



HaRav Shaul Israeli zt"l  
Founder and President

# HEMDAT YAMIM

## PARASHAT HASHAVUA

R'ei, 27 Av 5774

### To Learn to Fear

Harav Shaul Yisraeli – based on Siach Shaul, p. 509-510

In discussing the *mitzva* of bringing *ma'aser sheni* to Yerushalayim, the Torah writes "... in order that you should learn to fear" (Devarim 14:23). What is this learning, which results not in knowledge but in the emotion of fear? Also, what is the need to learn in such a manner, considering that at least mature Torah observers ostensibly already fear Hashem?

The truth is that the process of learning is never completed, and there is never a point at which it is no longer possible to progress. Judaism declares war on superficiality: "You shall not stray after your heart and your eyes" (Bamidbar 15:39). The eyes entice us to believe that what they see exists the way they perceive it. The corollary is that what they do not see and we cannot identify with any of our other senses does not exist. That is the reason that the world had difficulty accepting the existence of a spirit, the World to Come, and even the Creator. Even if someone accepts those things, he is liable to attribute to them less significance than he does to the physical world, which he experiences.

Does a person have a life outside the life of eating, drinking, and resting? Can he have aspirations that go beyond such physical experiences?

A religious Jew believes that everything is determined from Above and that his efforts will succeed only if it coincides with the Divine Will. Therefore, he fulfills *mitzvot* in order that he should succeed in life. *Chazal* taught, through a play on words from our *parasha*, "Give tithes in order that you will become rich" (Ta'anit 9a). Our *parasha* teaches: Lend money "so that due to this, Hashem will bless you" (Devarim 15:10). While he may do those good acts because he believes in Hashem and His Torah, what is his goal in acting as he does? It is liable to be the same ultimate motivation that a non-believer has. After all, if the non-believer in Hashem were somehow convinced that he would get rich by giving charity, he would do so as well. This is what the Torah hints at when warning a person not to say "How do these nations serve their gods, and I will do the same myself." In other words, it is not that we will serve their gods, but that we will be motivated to serve Hashem with the same aspirations of the non-Jews.

For this purpose, the *mitzva* of *ma'aser sheni* comes to educate us. You do not give the *ma'aser* to someone else but to oneself. Go on a vacation, just do it in the place Hashem chose: Yerushalayim. The person arrives with holy money with the intent to enjoy himself. He sees the *kohanim* and *levi'im*, those who are supported by his other tithes. He may think that they have to treat him with respect for that. However, when he sees the *kohanim* and *levi'im* at their glorious posts in the service of Hashem, with spiritual goals on their minds, he understands properly.

This is where the bringer of *ma'aser sheni* learns to fear. The values he sees are different than the toil he exerts during the course of the year. *Ma'aser sheni* is great for it leads to study (Sifrei, Devarim 106). He stays in Yerushalayim until he finishes his *ma'aser sheni* and sees others involved in the service of Hashem. He decides to concentrate on serving Hashem, fear of Hashem, and Torah study (see Tosafot, Bava Batra 21).

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by Rav Daniel Mann

## Going to the Courts Where There Is No *Beit Din*

**Question:** I am a lawyer in a country with a small Jewish population, in which when we need a *din Torah*, we fly someone in from another country. A Jew who is suing another Jew asked me to represent him, and the dispute is on a modest amount of money, which is less than the cost of bringing a *beit din*. May we sue in non-Jewish courts?

**Answer:** Although we respect and value local governmental courts (see Avot 3:2), Jews are required to seek adjudication specifically in a *beit din* (Shulchan Aruch, Choshen Mishpat 26). There are two main rationales for this halacha: 1. It is wrong for the incorrect litigant, from the perspective of Torah law, to win the case. 2) Seeking a different system of justice is a severe affront to the Torah's pertinence in the critical realm of justice (see Beit Yosef, CM 26; S'ma 26:4).

Factor #1 does not apply if the two sides agree to go before the non-Jewish court, as they can decide on other forms of dispute resolution, e.g., mediation, flipping a coin ... However, factor #2 is still a problem. If adjudicating in a *beit din* is unfeasible, then factor #2 should not be a problem because one is not rejecting Torah justice but is just dealing with a situation where it is not an option. Indeed, the *gemara* talks about adjudication before unknowledgeable Jews when no local Jews are capable of functioning as a proper *beit din* (Sanhedrin 23a, adopted by the Rashba, cited in Beit Yosef, CM 8). The implication is that this is preferable to going to the local non-Jewish court. On the other hand, there is room to argue that this was based on an assumption, which is not as prevalent in our days as in the past, that the courts were a corrupt and a dangerous place for Jews and the Jewish community (see Rashba, Shut II:290).

What does one do when a city has no Jewish tribunal at all? The Rama (CM 14:1) says that this is grounds for going to another city from the one in which the case should have been heard. However, as the discussion above implies, out-of town alternatives may be deemed practically unfeasible.

Most poskim posit that when there is no *beit din* that can adjudicate, it is permissible to go before a non-Jewish court (Chukot Hachayim (Palagi) 6). The Rivash (216) implies this. The Shulchan Aruch (CM 61:6) says that although a contractual stipulation does not allow a lender to make payment from a borrower's property without involvement of *beit din*, he may do so if he cannot find a *beit din* to adjudicate. The Maharikash (Erech Lechem, ad loc.) broadens this concept to allowing a Jew to sue in non-Jewish court when a local *beit din* is unwilling to hear the case. There is discussion about the conditions under which such action is justified (see Chukot Hachayim ibid.) and on whether a *beit din* must at least grant permission, but in cases where there is no alternative, it is permitted to go to the courts.

Spending more money on transportation than the claim warrants is one such case (see Sanhedrin 31b). On the other hand, there are often reasonable alternatives. Mediation and non-judicial arbitration are often good ideas in any case. Nowadays, there are recognized *batei din* which will adjudicate via video-conferencing, as our *beit din* has done successfully. While a standard hearing is more effective, we find precedents for compromising effectiveness in a case of need. For example, when one side wants to go to an expert regional *beit din* and the other prefers a local lower-level one, they adjudicate locally, and the *beit din* sends questions to experts (ibid.; Shulchan Aruch, CM 14:1).

We suggest that your plaintiff propose one of the above alternatives. If the other side rejects them, it is like any case in which the defendant refuses to submit to *beit din* and *beit din* grants permission to go to court. It would be legitimate for the plaintiff to refuse to offer one of these options if he truly believes that they will take away from his right for justice. In any case, it would be permitted for you to represent him as a lawyer in court.

Dedicated in memory of R' Shmuel Shemesh z"l, Eretz Hemdah's Board Member, who passed away 18 Sivan, 5774

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# Ein Ayah

(from the writings of Harav Avraham Yitzchak Hakohen Kook, z.t.l.)

## Developing Awareness toward Gratitude

(condensed from Ein Ayah, Shabbat 1:14)

**Gemara:** One who gives a present to his friend should inform him, as the *pasuk* says: "... my Sabbaths you shall guard, for it is a sign ... to know that I am Hashem who sanctifies you" (Shemot 31:13).

**Ein Ayah:** Gratitude is the greatest ethical pillar, which, when complete in a person, is very helpful in making him a complete person. Even now when people's hearts are full of spiritual deficiencies, they are still capable of expressing this delicate feeling in word and deed. This is most common and strong regarding honoring parents, especially after their death. Indeed, the trait is deep within the heart.

When a person is lacking, it is possible for him to have gratitude toward small things and not towards things that are inestimably greater. Thus we find those who are grateful to their parents but not to the one, merciful Hashem to Whom one should have a great thirst to express his realization of His greatness. Due to man's shortcomings and the vast extent of Hashem's contributions to us, the full extent of the recognition of Hashem's impact on us does not enter his heart. When mankind will develop spiritually and people will be able to handle great ideas, their gratitude to Hashem will bring a great light that will improve all of man's life, as individuals and as a collective. When mankind will reach the peak of its ability to fix the world physically and spiritually, all of mankind will be so grateful to Hashem that they will strive to fix everything in the world and will have an emotional need to express their gratitude through service of Hashem. Therefore, every opportunity that we now have to develop the spirit of gratitude in the world sets the foundation for the bright future.

Since human manners dictate that when one finds out that he received a present, his heart is filled with feelings of thankfulness, *Chazal* teach us that we should not forgo the opportunity even if the one who gave the present has no interest in the gratitude. It is worthwhile for the setting of the foundation of mankind's gratitude in such a way that even small feelings can join in the effort to make the whole better.

In the *pasuk* that the *gemara* cites, the Torah teaches that the sanctity of Shabbat is supposed to engrain in us gratitude in regard to spiritual presents, i.e., that Hashem sanctifies us. Life bereft of its spiritual element is considered a burden. Even if a person searches for imaginary pleasures to overcome the difficulties of life, this only masks the negative and does not bring absolute goodness. In contrast, Hashem presented us with a life of sanctity in which one can and should pursue goodness and eternal pleasures. When a person realizes that he has been given that opportunity, he will be truly happy and grateful.

Shabbat plays that role, as it is a very holy testament to Hashem's creation of the world. Shabbat illustrates that our gratitude to Hashem will be fully significant only if people appreciate the benefit of sanctity within life and the fact that it is a present from Hashem, in that He created us with the ability to bring sanctity, make life good, and enable man to thank Hashem in joy.

We learn that the knowledge that enables a person to be grateful is a foundation of the Torah and a sign between Hashem and His nation. That is why it is proper to train people to value recognition of the good they have received, even in regard to matters of limited value. As the world is spiritually embellished, so will the quality of this gratitude develop significantly.

May Hashem avenge the death of the kidnapped boys  
**Yaakov Naftali Frenkel, Gil-Ad Michael Schaer and Eyal Yifrah o.b.m**  
 And for all those that fell in the war for our homeland.



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# P'rinat Mishpat

## Disqualifying a Shochet

(based on Beit Yitzchak (Shmelkes), Choshen Mishpat 83)

[This responsum is the last one in the final volume of Beit Yitzchak. One can easily argue that it should not be in Choshen Mishpat (or in this column), as it is focused on the laws of kashrut. The explanation is that Rav Shmelkes was asked to state his opinion on whether a certain shochet could continue in his post or whether he needed to be removed. Apparently, there was a din Torah on the matter, and the beit din of Rozadiv, whose members are addressed in the letter, had to rule on the matter of his continued employment.

As opposed to most cases of this sort where the author of the responsum is approached solely due to his great scholarship, here there is an interesting additional twist. The shochet had been trained in Parmishla, the city where Rav Yitzchak Shmelkes had been rabbi for many years (by this time, he was in L'vov).]

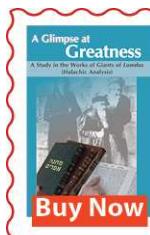
I received your inquiry about the accomplished shochet R. Avraham, who was trained in Parmishla, and now some of the people of your town want to disqualify him because he certified as kosher an animal with a certain question of tereifa. [We will not get into the animal's specific questionable blemish.]

I have been told by all the shochtim of Parmishla that there was a minhag started by the brilliant Rabbi Shmuel Zeinvi Heller, head of Parmishla's rabbinical court, to rely on the lenient opinion of the K'reiti U'pleiti on this matter. When I came to Parmishla, I did not agree with that ruling, as I wrote in Beit Yitzchak, Yoreh Deah I:69, but I did not protest against the practice. I always tried to find a way to be lenient on the matter by finding alleviating factors [again, we skip the technical details]. It is not clear whether in the case R. Avraham was involved in, there were not additional doubts in the direction of leniency. If there were, then his certification was proper.

However, even if there were no additional indications for leniency, since the K'reiti U'pleiti ruled leniently and this is the minhag in several places, R. Avraham is not considered like one who wrongly permitted a tereifa. Firstly, it is clear that even those who forbid such an animal do so only on the level of Rabbinic law, and the Avodat Hagershuni (15) says that a shochet who makes a mistake on a ruling on a Rabbinic matter is not disqualified.

The above is only extra justification, as the main idea is that since he followed the minhag of Parmishla, where he was trained, he should not be blamed. His training also is an excuse for the fact that he did not ask the local rabbi to rule on this matter. Another "extra" factor is that many Yom Kippurs have passed since he made the mistake in question, and you should therefore not question his reliability. [The responsum ends with a long tangent about the extent to which the passage of Yom Kippur affects those who are in need of atonement for various sins, and how Yom Kippur is more limited in its atonement powers when we no longer have the service of the sa'ir hamishtaleach (the "scapegoat").]

In summary, it is clear that R. Avraham can be relied upon to shecht and check the animals, even for those who want to be mehadrin among the mehadrin without any concern.



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