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HEMDAT YAMIM

Parashat HaShavua

Mishpatim, 20 Shvat 5776

Justice and *Shemitta*

Harav Yosef Carmel

Our *parasha* has many references to matters of proper jurisprudence, which we like to focus on. This time we will explore some of the *parasha's* more general instructions given to *batei din* and their proximity to another *mitzva* that is dear to us.

In Shemot 23:6-8, the Torah warns not to tip justice against the poor, to stay away from falsehood, and not to take bribes. The Torah (ibid. 9) forbids harming foreigners/converts. This is followed by three *p'sukim* on the Shabbat of the land (= *Shemitta*) and on standard Shabbat. Some of our great thinkers searched for connections between these matters.

The Alshich explains why *Shemitta* would come amidst rules of justice. If society is based on justice, then they will be able to follow the pattern of *Shemitta* – six years of agricultural work and one of refraining from it. The land will not tire despite six straight years of sowing. If there are perversions of justice, then famine will come and there will not be agricultural produce even on many of the years that are slated for it.

This idea is based on the Mechilta (D'Rabbi Yishmael, Mishpatim 20), which says that when Bnei Yisrael act according to Hashem's will they do one *Shemitta* every seven years, and when they do not act in that way they have four "*shemitoi*" in one seven-year period. The way the Alshich explains it, having a fair justice system has a special standing regarding fulfilling Hashem's will.

The Ohr Hachayim connects the matter to the *pasuk* found in between the discussion of justice and that of *Shemitta*, the *pasuk* that discusses the *ger*. He says that since the Torah says that if we do not let the land rest on *Shemitta* we will be sent away and it will therefore have its rest (Vayikra 26:34), *Shemitta* observance is needed to prevent us from being *gerim*.

Let us suggest our own explanation along the lines of the above ideas. By keeping the *mitzvot* of *Shemitta* and making our fields the domain of all, we are, to a certain extent, turning ourselves into strangers in our own fields. We will be forced to make a living from things that are available, as opposed to sustaining ourselves in an orderly manner through hard work on our own property. This type of situation could harm, Heaven forbid, the strength of the feeling that everyone has his own property that no one can take. If every seven years, people's property because ownerless, maybe it is not so bad to take it during the six years either. That is why, in proximity to the discussion of *Shemitta*, the Torah warns very strongly about propriety in monetary affairs and jurisprudence. The idea that matters of the spirit are more important than matters of the physical world in no way takes away from the importance of being morally careful about monetary matters.

May we merit seeing the fulfillment of both sets of *mitzvot* to their fullest.

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Ask the Rabbi

by Rav Daniel Mann

Why Not Use an Eiruv?

Question: Why would someone not trust an *eiruv* constructed under respectable rabbis' supervision?

Answer: The main reason that some people do not carry on Shabbat in an area with an *eiruv* is actually not a lack of trust in a given rabbi's expertise, as it is more commonly on fundamental grounds. Rather, they (including some rabbis who are responsible for *eiruvim*) are not convinced that an *eiruv* can be effective in the place in question. While all agree to the efficacy of *eiruvim*, some trust them only for small areas, not city or neighborhood *eiruvim*. Why?

What most people call an *eiruv* (a slight misnomer) is a collection of various structures, including walls and sets of strings connecting poles (*tzurot hapetach*). When an area is sufficiently encompassed with structures, it is a *reshut hayachid* (private domain, where one may carry, if certain other requirements are met). With all the possible places things that can go wrong in a big *eiruv*, including a need to rely on certain leniencies and the chance of changes (e.g., fallen or disqualified *tzurot hapetach*) since the last check, there is concern that something will. An *eiruv* is only as strong as its weakest link.

More fundamentally, the *gemara* (Eiruvim 6a-b) says that *tzurot hapetach* do not work in a *reshut harabim* (public domain, in which carrying more than four *amot* is forbidden by Torah law). Only in a *karmelit* (an area with *reshut harabim*-like status based on Rabbinic law) do *tzurot hapetach* make an area into a *reshut hayachid*, in which one may carry. Only actual physical impediments, such as walls and doors/gates can turn a *reshut harabim* into a *reshut hayachid* in which one may carry, and these are rarely feasible in municipal settings. Thus, in order to use our standard *eiruvim*, we need to assume that the areas in question are not *reshuyot harabim*. Are they?

The only Talmudically explicit requirements of a *reshut harabim* are that it is sixteen *amot* wide (Shabbat 99a), it is not roofed over (ibid. 98a), and perhaps that it is frequented by people (Eiruvim 6b). Such places abound (see Rambam, Shabbat 14:1).

How, then, can the great majority of Shabbat-observant Jews use an *eiruv* that relies on *tzurot hapetach*? First, rest assured that usage of such *eiruvim* is indeed the Ashkenazi *minhag*, supported by leading *poskim* for hundreds of years (see Magen Avraham 345:5) and to this day (see Igrot Moshe, OC I:139). The main source of leniency, which the Shulchan Aruch (Orach Chayim 345:7) cites, albeit as a secondary opinion, is that a *reshut harabim* requires the presence of 600,000 people. The Magen Avraham (ad loc. 5) says that this is the more accepted opinion. The Beur Halacha (ad loc.), while citing many *Rishonim* who accept it, cites even more *Rishonim* who are stringent. He also questions the Shulchan Aruch's contention that the 600,000 must be on an individual street in the course of a normal day. Another "disqualification" of *reshuyot harabim* is when they are not *mefulash* (i.e., if streets are lined by buildings on their sides and their openings end or they curve before making it through the city (see Shulchan Aruch, ibid. and Magen Avraham ad loc. 10).

There are other theses to explain our lenient practice (see Aruch Hashulchan, OC 345:20; Chazon Ish 107:5). Perhaps the strongest, found in the Avnei Nezer (OC 273), is that the idea that *tzurot hapetach* are ineffective in a *reshut harabim* is just a Rabbinic stringency. After erecting the classic *eiruv*, then, the worst-case-scenario is only a Rabbinic prohibition, making it easier to rely on the lenient opinions that a *reshut harabim* requires 600,000 people.

While we have confirmed the validity of the practice of most of us to rely on *eiruvim*, we have seen that there are often also strong reasons to refrain from usage, even if an illustrious rabbi vouches for the *eiruv*. Although we would warn people of the dangers of being *machmir* on this matter (e.g., due to communal and family dynamics), one should not misinterpret the intention of those who do so.



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Ein Ayah

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

What It Takes to be a *Kohen Gadol*

(condensed from Ein Ayah, Shabbat 2:145, 147)

Gemara: There was another story, of a non-Jew who passed behind a shul and heard a teacher say: "These are the clothes they will make ..." (Shemot 28:4). He asked who has such clothes and was told it is the *Kohen Gadol*. [He decided to convert in order to become *Kohen Gadol*, came before Shammai with the proposition, and was harshly rejected.] He came before Hillel, and he converted him. Hillel said: Is there such a thing as one who does not know how a king is to act who is appointed king? Go and learn the rules of kingship (i.e., how to be a *Kohen Gadol*). He went and read. Once he got up to "The 'stranger' who draws forward will die" (Bamidbar 3:10), he asked: "For whom is this *pasuk* written?" He said: "Even for David, King of Israel."

Ein Ayah: [The reason for Shammai's reaction should be obvious after what we have seen in the past. This piece focuses on Hillel.]

Admittedly, the chance occurrence of awakening to an interest in something good does not prove that a person has a strong affinity for good. However, Divine Providence assures that nothing is by chance, and thus certain occurrences deserve investigation. This is pertinent to the fact this non-Jew passed by a *beit kneset* when the *Kohen Gadol's* clothes were being discussed and that this inspired him to want to convert. This is significant even if he mistakenly thought he could be a *Kohen Gadol*. If he did not have a major inclination toward goodness and truth, the opportunity would not have arisen.

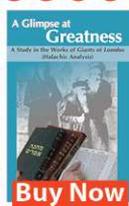
The candidate was not lacking honor as a non-Jew but was interested in an honor that stems from the service of Hashem. This was a sign that the kernel of love of Hashem was in his heart, even if impurities due to lack of education were mixed in. Therefore, Hillel felt obligated to not push him off but to purify his excitement about service of Hashem. His interest was genuine, even though he was used to external flashiness and was unable to settle initially on a simple form of service without attractive aesthetic elements. When he found out that service of Hashem could go together with glory, he jumped at the opportunity to accept service in a manner of adornment. The need for the latter lasted only until he internalized the ways of Torah with its ethical beauty, which in a simple way, contain true grandeur (see Berachot 58a).

The matter of setting aside *kehuna* for specific people can be explained by saying that it requires exceptional emotion that goes along with the action-based service of Hashem. In other words, it is possible that the actions of sacrifices can be missing the desired elevated emotions that one should have in his heart. One might, then, think that if one reached the level at which his heart is full of elevated emotion and can perform the actions of service with the proper sanctity and grandeur, he can serve as a *kohen*.

However, it is insufficient to have the type of emotion that a person can reach by choice. Rather, he needs a quality whose origin is determined by Hashem that enables the sacrifices to increase the honor of the Heaven in the desired way and connects man's actions to the sanctity of Hashem.

The deep connection to the *mitzvot* applies both to that which one is supposed to do and that which one is to refrain from. That which one refrains from is not only because it is not fit but also because there is a value in holding back from things one otherwise might have done. For example, even if one is on the emotional level of a King David, the pleasant psalmist of Israel, he must not serve as a *kohen*. Even though, on a certain level, he could do the service effectively, we disallow it due to the gain from refraining from allowing everyone to do so. Only with both positive and refraining from negative can there be requisite purity and sanctity.

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P'ninat Mishpat

A Split Majority

(based on Shut Noda B'Yehuda II, Choshen Mishpat 2 – by the Noda B'Yehuda's son Shmuel)

Case: Reuven sued Shimon for 100 *maneh* – 50 for direct damage and 50 for expenses to protect property that survived. The opinions of the three *dayanim* varied. One *dayan* exempted Shimon. Two wanted to obligate 50 *maneh* – one because of the direct damage; one because of the expenses. Do we say the majority obligated 50, or do we say that, on each element, a majority exempts?

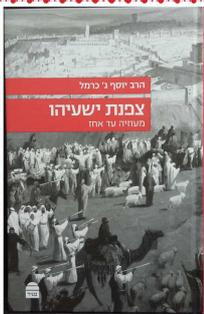
Ruling: The querying rabbi believes that there is no obligation to pay, based on the following source. The Rama (Choshen Mishpat 25:2) says that when two *dayanim* agree on a ruling but for different reasons, they are considered a majority. One can infer that when they disagree on the rulings regarding each claim, then even if they have the same bottom line due to the different claims, we cannot obligate payment.

It seems to me that the obligations on different claims can be combined because they are no worse than *eidut meyuchedet*. *Eidut meyuchedet* is, for example, when one witness testifies on one loan of 500 *zuz* and another witness does so on a different loan of 500 *zuz* between the same two people. Those testimonies are grounds to determine that the borrower owes at least 500 *zuz* (Shulchan Aruch, CM 30:2). However, one can argue on the comparison to *eidut meyuchedet*. There, neither witness argues with the other, but is unaware what happened in regard to the other claim. In contrast, here, where two of the *dayanim* disagree with each one of the claims, perhaps we should exempt.

Yet, we can still bring a proof to our thesis. The Rama's source is the Maharik (40), who learned from Chulin 38a, which says that a majority of opinions says that a vegetable upon which blood sprayed during *shechita* is not fit to become *tameh*, even though the two opinions disagree regarding the ruling's rationale. One can question the Maharik's proof, as the discussion in the *gemara* (ibid.) is about Rabbinic-level *tumah*, where leniency is easier. Thus, regarding Torah laws, it is likely that holders of a "majority opinion" need to agree on the ruling's reason, and this indeed seems to be the Rambam's view (see Korban Pesach 5:2, with Kesef Mishneh; Temidin 8:19 with Lechem Mishneh; the Ra'avad disagrees).

It is strange that *poskim* do not quote the Rambam as arguing on the Maharik. How could the Rama rule as he did without a qualifying statement that not all consider it a majority regarding matters of Torah law? It is possible that the differing opinions of live people who rule the same on a matter count as two opinions. The Rambam and Ra'avad can be arguing when the opinions are taken from written sources (admittedly, the distinction should have been mentioned).

The Rama must have understood that the Rambam agrees that regarding monetary matters, the different opinions count because of the comparison to *eidut meyuchedet* (some questions of whether something is permitted or forbidden are like monetary matters; others are not). In this case, where the *dayanim* sit together in judgment on a monetary matter, their opinions can be combined. If they adjudicated on the two matters separately, each would have ended with an exemption. However, since, in this case, the two claims emanate from one situation, they can be adjudicated together, and Shimon should pay 50 *maneh*.



Tzofnat Yeshayahu- Rabbi Yosef Carmel

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