



Harav Shaul Israeli zt"l

Founder and President

On Justice and the Right of Appeal – part III

Harav Yosef Carmel

We will now discuss the roots in Halacha of the practice of appealing *beit din* rulings.

The Torah discusses the Yitro-Moshe plan, which includes judges of thousands, of hundreds, of fifties, and of tens (Shemot 18:21). The Seforno explains that one would start with the "lower court," and if he was unhappy with the ruling, he would appeal to the court above it, and in the rare cases that went higher than that, it could go all the way to Moshe.

The Malbim raises the possibility that we can learn the concept of appeals courts from Yitro and Moshe, but he is skeptical that an appeal is a Torah-level law because of the competing concept (see Bava Batra 138b) that "*beit din* does not look into the rulings of another *beit din*." *Rishonim* (ad loc.) explain that we are to assume that the first *beit din* was correct in their ruling. The Malbim insinuates that it is possible that according to Torah law, one could appeal, and it is the Rabbis who closed off that possibility to prevent dragging out a case indefinitely. However, we do not find this approach in *Rishonim*; rather, there **is** a possibility of appeal, as we shall see.

The Maharam of Rutenberg (an important, early Ashkenazi *Rishon* with responsa) was asked about appeals (*Shut* 715). He says that we do not find an injunction against appealing, and, to the contrary, it was a common occurrence, at least in his time. We can suggest a proof for this approach from the following *gemara* (Sanhedrin 31b). Rav Elazar says that if the litigants argue about whether to adjudicate locally or to go out of town (which includes significant traveling expense) to a more expert *beit din*, they adjudicate locally. However, the one who wanted to go to the experts can require the local *beit din* to write the legal justification of the ruling. Apparently, the rationale for writing the reasons for the ruling is to enable the disgruntled litigant to go to experts and see if they agree. The Beit Yosf (Choshen Mishpat 14) understands the Rambam similarly. He says that the idea of writing the reasons applies specifically to a "junior court," so that the more expert court can investigate whether they made a mistake. If, though, a renowned court rendered the ruling, they would not need to cite the rationale.

All agree that if it was agreed in advance that there will be a possibility of appeal, then this is binding. Furthermore, if the original *beit din* agrees to it, then appeal can be brought. In our days, it apparently is also because we are unwilling to take the stand that we do not believe that our *batei din* are unlikely to make a mistake.

In Eretz Hemdah's arbitration agreement, we state explicitly that the presumed situation is that either side can appeal, just that a full appeal process has to be started by a decision of a single *av beit din* (panel head) who did not sit on the case that there is an apparent mistake in the ruling in question. If so, the two other panel heads join him to decide whether there was a mistake and what should be done about it. This method strikes a good balance between vigilance for the possibility of mistake and avoiding unnecessarily drawn out legal processes.

Hemdat Yamim is dedicated to the memory of:

Eretz Hemdah's beloved friends and Members of Eretz Hemdah's Amutah

Rav **Shlomo Merzel** z"l
Iyar 10, 5771

Rav **Reuven & Chaya Leah Aberman**
z"l
Tishrei 9, 5776 / Tishrei 20, 5782

Mr. **Shmuel & Esther**
Shemesh z"l
Sivan 17 / Av 20

Mr. **Moshe**
Wasserzug z"l
Tishrei 20, 5781

Prof. **Yisrael**
Aharoni z"l
Kislev 14, 5773

Hemdat Yamim is endowed by
Les z"l & Ethel Sutker of Chicago,
Illinois, in loving memory of
Max and Mary Sutker
& **Louis and Lillian Klein** z"l

R' **Yaakov** ben
Abraham & Aisha and
Chana bat Yaish &
Simcha **Sebbag** z"l

R' **Eliyahu Carmel** z"l
Rav Carmel's father
Iyar 8, 5776

Mr. **Zelig & Mrs. Sara**
Wengrowsky z"l
Tevet 25 5782
Tamuz 10 5774

R' **Meir** ben Yechezkel
Shraga **Brachfeld** z"l
& Mrs. **Sara Brachfeld** z"l
Tevet 16, 5780

Rav **Asher & Susan Wasserteil** z"l
Kislev 9 / Elul 5780

Rav **Yisrael Rozen** z"l
Cheshvan 13, 5778

R' **Abraham & Gitta Klein** z"l
Iyar 18 / Av 4

R' **Ben Zion Grossman** z"l
Tamuz 23, 5777

Mrs. **Julia**
Koschitzky z"l
Adar II 18, 5782

Rav **Moshe Zvi**
(Milton) Polin z"l
Tammuz 19, 5778

Rabbi Dr. **Jerry**
Hochbaum z"l
Adar II 17, 5782

Nina Moinester, z"l, Nechama Osna bat
Yitzhak Aharon & Doba z"l
Av 30, 5781

R' **Yitzchak Zev**
Tarshansky z"l
Adar 28, 5781

Mrs. **Leah Meyer** z"l Nisan 27, 5782

Mr. **Shmuel & Rivka Brandman** z"l Tevet 16 5783/ Iyar 8, 5781

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



Ask the Rabbi

by Rav Daniel Mann

Are Newly Ripe Avocados *Muktzeh*?

Question: Today, Friday, our avocados are not quite ready to eat. If they become ripe enough on Shabbat, may we eat them then?

Answer: Fruit that are so unripe that they are inedible are *muktzeh* (see Shulchan Aruch, Orach Chayim 308:31). When Shabbat begins, during *bein hashemashot* (twilight), several matters of halachic status are set for the entire Shabbat. One such matter is *muktzeh*, i.e., what is *muktzeh* when Shabbat begins, remains so throughout, even when the situation that made it *muktzeh* no longer exists (*migo d'itkatza'i* ... – Shabbat 43a). Thus, there is reason to suspect that an avocado that entered Shabbat as *muktzeh* would remain *muktzeh*.

However, there are a few reasons why the avocados in question will not be *muktzeh*. One is that since avocados usually ripen slowly, it is very likely that if you will **want to** eat it on Shabbat, it was halachically **edible** when Shabbat began. Foods do not need to be at their optimal state in order to be non-*muktzeh*; barely edible suffices. For example, the *gemara* (Shabbat 128a) and Shulchan Aruch (ibid.) state that uncooked meat is not *muktzeh* because it can be eaten raw, as can raw eggs (ibid. 328:38). Many *poskim* (including Igrot Moshe, OC 22) say that nowadays, raw meat is *muktzeh* because people no longer eat it, so that it must be practically feasible. So too, the *gemara* (Beitza 26b) discusses a food that is borderline fit to eat, i.e., only some would eat it, and instructs that one who wants to eat it must make an indication in advance to end the *muktzeh* status. Nevertheless, we assume that your avocados, if desirable to you on Shabbat, would have been marginally fit when Shabbat began. (One does not need to be aware before Shabbat that this was the case – ibid.)

A further reason that your avocados will not be *muktzeh* is that *migo d'itkatza'i* probably does not apply here. The *gemara* (Beitza 27a) points out that food that is cooking when Shabbat started is often not fit then, and still one may eat it when it is ready. The *gemara* explains that this is because it is “finished by the hand of man (*gomro biydei adam = gba*),” (as opposed to fruit drying in the field, which needs time with a strong sun to be fit for Shabbat and therefore stays *muktzeh*). The expectation that the food will become fit prevents him from removing the prospect of using it from his mind (which is what *muktzeh* means).

It is likely though that *gba* requires certainty that the object will be usable on Shabbat (Tiltulei Shabbat p. 246; Orchot Shabbat 19:(556)) and some posit that this happens by human action (see ibid.). If something is reliant on an unpredictable stimulant (e.g., the sun), it remains *muktzeh*. Avocados are apparently not affected by the sun; rather, time and/or exposure to ethylene gas (from ripening fruit) are catalysts. There may be a *machloket* (Ha'amek She'ala 47:7 suggests it could be a *machloket* between Bavli and Yerushalmi) whether one can extrapolate from the fact it ripened during Shabbat that it should have been clear on Friday that this would happen.

In any case, a further leniency solves the problem here. The classic case of *migo d'itkatza'i* is one who puts edible fruit to dry, an action that causes them to “push” them into a period of being unfit. In cases where the object was never fit and pushed off and becomes fit on Shabbat, many *poskim* say that it loses its *muktzeh* status as soon as it becomes fit (see Shulchan Aruch, OC 324:7). On the other hand, some *poskim* posit that even in cases where a status of being fit was not removed, the *muktzeh* status can continue unless people were “sitting and looking forward” to its becoming fit (see Tosafot, Chulin 14a). However, this level of expectation does not require certainty it will occur, and one who saw the avocados were “not quite ready” and hoped they would be ready on Shabbat definitely qualifies to have their *muktzeh* status fall off (Orchot Shabbat 19:370; Chut Shani 308:7.8 permits it but uses the term *gba*).

Therefore, for one or more reasons, if the avocado will be to your liking on Shabbat, it will be permitted to eat it.

“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@eretzhemdah.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.

► [SEND NOW!](#)



Igrot HaRe'aya - Letters of Rav Kook

The Need to Sell the Land before *Shemitta* – #189 – part I

Date and Place: 17 Shevat 5669 (1909), Yafo

Recipient: Rav Yaakov Dovid Wilovsky, known as the Ridbaz. The Ridbaz was a leading Torah scholar, who had served as a rabbi in several communities in Eastern Europe and then in Chicago. In 1905, he moved to *Eretz Yisrael* and founded a *yeshiva* in Tzfat. An author of many Talmudic works, his most famous halachic stance was against the *heter mechira*, the temporary sale of land in *Eretz Yisrael* in an attempt to obviate the restrictions of *Shemitta* (the Sabbatical year).

Body: I just received your holy letter with your respected pamphlet, *Kuntras Hashemitta*. Your pure words were salt on my unbandaged wounds. Only Hashem, Who knows all secrets, knows that my heart is bitter over the lot of the *mitzva* of *Shemitta*. With all my heart and soul and the life of my spirit and soul, I desire and am thirsty to strengthen the *mitzva* and return it to its former glory.


My eyes see how far we still are from accomplishing this great thing. I know clearly that if we do not carry out the sale of the land, a great multitude of people will violate all of *Shemitta's* prohibitions without any basis for leniency. This will encourage evil people to raise their profile and declare that the band that connects us to the *mitzvot* is undone and we can abrogate *mitzvot* from the Torah without any question. This will result in unfathomable destruction to the holy Torah and desecration of His Holy Name.

Therefore, I am compelled to follow the lead of the Rabbis in their rule of "It is better that Israel should eat sickly, slaughtered meat so that they do not eat unslaughtered and thus non-kosher meat" (Kiddushin 21b). I was compelled to arrange this halachic device for those who are compelled to use it, just as they did in previous *Shemitta* years. I knew that the present situation makes it impossible to avoid doing something to allow people [to create leniencies in the observance of *Shemitta*].

The first element of need is the matter of sufficient [produce for consumption] during *Shemitta*. It is conceivable that if this were the only issue, it might have been possible with great intervention that the Baron [Rothschild] might have given a sum that might have sufficed in the difficult circumstance.

The main matter, though, is the break that [*Shemitta* observance] would have made in the marketing, especially of wine and oranges, which comes to millions. It is not just that they will lose this incredible income during the *Shemitta* year (according to the Rambam, it is possible that the oranges would have two years of certain restrictions). Rather, it will break all marketing deals, as the importers abroad will not cooperate with exporters who cancel sending shipments periodically, as all know. This would definitely cause horrible hardship to all commerce, even post-*Shemitta*. The Baron would not want this, and he possibly cannot even handle it. His main intention was that the marketing should develop to the point that the farmers can support themselves without his help. Therefore a *heter mechira* is definitely needed for the export market as matters now stand, even though it is as difficult as splitting the Red Sea.

Hashem should see our difficulties and give us good counsel, so that we will be able to serve Him in the Holy Land without impediments and distractions. Because I know that even if all the greatest rabbis of the generation opposed the sale, people would not listen, mainly because of the great need, I desired to not publicize matters. That way, our actions will not look like there is a general agreement of the leading scholars but rather a practice that people do due to their plight. The scholars of the generation need to look the other way to fulfill the Rabbis' contention that "it is better to sin unknowingly than on purpose" (Beitzta 30a). We must hope that Hashem's mercy will bring us better days, after Hashem raises our stature in the Land, and we can support ourselves without the help of other people and without the deceptiveness of exporting *Shemitta* produce abroad, which is difficult to permit. Then we will return to previous glory with all its sanctity.



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.

Buy Now

P'ninat Mishpat

How to Take Payment from A Guarantor – part I

(based on ruling 83023 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl) lent 110,000 NIS to the borrower (=brw) for his business. Brw was to return it after a month with 10% interest. The defendant (=def) signed as an arev (guarantor). Many months have gone by without payment, and brw has filed for bankruptcy. Pl demands that def pay, but def says he did not understand the loan agreement and that, anyway, he does not have enough money to pay and can only make small monthly payments. Pl wants def to borrow money to pay at one time, as def assured pl, before the loan, he could do.

Ruling: We reject def's claim that he did not understand the agreement (see Shulchan Aruch, Choshen Mishpat 61:13). We do not believe such claims. Also, commerce can work only when people are held to contracts (see Beit Yosef, Even Ha'ezer 66). Also, since the one who signed relied on those who asked to sign, it is considered as accepting whatever is written there (see S'ma 61:23). Finally, communications between the sides indicate that def admitted knowing in what he was obligating himself.

One cannot extract payment from an arev before exhausting efforts to receive payment from the borrower (Shulchan Aruch, OC 129:8). In this case, pl tried several times to receive payment from brw. The Ge'onim instituted an obligation for a borrower to swear he does not have property from which payment can be taken, and the K'tzot Hachoshen (129:4) says that if he does not swear, the arev is exempt. However, in this case, brw has documented his bankruptcy filing, and more importantly, def acknowledges that brw is incapable of paying. Therefore, def must pay.

The main question is about the time frame of payment. On the one hand, def is in his last year of professional studies, and his wife recently started working. There is a process for extracting payment from those with limited resources called *mesadrin l'ba'al chov* (see Shulchan Aruch, CM 97:23). One who owes money is allowed to hold on to a bare minimum of his own property (it might be even stricter for an arev – ibid. 29), and these *halachot* are generally stricter on the obligated than the practices of *Hotza'a Lapoal*.

On the other hand, if the obligated does not have property to seize, we do not force him to work in order to have from what to take or incarcerate him until he makes payment available (ibid. 15). *Beit din*, though, which has limited capabilities in determining the debtor's capabilities, can recommend that the creditor use *Hotza'a Lapoal* to make such determinations.

Pl presented a recording of a phone conversation between pl and def before the loan. Pl was concerned that def was not a viable arev, and def tried to placate him with the assurance that if need be, he could take a 120,000 NIS loan. Was that assurance binding? Kovetz Hayashar V'hatov (XVII, p. 123) claims that nowadays, it is common for people who owe money to borrow large sums from *gemachim*, and if a borrower did not expect to have money to pay back when due, we treat it as a binding promise to borrow from another *gemach* to pay. In this case, def actually did promise to borrow money. A promise to borrow is equivalent to a promise to work.

We will continue from this point next time.

Comments or questions regarding articles can be sent to: info@erezhemdah.org

We daven for a complete and speedy refuah for:

Nir Rephael ben Rachel Bracha
Ori Leah bat Chaya Temima

Arye Yitzchak ben Geula Miriam
Yerachmiel ben Zlotta Rivka

Neta bat Malka
Meira bat Esther

Together with all *cholei Yisrael*

Eretz Hemdah is the premier institution for training young rabbis to take the Israeli Rabbinates' rigorous Yadin Yadin examinations. **Eretz Hemdah**, with its distinctive blend of Religious Zionist philosophy and scholarship combined with community service, ensures that its graduates emerge with the finest training, the noblest motivations resulting in an exceptionally strong connection to Jewish communities worldwide.