



HEMDAT YAMIM

חֵמְדָּה יָמִימִים

Parashat Hashavua Mishpatim, 27 Shevat 5782

Harav Shaul Israeli zt"l
Founder and President

May a *Dayan* Help the Poor in *Beit Din*?

Harav Yosef Carmel

The obligation to relate equally to the two litigants is fundamental in the Jewish system of justice. As the Torah writes in our *parasha*: "Do not give preferential treatment to the poor in his quarrel" (Shemot 23:3). The Rambam writes: "So too, in monetary cases, we do not have mercy on the poor, as we should not say, 'He is poor and the other litigant is rich and obligated to provide for him – I will have him win in court and it will turn out that he will be supported in a honorable way.' About this the Torah warned '...' (Sanhedrin 20:4). On the other hand, the Torah also warns in our *parasha*: "Do not take advantage of the convert ... every widow and orphan you must not afflict ..." (Shemot 22:20-23).

We will now try to explain in brief why the halachic system of litigation is preferable to the adversarial system, which is practiced in the government courts in Israel (based on the model of the British system). One of the advantages of our system relates to the "weaker party."

Our halachic system is based on an investigation of the claims carried out by the *dayanim*. They are the ones who ask questions of the litigants and, of course, the witnesses and the experts who are brought in to help clarify the truth. While we allow lawyers and rabbinical lawyers, their impact on the ruling is miniscule. It is the *dayanim* who call in an expert witness to give a professional report on, for example, an engineering issue regarding a building dispute or an accountant regarding a case of a retirement fund. *Beit din* is the one who pays these experts (through money it collects for this purpose from the sides). This is cheaper than the sides hiring experts to support their side, and, more importantly, it arms *beit din* with a reliable opinion from an objective source.

In an adversarial system, the lawyers interrogate the two sides, as well as the witnesses. When there is a need for an expert, each one hires one to provide corroboration for his case and pays him to be subjective in his favor. While the judge oversees the case, he is not permitted to investigate himself.

Therefore, in the British system, the quality of the lawyer has a tremendous impact on the case's result. If one side is rich enough to afford a more expensive, which usually means more capable lawyer, or a more convincing expert, it gives him a tremendous advantage. When *beit din* runs things, it can ensure equal footing for the two sides, which is a net advantage to the poor person. Thus, one can help the poor without giving them an advantage, just by holding down the disadvantage.

We end off with a *midrash* that connects *Parashat Mishpatim* to *Parashat Yitro* and stresses the importance of a proper judicial system in our lives as servants of Hashem: "Parallel to the Ten Commandments, Hashem gave ten negative commandments regarding jurisprudence... and since Hashem commanded Moshe about jurisprudence, therefore all of the prophets spoke and warned Israel about them" (Pesikta Zutrata, Shemot 20:23).

We pray that our *beit din* network, Eretz Hemdah-Gazit, will sanctify Hashem's Name in all that it does and will hold an ever-stronger place in the legal apparatus of the State of Israel and the Jewish Nation.

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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

Using Hot Water on Shabbat

Question: May I use my hot water on Shabbat since I have the boiler on a timer to go on every morning before I wake up? (My hands are arthritic; in the winter it is hard to wash with cold water.) If this arrangement is unacceptable, please suggest a permitted one.

Answer: There are two problems with extracting hot water from the faucet when the water is heated by an electric boiler. One is that it will cause the thermostat to heat water sooner than it would have had you not used it. This is a problem in terms of connecting an electric circuit, and, more importantly, that a glowing filament or a gas flame will go on, as well as cold water being heated in the process. All of the latter involve Torah-level Shabbat *melachot*. It is a complicated question whether there is a Torah-level violation for the person who takes out the water, as the normally delayed reaction makes it likely that it is a form of *gerama* (indirect causation). We will not go further into this interesting question because you describe your system as off when you want to use it, until the end of Shabbat.

The other problem that occurs when you extract hot water from the tank is that cold water rushes into the tank to take its place and mixes in with the remaining hot water. The systems are designed in such a manner that the cold water enters on the bottom, whereas the hot water (due to the physical properties of heat rising and hot water being less dense than cold water) for the most part stays on top and does not fully heat the cold water below. However, it can be assumed that if the hot water is hot enough, at least a small amount of the cold water will reach the forbidden level of *yad soledet bo* (113°F, 45°C). Even in this case, there is some amount of leniency in that you do not place the cold water in the hot water tank but it goes in based on properties of physics after you open up your tap (see Yabia Omer IV, Orach Chayim 35). However, at least under normal circumstances, it is forbidden to remove water from a hot-water tank (Shemirat Shabbat K'hilchata 1:39). If you were referring to a tank that had only solar-heated hot water in it, then this would very likely be permitted (see the famous leniency and its partial withdrawal in Shemirat Shabbat K'hilchata (ed. I, 1:31, and ed. II 1:45), as water heated by the sun is not fundamentally deemed to cook other things (Shabbat 39a). But, here too, we will be brief because this is not your case.

There are several practical ways to obtain lukewarm water. One is to not have the heating system go on on Shabbat and prepare things before Shabbat so that the water left in the tank does not heat the incoming cold water to *yad soledet bo*. Based on the physics discussed above, if you remove a nice amount of hot water before Shabbat after shutting off the heating system, the incoming water will not come in contact with hot water (Shemirat Shabbat K'hilchata ed. I, *ibid.*).

Another way to have warm water is to use a different source of hot water. If you remove hot water from a Shabbat urn, you can use it to create warm water in a container in two different ways. Many are used to using an extra cup in order to have a *kli shlishi* in which they put their tea, as many *poskim* (see Igrot Moshe, OC IV:74.15; Shemirat Shabbat K'hilchata 1:57 is slightly more stringent) posit that *kli shilishi* does not cook even *kalei habishul* (easily cooked food). However, regarding water, all agree that it is permitted to put it into a *kli sheini* (Shabbat 40b; Shulchan Aruch, Orach Chayim 318:13), so that the extra cup is unnecessary. (Just as when making tea, one should make sure that there is not a small amount of (never heated) water in the cup before pouring into the *kli sheini* (Igrot Moshe *ibid.* 19).

If there is a nice amount of cold water in a cup one can pour in a small amount of hot water if the resulting mixture will clearly be less hot than *yad soledet bo* (Rama, OC 318:12; Mishna Berura *ad loc.* 84). This is a good idea only if one is confident he will remember to be careful about the amount.

Do not hesitate to ask any question about Jewish life, Jewish tradition or Jewish law.



Igrot HaRe'aya - Letters of Rav Kook

Follow-Up Questions - #90 – part I

Date and Place: 17 Shevat 5665 (1905), Yafo

Recipient: A young Moshe Zeidel. A close disciple of Rav Kook, from their time in Boisk, he asked Rav Kook many philosophical questions. He would become Dr. Zeidel, a philologist and philosopher.

Body: [We will see some of the questions that he asked in a letter that was for the most part questions and comments of Zeidel to Rav Kook's letter (#89) that was featured over the last few weeks.]

You wrote that according to me, the Torah is in a process of development. Heaven forbid, I never said such a "foreign" idea. When people refer to development, they refer to the emergence of a "new face," which causes thoughts that there is a lack of seriousness.

This is what I have to say [about what you call development]. Divine wisdom surveys all that will transpire from the beginning of history to the end. Hashem arranges matters in a manner that only when the elders of each generation must make decisions, they will be based on understandings and feelings that Hashem prepared for them to decide properly.

Therefore, it is only possible for the fullest truths of the Torah to be revealed when the whole nation is living in its Land and is at an ideal point of spirituality and physicality. Then, the Oral Law will return to being produced in its full strength, according to the level of recognition of the Supreme Rabbinical Court which will sit in the place that Hashem chose and will deal with all practical questions whose solutions escape members of the nation. Then we can be sure that every new revelation will be crowned with all the vitality and sanctity that is fit for the nation by and for Hashem.

It is possible that a question will arise regarding a law in the Torah, which, based on a perception of ethics, would appear that it needs to be understood in a different manner than it was previously. If the Supreme Rabbinical Court decides that the law can be implemented only in circumstances that no longer exist, they will provide a source in the Torah that justifies that understanding.

The resulting agreement between the events of the time with the authority of the Rabbinical Court and the way of explaining the Torah sources do not coincide by happenstance. Rather they are like letters that light up with a message from the light of the Torah and the truth of the Oral Law, in whose system we must follow the "judge who will be at that time" (Devarim 17:9). This is not a "development" with its negative connotation.

However, if one were to come for adjudication in our days, when we are in a lowly station and our financial lives are not set up in the optimal national form, which would give us such greatness, then it would be a terrible thing to attempt to employ such authority. When I speak in terms of what was and will be regarding practical principles of the Torah, it is predicated on a vision of our nation living a full national life in its beloved Land in an ideal form of completeness, when we are self-governed, have a proper judiciary in place, and the Land is successfully home to its sons. Then that which comes out of the "spring of the House of Hashem" will be holy.

In contrast, at the time of darkness, although a person can follow his most refined feelings with the intention of elevating his spirit and drawing close to the light of truth and justice, which is of divine origin, this is not the Torah's guidance but that of a personal approach of righteousness. Therefore, if by so doing, he will cause damage to the lot of the broader community, it will be transformed from moral inclinations to matters that damage the masses. Thus, any wise person will understand that it is the individual's holiest obligation to curb his spiritual aspirations to help preserve the moral success of the nation, upon which the pillar of justice will have to stand. On this, the *pasuk* says: "The nation that walks in the dark saw a great light; those who sat in the land of shadows of death have the pure light shine upon them" (Yeshaya 9:1).

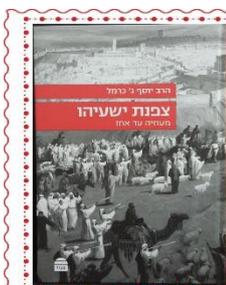
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**Neta bat Malka
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Tzofnat Yeshayahu - Rabbi Yosef Carmel

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

Where Could the Investment Money Go? – part II

(based on ruling 80067 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiffs (=pl) invested 200,000 NIS with the defendant (=def), an investment corporation owned by def2, in a project to build a commercial building. The following provisions are included in an investment agreement signed in 07.2015: 1. When def will receive a building permit, they will create a subsidiary for this project, in which pl will have a 6.6% stake. 2. If the project does not work (criteria detailed, but not in this presentation), pl's investment will be used for another project, chosen by pl. 3. Until the subsidiary is formed, pl's money will be kept in escrow. The property still lacks a building permit, and def has used pl's money, not keeping it in escrow. Pl accuses def of being evasive about information, assuring them that the building permit is coming soon, and for a long time keeping as a secret that the money is not in escrow. Pl asked to have the money transferred to other investments, but def offered only a loan with interest, which pl turned down. Therefore, pl demand their money back along with expected profits of 7% annually, and compensation for their lawyer's fee. Def2 responds that he told pl there was a potential for loss. The project became more complicated and expensive than envisioned, and pl's money has been spent, and will not be available until the project is finished. Def2 claims that the clause about escrow was a technical mistake, as money needed for a project would be useless in escrow. Def2 also rejects pl's demand that he accept personal liability since the contract was with def.

Ruling: [Last time we saw that def violated the agreement with pl and that pl did not relinquish their rights.]

Pl definitely has the right to get their principal back. While no profits were set, there are two mechanisms to justify def paying for use of pl's money: 1. How much pl, who borrowed money from a bank to invest, would have gotten from his investment money with a simple investment, after the two years when he could have gotten the money from escrow. 2. The estimate of how much def benefited from using that money for his projects (see Chavat Da'at 168:14). It is difficult to determine how much the above comes to but we will estimate it, based on compromise, at 9%, which comes out to 18,000 NIS.

Def2 refuses to assume the obligations of def based on the rules of corporations. While this is generally correct, our arbitration agreement states that when a representative of a corporation acted in an irresponsible manner, which deserves personal liability, we can obligate him. In this case, def2 clearly misappropriated and endangered pl's funds and therefore has personal liability. Since he is the sole owner of def, he has the means to pay himself back from def should he want.

Because of the inappropriate and elusive way that def2 acted in this matter, which forced pl to pursue legal recourse, we obligate def/def2 10,000 NIS for pl's legal fees.

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

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