



HaRav Shaul Israeli zt"l
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HEMDAT YAMIM

Parashat HaShavua

Shoftim, 7 Elul 5778

Each One Chooses One

Harav Yosef Carmel

As is our practice each year on *Parashat Shoftim*, we will deal with a matter that is connected to our network of *batei din*, "Eretz Hemdah-Gazit."

Our *parasha* opens: "Judges and officers you shall appoint in all of your gateways ... and they shall judge the nation a judgment of justice" (Devarim 16:18). Consequently, the Torah commands us to have a set court apparatus, with a cadre of *dayanim* ready to serve, and from them three judges will be chosen for each case.

In this short piece, we will not explain all of the logic behind how our administration assigns *dayanim* for each case. Certainly, the overall consideration is how best to serve the public and make it possible to arrive at a just judgment.

The *mishna* (Sanhedrin 3:1), though, describes another means of putting together a *beit din* panel of three. "This [litigant] chooses one, and this [litigant] chooses one, and the two [litigants] choose another one. These are the words of Rabbi Meir. Chachamim say: the two *dayanim* choose the third." We rule like Chachamim, that it is the two *dayanim* who choose the third (Shulchan Aruch, Choshen Mishpat 13:1). We often refer to this system by *roshei tevot – zabra*. The *gemara* (Sanhedrin 23a) explains the advantage of this system: "since ... the ruling will come out truthfully." Rashi explains the *gemara's* intention: "Because the litigants will listen to the ruling. Each will say: 'the person I appointed certainly raised every claim that can be made for my position.' And the judges also will find it easier to look for the strength of each position because each litigant chose them." Rashi seems to be saying that there are two separate reasons. Tosafot (ad loc.) writes that the simple reading is that due to this system, there will indeed be balance in the attempt to look for arguments for each side.

The Rambam (commentary on the *mishna*) implies that it is the third *dayan* who will not see things along the lines of one litigant over the other. However, it is difficult to say that the other *dayanim* are to show any sort of favorites. Rather, the *halacha* is taking into consideration the leaning toward the side who flattered him by choosing him as a judge. However, it is each *dayan's* job to try to overcome this, and it is the job of the third judge to make sure this is happening.

Despite the above, these issues have to turn on a warning light: a system that chooses judges based on *zabra* must not have a situation in which one of the judges sees himself as a representative of the one who chose him. We should not allow a situation in which these *dayanim* receive payment from one litigant or that there will be ex parte communication between them. In our *beit din*, it is the administration which chooses the *dayanim* without input from the sides. (Only in very special cases, where there is no choice, are the litigants allowed input.)

Let us pray that we will succeed in fulfilling the commandment to appoint properly and judge properly.

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Ask the Rabbi

by Rav Daniel Mann

Interrupting the Meal to Recite *Kri'at Shema*

Question: When I make Shabbat early, I make a break in the meal to recite *Kri'at Shema* when its time comes. Recently, a guest told me that this is not only unnecessary but one is called a *hedyot* (a moderately derogatory term) for doing so. Should I change my practice?

Answer: The *mishna* (Shabbat 9b) lists activities in which one must not partake before *Mincha*; one is eating. (see details in Shulchan Aruch, Orach Chayim 232:2.) However, if he did, he does not stop in the middle for *Mincha*. There are different versions in the *mishna* regarding stopping for *Kri'at Shema*, and the *gemara* (Shabbat 11a) discusses elements relating to it.

The Shulchan Aruch (OC 235:2) rules that one may not eat a meal within a half hour of the beginning time of the night's *Kri'at Shema*, and that if he did, he must stop to recite *Kri'at Shema*, without its *berachot* or *davening Ma'ariv*. The Ran (Rif's pages, Shabbat 4a) derives this from Sukka 38a, regarding stopping a meal to take a *lulav*, which distinguishes between Torah-level and Rabbinic *mitzvot*.

The Ran (ibid.), and Mordechai (Shabbat 224) say that one must stop a meal for Torah *mitzvot* e.g., *Kri'at Shema*, only if he started eating improperly (for Rabbinic laws, e.g., *tefilla*, one may continue even if he started improperly – see Tosafot, Shabbat 9b). This is how the Mishna Berura (325:23) *paskens*. (These *poskim* may disagree regarding one who improperly started eating within a half hour of *zman Kri'at Shema*, but before its proper actual time.) Your practice of reciting *Kri'at Shema* during the meal is therefore not required, if you start the meal early enough. (Actually, not everyone who *davens* at an "early minyan" starts the meal early enough, especially when he *davens* at a *minyan* that keeps the same time all summer.)

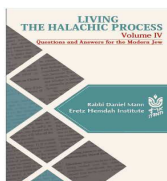
But is your practice a positive, negative, or "*pareve*" *chumra*? There is a concept that one who does something from which he is exempt is called a *hedyot*. The source is a Yerushalmi on our general topic (Shabbat 1:2), which is probably the logic behind what your guest told you. The Yerushalmi told of *rabbanim* who were eating together; one stopped to *daven Mincha* and was criticized by a colleague as above. It is very hard to determine when to apply this rule, as many respected sources have written "one who is *machmir* shall receive *beracha*." Understanding the reason behind the rule, about which there are various opinions, helps. These include: the stringency looks like he is adding on to the Torah; *yohara* (haughtiness/ holier-than-thou); casting aspersions on those who are not *machmir* (see more in the entry on this topic in Encyclopedia Talmudit, vol. XXVIII).

It seems to be a small jump from the Yerushalmi to your question. However, some (Sh'vut Yaakov II:30) understand that the Bavli disagrees (see Shabbat 9b). Furthermore, *Kri'at Shema*, being a Torah-level *mitzva* is stricter (see above). Indeed, the Rambam (Kri'at Shema 2:6; see also Shulchan Aruch Harav, OC 70:5) says that even when one started eating at a permitted time and is not required to stop for *Kri'at Shema*, doing so is praiseworthy. The Rambam actually hints at a reason for this ruling, which may help us apply the matter to our case, as he describes one who is concerned that he might not recite *Kri'at Shema* within its time limit. Therefore, if one recites *Kri'at Shema* during the meal because he has reason (e.g., based on past experience) for concern that he will not remember after the meal to recite it again, it does not make sense to consider him a *hedyot*. Many participants in early Shabbat meals forget to recite *Kri'at Shema* after the meal, so *machmir* based on such grounds is not inappropriate, even if one is allowed to be optimistic.

Since it appears that you thought it was necessary to say *Kri'at Shema* at the first opportunity, you may discontinue your practice (a *minhag b'ta'ut*) without *hatarat nedarim* (see Shulchan Aruch, Yoreh Deah 232:10). If you want to continue, we suggest to state first that you do not want it to become binding.

Do not hesitate to ask any question about Jewish life, Jewish tradition or Jewish law.





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Ein Ayah

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

Limiting Disgust to Its Proper Area

(condensed from Ein Ayah, Shabbat 6:83)

Gemara: [The Rabbis allowed a woman to have some adornments when she is a *nida*,] so that she not be disgusting in her husband's eyes. It is as it says in a *baraita*: "The woman with a flow – *b'nidata* (should be pushed off)" (Vayikra 15:33). The early elders said that a *nida* should not apply eye makeup or rouge and should not wear colorful garments. This continued until Rabbi Akiva came and taught: If so, you will bring her to disdain in her husband's eyes, and it may turn out that he will divorce her. So what do we learn from the above *pasuk*? She shall remain in her state of *nida* until she goes into [the] water [of a *mikveh*].

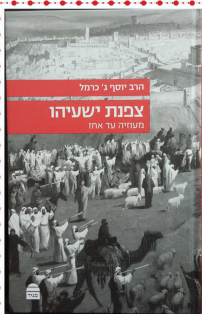
Ein Ayah: Because external unsightliness is connected to the material world and coarse senses, it is not expected, by itself, to turn into a thing of beauty and grandeur. Rather, the negative state will linger until the imprint of that which is disgusting is removed.

Spiritual unsightliness is different. It is something that has to do with the form of the spirit, with powers that are integrated with a polluted spirit. When the spirit is still polluted, the forces are so compromised that they are filthier than any physical unsightliness. However, when they are in a proper state, the same forces can provide light and growth; everything is then full of beauty and is wonderful. Those same forces that caused spiritual weakness turn into a good, powerful, and sustaining spiritual force.

The impurity of a *nida* is not only an aesthetically unpleasant thing, but it is even more unsightly in its internal spiritual sense. It would be horrible for a holy nation to allow those affected by this impurity to abound within it. Rather one has to deal with the physical unsightliness in a way that it will not have a negative spiritual impact. This requires much vigilance to avoid. When one is careful from the external perspective, it can leave behind negative reactions of disgust to the source of the impurity, which can ruin the proper course of life and the family. This can impact a relationship of love that should exist in the Jewish home, sometimes literally with the husband seeking to give a *get* because of his disgust.

Therefore, the picture of external disgust must be transferred into something more fundamental – spiritual unsightliness, which is a matter of a special type of form, which penetrates to the depths of the holy spirit. When this unsightliness passes by means of a very special mode of purification, it reinvigorates that which had withered in the past and turns everything into grandeur, which brings consequences of peace and happiness of the heart.

There were different approaches in different eras in Israel about how to distance oneself from the impurity of a *nida*. The early elders guided people to make the separation from *nida* happen on the external level [by withholding adornments which made the women attractive]. But later, there was an approach based on internal light which penetrated to the depths of the heart at the appointed time and did not require an external coating which leaves darkness after it. Rather it is connected strongly with a unique form of spirituality (i.e., the *mikveh*), which returns the light of the spirit and grants it grandeur and spiritual freshness. This can cause the flowering of gentle and holy life and holy charm. When the positive goes about enveloping the impure, the impurity ebbs away, and there is a new sense of life and elevation based on purity. That is why the woman is a *nida* only until she goes to the *mikveh*.



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

Ending Payment for Child Care Center

(based on ruling 70060 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl) enrolled her daughter at the child care center of the defendant (=def), an NPO, starting from February 23. She paid 180 shekels for registration and was asked to leave checks until the end of the summer of 697 shekels each, including for February, even though, she claims, it was agreed she would pay for February only for two weeks. On April 7, pl decided to move her daughter to a center that is closer to her house. Pl received a refund for May and on, but not for the parts of April and February that she did not use. Pl calculates that this comes to 882 shekels, which she is claiming. Def says that if their manager promised that pl would pay only according to the percentage of the month that her daughter was enrolled, then they would return the money. (It is not clear if def and pl signed on the agreement provided by the Department of Commerce, which supervises child care centers). Def considers it illogical to return for part of the month of February if pl already gave a check at the time for the whole month. Pl responds that she was told that one gives a check in full but that there is an accounting at the end. The manager testified that she does not remember whether or not she told pl that her payment would be proportional to the month.

Ruling: While the Department of Commerce has suggestions about the rules of payment for child care facilities, which does not mandate full return of payment, they do leave it up to the sides to agree, and our research on the matter shows that this is indeed the case. Although def is an NPO which is supported by donations, its managers have the authority to waive some of the financial rights it has coming to them (see Rama, Choshen Mishpat 2:1 and Pitchei Teshuva ibid. 4).

In this case, pl is making a claim of *bari* (certainty) that she was promised a return of the money beyond the proportional part of usage, whereas def's claim of not having to return it is *shema* (doubtful). Since the money is in def's possession, they would normally not be required to pay (Shulchan Aruch, CM 75:9). However, they would have a "*chiyuv latzet y'dei shamayim*" (moral obligation) because of the existence of *bari* and *shema*. This obligation should play a role in *beit din's* decision in a case like this in which the sides requested to know what the correct thing to do is.

Regarding February, it is very logical that a family which was getting started at def would be given a break and would not have to pay for a whole month when they started on the 23rd. It is noteworthy that pl did not ask for a fully proportional payment for February, but says they agreed on two weeks. This is not only credible but is fair.

Therefore, def should return the payment for half of February. In April, pl has in her favor only the matter of *bari* vs. *shema*, and therefore she deserves back only for two out of the three weeks she is requesting. Therefore, in total, def should return to pl payment for one month (697 shekels).

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