



Harav Shaul Israeli zt"l
Founder and President



Parashat Hashavua

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The Connection between Hearing and Justice

Harav Yosef Carmel

Our *parasha* opens with the commandment to appoint a system of judges to pursue justice (Devarim 16:18-20). When Yeshayahu described *Mashiach*, he stressed, "He shall judge with righteousness" (Yeshayahu 11:4). Our rule is that if one section of the Torah mentions an expression three times, it has extreme importance in that context. Based on this, proper justice certainly qualifies in the beginning of the *parasha*.

A few weeks ago, we highlighted the importance of hearing in our service of Hashem. We hinted that hearing is very important in *beit din* as well, as we find in the context of the *mitzva* of "In justice shall you judge your counterpart" (Vayikra 19:15). In the beginning of Moshe's first address of *Sefer Devarim*, Moshe commanded the judges of his judicial system, "Hear between your brothers and judge righteously" (Devarim 1:16).

The connection between hearing and righteous judgment has a special place in the rabbinical court system. Other judicial systems also try to ensure that their societies operate based on law and justice, but they do not connect between justice and hearing. We will mention a few examples that show the application of this concept in our judicial system.

In the *parasha*, the Torah says (literally): "On the mouth of two witnesses ..." (Devarim 17:6). The *gemara* (Makkot 6b) derives from this that *beit din* should not listen through a translator. The Rambam (Sanhedrin 21:8) applies this to the litigants' talking, but others extend this to the testimony of witnesses – witnesses must address *beit din* orally and not send their testimony in writing (Shulchan Aruch, Choshen Mishpat 28:11). Either way, we see the importance of listening properly. The S'ma (ad loc.) says that hearing directly increases the chances of arriving at a just ruling. "The words of truth are recognizable" (Sota 9b). If litigants speak themselves, the advantage of the rich over the poor is reduced, as the rich man's upscale lawyer cannot replace him.

The *dayanim* are sometimes to carry out, "Open your mouth for the mute... open your mouth, judge justly" (Mishlei 31:8-9). The main practical application of this *pasuk* is when "the *dayan* sees a strong argument for a litigant, who is trying to say it but does not know how to connect the points ... the *dayan* can assist him and get him started" (Shulchan Aruch, CM 17:9). However, he continues: "One must consider the matter very carefully so that he not be like one of the *orchei hadayanim* (the term that spawned the Modern Hebrew word for lawyer)." This is important because while we want to allow the weak side to express his position, we do not want to give him an advantage over the stronger side.

Another example of proper hearing is found in the Rambam and Shulchan Aruch (CM 17:7). One must listen and repeat the claims of each side, just as Shlomo did in his famous adjudication between the mothers of the two babies. It is important for the litigants to hear the other side's claims projected by a neutral *dayan*, as opposed to hearing it from someone they do not trust.

May we succeed in increasing the amount of listening there is in society and increase righteous judgment in many forms. This is one of the goals of our *beit din* system.

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by Rav Daniel Mann

How to Hold the *Sefer Torah* During an *Aliya*

Question: During *aliyot*, I keep my hand on the “disc” part of the *etz chaim*. Someone keeps telling me that I must hold it by the “handle” and may touch the disc only incidentally. Who is correct?

Answer: The *gemara* (Megilla 32a) states that one loses his *mitzva* if he holds a *sefer Torah* “naked.” *Chazal* even instituted that a Torah scroll makes one’s hands *tameh* so that one should not touch it with his hands (Shabbat 14a). This can be a matter of honor (Levush, Orach Chayim 147:1) or protection for the Torah scroll (Rambam’s commentary to Yadayim 4:6). This creates tension with the *halacha* (Shulchan Aruch, Orach Chayim 139:11; Mishna Berura ad loc. 35) that one should hold the *sefer Torah* during the *aliya*. One answer is that it depends if his hands are considered freshly washed (see Beit Yosef and Bach, OC 147), although most assume that even washed hands may not touch it (Rama, OC 147:1).

Most *poskim* (see Mishna Berura 147:2) assume that the prohibition of touching applies only to the *klaf*, not the *etz chaim*. Logic indeed dictates that this special treatment is a function of the innate *kedusha* of a Torah scroll, not the *etz chaim*, which is only a *tashmish kedusha* (Taz, OC 147:1). Nevertheless, some assume that as a connected extension of the *sefer Torah*, one should not touch the *etz chaim* with bare hands (Bach *ibid.*). The Magen Avraham (intro. to *siman* 147) sees in the Rambam’s ruling that the *etz chaim* makes the hands *tameh*, an indication that in matters of touching, an *etz chaim* is like the *klaf*. Others contend that one cannot extrapolate from the formal *halachot* of *tuma*, which equate connected parts of an object, to the *halacha* of not touching, which logically applies only to the *klaf* (see Eliya Rabba 147:1). The Maharit (Shut I:136) says that when the Torah is uncovered one should not touch the *etz chaim* without a separation, because of concern that he will touch the *klaf*.

Your question implies that you follow the great majority who hold the *etz chaim* without separation. (Note that the Mishna Berura agrees with the Noda B’yehuda (I, OC 136) that one who wants to be *machmir* must be discreet to avoid a problem of *yohara* (“holier than thou”).) So, if we accept the opinion that only the *klaf* is a problem, your friend seems wrong.

One can argue for your friend’s *chumra* with the following *chakira*. Why do we not accept the stringency? If it is because they decided the Taz is fundamentally right, then the **whole** *etz chaim* is a *tashmish kedusha* and can be held directly. However, if the reason is that it is too difficult to expect a fabric between one’s hand and the *etz chaim*, then arguably it is feasible to ask the *oleh* to not get his hand closer to the *sefer Torah* than necessary (see Maharit above). From a technical perspective, when you hold the top of the disc, nothing separates your hands and the *klaf* (for your friend’s system, the disc does) and depending on the thickness of the roll on that week, the distance could be millimeters. This being said, to create a halachic distinction between parts of the same object, logic is not enough; you need an explicit or at least arguable source. Since we found no source that the disc is different, we reject for your friend’s *chumra* on halachic grounds.

However, we must note that the great majority of *olim* to the Torah hold the handle of the *etz chaim*, not the disc. (Perhaps this is natural because the handle was made for hands, whereas the disc was made to protect the *klaf* from sliding.) So why would you want to be in the small minority in a manner that fares less well with the spirit of the law? If you are convinced that your practice is an actual family *minhag*, one can justify it. The Magen Avraham (139:13; see Mishna Berura 139:35) brings a little-known practice – holding the rolled *klaf* on both sides of the Torah, separated with fabric. This may imply that “the closer to the *klaf* the better,” provided you do not violate a *halacha*. Theoretically, your *minhag* could be based on that approach, in which case it makes sense to preserve it.

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Moreshet Shaul

(from the works of Hagaon Harav Shaul Yisraeli zt"l)

The Goal of an Agricultural Yeshiva – part I

Based on Siach Shaul, Pirkei Machshava V'Hadracha p. 263 (address at the laying of the cornerstone of the Yeshiva Chakla'it in Kfar Haroeh)

That for which we have so keenly waited is in the process of becoming reality. The cornerstone of the building of the Yeshiva Chakla'it (Agricultural Yeshiva) in Kfar Haroeh has been laid.

This term – an agricultural yeshiva – has already stopped being a strange one.

Men of labor from the "Torah and Avoda" camp have fulfilled this combination of concepts in their own lifestyle. Most of them were formerly yeshiva students, and when they left the seats of the study hall, they did not close their *gemaras*. When they hold the spade and hoe, they do not take their minds off their studies, and their spare moments are dedicated to Torah study. What we are trying to accomplish with the Yeshiva Chakla'it is that this combination of focuses will not come from an internal battle and confusion in finding the correct path. Rather, it should come from a thought out, accommodating plan, so that the study in the yeshiva will be connected to the work in the garden, the field, the barn, and the chicken coup. The various areas of work will be a continuation and a concretization of that which was learned in the yeshiva. This yeshiva will come to provide something fundamental that is missing in religious education – to connect that which is learned with the world of productive work and to give the student practical preparation for the lifestyle that will be waiting for him when he leaves school. The absence of such an institution has caused many to leave the religious world and created the difficult situation in which the strictly religious Jewish community finds itself. The success of such institutions can help tremendously to rectify the situation.

Dissemination of Torah knowledge has always been considered one of the foundations of Judaism. From time immemorial, Judaism has never sufficed with the automatic fulfillment of the laws. The main aspiration has been that the fulfillment of a halacha will be a fruitful foundation of the spiritual life, and that fulfillment of Torah will come with a recognition of the overflowing happiness that accompanies it. Therefore, Torah study has never been the realm of the individual but rather the realm of the entire nation. A yeshiva has not just been for outstanding minds but rather a popular educational system in which every Jew can find himself, whether to a great or to a smaller degree. The conditions of life in the diaspora in days of old did not require specific preparation. The store and commerce did not require prior specialization, and study in yeshiva never hindered one's subsequent occupation.

Once the life in the diaspora changed and the opportunity arose to enter different occupations that require specialization and preparation, Torah study was weakened, and the number of people who avoided it grew. This weakening has specifically been felt in the last several years with the development of a new lifestyle for Jews in *Eretz Israel*. The need for "working hands" has increased. The nation that has returned to its homeland had to produce those who know how to plow and do other work in the field and in the city. The yeshiva did not supply such workers and indeed this was not considered its purpose. Furthermore, since by its nature it was a Torah institution whose concern is the excellence of its students in Torah, the yeshiva world objected to any movement of this type within the walls of the yeshiva. It viewed outside study as something that disturbs the concentration of the students and takes them away from diligent Torah study and thereby lessens the critical enthusiasm of the yeshiva.

We will continue next time.

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*Together with all **cholei Yisrael***

P'ninat Mishpat

Realtor's Fee on Large Commercial Building – part I

(based on ruling 85031 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The defendant (=def), a non-profit organization, was looking to buy headquarters in a major Israeli city. The plaintiff (=pl), who works as a real estate agent, suggested a building and arranged the first meeting to see it, sending a representative in his place. Subsequently, pl communicated his willingness to help promote the deal and his expectation for a real estate fee. Def bought the property for 60 mil. NIS without pl's further involvement. Pl seeks a 2% fee on it. Def deny pl deserves it because he was not critical to the purchase, he did not have them sign a realtor's contract, and he is not an Israeli-licensed realtor (he is licensed in a European country).

Ruling: Israel's 1996 Realtor's Law requires a realtor to be licensed, to have the client sign a detailed contract regarding the specific property, and to be "the effective factor."

Def claim that they were aware of the property without pl and that most of the work was done by the seller's son and his high-level worker. The price of the property was also much too high when pl showed it to def. The effective factor in the realm of real estate relates mainly to the introduction between buyer and seller/property. It is true that the agent must be ready to work on other elements of the sale, e.g., documentation and negotiations. In this case, pl raised the idea and arranged the first meeting/tour (through his representative, who attested to doing it on pl's behalf). There is documentation that pl expressed his eagerness to help with all elements of the deal, and def did not take them up on that, possibly because they did not want to pay a realtor's fee. *Beit din* rejects def's claim that they knew about the property. If they did know about it in the relevant way, they should have arranged the visit themselves.

Pl explained that they do not make clients sign realtors' contracts because it removes the feeling of trust. While we reject this practice as the right way to do things, we recognize that this is not uncommon, especially in the Haredi world to which the parties belong. Therefore, we do not accept this element of the law (see *beit din's* ability to be selective in following certain types of local laws in Chatam Sofer V:44) when despite the lack of a contract, the nature of the introduction of the property to the buyer was clearly done as an agent. Here, it is clear, including from internal communication within def that pl was playing the role of real estate agent.

The requirement for licensing is also halachically binding only selectively, and is affected by logic. Society is harmed when people act irresponsibly when promoting real estate deals. In this case, though, pl is an experienced realtor who learned the trade, albeit in a different country, with the same principles. In the circles that the litigants find themselves, it is common for people to not see government accreditation as necessary. Therefore, def cannot exempt themselves from payment on these grounds.

Next week we will deal with the question of how much def should pay pl.

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