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Founder and President

HEMDAT YAMIM

חֵמְדַּת יָמִיִּים

Parashat HaShavua

Shoftim, 7 Elul 5776

Both Mishpat and Tzedek(a)?

Harav Yosef Carmel

Our *parasha* begins (Devarim 16:18) with the *mitzva* to appoint judges and officers of the court, who should judge the people in the manner of *mishpat tzedek* (most simply translated as a just judgment). Earlier we find the *mitzva* of *shemitta* (undoing) of loans at the end of the *Shemitta* year (ibid. 15:1).

We will try to find a connection between these two segments of the *parasha*. We have discussed recently that the ideal judicial system, which was taught by our founding fathers, Avraham, Moshe, and David, merges between the ideas of justice and charity. The phrase of *mishpat tzedek* also hints at a merging of *mishpat* and *tzedaka*.

The matter of *shemitta* for loans also demonstrates the merging of these two principles. According to the strict letter of the law, if someone takes a loan, he makes both his assets and himself “dedicated” to the return of the money. He must take all reasonable steps to pay and must not use his money for improper purposes or give assets to third parties in a manner that compromises his ability to pay. In principle, he should use the money he earns only for absolute necessities or to create further assets, which will help in further payments. There is no excuse for non-payment. If someone, Heaven forbid, finds himself without the ability to pay, then he is an *anuss* (one facing extenuating circumstances), in which case, due to the element of *tzedaka*, no steps may be taken to harm or punish him. He is not exempt from paying, just that payment can be delayed until the time when he will have the ability to pay.

The element of *tzedaka* arises in the context of *shemitta*. Loans that were not paid after the time for payment arrived become voided. The creditor is reminded: the fact that he was capable of lending money is a sign of divine grace. Therefore, he is expected to “share with the borrowers” every seven years. This is an element of *tzedaka* and also the connection between the agricultural and the fiscal parts of *Shemitta*.

We should point out that the above is from the creditor’s perspective. From the borrower’s perspective, he still has a moral responsibility to try to pay, even after *Shemitta*. While the creditor is supposed to announce that he releases the borrower from responsibility, the borrower is encouraged to say “Even so” and pay. The *mishna* (Shvi’it 10:9) says that one who pays after *Shemitta* is someone that the Rabbis are happy with, as they are, in general, with people who keep their word.

Because the laws of *shemitta* of loans are now Rabbinic and because there was a real fear that because of this *mitzva*, people would stop lending, Hillel instituted *pruzbol*. *Pruzbol* is a mechanism through which a creditor who wants to make sure he does not lose his loan can do so. Thus, along with the lofty ideals, there are times when practical considerations require certain adjustments within the rules that the Torah allows.

Refuah Sheleymah to Elchanan ben Adina & Orit bat Miriam

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Ask the Rabbi

by Rav Daniel Mann

Answering Monetary Questions – part I

Question: [We present a discussion that emerges from a set of questions.] People often ask us questions about financial disputes they are involved in. We respond that we do not get involved in practical monetary situations that affect another side whose view we have not heard. Most take this in stride. Others take offense. One pointed out that there are monetary discussions on our site. So, I decided to discuss our approach in more detail.]

Answer: Our policy is based on the Rama (Choshen Mishpat 17:5, based on the Rashba III:98 and the Rivash 179). The Shulchan Aruch (ibid.) says that one may not listen to the claims of one litigant while the other side is not present. The Rama says that this refers to one who is a *dayan* in this case. However, he continues that a *talmid chacham* should never express even a tentative opinion (“if indeed ...”) on a case without hearing both sides.

The first reason cited is that the presentation might teach the litigant which claims to make, including false ones. Our contemporary experience teaches us the following. While the sources speak of falsehood, it is not limited to premeditated lying, but includes describing the nuances of a gray situation in a slanted manner. Even honest people can do this under the pressure of litigation, where significant money and stature are on the line.

The Rama also explains that due to what surfaces in the trial, the ruling may appear to contradict the *talmid chacham*, which could discredit him. We note that the concern is not just for the non-*dayan*'s credibility. Our *beit din*'s staff have received post-ruling complaints: “I asked my rabbi about the case, and he said *beit din* was wrong, so the *dayanim* are either incompetent or biased.” Of course, two rabbis can have different views without either being incompetent or biased, which is why we bother having three *dayanim*. The disgruntled litigant does not care that we heard and interrogated both sides and spent dozen of hours analyzing and researching, while he may have asked his rabbi while he was folding up his *tefillin*. (Since we offer an option of appeal (with an added fee to avoid it being automatic), we do not object to a litigant showing our ruling to a *talmid chacham* for his advice on whether it is worthwhile to appeal.) The point is that even provisional statements made prior to adjudication can be used by otherwise respectable and respectful people to decide that they are right and that there is something wrong with anyone (litigant, *dayan*, or whoever) who does not agree with what they understood from what they were told.

Our experience makes us concerned about another issue that the Rama does not discuss (it is likely that he was not addressing that case – see part II). There are times that the sides prefer to avoid the trouble of litigation, which we **applaud** on fundamental and practical grounds. The well-intentioned “non-litigant” may ask us or another *rav* the question, as he honestly but subjectively sees it, and may even be willing to inform the other side if we said he was wrong. However, if we answer that “based on your description, you are right,” since he knows that he is not a liar, he is likely to say, “I asked a *dayan*, and he said I am right.” Now, the other side is at a disadvantage. Is he to question the *dayan* or call his neighbor, friend or business partner a liar? Will he know and choose to say: “If the *dayan* did not hear me describe the case in my own words, he could/should not have said, ‘You are right’?”

Two of our “hats” are: an “Ask the Rabbi” service, where we try to be responsive to all, and a *beit din*, where we make very strong efforts to be ethical, impartial, and cautious. (One fear is that our present anonymous querier will be our future litigant.) The correct policy, in our opinion, is to almost always refuse to answer questions of one side that have a hint of being related to practical dispute resolution. We regret that some people are resentful; that is part of the price of being principled.

Next week we will discuss some exceptions to this rule.



We are happy to present our third volume of "**Living the Halachic Process**". The book offers a compilation of questions and answers from our "Ask the Rabbi" project. A companion CD containing source sheets for the questions is also available. The volumes can be purchased through our office at the special rate of \$24. **Special offer: buy two out of three for \$37 or, buy all three volumes for \$54**

Have a question? -email us at info@eretzhemdah.org

Speech Can Be Harder than we Think

(condensed from Ein Ayah, Shabbat 2:245)

Gemara: *Askara* (a deadly disease that starts in the abdomen but spreads to the throat and causes death by choking) is a sign of *lashon hara* (slandering speech).

Ein Ayah: If a person could more clearly conceive the destructive power of *lashon hara*, he would energize his efforts to avoid speaking improperly. A person is often misled by the fact that speaking is so easy to do to think that it cannot possibly have such a major negative impact.

Sometimes he can be convinced only by a physical sign that shows that speech is not necessarily a simple act to be taken for granted. If not for Divine Grace, speech would actually be a difficult task, which we forget because of the consistency of Hashem's help. Therefore, *askara* is painfully effective in heightening the appreciation of the powerful significance of speech. This hopefully will help one heighten his awareness of the moral imperative to avoid *lashon hara*.

Appreciating those who Use their Voice

(condensed from Ein Ayah, Shabbat 2:246)

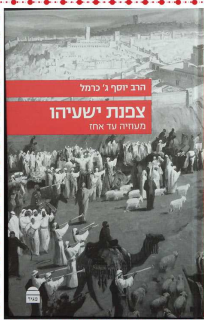
Gemara: Our Rabbis have taught: *Askara* comes to the world due to [failure to give] *ma'asrot* (tithes). Rabbi Elazar son of Rabbi Yossi says: Due to *lashon hara*.

Ein Ayah: Man has many material needs, but the most prominent one is the ability to speak in a spiritual manner, a power that comes from a person's elevated side. This is true for all people, and all the more so for the Jewish people, who have a special need to use those elements that promote their special spiritual tasks.

The sanctity of *ma'aser* exists in order that the Sons of Levi can dedicate themselves to the holy task of national service of Hashem. These holy functionaries have a special impact on the entire nation even by means of actions, such as the bringing of *ketoret* (incense), that are done unobserved by others. The level of the nation is elevated based on the spiritual level of those chosen to serve. However, their full impact will only come about if the people of the nation actively attach themselves to the *kohanim*.

Therefore, if the people refuse to act on the obligation to support the *kohanim* so that they can work, by giving tithes, the whole foundation of the partnership collapses. While there is the potential for gaining from the material connection with the holy people in addition to learning from them, that is only when they show their appreciation of the *kohanim's* holy work.

This is both in regards to the service in the *Beit Hamikdash* and to Torah study - the *levi'im* work on the outside. They, the recipients of *ma'aser* (*kohanim* receive *teruma*), are the ones whose service includes their voices, used in song and in rendering rulings, and they thereby show the importance of speech. Therefore, not appreciating them can be connected to the disease of *askara*, which prevents the use of spiritual speech. When one does not show appreciation for that tool, he may lose the ability to use it himself. This also connects the sin of not giving *ma'aser* to that of speaking *lashon hara*.



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 z"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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The Rightful Beneficiary of a Life Insurance Policy

(based on ruling 74080 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=p) is listed in his deceased brother's life insurance policy as the beneficiary and wants to receive its benefits. The defendant (=def), the deceased's son and inheritor, argues that it is not logical that his father would purposely leave p/ as the beneficiary, considering the very strained relationship that existed between the two in the final years of his life. Previously, the two were partners and had a good relationship, until mutual complaints led to the dissolution of the partnership. The policy was opened two decades previously, when def was five-years old.

Ruling: It is not clear why the deceased wrote his brother as the beneficiary of the insurance policy even though he had a wife (it is not clear how strong that relationship was) and a son. It is possible that he did so in return for some benefit that he received from p/ or for some other reason. It is hard to change, based on circumstantial evidence, that which is written explicitly in a legal document.

Def provided an audio tape discussion of the deceased in which the insurance policy was mentioned. Two things are clear from it: 1. The deceased remembered that p/ was the beneficiary of the policy. 2. He did not change his mind before his death. Therefore, the question is how to view the halachic status of a life insurance policy.

There are two ways to view the benefit payments an insurance company pays. One is that upon receiving premium payments, the company obligates itself to pay according to the instructions it is left. In that case, there is, in a case like this, no room for a court to intervene in the determination of beneficiaries. It is whoever the instructions specify. A second possibility is that the money is considered the insured person's monetary rights during his lifetime, which is to be dispersed by the insurer under certain circumstances. According to this second possibility, the deceased's instructions are under the halachic category of "it is a *mitzva* to fulfill the words of the deceased," whose rules we must take a look at.

The Shulchan Aruch (Choshen Mishpat 252:2) says that it is a *mitzva* to follow the words of the deceased even if he was healthy when he left instructions, as long as he gave it to a third person to hold for that reason. The K'tzot Hachoshen (252:3) rules that this is an obligation that the inheritors can be forced to carry out. Most *poskim* rule that this is the case even if the money is presently in the hands of the inheritors (see Shulchan Aruch, CM 250:23). In the case of an insurance policy, the company is the third party, and so they have the obligation to give the benefits to p/, and *beit din* has no reason to intervene to prevent this even according to the second approach above.

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