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HEMDAT YAMIM

ח'מ'ת'ת'מ'ח'מ'

Parashat HaShavua

Mishpatim, 1 Adar 5781

National Spiritual Impact of Justice

Harav Yosef Carmel

As we do every year on *Parashat Mishpatim*, we will deal with the matter of *batei din* for monetary matters.

Right after the giving of the Torah and before the many *halachot* that appear in our *parasha*, the Torah declares: "These are the statutes that you shall place before them" (Shemot 21:1), which is the source of the *halacha* that one must adjudicate in *beit din* (rather than non-Jewish or secular courts). This special location gives special importance to the place of Jewish monetary law in our national and individual lives.

Already in *Parashat Yitro*, before the giving of the Torah, the matter of appointing *dayanim* is discussed, and the desired characteristics of such *dayanim* are mentioned. Actually, even in *Parashat Beshalach*, right after the Splitting of the Sea, it says: "There (at Mara) He placed before them *chok u'mishpat* (statutes and laws) and there *nisahu* (He tested them)" (ibid. 15:25). *Chazal* saw this as such an essential matter that the *Mechilta D'Rashbi* (15) says that "*mishpat*" refers to a variety of monetary laws and "*nisahu*" refers to a high level of spiritual elevation. The *aggadic midrashim* also describe this *pasuk* in special terms. *Shemot Rabba* (30) compares it to a queen who was walking with an honor guard on either side.

According to this *midrash*, one can understand that the basis for the dwelling of the Divine Presence among us is a proper judicial system. The social and national life of *Am Yisrael* is based not only on people who have a common language and homeland, but also on a properly operating judicial system. This system elevates the nation. Naturally, just as a special nation has a special land, so does it have a special judicial system, which fits its needs and elevates it. By means of the judicial system, we can view the character of the nation and the level of its society.

Therefore, it is no surprise that prophecies that deal with the future full liberation put significant stress on the Jewish judicial apparatus, as it says in the famous opening prophecy of Yeshayahu: "I will return your judges as they were originally and your advisors as of the beginning. Afterwards, this will be called the city of justice and the trustworthy city. Zion will be redeemed with justice and its returnees with charity" (1:26-27).

As we know, Avraham, the father of our nation, was praised as teaching his household to uphold "the path of Hashem to do charity and justice" (Bereishit 18:19). Similarly, David, the first king who founded an independent nation-state in *Eretz Yisrael*, was also described by the *navi* as one who did "justice and charity for all his nation" (Shmuel II, 8:15).

The building of a justice system, which rests on the just foundations of the Torah, is a highly important task when developing the State of Israel as a Jewish state. If we are able to create such a system, which epitomizes honesty and strives with all its might to create justice, so that it is respected by all elements of Israeli society, we can see that as real progress, even if gradual, toward the fulfillment of the prophets' prophecies. In our *Eretz Hemdah-Gazit beit din* network, we try to do our modest part in advancing this important goal.

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Those who fell in wars for our homeland. May Hashem avenge their blood!



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Ask the Rabbi

by Rav Daniel Mann

Workplace Requirement for Vaccination

Question: [This question was sent by a European rabbi.] A business owner demands that his employees be vaccinated against Corona due to the type of work done and makes them sign a waiver of claims for damages stemming from the vaccine. Can an employer make such a demand and transfer risk to a reluctant employee?

Answer: [The answer (written on Jan. 15, 2021) is a short, general, fundamental one and should not be seen as giving the whole picture regarding claims in a specific case. It also can be impacted significantly by local law and health policies, which may differ by location and by changes in the situation and scientists' knowledge on the subject. Our general instruction is for all to follow public health guidelines and consensus (see Shulchan Aruch, Orach Chayim 328:10). At this point (with 30 million given worldwide), vaccination appears safe and effective and enjoys medical consensus.]

Regarding the morality of requiring a theoretically risky action, many jobs include risk, e.g., exposure to contagion, chemicals, extensive driving. It is legitimate for an employer to put his worker in necessary, responsibly assumed risk (Bava Metzia 112a). If, based on scientific consensus (which in many workplaces worldwide appears likely), the workplace will be safer overall if all members vaccinate, it is morally prudent to protect the staff as a whole. Should the other worker's be forced into working with people who are endangering them?! Would the unvaccinated worker agree to be sued if he causes death or serious harm to a co-worker whom he infected (some 5% of the vaccinated are presently expected to be vulnerable)?!


We now turn to the efficacy of the waiver. The rule is that conditions on monetary obligations are binding (Ketubot 56a), and written commitments are a strong way of formalizing commitment (see Ketubot 101b; Rama, Choshen Mishpat 12:7). Sometimes a conditional agreement is not binding because the one committing may not have believed the situation would occur (*asmachta* – see at length in Shulchan Aruch, CM 207). This is apparently not a problem here (analysis is beyond our scope).

On the other hand, one who is coerced into a one-sided commitment (e.g., waiving damage claims) is not bound to it if either he made a *moda'ah* (a formal statement nullifying the step taken due to another's coercion) or he has proof of coercion (Shulchan Aruch, CM 242:1). It would not be coercion if the employer had the legal/moral right to force the worker to take a vaccine if he wanted to be or remain employed. (This can depend on too many factors to discuss here, including governmental regulations employed to deal with the health crisis, which fall under *dina d'malchuta* powers (see Rama, CM 369:11).) When the employer has the right, it is worker's decision whether he wants the job enough to accept dictates he opposes, and a decision based on a difficult situation rather than coercion initiated by a person is not halachic coercion (see Bava Batra 47b).

There is some chance of late-emerging bad news on coronavirus vaccine safety, and a given person can end up being the "one in a million" with a serious reaction. However, our mentor, Rav Zalman Nechemia Goldberg z.t.l., taught an important idea about medical malpractice (see Techumin vol. XIX, p. 320). The discussion of malpractice applies only when there was a mistake, considering the situation. When a doctor recommends/performs a procedure that is correct based on benefits vs. risks, and it failed based on no clear mistake, there is no basis to sue. Claims must be based on *p'shi'ah* (negligence). When a patient is part of the minority of people for whom the risks come to fruition, the one giving the medical advice is not culpable. Therefore, in our case, the waiver is unnecessary, as the boss should not be culpable. If the waiver makes the boss feel good or protects him from a non-halachic legal suit, so be it. If the FDA and its counterparts turn out, *chas v'shalom*, to have done their job poorly, suits can be made against governments.

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





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Igrot HaRe'aya – Letters of Rav Kook

Dealing with Questionable Aron Kodesh – Vol. I, #10, p. 1-2

Date and Place: Wednesday night of Parashat Mishpatim 5660 (1900), Boisk

Recipient: Rav Eliyahu David Rabiniowitz Teomim (Aderet) – Rav Kook's father-in-law

Body: I have received a letter from the *av beit din* of Zaumel (Rav Kook's former community) on the following matter.

When I was in Zaumel, I instructed them to build an *aron kodesh* because, we should not know from such things, a *sefer Torah* fell from the *aron kodesh*, due to our great sins, when the *sefer Torah* was removed from it. Upon investigation, I determined that it happened because the *aron kodesh* was too small, making the *sifrei Torah* overly crowded. I therefore instructed that the main repentance would be to remove the cause of the unfortunate event; people should donate to make a large, beautiful *aron kodesh* to honor the holy Torah.

Certainly, what I said was, thank G-d, accepted, especially since the minds of the masses are attracted to *mitzvot* that are connected to beauty. (In our generation, this is just as well, because it at least keeps people connected to service of Hashem and gives them warm feelings toward *mitzvot* that are otherwise forgotten from our hearts, in our great sins. Although they turn the secondary into the primary, any action whose content is to honor Hashem is dear to me, unless it pushes off an obligatory *mitzva*, like in the case you were involved in.)

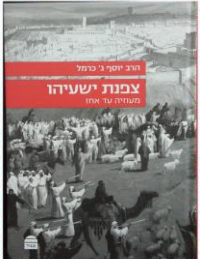
Many were inspired and donated with excitement. They hired a craftsman to make an *aron kodesh* with more aesthetically involved artistic elements than I had intended. However, I was reluctant to stop them because money saved by stopping the extras would not have been used for a different *mitzva* project. I was also concerned that if the beauty would be restrained, interest would also wane, and Heaven forbid the small *aron kodesh* and the likelihood of another disaster would remain.

This approach was more important to me than having a fast (over the falling of the *sefer Torah*). I was therefore very lenient about the fast, even though I did not eliminate it totally because I believed that involvement in fixing a bad situation is good repentance. It is similar to the Terumat Hadeshen's position on the repentance of serious sinners – their distancing themselves from improper desires is a clear indication of repentance.

Recently, this *aron kodesh* was completed, with all of its art work, but it has not yet been installed in the *shul* because they want to do so with great fanfare and also invite me because I was the initiator and encourager of this *mitzva*. However the *av beit din*, may he live, told me that the art work of the "wings" for the *aron kodesh* includes protruding animal forms, especially lions. It is known that some of the greatest rabbis have vociferously opposed this in *shuls*, especially when it is opposite where people bow, and he asked me to write to the people to refrain from installing these wings.

This is a very difficult situation, depressing for those involved, as it was a large expense. Had I known in advance, I would have, despite my lowliness, used all my strength to oppose it, in deference to the great men who forbid it. However, since it was already done and the whole public has seen it permitted in several *shuls* in holy communities, led by the greatest brilliant and pious scholars, I believe that they have what to rely upon regarding the letter of the law. After all, many great *Rishonim* posited that there is no prohibition, and those who forbade it view it only as a Rabbinic violation (no more than a small minority view it as a Torah-level prohibition).

In my humble opinion, to the contrary, we should be concerned with casting aspersions on the "earlier people" (who have such art work in their *shuls*). In my humble opinion, since those who forbid do so because it arouses suspicion of idol worship, Heaven forbid, and since we see some righteous rabbis who did not oppose the phenomenon, if we protest, that would cast great aspersions, Heaven forbid. It seems to me that rabbis made a big deal about this only in places without a custom, but now that the matter has become widespread and customary, there is no longer suspicion. Nevertheless, I am certainly afraid to do more than "look away."



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

Unartistic Material for Artistic Work – part I

(based on ruling 80036 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The defendant (=def) was hired by a *beit kneset* (=bk) to provide artwork, including one made of glass with forms made of brass attached, for the *aron kodesh*, priced at 47,900 NIS. Def ordered the brass, specially cut into forms, from pl. and def came to watch the work progress. Def attached the brass to the glass and installed them. The *gabbai* and interior decorator came to see the work and objected to much of the artwork, claiming that the brass forms were sloppily made. An argument ensued between them and def, and def was replaced, after being paid only 25,000 NIS for the piece in question (part of the work remained; part was replaced). Def paid pl only a 5,000 NIS down payment, and pl are suing def for the remaining 10,000 NIS promised for the work. Def refuses to pay because pl's work had been flawed and is countersuing for the 22,900 NIS in income he lost, around 5,000 NIS for wasted supplies, plus money for a diminished reputation. Pl responds that it was def's responsibility to see any problems and have them fixed before he attached them to the glass.

Ruling: The artistic pieces were brought to *beit din*. Even to a non-expert's eye, it was clear that the strips of which the forms were made were not of uniform width, which caused the lack of a smooth look, and had scratches and other imperfections. The fact that they were to be used for fine art was well known to pl, and they were not of that quality. Much of what was given could not have been fixed, but would have to have been replaced. Based on the context of the order, the average person would have rejected the brass strips, which provide the grounds for *mekach taut* (voiding the sale).

Does def's delay in complaining about the imperfections preclude *mekach taut*? One must also consider that as opposed to a regular case of *mekach taut* where the object can be returned, since they have been firmly glued to the glass, they effectively cannot be returned. The Shulchan Aruch (Choshen Mishpat 232:18) rules that in such a case, if the bought object was used in a normal manner before the blemish was discovered, it can still be returned for full value. Def explained how due to the flimsiness of brass strips, the extent of the problem could not be appreciated until the art work was put up.

The question of whether def should have been expected to check the quality of the strips before connecting them to the glass relates to a Maggid Mishneh (Mechira 15:3), who brings two opinions on this fundamental point. Many *poskim* (see Pitchei Choshen, Ona'ah 13:9) point out that the requirement to check applies only when it can be done easily, which is not the case here. Therefore, def has to pay pl only for the part that was used, based on which, *beit din* estimates that pl needs to return 2,800 NIS to def.

Next week we will deal with def's countersuit.

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