



HaRav Shaul Israeli zt"l
Founder and President

HEMDAT YAMIM

PARASHAT HASHAVUA

Mishpatim, 24 Shevat 5774

"These Are the Judgments"

Harav Yosef Carmel

As we do every year on *Parashat Mishpatim*, we will focus on matters that relate to the operation of our network of rabbinical courts, Eretz Hemdah-Gazit. With Divine Assistance, our eight branches throughout Israel are functioning to increase the honor and love of religion and consequently the honor of Heaven. Our *parasha*, which deals with many topics that are related to the operation of a *beit din*, opens with the *pasuk*: "These are the laws that you shall place before them" (Shemot 21:1). Our Rabbis expounded greatly on these words, and we will discuss some rules and how we apply them.

The *gemara* (Sanhedrin 7b) points out in this regard that the *dayan* should not "step on the heads of the holy nation." Directly after commanding, "Do not go up to the altar with stairs," it says "These are the laws..." This idea of not elevating their status as above the people is what Israeli's like to call "looking at someone at the same eye level." Rashi (ad loc.) says that not only should the *dayanim* not actually relate to themselves with over-importance, but that it should not even look as if they do so. The first part of the *derasha* is talking about the situation of one giving a Torah lecture with the assistance of a *meturgeman*, who repeated the scholar's lesson loudly. Just as in that case, one who walked through those who were seated looked as if he was stepping on them, *dayanim* should follow this principle as well. In other words, there should not even be an appearance of putting down the litigants.

Based on this idea, we set up our courts differently than every court of the State of Israel (rabbinical or secular), in which the *dayanim* sit on a platform. All of our courts have the judges on the same level as the litigants. Besides how this looks to the litigants, it also sends a reminder to the judges that they are sitting in justice as a servant of the public, not as one who uses his role to be above others.

Another derivation (ibid.) from our opening *pasuk* is that the judges have to "show the face" of the case. Rashi explains that this is derived from that which it says "place before them" and not "teach them." A judgment should be presented in such a way that reconciles the ruling with teachings (Rashi ad loc.). In other words, the students who were studying to be *dayanim* should understand how what they were being taught was being applied correctly. Our implementation of this idea is that all our rulings come with clear explanations of the ruling's basis. Halachically, not every ruling has to come with reasons. That is necessary only when the litigant seems to not trust the *dayan* or when he asks explicitly for the reasons (Choshen Mishpat 14:4), and even then, the requirement might only exist if the *beit din* adjudicated without the request of both sides. However, since we are big believers in the concept of transparency as a basic rule of operation, every ruling is given with full written reasons. We do this in a way that even the laymen who is not deeply familiar with halachic reasoning will understand its basics.

We pray that Eretz Hemdah-Gazit, along with the Forum for Rabbinical Courts for Monetary Matters, including Rav Ratzon Arusi's Halichot Am Yisrael and Rav Avi Gisser's Mishpetei Eretz will prove to be a major beginning to the proper performance of "These are the laws that you shall place before them."

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Ask the Rabbi

by Rav Daniel Mann

Making a Shabbat Tallit Into a Weekday One

Question: After replacing the *tallit* I have used for Shabbat, may I use the old one for during the week?

Answer: We find in several contexts a concept of *ma'alin bakodesh v'ein moridin* (= *ein moridin*) – one may only raise the status of a sacred object (or person) but not diminish it. The question is whether this case falls into that halacha.

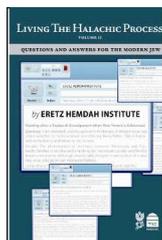
The Beit Yosef (Yoreh Deah 259) cites the Mordechai who says that an object that was used in a *mitzva* role, e.g., a candelabrum in *shul*, can be switched to another *mitzva* use, even if the latter is of a lower level. He explains that *ein moridin* applies to *tashmishei kedusha* (objects that “serve holiness,” especially sacred scrolls), but not to *tashmishei mitzva* (objects used for *mitzvot* that do not include such articles). Some *Acharonim* (including Maharsham II:39 and Yabia Omer II, Orach Chayim 1) posit that since *tzitzit* is a classic *tashmish mitzva* (Megilla 26b), *ein moridin* does not apply to it; one just must avoid disgracing it (Shulchan Aruch, OC 21). They are aware that important sources refer to *ein moridin* regarding *tzitzit*. This is either because they represent opinions that argue with the Mordechai (see Darchei Moshe YD 259:3; the Shach YD 259:11 supports the Mordechai), because *tzitzit* is more *kadosh* than a *shul*'s candelabrum, or the opinions represent acts of stringency (Maharsham *ibid.*).

The Shulchan Aruch (OC 15:1) rules that one may take kosher *tzitzit* off one garment as long as he will put it on another one. Most *Acharonim* (including Beit Yehuda (Assad) YD 29, Mishna Berura 15:1) permit moving the *tzitzit* from a *tallit gadol* (what we call a *tallit*) to a *tallit katan* (what we call *tzitzit*). Those who forbid it invoke the concept of *ein moridin*, saying that based on halachic or Kabbalistic factors, a *tallit* is of a higher level than *tzitzit* (see discussion in Yabia Omer *ibid.*; Tzitzit, p. 286). The majority opinion does not dismiss the relevance of *ein moridin* but denies there is a fundamental difference between the *mitzva* for the two garments. On the other hand, the Magen Avraham (8:6) and the Mishna Berura (8:9) explain the *minhag* of having an *atara* on the *tallit* as aiding one to keep the two front *tzitzit* in their more prominent position. While they cite the Ari's practice to not be careful to maintain the positions, the stringent opinion is quite accepted. Since we see that it is not always obvious to determine when a change is a prohibited diminishment, it is worthwhile to seek additional grounds for leniency.

The Taz (OC 154:7) suggests that if one has decided to stop using a holy object for its designated purpose, making it a candidate for *geniza*, it is better to “lower” its usage than to totally take it out of use. Thus, since it is appropriate to periodically upgrade a Shabbat *tallit*, it would be better to use it at least during the week. However, the Taz is not widely accepted (see Sha'ar Hatziyun 154:23). Another possible strategy is to initially stipulate the intention to eventually transfer it to weekday use. However, this idea is apparently contradicted by the fact that the *gemara* (Yoma 12b) does not raise it in regard to the need to retire rather than “lower” a temporary *kohen gadol* (see S'dei Chemed vol. V, p. 109).

Despite scant authoritative discussion of the topic, we would confidently permit one to transfer a *tallit* from Shabbat use to weekday use for the following reasons. It is unclear that a Shabbat *tallit* has more *mitzva* importance than a weekday one; consider that the frequency of use is halachically prominent. More fundamentally, even if a Shabbat *tallit* is more prominent, it is not in regard to the *mitzva* of *tzitzit* but because wearing nicer garments is a means of honoring Shabbat (Rambam 30:3). Therefore, buying a new *tallit* and using the old for weekdays is like buying a new suit for Shabbat and using the old one for weekdays - a practice we have never heard questioned due to *ein moridin*.

Thus, based on several reasons, one should have no compunction about using a former Shabbat *tallit* for weekdays.



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Ein Ayah

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

Four Prototypes of Service of Hashem

(condensed from Ein Ayah, Pei'ah 9:1)

Gemara: For the following *mitzvot*, a person eats their fruit in this world and the principle remains for the World to Come: respect for one's mother and father, acts of kindness, and bringing peace between people; and Torah study is equal to all of them.

Ein Ayah: All forms of service of Hashem that are achieved through Torah, *mitzvot*, and good attributes are good at their time and are "planted" for future use when His creations will flock to Him. The human eye and intellect cannot see how all the details of a person's good deeds combine to create lofty things. We cannot see the greatness behind the reason for individual *mitzvot*. There are four categories of good deeds that elevate the world through the improved spirit of man to the point that the light of Hashem will fill the land: thankfulness for the good one receives, love of kindness, love of peace, and developed wisdom. We will analyze each.

One whose spirit is straight will have a strong recognition of those who did good for him to the extent that he will feel a burning desire to express his appreciation even without seeing how it will help the subject of his gratitude. The *mitzva* that best develops this attribute is respecting parents. We find children whose thankfulness creates within them strong longings for the opportunity to show their allegiance to their parents, especially after their death. This is compounded when the good they received is great, the benefactor was great, and they realize the importance of thankfulness. The power of this feeling will be much greater in the future when people's spiritual blindness will disappear and the world will be filled with knowledge. Thus, respecting one's parents helps push the world in the right direction by impacting individuals and will connect with the broader sense of thankfulness that will exist when all the nations gather to serve Hashem.

The love of kindness which people plant in their hearts will find new expression in the World to Come, a time of light and universal enthusiasm for service of Hashem. That which previously found expression in man providing help for his fellow man will hardly be relevant at a time when there will be no poverty, sickness, and pain. Wisdom will then be easily attained by all, and no one will need to teach his fellow about Hashem. Man's desire to give to others will then find expression regarding Hashem's broader creation, improving their conditions, and educating them to the best of man's ability. Love of kindness will sweep the world to the point that the wolves will live with sheep and tigers will graze with goats. This will become possible due to man's pure service of Hashem, made possible by the great power of thankfulness.

Great thankfulness will make people realize that kindness is needed not only by those who cannot cope with life's challenges; even those who are successful require peace. Man will focus his efforts to find the roots of the causes that prevent peace and harmony and strive to remove them and allow Hashem's light to shine. The search for peace will cause people to reach greater intellectual understanding, which will enable them to also appreciate the divine better. The tendency to bring peace between individual people will not only have its present blessed impact but will also expand to a broader peace in which a nation will not raise up the sword against another nation and they all join each other to serve Hashem in a spirit of brotherhood and peace.

The first three elements focus on man's emotional nature, but emotion does not suffice to fully actualize these great values. They require wisdom that emanates from the Torah, which is why Torah study is equal to all the values. The elements of Torah that are uncovered by each individual will join onto that which was handed down from one generation to the next to the extent that the seeking of Torah and knowledge will be a pillar in the world that will support all lofty ideals. This helps improve people's behavior throughout history; when it is complete, it will be the basis of the eternal light and life within man.



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P'ninat Mishpat

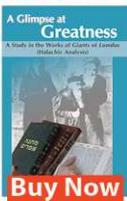
Responsibility for Collateral

(based around Shut HaRosh 91:1)

[Last time we introduced the Rosh as a (very important) halachic authority and author but did not describe his responsa. The most unique element to the sefer is the arrangement of its responsa, which was done posthumously by his students, perhaps including some of his sons. Shut Harosh is the one book of responsa that is broken up into sections (klalim) and subsection (simanim), where all the responsa in one klal belong to one general topic. While many later volumes of responsa follow the order of the Shulchan Aruch, the Shut Harosh's arrangement is unique.]

Reuven gave a house to Shimon as collateral for a loan before going abroad. When Reuven returned and wanted to pay his loan and claim back his house, he found that the partitions between his part of the property and his partner's property were missing. Shimon said that he received the property without partitions and that if there were partitions, he didn't want them because he was afraid the non-Jewish inhabitants would destroy them. He added that if there were partitions, it was Shimon's father who had installed them.

The various contradictory claims that Shimon presented regarding the existence of partitions or lack thereof prove that one cannot take any of them seriously. His main claim is that he did not receive the partitions, which he supports by the fact that the document that stipulates the details of the collateral arrangement do not mention them. However, since partitions that are part of a property are considered part and parcel of the property, they are included unless the document explicitly states that they are excluded (witnesses to an oral stipulation would not suffice). It is also not clear why the presence of non-Jews in the property is relevant to Shimon's refusal to accept the partitions because even if the non-Jews would cause damage to the property, Shimon would not bear responsibility for them, if indeed it was Reuven who brought them in as tenants. Rather Shimon would just have to return the materials of the now broken partition to Reuven. If, though, it was Shimon who brought the non-Jewish tenants to live in the house, then he is responsible for the damage they caused, as he should have known they would be dangerous [*Ed. Note-presumably, in those times, it was not feasible for a Jew to sue a non-Jew for damage he caused.*] Certainly, if Shimon is the one who took down the partition, he is obligated to rebuild it.



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