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HEMDAT YAMIM

Parashat HaShavua

Beha'alotcha, 12 Sivan 5779

Each Man under his Grapevine and Fig Tree – When?

Harav Yosef Carmel

The *parasha* and the *haftara* share the theme of a gold *menora*. In the *parasha*, it is an actual *menora*, of the *Mishkan/Beit Hamikdash* (Bamidbar 8:2-4). In the *haftara*, it is a prophetic vision that represents the emerging leadership in the community that returned to Zion after the destruction of the first Temple, who were involved in the rebuilding of the Temple (Zecharia 4:2-3). Even though this *haftara* is also read on the Shabbat of Chanuka, we have proved elsewhere that there is no connection between that *menora* and the events of Chanuka.

Zecharia speaks at length about how the *geula* will(/would) work. He says that at that time “a man will call his friend to [sit] under his grapevine and fig tree” (ibid. 3:10). This image connects us to other great times in Jewish history. In describing the tranquility and prosperity that existed during *Shlomo Hamelech's* reign, the *navi* says that the people were “secure, each man under his grapevine and his fig tree from Dan to Be'er Sheva” (Melachim I, 5:4-5).

There is a parallel, through the idea of grapes and figs, to a prophecy of Micha (4:1-4). He refers to the End of Days as a time in which people will sit under these trees. In those *p'sukim* he also speaks about themes and phrases made famous by Yeshayahu: the *Beit Hamikdash* will sit proudly at the head of mountains, attracting the nations of the world, who will be led by *Mashiach*, and they will beat their swords into plowshares and no longer learn war. The prophet Chagai, who like Zecharia, lived during the Babylonian exile and the beginning of the Second Temple period, also used some of these motifs (2:18-19).

These prophecies were designed to have been fulfilled at the time of Zerubavel, from the House of David, and the *kohen gadol*, Yehoshua ben Yehotzadak, who functioned as leaders of those who returned to their homeland from Babylonia. Chagai's prophecies and many of Zecharia's were addressed to them. Had these leaders succeeded, the symbol of the *menora* with olive leaves, would have been the symbol of the Kingdom of Judea, some 2,500 years ago. The people would have been enjoying life under their grapevines and fig trees well before what became the period of the Chashmonaim.

So why did the Jews of that time not succeed in being the generation of the End of Days? Zecharia spoke about a time when there would be no need to keep the fasts associated with the destruction of the *Beit Hamikdash* and ends the prophecy with “truth and peace shall you love” (8:19). This seems to be a condition for the arrival of the days of liberation. What do truth and love refer to? In the political realm, it means that the apparatus which Zerubavel led would have to be motivated by truth and not by self-interest, which causes the type of deception that we are unfortunately used to. Peace relates to the spiritual/religious apparatus led by Yehoshua, who was to look for a path toward unity within the nation, including between those who see things differently from each other.

We too, in our days, should strive to have our Israeli society run based on these principles.

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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

Secrecy in *Beit Din*

Question: [We received the following question from an official in Israel's judicial system. Below is a free translation of our answer.] In Israeli government courts, records of the proceedings are open to the public, but the proceedings in arbitration courts (including *batei din*) are supposed to be private. Is there halachic basis for this distinction?

Answer: We begin with what can be learned from classical sources about privacy norms in *beit din*.

Several sources in *Chazal* indicate that *beit din* proceedings were at least often open to the public. *Gemarat* (including Shvuot 31a; see Rambam, Sanhedrin 22:3) describe the situation of students following the proceedings of their teachers who were *dayanim*.

There was a strong rationale for at least the results of the proceedings to be known to the broad public. *Chazal* assumed that a divorce would be known to the public, as it was important for people to know their change in status for several reasons (see Gittin 81a).

Knowledge of transactions and adjudication about ownership and monetary obligations was critical to the public especially in regard to land acquisition. If someone wants to buy land, he needs to know whether the seller's ownership is accepted. He also needs to know if the seller is a debtor, as this often creates a lien on all of his land. Now the land registry (in Israel, Tabu) clarifies ownership and allows notations about liens, adjudication, etc. At a time when formal registries did not exist, common public knowledge was critical. Therefore, witnesses to loan contracts who told people about the documents' content were not gossipers but doing a civic duty (see Bava Batra 175b). This was also true of awareness of legal proceedings. This is why the *gemara* assumes that the public found out about monetary legal processes before *beit din* almost instantaneously (see Gittin 18a). Again, this allowed a potential buyer or a lender to perform due diligence. Secrecy often damaged social welfare.

Sources also discuss the idea that as a result of a dispute going to *beit din*, witnesses unknown to a litigant could hear of the dispute and come forward to testify (see Tosafot, Ketubot 2a). Since people would invite others to witness agreements, contracts, etc., if someone was caught doing something unethical that invalidated him as a witness, *beit din* had a process to inform the public not rely on him (Shulchan Aruch, CM 34:23).

At least one element of the *beit din* process required secrecy. When *dayanim* disagree on a ruling, none of them may divulge who agreed with which side (Sanhedrin 29a).

There are differences between set and ad hoc *batei din* accepted by the litigants of their own will. The main differences involve jurisdictional questions (see Shulchan Aruch, Choshen Mishpat *siman* 13&14). We do not find major differences in the manner in which the hearings and rulings are carried out, including secrecy.

That being said, litigants can agree to significantly change the rules of adjudication. They can accept a *dayan* or a witness who should have been disqualified to serve in their case (ibid. 22:1). They can transfer the need to make an oath from one side to the other (ibid. 3). They also have the ability to agree that the process should be private (at least when it does not directly contradict the need of the public to know). This is less likely to cause problems to the public in our days. The Law of Arbitration makes it possible for one to have non-governmental options available for adjudication, and when there is a requirement to have an arbitration agreement to make the decisions legally binding, it makes sense that they include rules that look out for the welfare of the litigants. In most cases, litigants prefer secrecy, and therefore a *beit din* like ours is happy to protect their privacy. However, had the law required public transparency for adjudication in a *beit din* operating according to arbitration law, Halacha would have been fine with that.

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Ein Ayah

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

Gemara: [We continue with the account of Moshe finding a hint in the Torah that he should extend the preparations for accepting the Torah to a third day.] “They shall sanctify themselves today and tomorrow” (Shemot 19:10) – today is like tomorrow. Just like tomorrow includes the night that goes with it, so too today (i.e., the first day of separation) refers to a day that has an accompanying night, whereas in this case, the night had already passed.

External and Internal Preparations

(condensed from Ein Ayah, Shabbat 9:35)

Ein Ayah: Daytime and nighttime work together to influence a person, just as they work together in the natural world, whether in terms of weather, on growth in the world of vegetation, and generally in keeping life going. Daytime is the time when external things influence man’s spiritual side. A person absorbs that which abounds in his surroundings and is enriched and develops through this. Night is the time to deepen one’s personality from within. External stimuli retreat at night, and the spirit internalizes and dives to the depths of one’s own personality, more fully reaching self-understanding than it can during the daytime of activity. Only when both elements, that which is sensitive to the outside world and that which is focused internally, are working in a broad yet pure manner, can there be a complete enrichment of the spirit. Then he can stride in an improved path of life. Just like the sanctity itself, the preparation for sanctity must also encompass all the content that completes the function of the soul, and this requires the contribution of both the day and the night. The beginning of the beginning of the preparations for sanctity must be without lacking, just like the nature of the sanctity that people yearn for. If either the external or the internal is missing, the matter will “limp along” and is considered a flawed preparation to which complete sanctity cannot connect. For this reason, just as the second day of preparation for the giving of the Torah included a night and day, so too the first day had to have a night and day. Since the first night had already passed, the full day that was needed to complement, based on Moshe’s initiative as Hashem’s greater intention wanted, had to relate in a complete manner to the highest levels of sanctity.

Any Push and then Balanced Growth

(condensed from Ein Ayah, Shabbat 9:36)

Ein Ayah: It turns out that the initial spiritual push happened when there was only daytime (the first, half day), corresponding to the idea that spiritual growth from external factors does not have to be complete. The stage that precedes listening can be divided into partial pieces and come from any number of sources. Only afterward, when the spirit proceeds toward completion, does it become clear that the spirit cannot be monolithic. Thus, the next two days must have uninterrupted preparation which includes day and night, which fill the soul with complete characteristics.



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

Firing a Contractor – part II

(based on ruling 75104.1 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: Plaintiff 2 (=p/2) was the contractor for major renovations of the defendant's (=def) home; plaintiff 1 (=p/1) was the supervisor. The contract stated that p/2 would finish the job in 120 work days within approximately six months. After over eight months, with the job not close to complete, def fired them, with the claim that p/2 was working only sporadically because he took on another job. P/2 claims that he took the other job only after def fell behind in payments and that he had already worked 140 days because def made additions to the original plans. P/2 claims that def fired them when she received a bill for the additional work. Def says that she wrote a letter to fire them before she received that bill, that she paid less than spelled out because she bought some of the materials that p/2 was required to, and because the work was behind schedule. She claims that p/1 approved the amount she paid and that p/2 did not protest.

Ruling: [Last time we saw that def had a right to fire p/1. Now we will start to look at monetary ramifications.]

The contract states that when there are grounds for dismissal, p/2 “will be paid only for the part that was actually carried out, fully and with excellent quality, and after the damages incurred by the homeowner are deducted. The decision will be made by the supervisor (p/1).”

This paragraph does not spell out exactly how to figure out how much to pay for the part completed, but it is appropriate to follow the standard halacha for justified firing. What one does is to subtract the amount that needed to be paid to a new worker to finish the job from the amount that was supposed to be paid to the first worker (Shulchan Aruch, Choshen Mishpat 333:4). This ensures that def will not be damaged directly from the cessation of p/2's job. While the contract says that p/1 will do the appraisal, since there is a dispute between p/1 and def, it makes sense that *beit din* should be responsible for the appraisal (through an expert we appoint).

There is a prominent source (Kesef Kodashim 375:1) that says that when a worker lagged behind the schedule he was bound to that he receives payment not according to the work he did but the smaller amount between the value of his work and the amount he outlaid to do the work, like one who did unauthorized work. The Pitchei Choshen (Sechirut 13:4) applies this even to a *kablan*, a craftsman who is paid per the job.

However, it appears to us to distinguish in this case between a *po'el* and a *kablan*. Since a *po'el* is permitted to back out of the job, and he cannot be punished for it, the only protection of the employer has is to say that the conditions of the employment turn out to not be viable. In contrast, regarding a *kablan*, the normal approach to deal with paying for that which he did is to subtract from that which was coming to him the amount that needs to go to someone else to finish the job.

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