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HEMDAT YAMIM

המדת ימים

PARASHAT HASHAVUA

Mishpatim, 25 Shevat 5775

Reasons, Appeal, and Just Judgments

Harav Yosef Carmel

As we do every year on *Parashat Mishpatim*, we will deal this week with principles of the operation of the *batei din* (rabbinical courts) of Eretz Hemdah-Gazit.

One of the topics that riled up emotions in the pre-State developing community of *Eretz Yisrael* (in the 1920s to be more exact) was the British authority's ultimatum that rabbinical courts would be recognized only if they had an appeal system. The dispute as to the proper reaction started as one between the rabbinate of Yaffo and that of Yerushalayim. It turned into one between followers of the founder of the Chief Rabbinate of Israel, Rav Avraham Yitzchak Hacohen Kook zt"l and the opponents of the Chief Rabbinate, led by Rav Chaim Sonnenfeld zt"l.

We will cite the approach of the first Sephardic Chief Rabbi of the State of Israel, Rav Bentzion Uziel. He said that if the people want an appeal system, we cannot block our ears. One should not claim that we cannot employ an idea we have not found explicitly previously. When the community agrees to institute an innovation that there can be appeal and all who adjudicate accept it, it can be done. In order to facilitate appeal, a *beit din* must clearly write the basis for the ruling so that others can evaluate it (see citation of his thesis in *Techumin* XV, p. 83). Others have found precedent in the writings of *Rishonim* for the existence of appeal tribunals, and great rabbinic leaders have approved the system used for presenting the appeal (*ibid.*).

A complementary source is the *gemara* in Sanhedrin (31b). R. Elazar says that if one litigant wants to go to a local *beit din* and the other wants to go to a more distinguished regional *beit din*, the case is heard locally and *beit din* writes down the reasons for their decision. What was done with the reasons? This is another apparent source that others would review and evaluate the veracity of the first court's ruling.

Based on the principles found above, Eretz Hemdah-Gazit's rulings contain detailed reasoning. Most of the rulings are also made available to the public. Writing the reasons both allows for appeal and makes the process more transparent. Publicizing the rulings (after removing all identifying details) allows for public scrutiny and enables people to learn the principles upon which our court system operates.

Our procedures, which explicitly allow for appeal, take into account that no man is immune to mistakes. On the other hand, we place certain brakes on the appeal system to prevent automatic appeal, which can cause unjustified delay in implementing rulings.

We will summarize by citing our basic rules of appeal.

1. Each side can appeal but only within 30 days of the handing down of the ruling.
2. A court head who did not sit in the case at hand reviews the ruling and decides whether a deeper review of the ruling is in place.
3. If the court head decides the matter warrants appeal, it is heard by a panel of three who all serve as court heads (it may include the one who granted the right to appeal).
4. Litigants can decide in advance to waive their right to appeal.
5. There is a special additional fee for appeal.

May we merit that our courts will be a proper fulfillment of the precept: "These are the statutes that you shall place before them" (Shemot 21:1) and that it will help hasten the fulfillment of "Zion will be redeemed with justice and its returnees through charity" (Yeshaya 1:27).

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by Rav Daniel Mann

Beracha on Pureed Vegetable Soup

Question: I read your recent response about the *beracha* on the broth of vegetable soup. Is the halacha any different for pureed vegetable soup?

Answer: You will remember that according to most fundamental approaches, based on the *gemara* (Berachot 39a), the *beracha* on the clear broth of vegetable soup is *Borei Pri Ha'adama*. On the other hand, there are enough factors against saying *Ha'adama* to convince most contemporary *poskim* to prefer *Shehakol*. Pureed soup shares certain factors, but other factors point in different directions.

We dealt with an apparent contradiction with the *gemara* (ibid. 38a) that says that the *beracha* on most fruit juices is *Shehakol*. Another reason to not make *Ha'adama* on vegetable soup broth is the contention of Rav Shlomo Zalman Auerbach and others that these soups often lack sufficient vegetable taste to justify it. These issues do not apply to pureed soup because one is not consuming just the juice/broth but the whole essence and taste of the vegetables.

However, in another way, the situation points more toward *Shehakol* than toward *Ha'adama*. We saw the Rosh (Shut 4:15) who says that the broth's *beracha* is *Ha'adama* when and because it is normal for people to cook the vegetables to eat them. The broth is thus dependent on the vegetables, which generally exist even if one is eating only the broth. In this case, though, the vegetables cease to exist as a solid, clearly recognizable entity. V'zot Haberacha (p. 404) entertains the possibility that the *beracha* should be determined as *Ha'adama* when it was cooked, before it was pureed. However, he concludes that we follow the form in which it is eaten, certainly when the intention when cooking it was to puree it before eating. Since the soup is actually a semi-liquefied form of mashed vegetables, it is necessary to determine what the *beracha* is on mashed vegetables.

The *gemara* (Berachot 38a) says that when one takes dates and crushes them into *terima*, their *beracha* remains *Borei Pri Ha'etz*. What is *terima*? The Rambam and the Shulchan Aruch (Orach Chayim 202:7) say it is totally crushed to the point that it is "like dough," and yet the *beracha* is unchanged. The same should apparently apply to a mashed vegetable. On the other hand, Rashi (ad loc.) says that *terima* is only partially crushed, and based on this, the Terumat Hadeshen (29) and Rama (OC 202:7) say that mashed fruit (and presumably vegetables) should get the safer *beracha* of *Shehakol*. This does not necessarily turn into a clear *machloket* between Ashkenazim and Sephardim, as the Rama says that if one recited the *beracha* of the fruit/vegetable he can assume he was *yotzei*. Sephardi *poskim* also disagree whether to follow the Shulchan Aruch or to also make the safer *Shehakol* in light of this *machloket Rishonim* (see V'zot Haberacha, p. 99, Birkat Hashem 7:26-29).

Based on the above, we should, on the practical level, distinguish between different levels of puree. If the vegetables are pulverized to the point that there are no or few pieces of discernable vegetables, even if the soup is thick, then the more accepted *beracha* is *Shehakol*. However, if the soup is lumpy, then the *beracha* should be *Ha'adama* (V'ten Beracha (Bodner), p. 434). This distinction is similar to what many say regarding types of apple sauce and peanut butter. Those who make *Ha'adama* even for smooth pureed soup have what to rely upon, especially considering the fact that the stronger fundamental opinion regarding mashed potatoes, even if this not usually suggested, is to recite *Ha'adama* (see Mishna Berura 202:42).

Another logical distinction within the case of totally crushed vegetables is whether they are still recognizable based on their characteristics, which is a major reason to warrant *Ha'adama* (see Birkat Hashem, p. 404-6). It would seem then that if the pureed soup has several vegetables that form its basis, then it is more difficult to recognize its component parts and harder to justify reciting *Ha'adama* unless there are many small pieces.



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Ein Ayah

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

Mishpatim

Outside Is No Place for a Voter

(condensed from Ein Ayah, Shabbat 1:79)

[This piece is a continuation of the discussion of the halachic dispute between Shamai and Hillel about the need for purity in dealing with wine and oil. Rav Kook had explained that the philosophical debate was the extent to which it was wise to demand of the populace that their joy and/or pleasure be limited to matters of purity and mitzva. As the gemara continues, the two sides prepared to take a vote on the proposed laws in question.]

Gemara: They announced: "One who wants to enter [the *Beit Midrash*] may enter, but one who wants to leave may not leave."

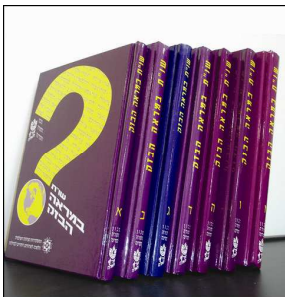
Ein Ayah: At a time that the generation is corrupt and the people need to be supported in the good, straight path of the Torah, the outlook of the leaders must always be to the Torah, as finds expression in the life in the *Beit Midrash*. That is the place from which one can properly see how life is supposed to be lived.

However, if one wishes to incorporate into the discussion in the *Beit Midrash* elements of the corrupt atmosphere that exists in the marketplace, the intention will be ruined. It is like a doctor who must approach the task of healing a patient from the perspective of the wisdom of medicine, not from the perspective of the desired lifestyle of people who ruined their health by an unhealthy lifestyle.

Along those lines, all agreed that he who wanted to enter could enter, but he who desired to leave could not leave. In other words, the dispute would be decided by means of the depth of the wisdom of the Torah, which encompasses everything and leads to a proper and straight path. One should not go out to see how the matter looks from the perspective of the world outside the *Beit Midrash*. One who sees the corruption and the tendency towards lack of control and uncurbed desires may give up on the possibility to lead the nation toward joy that is reserved for purity and *mitzva*. One who wants to leave the *Beit Midrash* and join the masses cannot be involved in the decisions for the Nation of Hashem. Rather, the backbone of the nation must always be the stalwarts who use Torah as the basis for their decisions.

Therefore, one who wants to enter, breathe the spirit of wisdom from the *Beit Midrash*, and be included in the group which is deciding, may do so. However, members of the group should not go outside. It is true that those giving guidance need to know the way of practical life and realize the people's needs in order to bring goodness and completeness to the world. However, they should not be swayed by the corrupt lifestyle caused by the generation's deterioration and certainly not incorporate these in decisions. Even one who usually does go out and knows how to use what is happening in the world to rule in matters of Torah should not go out now. Yes, he should know what is happening so that he knows what is corrupt so that he can "patch up the holes." However, going out to help shape his decision at the time of voting can cause an abuse of Torah.

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P'ninat Mishpat

Putting Pressure on Male Inheritors

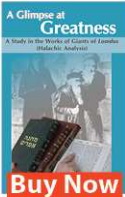
(based on Shoel U'meishiv III:l:178)

Case: A man died, leaving behind two sons (including a firstborn) and three daughters. According to the laws of the government, the sons and daughters all inherit their father in equal parts unless the daughters sign a *chesia* (some sort of waiver of rights or acknowledgement). This is as opposed to the Torah law that the sons inherit, with the firstborn receiving a double portion. The daughters are willing to sign the *chesia* only if they get a full share of the inheritance. One of the daughters also claims that the firstborn told her husband that he does not want to receive one bit more than his sister, [but has since changed his mind, while not denying that statement].

Ruling: We will start by analyzing the firstborn's *mechila* (relinquishing of rights). Regarding the firstborn's regular portion, *mechila* does not work. This is because inheritance is an automatic right that comes to the inheritor based on Torah law. This right, which can take effect at any moment upon the "bequeathing party's" death, is not subject to *mechila* (see Mishneh Lamelech, Ishut, ch. 23). [One would have to void his ownership or give it away to another after receiving the inheritance.]

The firstborn's extra portion may be different in regard to *mechila*. Since the Torah views it as a "present" to the firstborn, he is able to remove himself from receiving it (Hagahot Oshri to Bava Batra 8:15). Although the Hagahot Oshri cites a Yerushalmi as saying that the firstborn's *mechila* is ineffective, the K'tzot Hachoshen (278:13) neither could identify such a Yerushalmi nor did he understand what its reasoning would be. My father [Rav Aryeh Lebusch Nathanson] claims that there is a misprint in the Hagahot Oshri and that he just said that *yerusha* (inheritance), i.e., a regular portion, is not subject to *mechila*. The conclusion is that *mechila* is effective for the firstborn's extra portion, although in any specific case, it will depend on the language that the person uses.

Regarding the need to sign a *chesia*, it does not appear that the daughters are required to do that, even in regard to money that they do not deserve based on Torah law. This is what follows from the Pnei Moshe, and I have written on the matter at length in several responsa. I demonstrated that this approach is supported by Tosafot (Bava Kama 40b), who says that one who should pay for his ox's damages from the ox itself can force the damaged party to relinquish some of his rights through a compromise based on the threat that he will hide his ox and thereby prevent payment. It is true that the Terumat Hadeshen (306) rejects this approach as the Shulchan Aruch (Choshen Mishpat 12:6) apparently does. However, it seems that in this case, the Shulchan Aruch could agree because the daughters are not taking steps to force the brothers to make a settlement, just that they are refusing to take positive action on their brothers' behalf.



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