



HaRav Shaul Israeli zt"l  
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# HEMDAT YAMIM

## Parashat HaShavua

4 Elul 5777 Shoftim  
**What is Mishpat Tzedek?**

Harav Yosef Carmel

As we are in the practice of doing for *Parashat Shoftim*, we will once again deal with an issue that is connected to the work of our Eretz Hemdah-Gazit *beit din* network, which serves a broad spectrum of society throughout Israel. (One can find back-issues on our website).

The *parasha* begins with a charge to appoint judges and officers of the court, and commands the judges to rule the people with *mishpat tzedek* (approximately, righteous justice). They must not skew the judgment, show favorites, or take bribes, which blind even the wise judge (Devarim 16:18-19). While defining bribes is relatively straightforward, what is "*mishpat tzedek*"? We will learn today a *halacha* from the Shulchan Aruch that will give us an insight into how to accomplish this high level of justice.

The Yerushalmi (Sanhedrin 3:8) says that the *dayan* must repeat the claims of the litigants, as we learn from Shlomo who repeated: "This woman says, 'This is my live son and your son is dead'..." (Melachim I, 3:23). When the Shulchan Aruch (Choshen Mishpat 17:7) cites this *halacha*, it adds that the "*dayan* should hear ... and repeat." What is the significance of hearing, which he adds – is it possible to know what to repeat without having heard in the first place? Perhaps he is hinting that Shlomo Hamelech is not the only source, but that this idea is a fulfillment of the *pasuk* from the Torah: "Hear between your brothers and judge righteously ..." (Devarim 1:16).

The S'ma (17:15) offers two reasons for this *halacha*. 1) It is logical to put each litigant at ease that his claims were understood properly. 2) Perhaps the *dayanim* actually did not understand properly, and when they repeat the claims, the litigant(s) can correct them. Thus, the first explanation is psychological, while the second is a practical concern (see also Bach and Ptichei Teshuva ad loc.).

We want to suggest another benefit of repeating the main claims, which we have arrived at by means of years of experience we have accumulated, *b'ezrat Hashem*, in the *beit din*. One of the problems that force the litigants to come to *beit din* and not work matters out themselves is the problem of listening (i.e., lack thereof). Because they do not truly listen properly to the other side, they think that only their own side has real merit, and under such circumstances, they are indeed unable to come to an understanding and a solution. Negative feelings fuel this phenomenon, and they have several negative impacts. Sometimes the first real opportunity to listen is when sitting in *beit din* and the other litigant has the turn to speak, and even more so when the *dayan* gives import to those claims when he repeats them. In order to do the job properly, the *dayan* has to give a good example and listen well himself. When the *dayan* has "Heard between his brothers," then he will have a good chance in the next stage of "and judge righteously ..."

During these days, when we hear each morning the blowing of the shofar, it is a good time to encourage ourselves to always be sensitive enough to listen carefully one to another. This is one of the best recipes for an atmosphere of peace and truth between peers.

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# Ask the Rabbi

by Rav Daniel Mann

## Improper “Table” Manners?

**Question:** I was at the home of very fine friends, who have a few-weeks-old baby. Soon before the meal, they put a changing pad down on the dining room table and changed the baby. I didn't say anything, but I (like most would) found it distasteful. Is it also halachically forbidden, and should I say something?

**Answer:** We will first take a look at the “halachic” element, and then, likely more importantly, try to put things in perspective.

The *gemara* (Chulin 27a) sees in a *pasuk* (Yechezkel 41:22) that mentions both the *mizbeach* (altar) and the *shulchan* (table) the following idea: “At the time of the *Beit Hamikdash*, a person would bring a sacrifice and be atoned, but now one's table brings him atonement.” The primary explanation is that the atonement power comes from the *mitzva* of feeding those in need (see *Tosafot ad loc.*) – a practical, not mystical, concept. Nevertheless, there are several (semi-) accepted *halachot* that are learned from a spiritual concept of “a table is like an altar,” which may reflect another level of this *gemara*.

Several *Rishonim* (see *Beit Yosef*, *Orach Chayim* 180) learn from this concept that one should cover metal knives that are on the table at the time of *bentching*, as metal is kept away from the *mizbeach* because the latter lengthens life and the former shortens it. The *Shulchan Aruch* (OC 180:5) *paskens* this way. The *Rama* (OC 167:5) recommends to put salt on the table, just as salt was put on the *korbanot* brought on the *mizbeach*. The *Magen Avraham* (167:13) cites the *Sefer Chasidim* (102), that one must not kill insects on a table upon which people eat, just as he would not do so on the *mizbeach*, again, for the above reason. As usual, when the *Magen Avraham* states an opinion, most *Acharonim* follow suit (see *Sha'ar Hatziyun* 167:26; *Kaf Hachayim*, OC 167:41). The *Aruch Hashulchan* (OC 167:12) extends this to anything that is unseemly, with other *Acharonim* mentioning some specific examples, such as not allowing children to walk on top of the table (see *Piskei Teshuvot* 167:6). All indications are that this matter of respect for the table applies all the time, not just during a meal.

It seems clear to most anyone that changing a diaper is included in what the *Aruch Hashulchan* (*ibid.*) calls unseemly things, and he would thus forbid it. Actually, most people would refrain from doing so on health and aesthetic grounds, certainly in the presence of guests and soon before a meal.

On the other hand, I would not have said anything to the new parents, unless I felt that due to our relationship and/or their personality, they would take my comments in a positive spirit without significant embarrassment or resentment. While those who cite this *halacha* use the word *assur*, it is hard to view this post-Talmudic prohibition as a classical Rabbinic prohibition of the type from which we should try to protect our counterparts. (It is also unclear if all accept the *Aruch Hashulchan's* extension to all unseemly things).

It is healthy to be *melamed z'chut* and see a little logic and even some beauty in the couple's behavior. First, the *halachot* of excrement do not apply, for the most part, to such young babies (see *Shulchan Aruch*, OC 81:1 and *Mishna Berura ad loc.* 2). Indeed, the smell is also less oppressive (for most) and apparently somewhat less unhygienic (especially for nursing babies). What is more interesting, though, is the attitude of these parents, who, I would guess, are first-time parents. Their days (and some sleep-deprived nights) revolve around that little bundle of joy, and he or she occupies their thoughts and actions. With such a frame of mind, they probably see taking care of the baby's needs as the most natural and beautiful thing, and it did not dawn on them that others might be taken aback. I would also predict that in a few weeks, they will “land” a little bit and stop doing this practice, not due to halachic realization, but due to a return to normalcy, in which they would “know better.” In the meantime, I would excuse their lack of tact and try to focus on its endearing element.



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# Ein Ayah

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

## The Possibility of “Not Dying”

(condensed from Ein Ayah, Shabbat 5:38-39)

**Gemara:** [The opinion we saw last time that no one dies without sin] is in line with the following Tannaic opinion: Rabbi Shimon ben Elazar said: Even Moshe and Aharon died due to their sin, as the *pasuk* says: “Since you did not believe in Me ...” (Bamidbar 20:12) – we infer: “had you believed in Me, your time would not have come to take leave of the world.”

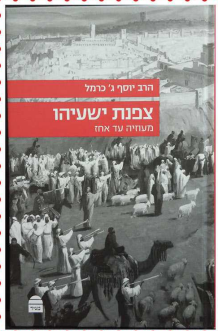
**Ein Ayah:** Even though it is clear that there is a connection between the spirit of the individual and the spirit of mankind as a whole, in regard to a life of morality as it is in other aspects of life, it is still unclear how far the power of free choice extends. The opinion that there is no such thing as death without sin posits that a person, no matter how righteous and wise he is, is not capable, after Adam’s sin, of rising up above the general lowliness of mankind. Man cannot escape sin and death because it is necessary for death to facilitate a renewal of mankind, and thereby bring it to the right direction.

Yet there is a different opinion, that choice is so free that an individual person can elevate himself out of the reach of all lowliness and lacking that is embedded in the standard human condition. A person can reach such a point that the lacking for which death was instituted, to remove people from the world and introduce new people who can progress, does not apply to him. If so, there is no need for him to die, as he carried out every choice to its fullest. Death has occurred to all only because perfection in moral decisions has not existed yet. But Moshe and Aharon had the potential, if not for their sin, to be beyond the need for death, as complete individuals do not need to wait for the time that the resurrection of the dead creates new existences in the world.

It is proper to view the changes between the different forms of life as a good way to complement that which was accomplished but not completed. The transition from one world to another, from the lowly state that we call life to “life after life,” which is on a much loftier level, is fit to always accompany life. Remaining in one place with one personal standing, during what should be a never-ending process of elevation, can never be considered success.

Without sin, though, one can make a transition to another state of life in a way that is pleasant and desirable, without it engendering a lowering of state or darkening in regard to any of the elements of life, neither internally nor externally. To the contrary, the transition to a different type of life can be done with happiness, as it gives new freedom and exemption from previous obligations, because all the previous obligations were completed properly. We do not, spiritually, consider such an end to physical life to be death, but taking leave of the world (the word in Hebrew is *patur*, which means exemption). One becomes exempt from all the trials that he had to pass because he already succeeded in them.

To make the transition, one does not need sin. Rather, only to leave the world in a manner that we know as death, requires sin. That is why the *gemara* says that had Moshe and Aharon’s belief been complete, their time of taking leave of the world would not yet have come. The time would eventually have come but then it would have been in a manner that is called taking leave of the world, not death. It would not have taken away from the goodness of life. The fact that their departure had to be described as death was due to the sin of Moshe and Aharon. That sin made it fit for them to experience death because Hashem is especially strict on those who are close to Him (see Tehillim 99:8 and 50:3).



### 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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# P'ninat Mishpat

## Copyright Infringement in Communal Gift – part II

(based on ruling 76038 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** The defendant (=def), a settlement community, decided to give as a present to its few hundred families, magnetic signs with a certain design and the families' names on them. Their Director of Culture took a picture of a sign in front of family A's house to a printing press and asked for a similar design. (She tried to call the designer of that sign, but when she did not succeed, she proceeded). Because she did not like the result, she approached a designer who worked at a child care center belonging to def, and asked her to quickly come up with an alternative. The designer took a design for a sign off a Facebook site for designers; the design had pl's name and number on the bottom. This was used for signs that were given out and are now on the doors of many of the yishuv's homes. Pl is suing for: 450 shekels for use of the design and 50,000 shekel penalty for copyright infringement. Def claims that they should be exempt, because, as an entity, they did not do anything wrong. The Director of Culture acted without realizing what she was doing in this regard (she claims to not have noticed the name on the design and assumed it was from a legal source). Pl also asked that the signs be collected because they were done with poor quality, which reflects badly on her.

**Ruling:** [Last time we saw that def is obligated to pay pl for infringing on her intellectual property rights through the actions of their employees on their behalf.]

Beit din accepts pl's premise that the low quality of the signs is damaging to her reputation. However, it is not practical to try to collect all of them from a great number of homeowners, who are not a direct party to this case. Instead, beit din requires def to distribute the letter that is an appendage to the ruling, which explains the situation. If pl wants to use some of the award to replace the signs with improved ones, she may do so.

The law allows for payment of up to 100,000 shekels without proof of damage for intellectual property infringement. Par. 56b lists factors that are recommended to impact the amount paid, which we will list and apply to our case. 1) The scope of the infringement (e.g., number of copies) – small, only a few hundred copies. 2) Amount of time infringement went on – a year. 3) Severity of infringement – mixed. It was done intentionally, but it was not done by someone who operates in the same field as the owner of the rights. 4) Level of loss – only 450 shekel, estimated that def would have had to pay pl for rights in the first place. 5) Gain by violator – again, 450 shekels. 6) Nature of violator's activities – not involved in the field. 7) Level of awareness of violation – aware.

Based on the above analysis, we obligate def to pay pl 4,500 shekels.

We daven for a complete and speedy refuah for:

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