



HEMDAT YAMIM

Parashat Hashavua

Shoftim, 7 Elul 5782

Harav Shaul Israeli zt"l
Founder and President

Kim Li? Litigation and Justice Must Go Hand and Hand

Harav Yosef Carmel

Our *parasha* opens with three operative commands: place judges throughout the land; judge the people righteously; pursue justice (Devarim 16:18-20). How do we implement these principles in our *beit din* network, "Eretz Hemdah- Gazit"?

One of the most important rules in monetary Halacha is *hamotzi mei'chaveiro alav ha're'aya* (see *Mishna*, Bava Kama 3:11). Whoever is in possession of the money in dispute has a strong advantage over the one who is trying to claim it away from him. Therefore, the plaintiff needs to bring proof, because if a doubt will remain, the defendant will win in very many cases.

The Rama (Choshen Mishpat 25:2) expands this to doubts not only on what happened but also to disputes on relevant halachic opinions. The fact that a majority of *poskim* rule in the plaintiff's favor does not necessary enable him to extract money from the defendant. The Shach (Tokfo Kohen 123) takes this shockingly far. It is enough for a small number of *poskim* to rule in a manner that the money's possessor can keep it. This idea is called "*kim li*" – allowing the defendant to say, "I am sure the small minority who would have me win are correct."

Some of the greatest rabbis protested the implementation of *kim li*. Rabbi Yonatan Eibshitz (Urim V'Tumim to Tokfo Kohen 123-124) argues that if we follow the Shach: "Heaven forbid, the Torah will not be followed, and we will have a situation where whoever is stronger will prevail ... if so, *poskim* and authors toiled for nothing, bringing proofs and analyzing in depth, because the one in possession can always claim *kim li*, and Heaven forbid, our Torah will be *hefker*."

Rav Yaakov Chagiz (Shut Halachot Ketanot I:182) used even stronger language: "If so, you have undone all of *choshen mishpat* ... I say about such a case: How long will you go about destroying all of Israel's money and giving a hand to criminal elements? I am afraid that over time all of the work of the *gemara* will be undone, as people will say: *Kim li* like this *Tanna* or this *Amora*."

We add to the question. Would someone who fears Hashem be so lenient to rely on the opinion of a tiny minority of *poskim* in the laws of *kashrut*?!

Let us return to our *parasha's p'sukim*. The Torah commands us to appoint judges and emphasizes: "Justice, justice shall you pursue." Many quills have been broken trying to explain the repetitiveness. We suggest that the Torah is stressing that we need to build a system of justice that will promise justice that is realistic for the situation. *Batei din* who embrace the Shach's approach will remain empty. Who will sue in *beit din* when the defendant can win by finding one or two agreeable opinions?

But the Shach's prominent opinion still exists, so how do we deal with it? Our teacher, Rav Zalman Nechemia Goldberg, taught us that whenever litigants sign an arbitration agreement that reads "for strict law or for compromise," it gives *beit din* the right to decide between opinions in a halachic debate without allowing the defendant to claim *kim li*. In our arbitration agreement, we are even more explicit in allowing the *dayanim* to use their wisdom to arrive at decisions irrespective of *kim li*. May this be a step in the direction of Yeshayahu's view of a future of proper justice in Jerusalem.

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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

Tasting Meat Liquids

Question: When I cook for Shabbat, I like to taste the chicken soup and gravies to make sure they are properly spiced. Does that “make me *fleishig*”?

Answer: In many areas of Halacha, such a question would be easier to decide conclusively, but for whatever reason, *Klal Yisrael* shies away from leniency regarding meat and milk. We start by telegraphically mentioning multiple ways that such a case is or may be distanced from the Torah-level prohibition. 1) If the meat is poultry, not beef; 2) Perhaps, if you are tasting only gravies and not the meat itself; 3) The meat and milk were not cooked together; 4) You are eating one after the other, not together.

Different *Rishonim* give different reasons to wait six hours (or a different *minhag's* time) between *fleishig* followed by *milchig* foods. Rashi (Chulin 105a) says that “meat exudes fat, and it sticks to the mouth and gives taste for a long time.” The Rambam (Ma’achalot Asurot 9:28) says that we are concerned that meat got stuck between the teeth in a manner that it is difficult to remove. The Tur (Yoreh Deah 89) brings *nafka minot* between the opinions: 1. If meat is found between the teeth after 6 hours, is the meat still *fleishig*? (Rambam- no; Rashi- yes); 2. If it was chewed but not swallowed (Rambam- must wait, as meat could be between teeth; Rashi – no wait, as swallowing is what makes the taste linger). The Tur and Shulchan Aruch (YD 89:1) rule like the stringencies of both positions, therefore even if one does not eat the *fleishig* food but chews and then spits out (e.g., to feed to one’s baby), he still has to wait before eating *milchigs*. The Pri Megadim (MZ 89:1) reasons that our being *machmir* for both opinions is logical either due to our carefulness about *safek* in all the relevant cases, or because the two reasons could both be true.

The Pri Megadim continues that if one chewed *pareve* food that absorbed *fleishig* taste, but does not contain pieces of meat (e.g., chicken soup broth), neither reason indicates having to wait. However, he says that holy Jews do not distinguish (*lo plug*) between similar cases and always wait, and the Pitchei Teshuva (YD 89:1) accepts his opinion. How broad is this *lo plug*? While some *rabbanim* view it as applying to everything that is put in the mouth, the more accepted opinion is that tasting with the tongue (without chewing) and then spitting out the *fleishig* food does not make waiting necessary (Pri Chadash, YD 89:18; Aruch Hashulchan, YD 89:14; Darchei Teshuva 89:22). (There are discussions in other *kashrut* areas on the extent to which tasting with the tongue alone is an especially lenient case – see Pitchei Teshuva, YD 98:1). Among Sephardi *poskim* as well, the mainstream approach is to be lenient (Kaf Hachayim, YD 89:4; Yalkut Yosef, YD 89:13). (See also a similar discussion in Living the Halachic Process, III, E-1).

There are some provisos, though. First, just as between milk followed by meat, we require washing the mouth by first eating liquid and solid *pareve* food (Shulchan Aruch *ibid.* 2), so too this is needed to remove the tasted meat residue (see the aforementioned lenient opinions). Since there is no minimum amount for how much one needs to eat to become *fleishig* (Badei Hashulchan 89:2), one would have to determine that the tasting included **no** swallowing.

These rules can be burdensome to follow. Consider also that on a day of substantial *fleishig* cooking, some people tend to eat samples of their food without giving it much thought and forget thereafter that they are *fleishig*. Therefore, it might be prudent for many home Shabbat chefs who want to eat *milchig* food around the time of their major cooking, to eat the real *milchig* food prior to tasting *fleishig* food and spending a long time around them.

However, this suggestion is no more than practical advice where it applies. As far as a halachic ruling is concerned, if one just tasted *fleishig* food with his tongue, spat it out, and washed his mouth, he does not need to wait six hours before eating *milchig* food.

“Behind the Scenes” Zoom shiur

Eretz Hemdah is offering the readership to join in [Rabbi Mann's weekly Zoom sessions](#), analyzing with him the sources and thought process behind past and future responses. Email us at info@erezhemdah.org to sign up (free) or for more information on joining the group.

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



Igrot HaRe'aya - Letters of Rav Kook

Improving a Colleague's Work - #112

Date and Place: 11 Adar I 5668 (1908), Yafo

Recipient: Rabbi Pinchas Hakohen Lintup, rabbi of the Chassidic community of Birzai, Lithuania. Rabbi Lintup was a respected friend and reportedly a *chavruta* of Rav Kook for the study of *Kabbala*. Rabbi Lintup was a Zionist, fluent in academic spheres, and yet also a fighter of the influence of the outside world on traditional Judaism.

Body: The dear pamphlet "Binyan Hauma" (the Building of the Nation – about steps to take to strengthen observance of *mitzvot*) came to my hands, and I have read it with internal happiness. I thank Hashem for bringing me to this time, when the greatest of rabbis begin to deal with existential national questions based on Torah sources with a scientific approach in a way that they need not be embarrassed to present the ideas before (philosophical) enemies and friends in the gates (based on Tehillim 127:5).

However, I am unable to hide from my honorable friend, that you need to seriously fix the style of writing in future editions, and especially be as careful as possible to avoid noticeable grammatical mistakes. This brings people of small intellectual stature, which is most people, to scorn not only the language but even the lofty content of the work. I am confident that you will take my advice, and it is something very easy to do. Before each pamphlet is published, give it for editing to someone who is proficient at Hebrew grammar, and he will fix the matters that are most noticeable.

I will have even enough gall to request of you to be careful to avoid all elements of *drush* (less rigorous homiletic ideas) and things of that nature at the time that we are dealing with questions that are of the highest level of importance. There should always be a guarded boundary between one world of Torah topic and another. Extrapolating on minutia should not mix in with investigation of crucial matters.

In any case, these blemishes are like spots on the face of the clear sun in the sky, which are not comparable to the great light which you reveal to us through your wonderful books, when they become available to the world.

I will tell my honorable, beloved friend that I have no criticism for the valuable general ideas in the pamphlet. It is full of new and old pure gold, and it is influenced by the sanctity of the internal (mystical) elements of the Torah. This is what I would expect based on my knowledge of you and your *drashot*. You have recently increased in ideas and lessons, which you have incorporated through the sparks of sanctity that you brought up from the depths of the "peels," by using many new tools from the world of modern literature. May you be blessed with strength, for this a phenomenon that is appropriate and actually required.

[We will skip a paragraph on Rav Kook's suggestions regarding technical help in publishing.]

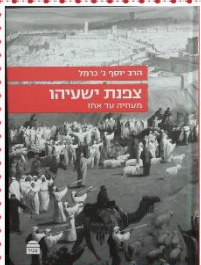
I want to point out that we need to actively invest in building our nation in the Holy Land rather than getting overly involved in criticizing those who have little faith and use their imagination to limit the extent of Hashem's Hand. As the Ba'al Shem Tov said, we have to serve Hashem in all ways. We also have to look toward national liberation, which is one of the foundations of the service of Hashem, about which we are asked on our day of judgment (see Shabbat 31a). There are different ways to do this, and they are not mutually exclusive. We just need to "prepare the road," removing the thorn bushes and stumbling stones, whereas all the roads themselves lead to the goal. The closer the goal is the less important the impediments are.

We daven for a complete and speedy *refuah* for:

Nir Rephael ben Rachel Bracha
 Yisrael ben Rivka

Arye Yitzchak ben Geula Miriam
 Yerachmiel ben Zlotta Rivka
 Together with all *cholei* Yisrael

Neta bat Malka
 Meira bat Esther



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

Payment Plans

(based on ruling 78063 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl) hired the defendant (=def) to renovate his home. Def gave an estimate of 25,000 NIS, which was paid in full. It was not finalized what work would be included, but the main work was in turning a bedroom into a workroom, undoing a closet area, moving an electric box, and other small jobs. When pl saw that def would not be able to do some of the work, he asked him to build a fence instead; def originally agreed but then decided against it. Pl claims that the work that def did is worth no more than 10,000 NIS and demands a return of 15,000 NIS. Def does not remember what was supposed to be included in the work but claims that pl had been satisfied, which is why he paid in full, and that pl is making claims now because he thinks he could have done much of the work himself.

Ruling: Def was employed as a *kablan*, one who is paid by the work accomplished (Rama, Choshen Mishpat 333:5), and the amount of time spent is irrelevant. The agreement was finalized by the beginning of the work.

The main question is what was included in def's obligation to accomplish. Pl's claim that moving the electric box was included is supported by the architect and the building plans. It is a case of a definite claim vs. a claim of doubt (def does not remember). Based on all the above, we assume that it was included.

In this case, pl broke the employment agreement by demanding money back instead of having def complete any work that needed to be done. In such a case, the hirer has "the lower hand," paying the higher of the value of the work done or the difference between that which was promised and the cost of finishing the job (Rama, CM 333:4). The Netivot Hamishpat (333:7) says that even if a *kablan* found other work, he still has rights to the pay promised him because one job does not preclude the other. Tehilla L'David (146) and Minchat Pittim (333:1) disagree. Even according to the Netivot Hamishpat, the *kablan* gets paid as promised only if he is willing to work an equivalent amount to that which was agreed. In this case, def did not agree to do other jobs that pl requested.

At one point, def agreed to build a fence (valued at 7,000 NIS), and pl agreed to forgive the rest of the work value coming to him. Can pl renege on his compromise and demand a full 15,000 NIS? We rule that there is no need for an act of *kinyan* to relinquish rights. However, one who agreed outside of *beit din* to make a smaller claim can decide to make a bigger claim in *beit din* (Minchat Pittim 17:12). In any case, since the *mechila* was on condition that def build a fence, which he did not do, pl is not bound by his conditional *mechila*.

Was def's initial agreement to build a fence an admission that he still owed pl? Although def claims that the agreement was just built upon willingness to go beyond the letter of the law, this claim is an *amatla* (a way out of a commitment), which is admissible regarding monetary cases only with a strong basis (Shulchan Aruch, CM 47:1). In this case, where there is some indication from the fact that pl paid in full, we are ruling based on compromise that def will return 9,000 NIS.

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