



HaRav Shaul Israeli zt"l
Founder and President

HEMDAT YAMIM

Parashat HaShavua

Mishpatim, 29 Shevat 5777

“These are the Laws” – Like a Set Table

Harav Yosef Carmel

In the past, we presented sources on the topic of an appeal's court in a *beit din* system and the policy of the Eretz Hemdah-Gazit network.

The echoes from the big dispute that accompanied the establishment of the Israeli Chief Rabbinate and the Rabbinical Courts reverberate to this day. It started between the rabbis of Yerushalayim and those of Yafo, and it turned into a *machloket* between supporters of the Chief Rabbinate, founded by Rav A.Y. Kook z.t.l., and opponents, led by Rav Chaim Sonnenfeld z.t.l.

One of the results of this *machloket* is the Chief Rabbinical Court in Yerushalayim's policy to not intervene, in most cases, in the rulings of regional *batei din*. Even in cases where the upper court agreed with the appeal, they would return the litigants to the original court rather than reverse the ruling themselves. (The last few years have seen an attempt to change this, but there has been no explicit announcement of a policy change.) The result has been that every tribunal, consisting of respected *dayanim*, rules according to its understanding of halacha, with no system-wide binding policies. Such policies would enable the system to run in a manner that people would know in advance the principles that are employed.

The lack of this uniformity seems to be against the guidance of *Chazal* in their comments on the opening of our *parasha* (Shemot 21:1, referring to the judicial system): “These are the statutes that you shall place before them.” In the *Mechilta D'Rabbi Yishmael*, Mishpatim 1, Rabbi Akiva teaches the extent of the presentation of Torah laws. We learn from “... and teach Bnei Yisrael, place it in their mouths” (Devarim 31:19) that the teaching process should not be limited to being taught once but should be repeated until the material is learned. From our *pasuk*, he learned that the laws should be taught until people actually know the material clearly – “arrange it as one sets a table.”

The lesson is clear. The Jewish judicial system needs to be clear and understood. All who want to use it should know what halachic rules “make it tick.” It is true that to be an expert in *Choshen Mishpat* (the section of the *Shulchan Aruch* on monetary law), one needs to dedicate many hours a day for many years. Only a few brave souls (with brave-souled wives) live up to the challenge. However, it is still important that the broad public, and certainly the lawyers and *toanim rabbonim* who help litigants, should understand the rules that are the underpinnings of the *beit din* system they approach. Therefore, action must be taken to make these as transparent as possible as soon as possible, so we can fulfill that which Rashi says on our topic: “place before them like a set table, which is prepared for a person to eat.”

Every year, the Eretz Hemdah-Gazit network, along with *Mishpetei Eretz*, assemble the heads of the *batei din* and the *dayanim* from throughout the country to discuss pertinent fundamental questions. We publicized a summary of the conclusions of these discussions on the *beit din* website.

Let us pray that we will soon merit the complete fulfillment of the prophecy of a judicial system which all can appreciate: “I will return your judges as originally and your advisors as initially. Then you will be called the city of justice, the reliable town. Zion will be redeemed with justice and its returnees with charity” (Yeshaya 1:26-27).

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HaRav Professor **Reuben M. Rudman** ob"m

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



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Ask the Rabbi

by Rav Daniel Mann

A Rabbi's Approach to Monetary Problem Solving

Question: [We present a summary of a conversation with a new community rabbi who sought our help in handling a monetary dispute between two congregants. The specific dispute and solution are not the focus of this presentation.]

The scope of the dispute, between people who need to interact with each other regularly, is approximately 2-3,000 shekels. I was reluctant to accept responsibility for the matter, because I do not want to create resentment with congregants and because I do not "specialize" in monetary halacha. However, they want me, specifically, to handle it, and a rabbinical mentor told me I have no choice. So far, each side has told me their side separately; I have not met with them together. I think each one of them is trying to be honest, but each views the situation, on technical and legal grounds, differently.

Answer: I urge you to clarify with your congregants that the following rules of engagement are secure for a combination of halachic and practical reasons.


In such a case of only a moderate financial scope, a significant personal one, and technical claims, the sides should assure you they will not allow it to develop an adversarial bent. (Most of) each side's claim has logic, and they must not be overly disappointed or surprised if they "lose" compared to their expectation. They should view any amount they "lose" not as a shame but as an honor to do the proper thing vis a vis their neighbor. It is no more of a loss than the extra cost of kosher food or of tuition at their children's schools of choice. Hammering home these ideas is important for at least two reasons. 1) It is true and educational, and this is the right time/setting, as their rabbi, to teach or remind them. 2) If they have an adversarial approach, you are likely to incur resentment from either or both sides for not living up to their expectations. (As *dayanim*, we are used to that, and it is part of our sacred duty. It is also with people with whom we do not interact in other settings.) As you need to interact with them communally, you do not want to harm relationships. So if they do not have the right attitude, I recommend to refer them to a different framework. (In the *shtetl*, the rabbi/*dayan* often had no choice, but our dynamic society offers many options.) Working it out themselves is best but is hard with bad attitudes; mediation or *beit din* are options.

Next, let us look at your role. Due to a few issues, I suggest not to view or present yourself as an ad-hoc *dayan* bound to a Choshen Mishpat ruling. First, you have not had sufficient training and practice. Also, it may be very time-consuming to arrive at the correct ruling. Seeking assistance from *dayanim* minimizes but does not remove the problem.

Also, under normal circumstances, monetary decisions are to be made by a *beit din* of three, not a lone *dayan* (Shulchan Aruch, CM 3:1). Even a special expert, who can serve alone, should generally avoid it (ibid. 3, based on Pirkei Avot 4:8). While it may be permitted to do so when the litigants specifically ask for one, it is still problematic (see Shach, CM 3:10). The best solution is to say that your ruling can be either according to halacha, or even a halachic mistake, based on your reasoning.

Another issue is that you have already met with each side separately. That is great when dealing informally with disputes, but it is forbidden for *dayanim*, both according to halacha (Shulchan Aruch, CM17:5) and according to arbitration law. Admittedly, it is permitted to adjudicate afterward with the other side's agreement (Rama ad loc.).

All these factors push toward a preference of giving up on the *dayanut* route in favor of less formal dispute resolution, as was Aharon's practice, as opposed to Moshe's (see Sanhedrin 6b). If you can serve as a mediator rather than an arbitrator – great. If they need you to make the decision, then to the extent that halacha guides you – wonderful. However, they should expect a ruling based on *peshara*, where you bring them to a settlement we wish they would have arrived at alone.



We are happy to present our third volume of "Living the Halachic Process". The book offers a compilation of questions and answers from our "Ask the Rabbi" project. A companion CD containing source sheets for the questions is also available. The volumes can be purchased through our office at the special rate of \$24. Special offer: buy two out of three for \$37 or, buy all three volumes for \$54

Have a question? -email us at info@eretzhemdah.org

Ein Ayah

(from the writings of Harav Avraham Yitzchak Hakohen Kook, z.t.l.)

Focus on the Internal in All Elements of Life

(condensed from Ein Ayah, Shabbat 3:6)

Gemara: One who bathed in hot water but did not drink hot water is similar to one who heated an oven from the outside but not the inside.

Ein Ayah: This *gemara* teaches a nice moral insight related to the nature of protecting the body. It is more important to bathe in hot water for the purpose of protecting the body than for adorning himself externally. This makes one realize that external cleansing as a way to remove dirt from one's exterior also requires that he clean his spirit, including purifying his heart from unseemly thoughts and his mind from problematic imagination.

One should always, including for external matters, turn toward the internal benefit he can receive from the matter. Then he will always choose for himself a beneficial approach to life. When focused on the internal, better things result, even in external matters, than if he intended only to improve the external. The appropriate metaphor for this is heating the oven. Heating it on the inside is more effective not only for heating the inside but even for heating the outside.

When a person loves and respects his spirit, despite the fact that he is too close to himself to be objective, this enables him to build the foundation of treating others properly. When one spreads out his efforts towards others, this behavior actually includes an element of crude love for himself, as he wants that all should love and respect him. This will not bring the desired result, as he will remain a slave to the masses without a healthy spirit in his own midst.

Regarding protecting one's body, which relates both to the external and the internal, Hashem put into nature things that bring benefit in a way that trains people to put the emphasis on the internal. This fact should serve as the basis for concluding that the preference of the internal that he sees in nature is true also for the spiritual world. It is unwise to just bathe in hot water and not drink hot water or to heat an oven from the outside – [in the literal and metaphorical senses.]

Flexibility Until the Time for Rigidity

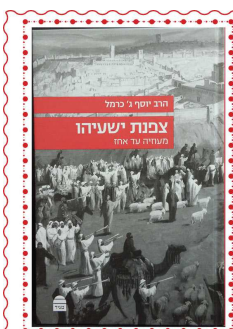
(condensed from Ein Ayah, Shabbat 3:7)

Gemara: If one washed in hot water and did not rinse with cold water, it is like iron put into a furnace but not followed by cold water (the latter finishes the strengthening process - Rashi).

Ein Ayah: Two powers come together in a person's physical and spiritual structure. One is the power of action, which causes him to gain new attainments. This brings new powers and new materials to replace those that are no longer effective for their intended purposes. The second power is that of preservation, which stores that which was already gained.

One who wants to gain must be ready for changes, flexibility, and dynamism. For preservation, one must be ready for materials becoming firm. Bathing in hot water softens the body and prepares it to be more responsive to the power of life that rules it. It is excellent for the metabolism and the renewal of one's energy. On the other hand, a person needs to create within himself the power of preserving, so that he not be too prone to softness and exaggerated metabolism. Therefore, rinsing in cold water is important. This idea has parallels in the spiritual realm.

This is similar to working with metal. Putting it in the furnace enables it to be made into a utensil. Preserving what was done, though, requires an opposite process – putting it into water, which allows the form created by the heat to be functional. Not surprisingly, opposite powers work together to reach a goal. "Everything goes to one place, and all was given by one shepherd."



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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Too Late to Renew Rental? – part II

(based on ruling 72079 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl) rented out his apartment to the defendant (=def), a mother with three older children, for a year, ending on Aug. 3, 2012. Def could renew the rental for a second year if she informed pl by May 5, 2012. Not until pl requested at the end of May that she vacate at year's end, did def write such a request. Def and pl met earlier in May. Def claims that at that time, they orally agreed to renew; pl denies this. Pl also claims the right to end the rental because def's children's behavior upset all the neighbors, and def refused to pay July's rent up to and including the *beit din* hearing (early August). Def claimed she had trouble finding rent money because of legal expenses due to pl's suit. Pl's claims are: immediate vacation of the property (as most rentals are set by early Aug.); payment of July rent; \$3,000 penalty for breach of contract as specified in the contract. [Reuven, who accompanied def to *beit din*, suggested a compromise, that def would remain for an additional four months. Pl accepted it; def did not.]

Ruling: [Last time, we saw that there were grounds for pl to end the rental. We continue now with practical steps.]

The hearing was held a week before the end of the first year of rental. While from a purist perspective, pl has the ability to remove def by Aug. 3, a *dayan's* obligation includes incorporating elements of practicality and fair play. We cannot put def and her three children on the street. On the other hand, if we give too much time, the rental season will be over, and it would be unfair to pl to return his rental apartment when the pool of renters is small.

First we must review the sanctions for breach of contract. The contract states that late vacating of the apartment brings a fee of \$50 a day for the first five days and \$100 a day for every subsequent day. Additionally, any significant breach of contract carries a one-time charge of \$3,000. Since this is reasonable for the refusal to pay or to vacate when legally demanded, the obligation is not precluded by the rules of *asmachta* (an obligation that one accepts in a not realistic manner). These demands should be tempered by the need to be fair and realistic in allowing for vacating in a way that both def can manage and pl can have a good chance to rent out during rental season.

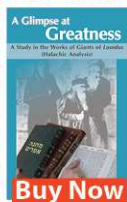
Therefore, we present def with two possibilities. Pos. #1 (simple application of the law) – Def shall vacate by Sept. 15 (instead of Aug. 3) and pay rent at the normal rate until then. Def will pay \$3,000 as stated in contract for breach of contract, which will also go toward pl's legal expenses. If def will not vacate by Sept. 15, the further expense will be according to the contract.

Pos. #2 (fast vacating) – Def will vacate by Aug. 24, after informing pl of her intention to do so by Aug. 12, and after paying by then for rent until Aug. 24 (7,300 shekels). In this case, def will not pay for breach of contract. Since pos. #2 is beyond the letter of the law, if def wants to claim that she followed its provisions appropriately, the burden of proof will be on her.

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