

לפנים משורת הדין הרב צבי קרקואר

The Gemara relates a story involving the *mitzvah* of טעינה – helping a fellow load or unload his packages. There was a salesman selling bundles of wood, and asked R. Yishmael ben R. Yose to assist him in loading up the bundles so he could take them to market. Instead of doing the *mitzvah* of טעינה, R. Yishmael ben R. Yose bought the wood from the man and therefore did not need to help load the bundles. The Gemara asks why he would even have had to do the *mitzvah* if he was a *talmid chochom*, which comes with the פטור of "זקן ואינו לפי כבודו"? The Gemara answers with a *posuk* from our *parsha*: "...והודעת להם את הדרך... ואת המעשה אשר יעשו" (שמות יח, כ). The Gemara *darshens* the former phrase refers to actual דין and the latter part of the *posuk* means לפנים משורת הדין. R. Yishmael ben R. Yose was acting לפנים משורת הדין and therefore decided to buy the wood outright instead of performing טעינה.

The Bais Yosef states this is the *makor* for the Rambam's *din* that if one is in a position of לפנים משורת הדין he must perform the *mitzvah* of טעינה. Meaning to say, even if one is "זקן ואינו לפי כבודו" and *patur* from the *mitzvah* of טעינה, he is *mechuyav alts* "לפנים משורת הדין".

There is another Rambam, in הלכות גזילה ואבידה, which seems to be at odds with this. The Rambam *paskens* should a person find a lost object after the owner was מייאש, the *halacha* is that he may keep it. However, if he wants to go לפנים משורת הדין he may return the object to its owner. From here, it seems that the Rambam holds "לפנים משורת הדין" is optional by returning a lost object, yet by הלכות טעינה it is mandatory even when a person is *patur* from the *mitzvah*?

The Rambam in הלכות גזילה ואבידה is really coming off an earlier Gemara on דף כד. The Gemara relates R. Yehuda was walking in a marketplace with Mar Shmuel and asked, "if one finds a lost object here, what is the *din*?" One time Shmuel said he could keep it, because we assume יאוש happened, and in another incident, he told him to return it. The Gemara asks what the difference was, and answers that one case Shmuel told R. Yehuda the דין and the other was לפנים משורת הדין. It seems that the Rambam understood from here that even though one can keep the item, nevertheless, there is still a voluntary לפנים משורת הדין aspect to return it.

Tosafos, here on דף כד, asks the following *kasha*: If the Gemara introduces the ענין of לפנים משורת הדין here, why does it not bring the *posuk* of "...והודעת להם את הדרך..." which is its source? Why only on דף לד, by the *mitzvah* of טעינה does it bring the *posuk* source? Perhaps it is this *kasha* of Tosafos which compelled the Rambam to understand a difference between the לפנים משורת הדין by טעינה and that of השבת אבידה. The Rambam could understand that they are in fact two different types of לפנים משורת הדין.

Perhaps the Rambam understands the לפנים משורת הדין of the *posuk* is a function of extending a *mitzvah* that already exists. Meaning, by the *mitzvah* of טעינה there is a *mitzvah* to help load or unload. While there is a פטור of "זקן ואינו לפי כבודו", there the לפנים משורת הדין functions to extend the pre-existing *mitzvah* despite the applicable פטור. We can even see this *mashma'us* from the *posuk* - do the action which is still present, even when it is לפנים משורת הדין. This is the לפנים משורת הדין by טעינה on דף ל.

However, on דף כד the Rambam is clearly discussing a case where the finder picked up the object with the intent to keep it. When he does so, he immediately becomes the owner of the item. There is no longer any remaining *mitzvah* of השבת אבידה because he is now the owner. The לפנים משורת הדין here cannot extend the *mitzvah* of השבת אבידה which disappeared, and is therefore not the same as לפנים משורת הדין from the *posuk*. Rather, it more resembles a מדת חסידות because there is still the original owner who would most probably like to have his item returned. This is why the לפנים משורת הדין of השבת אבידה is voluntary.

Tosafos, who originally posed the question of contrasting the לפנים משורת הדין between the two Gemaras, may even agree to the Rambam. He could agree that by השבת אבידה, when the finder became the owner, there is no longer a דאורייתא-level לפנים משורת הדין to be *chayiv* to perform. It could be that Tosafos learns the case on : דף כד as the finder picked up the object and wasn't sure whether he should keep it or return it, and Shmuel said that even though he is allowed to keep it he should still return it *alts* לפנים משורת הדין. Therefore, Tosafos understood both the case on : דף כד and that on : ל to be scenarios of לפנים משורת הדין extending a still-present *mitzvah*, which is why he asked his question.

I think we could say the following *rayuh* to assert that Tosafos agrees to the Rambam's *yesod* in לפנים משורת הדין. Tosafos brings various Gemaras which discuss לפנים משורת הדין, some with the *posuk* and some without, but he leaves out the following Gemara in מסי כתובות: There was a story with R. Pupa who knew someone who needed capital for an investment. He sold his land to R. Pupa for cash. Subsequently, the investment deal fell apart and he no longer needed the cash, so he wanted to buy the land back. The Gemara discusses that since there was no *tenay* for the sale to be contingent on needing the cash, the *halacha* is that the buyer does not need to sell the land back to original owner. Nonetheless, R. Pupa sold him back the land because of לפנים משורת הדין. However, the Gemara does not bring the *posuk*, nor does Tosafos ask his *kasha* on that Gemara. With the *yesod* of the Rambam, Tosafos has no *kasha* on the lack of *posuk* in that Gemara because the buyer fully owns the land now. Any לפנים משורת הדין cannot be that of the *posuk* because it is not extending any *mitzvah*, and instead is the מדת חסידות type of לפנים משורת הדין.