



HEMDAT YAMIM

Parashat Hashavua

Mishpatim, 1 Adar I 5784

Harav Shaul Israeli zt"l
Founder and President

On Justice and the Right of Appeal – part II

Harav Yosef Carmel

Certain specific legal issues, the organizing of the *beit din* system, choosing judges, and the rules of adjudication are discussed in this week's *parasha* as well as the previous one. Yitro suggested to Moshe that Moshe deal with the big (*gadol*) matters and the lower courts would deal with the small (*katan*) matters. Moshe carried it out differently, taking the hard (*kasheh*) cases and leaving the small cases for the other courts. In Devarim (1:17), it says that the lower courts would refer to Moshe the cases that were too difficult for them. Let us look at the difference between these terms and the distinction that is hiding behind them.

The *mishna* (Sanhedrin 1:5) says: Only a court of 71 can judge a tribe, a false prophet, or the *Kohen Gadol*. The *gemara* (ibid. 16a) derives it from the words "the big matters" – it refers to "the matters of the big (*gadol*)," i.e., prominent. In other words, when the judged person has a special public status, and certainly if the judged is a whole tribe, it requires the Sanhedrin, the largest court (parallel to the court of Moshe).

The Ramban explains that Sanhedrin represents all of the elements and approaches (there are 70 facets to the Torah) in society. This is the proper way to deal with every matter that affects the public. I might have thought that Moshe would hear the cases involving large sums of money, but the *gemara* (Sanhedrin 8a) learns from the *pasuk* "Do not show favor in judgment; you shall hear alike the small and the large" (Devarim ibid.) that not only should the judge put in the same effort for large amounts and small amounts of money, but the size of the monetary dispute does not even impact the order in which cases are heard.

Regarding the "hard (*kasheh*) matter," the author of the Tur explains that it refers to cases that include difficult, powerful people. The Torah commands the judge not to be afraid of the litigants, and that Moshe would be the one to deal with those who might be intimidating. This is an important demand of the judges, but it also obligates society to protect the judges and not allow them to be dependent on individual powerful people.

There is an opinion in the *gemara* (ibid.) that Moshe was punished for saying that the things that were too difficult for others should come before him, and Rashi explains that he was seizing too much power. The "punishment" was that when questions of inheritance (with the daughters of Tzlofchad) arose, Moshe was forced to admit that he did not know the answer and had to wait for Hashem to inform him.

From this statement of *Chazal* we learn another critical characteristic: humility is particularly important for a judge. Moshe had earned the right to be confident in his ability to solve legal matters, and still he was taken to task for not being careful enough in expressing it.

Next week, we will deal with the idea of the Malbim and the Seforno, that Torah portions teach us the concept of an appeals court.

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Ask the Rabbi

by Rav Daniel Mann

Reading Advertisements on Shabbat

Question: May one read advertisements on Shabbat? If not, is it permitted to read *divrei Torah* on the same page as an ad?

Answer: One may not read *shitrei hedyotot* on Shabbat (Shabbat 116b). Another *gemara* may extend this prohibition. The *mishna* (Shabbat 148b) forbids reading a guest list on Shabbat. The *gemara* (ibid. 149a) cites two opinions on the reason for this: the reader might erase some of it; reading it might bring one to read *shitrei hedyotot*.

What are *shitrei hedyotot*, and why are they forbidden? The Rosh (Shabbat 23:1) says that *shitrei hedyotot* are documents connected to commerce, and they are forbidden due to the *navi's* warnings not to be involved in one's mundane pursuits on Shabbat (*mim'tzo cheftzecha* – Yeshayahu 58:13). The Rambam in the Commentary on Mishna (Shabbat 23:2) says that it is forbidden to read anything that is not Torah. In Mishneh Torah (Shabbat 23:19) he views *shitrei hedyotot* as weekday-like things, which can bring one to erase. How far to take this is a complicated topic, and the broad common practice is extremely lenient. However, the full consensus of *poskim* (see Dirshu 307:70) is that *shitrei hedyotot* include not only commercial documents but also commercial advertisements, which are produced to encourage people to buy, rent, take a job, etc. in a for-profit setting.

The reading's intensity makes a difference. While there is an opinion that the prohibition is only for reading with one's mouth (see Beit Yosef, Orach Chayim 307), we *pasken* that reading with the eyes is also generally forbidden (Shulchan Aruch and Rama, OC 307:12-13). However, glancing at something, without intent to pick up content, is permitted (Ne'ot Mordechai XVIII, p. 70; Dirshu 307:58). Consider that in order to avoid reading something, one first needs to see (= read superficially) what it is.

It has been debated for centuries whether one may read newspapers on Shabbat (beyond our present scope). In this context, the She'eilat Ya'avetz's (I:162) reason not to raises your critical question. He says a newspaper should have been permitted, but one should not read one because he is liable to read the ads within it. The Mishna Berura (307:63) seems to prefer this opinion, but many view this as a *chumra*, good advice, and/or for people who are drawn to the paper's commercial parts (see Shemirat Shabbat K'hilchata 29:46; Da'at Torah 307:16).

In Torah oriented or based publications, other leniencies apply. First, even those who would forbid or discourage reading newspapers because of the commercial parts, permit reading *divrei Torah* even if they are in the proximity of advertisements (Shemirat Shabbat K'hilchata ibid.; Avnei Yashfeh I, OC 76).

More fundamentally, the *mitzva* element is its own *heter* regarding would-be Shabbat violations of what one should be occupied with on Shabbat (see Shabbat 113a). This permits reading an advertisement of *mitzva*, e.g., notification of a *shiur*, *tzedaka* appeal (Orchot Shabbat 22:132, based on Magen Avraham 307:16). It is somewhat less clear if it is permitted to read a commercial ad (i.e., for profit), when the sales item is used for a *mitzva* e.g., *sefarim*, 4 *minim* (see ibid. 129; Ne'ot Mordechai XVIII, p. 230).

If we accept the latter leniency, then we must analyze many commercial ads in *parasha* sheets to determine whether they count as *mitzva* matters in this regard. In many types of ads, it can depend on the specifics and/or the reader, as we can see (in brief) in the following examples: 1. Real estate in Israel can be a *mitzva* if needed to strengthen our hold on the Land or **enable** *aliya*; 2. Most travel offers are about enjoyment, but, for a few, the Torah or *mitzva* element could be major; 3. Some health services are just nice, and some are life-saving.

We recommend that publications whose content is Shabbat appropriate can be read on Shabbat, but it is best to not read any commercial ads (it is too complicated to figure out each time and people may lack the discipline to look and then look away). However, there is room for *limmud z'chut* for quite a few ads.

“Behind the Scenes” Zoom shiur

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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

Deeper Literature – #188 – part II

Date and Place: 19 Shevat 5669 (1909), Yafo

Recipient: Rav Isser Zalman Meltzer, Rabbi and Rosh Yeshiva of Slutzk. Rav Isser Zalman overlapped with Rav Kook in the Yeshivas Volozhin and was also a great lover of *Eretz Yisrael*. Years later, they would reunite in Jerusalem, with Rav Kook as the Chief Rabbi and Rav Isser Zalman as the Rosh Yeshiva of Yeshivat Etz Chaim, where many of Rav Kook's most prominent supporters taught and studied. Rav Meltzer was the author of *Even Haezel* on the Rambam, and, of significance here, was the editor of the Torah Journal, *Yagdil Torah*.

Body: *[Last time we saw Rav Kook begin to explain why there was a need for a deeper philosophical/spiritual approach than was presented in the Yagdil Torah journal in order to attract the young and searching. The last point was a partial admission that not all young scholars can develop in the new approach. However, Rav Kook claimed that many can.]*


Especially at a time like this, when matters impact us in the most significant ways, we should be able [to identify a serious number of young scholars to become experts in deep spirituality] among those whose spirit is receptive to giving much of their energies to in-depth spiritual studies, with hard work and internal joy. For them, we must open wide entranceways like the width of the entrances to great halls. May many "sail in these waters and increase knowledge."

By means of the efforts of the choice, elite scholars, we will merit to present alongside the literature of Halacha and standard *aggadic* literature [as appears in *Yagdil Torah*], other works of literature that are more literary, and are holy and light-emitting, full with all of the splendor and aura of life to the fullest sense. These works shall be outstanding in their beauty and adornment, and even more so in their truth and strength compared to the charm that is found in the new [secular] literature, whose many edges are full of poison and destruction.

[If we succeed in this,] we will attract bands of people, including those who are presently in the camp of the enemy, because a live word, written in the style that fits this generation's desire for the most internal spirituality, has still not been heard from the great Torah leaders, whose ideas are grounded in the Torah.

I hope that you, oh respected Torah scholar, will use the platform of your dear journal to generate interest in the question that we need to solve. When you elevate to prominence lofty ideas that inspire the soul that are based on Torah sources, it will [also] make prominent the return of parts of the nation to living in the Desired Land. This can be done by the strength of Torah scholars who know how to "be bold in supporting Hashem," by beginning to give public addresses on matters of public affairs on the highest and most expansive level. This can be done on a high intellectual level with a spirit of life, pleasantness, and robustness. This will uncover and display the splendor of the Torah and those who study it seriously, as they impact the whole nation.

I am bound to hope and look for redemption, from the holy mountains, which is the place where the dew of light and life are embedded in the land, and will spread to Israel and Hashem's Torah, which is in their hearts.



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

Should the Will be Updated? – part II

(based on ruling 82121 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: Reuven and the defendant (=def) were married in a second marriage for each. Reuven wrote a will, leaving his main possession, a large, commercially used building, exclusively to def, and not to his children (=pl). Pl claim that in the year before his death, Reuven expressed several times to pl (sometimes in def's presence) that he wanted them to receive significant portions of the inheritance. After operating the business for a few years, as Reuven wanted, def sold it for 1.6 mil. NIS, (claiming she kept it going as long as she could). [We saw that there were not grounds to invalidate Reuven's will. Part II deals with def's commitment to give some of the sale's proceeds to pl]. Pl demand 60% of the sale's proceeds, as def promised them several times after Reuven's death, as she mentioned in WhatsApp messages. Def admits making the commitment, albeit without a formal document or act of *kinyan*. She claims that it is only for the following reasons that she refuses to keep her word. First, she thought she would be able to sell the property for housing, which would have brought in much more money; she needs the entire amount she received for her own support. Also, since making those assurances, she invested a lot of time and money into the property, due to which she deserves full proceeds. Finally, pl have asked their share from the gross sales price as opposed to her net returns (deductions include taxes and agent's and lawyer's fees).

Ruling: Def's promises appear to be oral gifts, which are not enforceable in *beit din* (Shulchan Aruch, Choshen Mishpat 189:1). However, monetary oral promises can sometimes create a moral obligation, which *beit din* needs to explain to a party who wants to back out of it (ibid. 204:7). However, the *halacha* (ibid. 8), based on an opinion in the *gemara* (Bava Metzia 49a), is that there is no moral obligation to keep the promise on a large gift, because people do not rely on such generous assurances. While the cutoff point for a large gift depends on the giver's means, this case's hundreds of thousands of NIS certainly constitutes a large gift.

On the other hand, here def was not promising a simple present but a means to settle a brewing legal dispute (over inheritance). Because of this and, additionally, because at the time of the commitment all believed that def would be able to keep her promise, there should be a moral obligation.

A factor to exempt def is that, in general, there is a *machloket* whether oral promises are still morally viable if the financial logic behind the promise changed substantially (Rama, CM 204:11). While the Rama sides with the opinion that it still applies, many *poskim* disagree, thus weakening any moral obligation (Aruch Hashulchan CM 204:8). Furthermore, due to the fact that the assurance was not immediate but depended on a future event (the sale), in a manner that a *kinyan* could not have been legally binding, many dismiss the moral obligation without a *kinyan*.

While def is not required to pay anything to pl now, *beit din* suggests that if the family relationships return to being good, def should bequeath to pl in her will, part of the home that she bought with the sale's proceeds.

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

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

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