



# Likkutei Sichos

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Whose Stone is it Anyway?

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\* and *siyum* of tractate *Bava Kamma*

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## 1.

### EXTRA SAPPHIRE FOR MOSHE

Hashem said to Moshe (about the second set of *luchos*): “**Carve for yourself** two stone *luchos* like the first ones.”<sup>1</sup> From here, the Gemara learns Hashem told Moshe “their remnants are yours {to keep}.”<sup>2</sup>

The final mishnah of tractate *Bava Kamma*<sup>3</sup> discusses the laws concerning the leftovers from the material with which a worker was plying his craft: Does it belong to the worker or to the owner {of the material}? The mishnah says: “Strands of wool that a launderer removes from the garment belong to the launderer, but strands that the carder, the person combing the wool, removes belong to the owner.”

[Because while washing the wool, the strands that the launderer causes to fall out of the garment are worth very little, and the owner does not care about them. Therefore, they belong to the launderer. But that which the carder, removes by combing it, belongs to the owner since “it is significant, and he does not relinquish it.”]<sup>4</sup>

Later, the mishnah discusses other situations and states when the extra material belongs to the worker; and when, to the owner:

The material a carpenter removes with an adze (very thin splinters) belongs to him; but what he removes with an ax (“an ax removes large chips”)<sup>5</sup> belongs to the owner.

The mishnah then concludes:

And if he was doing his work on the property of the owner, then even the sawdust (“even the very fine material which comes out from under the borer”) belongs to the owner.

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<sup>1</sup> *Devarim* 10:1; *Shemos* 34:1.

<sup>2</sup> *Nedarim* 38a; *Midrash Tanchuma*, commenting on our *parshah*, sec. 9, and commenting on *parshas Ki Sisa*, sec. 29; *Jerusalem Talmud, Shekalim*, ch. 5, sec. 2; *Shemos Rabbah*, ch. 46, sec. 2; *Vayikra Rabbah*, ch. 32, sec. 2; *Koheles Rabbah*, ch. 9, sec. 11, end of ch. 10.

<sup>3</sup> *Bava Kamma* 119a ff.

<sup>4</sup> Rashi on *Bava Kamma*, loc. cit.

<sup>5</sup> Rashi on *Bava Kamma*, loc. cit.

The Gemara analyzes this topic and quotes a beraisa:<sup>6</sup>

The Rabbis taught: Stone chisellers do not violate the prohibition against theft {if they take the leftover chips of rock}.

The Rebbe Maharash (in a brief note,<sup>7</sup> {the contents of which he originally said} at a *siyum* on tractate *Bava Kamma*) discusses this topic, questioning the law that “stone chisellers do not violate the prohibition against theft.” He says:

We need to clarify: If this is the case, why did Hashem need to tell Moshe, “Carve for *yourself*”? Seemingly, Moshe would not have violated the prohibition of theft, regardless, because the chips were ownerless; therefore, the worker closest to the chips {in this case, Moshe} may keep them. Why then did Hashem have to say, “Carve for *yourself*”?

The Rebbe Maharash answers:

There {in the case of the second *luchos*} the stone was sapphire; and here, the mishnah says “stones” without qualification {implying regular stones}. But in that case {of the second *luchos*}, the *luchos* were carved out of a precious stone.

Ostensibly the Rebbe Maharash’s explanation — that concerning the residual chips from the *luchos*, Hashem had to tell (allow) Moshe, “carve for yourself” {i.e., to keep the remnants} because they were made of sapphire — hinges on the two opinions mentioned in the Midrash:<sup>8</sup>

Rabbi Levi and Rabbi Yochanan say, “From where did the stone that he carved originate?” One answered, “From beneath Hashem’s Throne of Glory.” And the other said, “Hashem created a quarry in the midst of Moshe’s tent, and he quarried two *luchos* of stone from there. Moshe took the remnants from there and thereby became wealthy, since they were made of sapphire.”

According to the first opinion, the material from which the *luchos* were made descended from Heaven. According to the second opinion, the material was quarried from some place in our world. [This is, in fact, implicit from the simple understanding of the verses in our *parshah*. Hashem commanded, “Carve for

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<sup>6</sup> {A teaching of the mishnaic Sages that was excluded from the Mishnah.}

<sup>7</sup> Printed at the end of *Sefer Hatoldos Admur Maharash* (Kehot, 5707).

<sup>8</sup> *Midrash Tanchuma* on *Devarim* 10:1.

yourself two stone tablets like the first ones,” and subsequently, “and **ascend** to Me on the mountain.” This same order is recorded also in the passage that describing how Moshe fulfilled Hashem’s instructions:<sup>9</sup> “So I made an ark out of shittim wood, and I carved out two stone tablets like the first ones; and I ascended the mountain with the two tablets in my hand. (And the same is true in *parshas Ki Sisa.*)”<sup>10</sup>

According to the opinion that Moshe quarried the material for the *luchos* (and carved them) somewhere in Heaven, we do not need to answer that since they were made from sapphire, Hashem had to say, “carve for yourself.” For the law is (as mentioned earlier, based on the mishnah), “And if he was doing his work on the property of the owner,” then in any event, the material belongs to the owner.

Meaning, if the stones were ordinary ones and not sapphire, since Moshe had quarried the stones in Heaven, “on the property of the owner,” viz., Hashem, then Moshe would have needed the permission implied by Hashem’s command to “carve for yourself,” i.e., “their remnants are yours.” (For without permission, the law is that “they belong to the owner.”)

## 2.

DOES HASHEM CARE?

In the note, the Rebbe Maharash continues, saying that Rashbatz<sup>11</sup> asked: “Certainly, up Above, even precious stones have no value?” And the Rebbe Maharash answered: “But He made them in this **terrestrial world**, for from those made in Heaven, there would be no remnants.” Thus, the aforementioned question is also resolved, for the *luchos* were not made “on the property of the owner {i.e., Hashem}.”

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<sup>9</sup> *Devarim* 10:3.

<sup>10</sup> *Shemos* 34:1-4.

<sup>11</sup> {HaRav Shmuel Betzalel, son of Reb Shalom Shabsi Sheftel. See <https://www.chabad.org/85430> for his fascinating life story.}

Nonetheless, a question remains:

Even down here — everywhere — is the owner’s (Hashem’s) property: “His presence fills all the earth!”<sup>12</sup> Or, in the lexicon of our Sages (and **halachah** accords with this):<sup>13</sup> “Wherever they are located, they are inside the treasury of the Merciful One, as it says:<sup>14</sup> “The earth is Hashem’s, and all that it holds.”” Thus, even though the *luchos* were produced in this world, they were still carved “on the property of the owner.” Therefore, even for regular stones, special permission to “carve for yourself,” to keep the remnants, would be necessary. So how are we to make sense of the Rebbe Maharash’s answer?

On the other hand, in a case when the owner is Hashem, certainly, the reasoning that “the owner is **particular** (even about the small chips)”<sup>15</sup> does not apply. Nothing is consequential to Hashem, and He certainly is not particular about anything (regardless of whether the stones are precious [as Rashbatz asked]). However, there is a difference if they were made below in our world. Because **in our world**, we judge matters (and their laws) according to the world’s perspective. For this reason,<sup>16</sup> “Everything given for the sake of Hashem, who is good, should be of the most attractive and highest quality.... Similarly, it says,<sup>17</sup> ‘All the choice parts for Hashem.’” Thus, we should presumably conclude that even regular stones, since they are on the property of the “owner” — Hashem — they belong to the “owner,” because when the material is on the property of the owner, he is particular about it all.<sup>18</sup>

(On the contrary,<sup>19</sup> “Everything that the Holy One created in His world, nothing was created without a purpose.” Thus, seemingly, the question is exactly the opposite: Hashem is particular about everything.)

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<sup>12</sup> {*Yeshaya* 6:3.}

<sup>13</sup> *Chullin* 139a; see *Rosh Hashanah* 6a.

<sup>14</sup> {*Tehillim* 24:1.}

<sup>15</sup> *Sema* on *Choshen Mishpat*, ch. 358, sec. 14.

<sup>16</sup> *Mishneh Torah*, “*Hilchos Issurei Mizbeach*,” ch. 7, par. 11.

<sup>17</sup> {*Vayikra* 3:16.}

<sup>18</sup> *Tosfos Yom Tov*.

<sup>19</sup> *Shabbos* 77b.

### 3.

#### THE CRAFTSMAN IS CLOSER

Perhaps, we can answer that the law: “If he was doing his work on the property of the owner, then even the sawdust belongs to the owner” does not apply to the case of stone chisellers. The proof: The Gemara quotes the beraisa stating that “stone chisellers do not transgress the prohibition against robbery” not in connection with the part of the mishnah that discusses the various laws of items that either belong to the worker or to the owner. Rather, the Gemara quotes this beraisa when discussing the conclusion of the mishnah, “And if he was doing his work on the property of the owner....”

This implies that the law, “stone chisellers do not transgress the prohibition against robbery,” applies not only when the craftsmen performs his labor on his own premises, but even when he works on the owner’s premises. (Similar to the other cases in the beraisa, “wood choppers and vine pruners...,” who presumably work in the vineyard (the property) of the owner.)

In this light, the Rebbe Maharash’s explanation is understood simply. The reason Moshe needed {specific permission to keep the remnants, alluded to in Hashem’s command to him:} “carve for yourself” was because the *luchos* were made of sapphire. Had they been made from regular stones, there would have been no difference whether the stones were on the worker’s property or on the owner’s. Either way, in the case of regular stones, they “do not transgress the prohibition against robbery.”

This answer, however, is strained. The **rationale** for differentiating between a craftsman who works on his own property and one who works on the owner’s premises also applies to stone chisellers. Thus, why would stone chisellers be different? (Moreover, none of the halachic authorities mention that the law “if he was doing his work on the property of the owner, then even the sawdust belongs to the owner” does not apply to stone chisellers.)

Furthermore, the Rebbe Maharash, in the note, says specifically: “the worker is closer to the chips {and therefore, may keep them}.” Ostensibly, the meaning behind this is: Even the law that “stone chisellers do not transgress the prohibition against robbery” only applies when the worker is not on the owner’s property. For had he been talking about a worker on the owner’s property, the clause, “the worker is closer to the chips {may keep them}” would not make sense.

#### 4.

##### BERAISA AND TOSEFTA

We will understand this by first analyzing the differences between these laws as they appear in the beraisa and the tosefta.

The beraisa, as mentioned above, divides this topic into two cases and laws:

Stone chisellers do not transgress the prohibition against robbery. Those who prune trees, those who prune vines, those who trim shrubs, those who weed plants, and those who hoe vegetables: When the owner is particular about the plant trimmings, the workers transgress the prohibition against robbery {if they take the trimmings}, but if the owner is not particular about them, then these items belong to the workers.

The tosefta<sup>20</sup> records them all together, in one case and law:

Stone chisellers, those who prune vines, those who trim shrubs, those who weed plants: When the owner is particular about the plant trimmings, the workers transgress the prohibition against robbery {if they take the trimmings}, but if the owner is not particular about them, then taking these items is not considered theft.

The beraisa and the tosefta disagree on whether the owner’s attitude makes a difference in the case of stone chisellers. What is the rationale behind the dispute? Note that *Tur*<sup>21</sup> (although he applies this law also to the cases of “those

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<sup>20</sup> {A collection of beraisas arranged by the Talmudic Sage, Rabbi Chiya.}

<sup>21</sup> *Choshen Mishpat*, the end of ch. 358.

who prune trees,” and “those who hoe vegetables,” which only the beraisa mentions and not the tosefta) says, however (like the tosefta), that the case of stone chisellers depends on whether the owner is particular.

The explanation: According to the beraisa, there is a difference between the case of the stone chisellers and the other cases — “those who prune trees... and those who hoe vegetables.” The reason is that the leftovers from pruned trees are worth more than leftover stone chips. Therefore, the law depends on the owner being particular: “When the owner is particular about the plant trimmings, the workers violate the prohibition against robbery {if they take the trimmings}, but if the owner is not particular about them, then these items belong to the workers.” [Or, in a locale where owners usually are not particular — the custom of (the people in) that locale is not to be particular about a small quantity of leftovers — even if a single owner is particular, his intention is subordinate {to that of his community}. Therefore, the feelings of the individual are not considered, as the people in that community do not care.]

In this case, when it does depend on the owner being particular, and the owner is not particular, there are two rationales why the workers may take the leftover material: Either the owner not being particular makes the items considered ownerless. Since they are ownerless, they become available for any person to take, not only the worker or any specific person.<sup>22</sup> Alternatively, it is like a gift. Since it is of little value, the owner gives it as a present to whomever takes it, even without his knowledge.<sup>23</sup>

However, regarding stone chisellers, the beraisa uses the wording, “do not transgress the prohibition against robbery.” Meaning, the stone chips are even less valuable than the tree prunings. In the case of stone chips, a craftsman does not even need special permission, because “the owner is not particular about them.” Rather, because of their inferior value, they become ownerless automatically. Meaning, they have no significant value or worth in people’s eyes, so they become ownerless automatically. (Therefore, even if some owner is particular about them, his intention is ignored, not only because it is overridden

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<sup>22</sup> Responsa of *Noda B’Yehuda* (1<sup>st</sup> ed.), “*Even Ha’ezer*,” ch. 59.

<sup>23</sup> *Avnei Miluim*, ch. 28, sub-par. 49.



by public consensus, but moreover, because the owner does not own these chips, as they have no significant value.) This is in fact implicit in the Rebbe Maharash's note: **“Meaning, because they are ownerless, and they have no connection with the owners.”**

Put slightly differently: In the case of the tree trimmings and the like, where ownership {of the leftovers} depends on whether the owner is particular (or on the **custom** of the people in that locale), the leftovers are made ownerless (or gifted) by the person, although the items themselves have a degree of value. In contrast, the law that “stone chisellers do not transgress the prohibition against robbery” (and the same would apply to dodder and green grain),<sup>24</sup> is because these items {remnants from chiseled stone; and dodder and green grain} are inherently ownerless.

## 5.

### ISRAEL AND BABYLON

On this basis, we can posit that the rationale behind the dispute between the beraisa and the tosefta is based on whether the disposition of stone chips depends on whether the owner is particular. By way of introduction:

As explained by the commentators<sup>25</sup> who explain the “Rules of Gemara,” the difference between Beraisa and Tosefta is that

*Tosefta* refers to what was added to the Mishnah. Therefore, Tosefta does not employ the wording, “we have been taught,” or, “our Rabbis taught,” etc. Tosefta includes that which Rabbi Chiya organized before Rabbi Yehuda Hanasi, and Rabbi Yehuda Hanasi would say, “write this and this.” For this reason, the Gemara says, “if Rabbi Yehuda HaNasi did not teach this, from where did Rabbi Chiya learn it?” “Beraisa” refers to mishnayos that were said without Rabbi Yehuda’s knowledge, i.e., outside of his yeshivah, etc.

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<sup>24</sup> {*Bava Kamma* 119b. This vegetation grows on its own and no one tends to it.}

<sup>25</sup> *Sefer HaKerisos* and *Maharik* (quoted in *Kitzur Klalei HaTalmud* (printed at the end of tractate *Berachos*) s.v., “kessav be’peirush ha’mishnayos.”

Rabbi Chiya, Rabbi Oshia, and other Sages composed the Beraisa. The word *beraisa* is etymologically related to the word *bara* — outside. Meaning, they were taught outside the *yeshiva* of Rabbi Yehuda Hanasi.<sup>26</sup>

Thus, the toseftas that Rabbi Chiya organized before Rabbi Yehuda Hanasi were said in the land of Israel (where Rabbi Yehuda Hanasi's yeshivah was located). In contrast, the beraisas, which were taught outside of the yeshivah of Rabbi Yehuda Hanasi, may have been taught in Babylon (specifically because Rabbi Chiya came from Babylon).<sup>27</sup> And generally, it is reasonable to presume that the beraisas have a stronger connection with Babylon, because in the days of Rabbi Yehuda Hanasi, “the Jewish people wandered and became dispersed to the far ends of the world.”<sup>28</sup> At that time, Babylon turned into more of a place of Torah.

Now, upon the verse,<sup>29</sup> “Come, let us mold bricks... the bricks {they made} were {as hard as} stone,” Rashi comments: “For there were no stones in Babylon, because it was a valley.” Therefore, in Babylon, where stone was not used (because stone was not found there), the leftover stone chips (from stones that they had **when** some were transported there) had no value. Therefore, the beraisa says, “Stone chisellers do not transgress the prohibition against robbery.” Stone chips are inherently ownerless (in Babylon), and the intention of anyone who is particular about them is ignored.

In Israel, however, where stones are commonly found and are used for building and other purposes — in fact, the land of Israel is praised for being “a land whose rocks are iron”<sup>30</sup> — even the stone chips are valuable. This is similar to the trimmings of vines, etc. Therefore, their permissibility or prohibition depends on whether the owner is particular.

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<sup>26</sup> *Eitz Chaim*, introduction to *Peirush HaMishnayos*.

<sup>27</sup> *Sukkah* 20a.

<sup>28</sup> *Rambam*, “Introduction to *Mishneh Torah*.”

<sup>29</sup> *Bereishis* 11:3.

<sup>30</sup> *Devarim* 8:9.

## 6.

CLOSEST

Based on the above, we can also understand the Rebbe Maharash's note:

At that time {when the second *luchos* were hewn}, the Jewish people were traveling in the desert. It was not common (although we do find mention of stones, for example, in the story about the person who gathered wood on Shabbos)<sup>31</sup> to use stones (and certainly not to build. They did not build any permanent structures for they were constantly traveling and camping, traveling and camping). Thus, the law that “stone chisellers do not transgress the prohibition against robbery” would certainly apply to the Jews in the desert: “Meaning, because they are ownerless, and they have no connection with the owners.” The stone chips were completely ownerless, in and of themselves (not only because their owners did not care for them — i.e., from a person's perspective), as discussed above. Thus, why did Hashem have to permit Moshe to take the remnants by telling him to “*carve for yourself* — the remnants are yours”?

To this, he answers: “There, it was sapphire; and here, the mishnah says *stones*, without qualification.” Regarding sapphire, the law that “stone chisellers do not transgress the prohibition against robbery” cannot apply, although it does in the case of regular stones, because they have no significant value. Remnants of sapphire are certainly valuable. Therefore, we can understand why Hashem had to give Moshe the remnants.

[In the note, the clause, “the worker closest to the chips may keep them” {the regular stones}, means relative to other **people** (not relative to Hashem {the owner} for in this scenario, the law of “on the property of the owner” does not apply, as discussed). Therefore, automatically, the worker (specifically) acquires it.]

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<sup>31</sup> *Bamidbar* 15:35,36.

THE JEWISH PEOPLE OWNED THE *LUCHOS*

Another explanation can be offered to answer why, in the context of the *luchos*, Moshe had to be given permission to keep the remnants, Hashem telling him to “carve for yourself”:

The reason that Hashem had to give Moshe permission, telling him to “carve for yourself,” is not because without having received this permission, the remnants would have belonged to the “owner” (Hashem). Rather, since the *luchos* (needed to be placed in the Ark in the *Mishkan*,<sup>32</sup> they, like all the other items in the *Mishkan* and *Beis HaMikdash*) needed to become public property. (After their manufacture, they needed to be given to the public without reservation.<sup>33</sup> Alternatively, from the outset, even before they were formed, they needed to belong to the public.) They needed to be produced from material that belonged to the entire community.

This is also apparent from the continuation of the Gemara,<sup>34</sup> “The Torah was given {initially} only to Moshe..., as it says:<sup>35</sup> ‘Write for you,’ and it also says: ‘Carve for yourself’ — just as their remnants are yours, so, too, their writing is yours.” “Their writing” refers to Torah pilpul (as the Gemara clarifies), which was given to Moshe and not to the community. Thus, we can presume that the same applies to “*carve for yourself* — their remnants are yours.”

Since remnants from the *luchos* were also sapphire, they also belonged to the entire Jewish people. Yet, the stake that every Jew had in them was naturally less a *prutah*'s<sup>36</sup> worth, too small for the prohibition “you shall not rob” to apply. For the Torah only makes a person liable for stealing something worth money, and something worth less than a *prutah* is not considered to have monetary value.<sup>37</sup> Nevertheless, it is certainly forbidden to steal public property regardless

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<sup>32</sup> {The portable temple constructed by the Jews in the desert.}

<sup>33</sup> *Rosh Hashanah* 7a ff.

<sup>34</sup> *Nedarim* 38a.

<sup>35</sup> *Shemos* 34:27.

<sup>36</sup> {The coin worth the least in biblical times.}

<sup>37</sup> *Sefer Hachinuch, Mitzvah* 229.

of its value. Obviously, it is impossible to say that doing so wouldn't violate the prohibition against robbery. After all, "it is forbidden<sup>38</sup> to rob or steal even the slightest amount, according to Torah law."<sup>39</sup>

## 8.

### TOILING IN TORAH

The explanation of this matter (the difference regarding the ownership of the second set of *luchos* — the *luchos* themselves belonged to the public, to all the Jewish people, whereas the chips were given to Moshe, "their remnants are yours") according to the deeper ideas in Torah is as follows: When Hashem gave the Torah to the Jewish people via the second *luchos*, a change was brought about. Namely, as the Gemara continues (and as discussed above), "Just as their remnants are yours, so, too, their writing is yours," i.e., the pilpul of Torah was also given to Moshe.

This explains the deeper meaning of the words, "But He made them **down here**, for from those made in Heaven, there were no remnants." Torah, as it exists from the perspective of Heaven, which, in general, refers to Torah as it existed in the wake of the first set of *luchos*, is oneness. There is no division, and there are certainly no remnants {lit., "waste"} (rather — it is all foremost). However, Torah then descends below, a process represented by the second set of *luchos*. (Hashem gave the second set of *luchos* to the Jewish people after they repented for the sin of the Golden calf. Meaning, the Jewish people's repentance, so to speak, induced Hashem to give **them** the *luchos*). At this point, a division of levels in Torah comes about, also the aspects of "remnants," as it were (*front and back*).<sup>40</sup>

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<sup>38</sup> Alter Rebbe's *Shulchan Aruch*, "Choshen Mishpat," beg. of "Hilchos Gezeilah Ugeneivah."

<sup>39</sup> See *Sanhedrin* 57a: "After the fact, the one stolen from overlooks the theft; however, at the time, who wouldn't be annoyed?" Rashi, ad loc, comments: "Therefore, this act constitutes theft." See Rashi, *ibid.*, end of 59a.

<sup>40</sup> {In the Hebrew original, "*panim ve'achor*."} In the lexicon of Chassidus, terms that refer to the foremost and hindermost facets of an entity, just as the front of a person is foremost, and his backside, the hindermost.}

The explanation of the connection between “their remnants are yours” and “their writing is yours,” which refers to Torah pilpul : The pilpul of Torah, given to Moshe, is a most sublime matter, the polar opposite of the remnants of the *luchos*. The second set of *luchos* gave rise to the concept of toiling in Torah, as explained at length in Chassidus.<sup>41</sup> This matter also contains paradoxical elements: Toil is necessary because of the obscurity, concealment, and questions, etc. These are remnants {lit., “waste”} in comparison with the quintessential wisdom of the Torah. On the other hand, specifically toiling in Torah brings a person to the primary part and essence of Torah, beyond the Torah as it exists by itself, i.e., beyond the way the Torah exists on the level that it was given from On High — the first set of *luchos* — as explained there at length.

This, then, refers to the pilpul of Torah that Hashem gave Moshe. Although the Gemara refers to it as “**mere** pilpul,” it is also called “understanding and astuteness”<sup>42</sup> in Torah — a highly advanced level of Torah comprehension. “This was given to Moshe, and he magnanimously shared it with the Jewish people.”<sup>43</sup>

— Based on a talk delivered on 20 Av 5724 (1964)

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<sup>41</sup> See *Hemshech Samech Vav*, p. 86 ff.

<sup>42</sup> *Rosh* on *Nedarim* 38a.

<sup>43</sup> *Ran* on *Nedarim* 38a.