



HaRav Shaul Israeli zt"l  
Founder and President

# HEMDAT YAMIM

## Parashat HaShavua

Shoftim, 7 Elul 5775

### Courts Throughout Your Country

Harav Yosef Carmel

As usual for *Parashat Shoftim*, we will discuss something connected to our Eretz Hemdah-Gazit *batei din*, which are spread throughout the country (from Sderot to the Golan), with Hashem's help. We will focus this time on the Law of Arbitration, which the Israeli Knesset legislated, and its impact on the operation of our *batei din*.

The ability to enforce rulings is a fundamental element of any court system. Going through the process of opening a file, holding hearings, accepting written submissions, studying the case's halachic/legal background, and writing a comprehensive ruling without knowing it can be enforced, turns the matter into a farce. It risks a great waste of time and money and can cause significant *chillul Hashem*.

In a closed society where refusing to follow a *beit din's* ruling is unheard of due to societal pressure, the possibility of governmental enforcement may not be necessary. However, even in such surroundings, in litigation on the most significant matters (e.g., control of leading Torah institutions), parties have been known to solve their problems in secular courts, where there is enforcement.

Even the rulings of the government-financed *Rabbanut* courts on purely monetary matters have only been enforceable by means of the Law of Arbitration, as they have jurisdiction only for personal status and family matters, especially divorce. After the landmark Amir case ruling of Supreme Court Justice Procaccia, it became illegal for the *Rabbanut* courts to hear cases outside the areas of their jurisdiction. Many *dayanim* in those courts refused to use arbitration law, claiming that their authority comes and must come only from the authority of the Torah, without the need for the permission of the Knesset or Supreme Court.

Before we clarify our position on the matter, we will briefly explain the working of the Law of Arbitration. Opening litigation to arbitration courts makes the process faster and lessens the backlog of cases that fall upon the tired governmental courts. Most countries have adopted such laws, which are incorporated into international law. The law sets certain basic requirements for the arbitrators' rulings to be fit to be upheld:

1. The rulings are binding only if a valid arbitration agreement has been signed.
2. The arbitration must remain within the boundaries of the dispute to which the sides agreed.
3. The litigants were given a fair opportunity to present their claims and proofs.
4. The content of the ruling does not run against the public interest.
5. The ruling is written, signed, and dated by the arbitrators.
6. The Regional courts will uphold the ruling and thereby enable its enforcement after they check that the basic rules of justice were followed.

Since the rules that are expected of arbitration courts are required by halacha as well, we are happy to be subject to them. The substantive law that we use is Torah law. The Law of Arbitration, which is a fair law, upholds the right of every set of litigants to adjudicate according to their beliefs, while ensuring that they will abide by the rulings.

We should be thankful that the State of Israel legislated such a law, which preserves much of the Torah's relevance to modern society. We are not bothered by the question of ultimate authority since halacha recognizes a government's responsibility for the welfare of its populace. We pray for a strengthening of the State leading to a time of full fulfillment of "I will return your judges as it was initially ..." (Yeshaya 1:26).

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by Rav Daniel Mann

## Who Drinks Kiddush/Havdala Wine and Why?

**Question:** Why is it that after *Kiddush* everyone drinks the *Kiddush* wine and after *Havdala* only the *mavdil* does?

**Answer:** The sources leave room for much hypothesis but little conclusive evidence.

The Shulchan Aruch (Orach Chayim 271:14) deals with the way(s) to fulfill the requirement that a *m'lo lugmav* (enough to fill cheeks – approximately 2 fl.oz) of the *Kiddush* wine is drunk. Some say that one person has to drink the whole amount; others say we can add up that which different people drink. The Shulchan Aruch points out that either way, the choice way to perform the *mitzva* is for everyone to drink. It is sufficient for each person to have a small amount (Taz ad loc. 17), and if their drinking interferes with one person having a *m'lo lugmav* or leaving wine for the next day, the idea of everyone drinking is waived (Magen Avraham 30). Yet it is important enough to delay the *mekadesh* between his *beracha* and drinking (see Shulchan Aruch, *ibid.* 16).


The Shulchan Aruch's source (see Beit Yosef) is the Rosh (Pesachim 10:16), who explains the goings on in the *gemara's* about people drinking *Kiddush* wine: "Although they are not required to drink, still it is a preferable *mitzva* to drink." He does not offer a source, or an explanation, nor does he mention if it is a special *mitzva* regarding *Kiddush*, which is the *gemara's* context.

The Rambam (Shabbat 29:7) says that after drinking a *m'lo lugmav*, one "gives to all the members of the group to drink." The Mirkeveth Hamishneh (ad loc.) looks for a Talmudic source for the Rambam (who rarely includes a halacha that lacks one). He points to the *gemara* in Berachot (51a) that lists things one is supposed to do to enhance a *kos shel beracha* (cup of wine used in a *mitzva* context). Rav Avahu mentions ten things and then that some say to send it to the members of one's household. R. Yochanan argues that only four of the practices need to be kept. The Mirekeveth Hamishneh says that R. Yochanan reduced the ten to six but did not take issue on sending to one's household. If this is the source, then it should apply to all cups of *beracha*. Indeed, the Shulchan Aruch (OC 190:40) says so regarding wine for *Birkat Hamazon*, and it should ostensibly apply to *Havdala*. The logic is that drinking the wine bestows importance to this *mitzva* cup (Darchei Moshe, OC 182:1).

The Rambam (Berachot 7:15) while not stressing the matter, does talk about drinking the wine used for *Birkat Hamazon* in the plural. Within the *halachot* of *Havdala*, the Rambam (Shabbat 29:24) doesn't mention drinking at all, which could indicate that the drinking of *Havdala* wine follows the same rule as *Kiddush*. The Shiblei Haleket (64), accepted by the Magen Avraham (296:4), is an early source that says that our practice is to not give *Havdala* wine to others to drink. The Mishna Berura gives a technical explanation of why not. Since *Havdala* is not made in the framework of a meal, we want the *mavdil* to drink enough (a *revi'it*, which is more than *m'lo lugmav*) for a *beracha acharona* on the wine to be a certainty. Whether all agree and why the Shulchan Aruch does not mention this issue regarding wine for *Birkat Hamazon* is unclear (see Mishna Berura 190:17). Our *minhag* seems to be that not all drink that wine either.

One can suggest positive reasons for drinking specifically at *Kiddush*, which will also explain the *minhag*. Some claim that the obligation to make *Kiddush* over wine has a stronger basis than other cups of *beracha* (see Encyclopedia Talmudit, v. 27, col. 510). Also, *Kiddush* is connected to the meal in which all are partaking (there are different explanations of the connection). Since it is positive to drink wine during the meal (Shulchan Aruch, OC 250:2) and when one drinks wine at *Kiddush*, he is exempt from a *beracha* during the meal (Shulchan Aruch, OC 174:4), it makes sense to start drinking at *Kiddush*.

In any case, while halacha does not obligate everyone to drink *Kiddush* wine nor forbid it at *Havdala*, your observation has both sources and a variety of possible explanations.



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# Ein Ayah

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

## The Right Time for Each Period

(condensed from Ein Ayah, Shabbat 2:55)

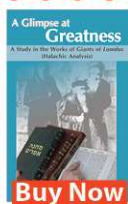
[This gemara and its explanation are counter-intuitive and ostensibly counter to Rav Kook's general approach.]

**Gemara:** [After being told he was to die on Shabbat, David said:] "Let me die on Sunday." Hashem replied: "The time for your son Shlomo's kingdom has already arrived, and one kingdom may not touch another even in the slightest." "Let me die on Friday." Hashem replied: "For one day in your courtyards is better than a thousand' (Tehillim 84:11) – I prefer one day that you sit and are involved in Torah to a thousand burnt sacrifices that Shlomo is destined to bring before Me on the altar."

**Ein Ayah:** Divine Providence deals with mankind's progression, which is designed to bring the collective to the high level its Maker set for it. Therefore, factors that are to make major changes in the leadership are synchronized precisely. When a national leader begins his reign, his actions are noticeable, as they include major changes according to his new spirit. As he ages, matters follow the path he forged in his youth. This pattern of fast and slow steps and breaks is part of natural history. When Providence decrees the need for a new era to begin, with its many innovations, a delay of even one day is of inestimable consequence, for all the changes and their contributing factors are interconnected. David did not want to die on Shabbat so that the ensuing sadness would not take away from the nation's tranquility. He did not want his death to be fit for him as an individual, but appropriate for communal needs. However, his concern for the collective was as the collective related to him as an important individual. The nation's more basic need was to follow its path, which included inaugurating the era of Shlomo Hamelech. The changes he was to make could not be delayed even slightly in deference to an individual's needs, great as they might be. David then reasoned that it was acceptable to end his era, which was at a point of slow progression, a day early. The communal progresses over time, despite some regression for the sake of subsequent progression, as Hashem created the world for it to advance. Therefore, starting a new period earlier can be fine. However, although the collective concern is more important than the individual one, as it pertains to many, still the collective's standing depends on the individuals of which it consists. The advancement of the collective is supposed to advance the individuals, which is absolutely central in regard to the life and spiritual advancement of an especially lofty and important individual. In David's case, he had already reached such a level of sanctity and holy spirit that he was an individual who was the foundation of the collective. His Torah study, while an act of private development, was more beloved to Hashem than actions that helped prepare other individuals to emulate him.

Sacrifices, especially in great volume, are designed primarily to impress the collective with the honor of Heaven. But Hashem said many times (see Tehillim 50:8, Yirmiya 7:22) that this is not His primary concern. Heightened morality and understanding of Hashem bring one to as high a spiritual level as sacrifices can. Certainly, service with sacrifices is critical for the community, when the nation assembles at the house of Hashem and performs service according to the Torah's rules. This influences people to desire to follow the path of Hashem, and many individuals will be improved by things such as a thousand sacrifices that Shlomo offered. However, the Torah study of the already established holy person is the fruit itself that Hashem loves. That is why Hashem was not willing to pass up on David's holy actions for a day even in order to hasten in the preparatory actions that would begin with his death.

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of those that fell in the war for our homeland.



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# P'ninat Mishpat

## Late Demand of Expenses

(based on Shut Chatam Sofer, Choshen Mishpat 78)

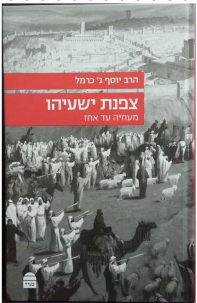
**Case:** The Jewish government-appointed official R. David outlaid moneys in representation of the community. It was decided that he would do as he saw fit with donations or revenue from individuals, including using them to reimburse himself for expenses. A long time after he stepped down from his role, R. David sued the community for expenses for which he claimed he had not been compensated. He did not bring witnesses that he made a claim when he originally stepped down. R. David said he received a ruling from a Sephardi *beit din* that he had a right to make the claim and should be believed if he swears how much is coming to him.

**Ruling:** It is true that one who makes monetary outlays on behalf of his friend with permission is believed to say the amount he is due with an oath (see Ketubot 80a). This is even true if he makes the claim after a few years. However, that is only when it is known that there are expenses outstanding and the question is how much. In that case, we do not assume that the time that has gone by is a sign of *mechila* (relinquishing of rights). In contrast, in this case, it was not until after years that anyone was made aware that there might be outstanding expenses due, in which case, the claimant cannot be believed even with an oath.

What we have said must be true, for otherwise there are no limits to the potential obligation of someone who was involved at some point in this type of relationship. Can it be that because at some point one outlaid money for his friend, that the friend would have to pay upon demand for an open-ended amount of time? Indeed, we find this idea in the Shulchan Aruch (Yoreh Deah 257:6 and Taz ad loc. 4) that although a *gabbai* of a *tzedaka* is believed that he lent money to the fund, he cannot make this claim when a significant amount of time has passed since he stepped down.

If R. David knows people who saw him raise the issue of certain outlays at the appropriate time, he can make them swear if they now deny it. If these people are fit to be witnesses and they agree with him, then he is entitled to this money, even at the expense of the whole community.

If the alleged ruling of the Sephardi *beit din* comes to our hands, we will respond to it. In the meantime, it is hard to accept that they would hear the word of one litigant without hearing the other side. However, if and when such a ruling is presented with reasoning, we can deal with what is said. In the meantime R. David is not entitled to payment.



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