



HaRav Shaul Israeli zt"l
Founder and President

HEMDAT YAMIM

Parashat HaShavua

Vaetchanan, 16 Av 5776

A Great Nation with Laws, Statutes ... and Charity

Harav Yosef Carmel

The Torah says in our *parasha*: "Who is a nation that has righteous laws and statutes (*chukim u'mishpatim tsaddikim*)" (Devarim 4:8). The combination of laws and statutes is a common one in *Tanach*, and on the level of *p'shat* (which by no means limits the ability to derive other concepts from these terms), these refer to the judicial system. *Chok* and *mishpat* are the basis of any national society, certainly of an independent Nation of Israel living in its own Land. Therefore, right after Bnei Yisrael left Egypt, we find: "... there He gave them *chok* and *mishpat*, and there He tested them (*nisahu*)" (Shemot 15:25). Bnei Yisrael accepted upon themselves to live as an orderly society, which turned them from a group of slaves to a proper nation, which passed tests and is fit to be shown off like a banner (in accordance with two meanings of the word *nes*). However, what is the significance of the adjective *tzaddikim* (from the root of *zedek* (justice) but also *zedaka* (charity)? This connects us to other important declarations of the Torah.

One is about Avraham: "Avraham will become a great nation ... they will follow the path of Hashem to do *zedaka* and *mishpat* ..." (Bereishit 18:18-19). The other describes the ways of King David: "David ruled over all of Israel, and David would do *mishpat* and *zedaka* for his entire nation" (Shmuel II, 8:15). It is no surprise that *Chazal* tell us that the path to true liberation passes through the fixing of the judicial system. This is in line with the *p'sukim* that end last week's *haftara*: "I shall return your judges as in the beginning and your advisors as it was originally, after which you will be called the city of justice, the reliable town. Zion will be redeemed with *mishpat* and its returnees with *zedaka*" (Yeshaya 1:26-27).

The idea of a judicial system is that it must give equality – the laws apply to all and everyone is equally responsible for these laws. The Rambam and many other great decisors have codified these concepts, and it actually is a universally accepted concept. For this reason, our dedication to the principles of justice is "our wisdom and insight in the eyes of the nations" (see Devarim 4:6) and the source of our being the "source of blessing for all the nations of the land" (see Bereishit 18:18).

The uniqueness of Avraham, Moshe, and David was in the incorporation of the "softer element" of *zedaka* into the ostensibly rigid apparatus of *chok* and *mishpat*. The need for a mixture between the two seemingly non-intersecting worlds is a difficult challenge which requires much work to wisely implement. For many years, the Jewish judicial apparatus on a national level was an idea that seemed reserved for the times of *Mashiach*. While there were always *batei din*, the ability to have them shape society and be enforceable was limited, and few dealt with it holistically. With Hashem's kindness, our generation has seen a wonderful change, which enables us to deal with and implement monetary Torah laws in daily life.

We at Eretz Hemdah continue to strive to produce a generation of *talmidei chachamim*, with great Torah knowledge, who know how to implement *mishpat* and *zedaka* in our network of *batei din*.

Refuah Sheleymah to Elchanan ben Adina & Orit bat Miriam

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by Rav Daniel Mann

The *Beracha* on Making a Roof-Top Fence

Question: The investment team I am part of is currently renovating a building we own, including making a roof usable for tenants. The roof has a fence (*ma'akeh*), but we have contracted a non-Jewish company to remove and replace it. Can I make a *beracha* on the new fence even though non-Jews are installing it? Does one make a *beracha* on a fence that replaces a previous one?

Answer: Let us start with the bottom line. You should not make a *beracha*. You have identified some of the several doubts about the need for a *beracha*. One does not make a *beracha* unless there is a significantly better than even chance it is called for (*safek berachot l'hakel*), and that is not the case here. We will take a quick look at some of the indications on various doubts.

There is a *machloket Rishonim* whether one ever makes a *beracha* on the *mitzva* of *ma'akeh*. The reasons against a *beracha* include the following: it is done to remove danger, rather than being a classic positive *mitzva*; it is *mitzva* that is rooted in natural logic; there is a concern that the one building the *ma'akeh* will not carry through. However, despite the principle of *safek berachot l'hakel*, there is enough consensus of *Rishonim* and *Acharonim* to generally justify a *beracha* (see Yalkut Yosef, Sova Semachot p. 676).

A non-Jew is not able to be a halachic agent, certainly including regarding doing *mitzvot* on behalf of a Jew (Kiddushin 41b). Therefore, your non-Jewish workers' actions ostensibly cannot fulfill the *mitzva* on your behalf. It is not that the *ma'akeh* is invalid and needs to be redone, as it suffices that the danger was obverted. However, a *beracha*, as well as much of the positive *mitzva* opportunity would be missing (see Menachot 42b).

On the other hand, the Machaneh Ephrayim (Shluchin 11) says that if the non-Jew is your salaried worker, we apply the rule that a "the worker's hand is like the employer's hand" (Bava Metzia 10a). This enables the Jewish homeowner to fulfill his *mitzva* through his non-Jewish employees' actions, and a *beracha* is appropriate. Many *Acharonim* reject the Machaneh Ephrayim's thesis. Their main claim is that the rule that a worker is like his employer does not apply to a non-Jew's performance of *mitzvot* on behalf of his Jewish employer, and this is the stronger position. Certainly there is enough doubt to eliminate a *beracha* in such a case (Yabia Omer IX, Choshen Mishpat 10). Furthermore, the Pitchei Teshuva (CM 427:1) says that the Machaneh Ephrayim applies only to salaried workers and not to contractors (which you are talking about).

You imply that there are other investors. The *mitzva* of *ma'akeh* applies even when the property is co-owned (Chulin 136a). However, not all agree that this is true when the partners include non-Jews, and Rav B. Zilber (Birur Halacha, p. 249) claims that this is enough reason to not make a *beracha* in such a case.

The fact that the fence will replace an existing one raises an interesting question. There is discussion on whether one who switches one *mezuzah* scroll for another has to make a new *beracha* (see Yabia Omer II, Yoreh Deah 17), as well as similar discussions regarding *tzitzit* and *tefillin*. There are major similarities between the cases but also possible distinctions (see Avnei Shlomo (Bloch) p. 41). The matter may also depend on how long the interim period with no functioning *ma'akeh* will be or on whether the roof required a *ma'akeh* before renovations make the roof more accessible.

Finally, it appears that before you got involved, there were already people renting apartments in the building, in which case, the tenants were obligated in *ma'akeh* (Bava Metzia 101b). The Minchat Chinuch (#546) says that although renters are obligated, the landlord might also be obligated. However, others say that the Rabbis uprooted the *mitzva* from the landlord and gave it to the renters. According to them, although you could argue that the renters are making you an agent for making the *ma'akeh*, it is still not simple that, if there were a *beracha*, you would be the one to make it.



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Speech – The Medium to Properly Convey Emotion

(condensed from Ein Ayah, Shabbat 2:232)

Gemara: Due to the sin of *navlut peh* (a filthy mouth), many problems and harsh decrees arise, young Jewish men die, and orphans and widows cry out and are not answered, as the *pasuk* says: “For that reason, Hashem will not be happy over His young men, and He will not have mercy for His orphans and widows, for all is false flattery and evil, and every mouth speaks horrible things. For all this, His anger remains, and His arm is still outstretched” (Yeshaya 9:16).

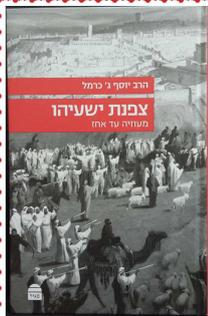
Ein Ayah: A person has two types of tendencies that connect to the world around him, natural and choice tendencies. When his spirit looks at all his actions and all his internal tendencies and how they relate to each other and to others, he will see that everything is good and pure. Although individual tendencies may be upsetting and unseemly to the spirit, it is not the individual but the broader communal elements which give the true picture.

When a person’s feelings break forth and connect to those around him, he does this through speech. His mouth must express his emotions in the most appropriate way, which furthers communal goals. One must, therefore, use clean, pleasant language. When life is going well, it is easier for one to express his feelings positively and richly. When there is a good connection between the individual and society, it helps both, and one will be able to express himself in a way that broadens his experience and connection with the world. This, in turn, will elevate his thoughts and his actions.

The period of greatest vigor is *bacharut* (early adulthood), and this is related to the nice side of life, when a person has the strength to give life to his hidden emotions, as one before whom the field of opportunity is most widely open. They can even invigorate the older people around them (“The crown of the old is their grandchildren” – Mishlei 17:6). When speech is used properly, it can elevate all emotions, even those that have the potential to isolate a person, and instead by choosing to focus on the positive and the holy, it can make life more special. When the properly expressive person encounters a tragedy, he has the tools to make people join with him in efforts toward seeking divine mercy and salvation.

All of the above is lost when one uses speech to express the unseemly and lowly elements of his emotion. Then he spreads that which is objectionable throughout society and lowers it. As a result, people throughout society will start speaking in a manner that will turn speech into a horrible monster, so that more and more discussion among people will lower individuals’ and society’s moral level. The focus on beauty and pleasantness will be replaced by ugly emotions that should have been left in the realm of the individual.

In these unfortunate circumstances, instead of *bacharut* being the most positively energetic, it is the most polluting. Since speech can create destructive emotions, it becomes necessary to weaken the power of these young people. Society in general will not be able to use its emotions to evoke mercy when people are hit by tragedy. People will have to focus on their tragedy and not on matters that are destructive to society, which Hashem will ensure is downsized and weakened. Orphans and widows will go unheeded because all of the charm of life will be lost, as people will not be moved by emotion. The weakened state will have to continue until it causes people to realize that they need to significantly uproot the destructive forces, which is not a quickly accomplished task.



Tzofnat Yeshayahu- Rabbi Yosef Carmel

The Prophet Yeshayahu performed in one of the most stormy and dramatic periods of the Israeli nation's life, a period of anticipation for the Messiah that was broken by a terrible earthquake, and also caused a spiritual and political upheaval. The light at the end of the tunnel shone again only in the days of Chizkiyah.

"Tzofnat Yeshayahu – from Uziya to Ahaz" introduces us to three kings who stood at this crossroad in our nation's history: Uziya, a king who sought God but was stricken with leprosy because of his sin; Yotam, the most righteous king in the history of our people; And Ahaz, the king who knew God but did not believe in His providence.

In his commentary on the prophecies of Yeshayahu, Rabbi Yosef Carmel, Head of the Eretz Hemdah-Gazit rabbinical court and a disciple of Rabbi Shaul Israeli zt"l, clings to the words of Hazal, our sages, and to the commentaries of the Rishonim, the great Jewish scholars of the middle ages, and offers a fascinating way to study Tanach. This reading attempts to explain the Divine Plan in this difficult period and to clarify fundamental issues in faith. Tzofnat Yeshayahu reveals to the reader the meaning of the prophecies in the context of the prophet's generation and their relevance to our generation.

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Returning Expenses to Organization Head

(based on ruling 73141 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The defendant (=def) was the head of an organization (=org) from 2007 until his resignation in 2011, and the plaintiffs (=pl) were and are members of the board. Def is claiming expenses of 13,500 shekels from org for use of his telephone (org did not have an office and most of its activity were run out of def's home) and his car on behalf of org over the years. Pl say that standard practice is that a non-profit organization executive does not charge it for use of his car. Regarding the phone, they had urged def to use an unlimited call plan. In any case, def's indirect benefit from org's activities exceeded the expenses, and he, therefore, does not deserve compensation. Def says that in past voluntary positions, he had charged for use of his car. After the dispute arose, def found approximately 21,000 shekels in cash that belong to org, which he is willing to return but claims that this disclosure adds to his claims' credibility.

Ruling: Def's work on org's behalf is considered that of a *yored b'reshut* (someone who worked with permission), which normally entitles him to pay and not only returned expenses (see Shulchan Aruch, Choshen Mishpat 375:3-4). While it is clear from context that def was not asking for and therefore could not demand pay, he at least deserves reimbursement for expenses, unless there are strong enough indications otherwise.

Pl brought convincing documentation that heads of organizations are not in the practice of charging for using their car or their telephone. Def argued that this case is different because the organization worked out of his house, and therefore the level of use of his resources was too great to ignore. *Beit din* accepts def's argument in regard to the phone but does not see why this fact would affect the use of his car. We also note that in ongoing briefs to the board, def listed phone expenses as part of org's budget but did not mention anything regarding car expenses.

Beit din looked into the claim that def should have used an unlimited call package. Def responded that the quality of the reception for companies that had it were not good enough. Since he used his personal phone, def cannot be expected to switch phones to one he dislikes to save money for org. Regarding the possibility of two lines, we determined that under the circumstances, it was likely to have cost more money.

As far as proving the amount of expenses paid, usually one who demands expenses must prove them or swear about the amount (Shulchan Aruch, CM 375:8). While *beit din* is very critical of def's possession in his home of a very large sum of cash that belonged to org, the fact that no one made claims for the money before he admitted its existence does give him credibility to say how much of it he deserves to keep toward expenses. This is based on a strong form of *migo* called *meishiv aveida* (see *ibid* 75:3). However, this only gives credibility to the facts he claims, but does affect *beit din's* understanding of societal norms. Therefore, even if we believe def that he intended to ask for reimbursement for the car, since he did not claim to have made this clear to the members of the board, they are not responsible to reimburse him against the common practice.

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