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# HEMDAT YAMIM

## Parashat HaShavua

Korach, 29 Sivan 5779

### Are There Criteria for Rabbinical Judges in Israel? – part II

Harav Yosef Carmel

Last week we saw that in addition to excellence in Torah knowledge, a *dayan* needs general knowledge, including in languages (Rambam, Sanhedrin 2). In Sanhedrin 2:7, the Rambam says: "And known by your tribes" – this teaches that the spirit of people must find them pleasant. "In what way will they be loved by others? When they possess a 'good eye,' a low spirit, they are good friends, and their speech and transactions with people are in a way that is pleasant."

A *dayan* should be someone who finds *chen* and *sechel tov* (approximately, favor) not only in the eyes of G-d but also in the eyes of people (see language at the end of *Birkat Hamazon*). Therefore, the process of choosing a Rabbinical judge included receiving public feedback on the people whom the great scholars recommended as worthy scholars. That is the reason that someone could not be chosen as a *dayan* behind closed doors. Rather, the people had to be gathered and lend their approval. One whose characteristics and manners did not bring honor to His Divine Name should not be appointed. Because of the need for the appointment to be public, it was possible for the Romans to intimidate the people and thereby stop the continuation of *semicha*, as they would kill the people of any city in which it would be carried out (see Sanhedrin 13b-14a). A responsible, calm approach to the matter of adjudication is also included in this requirement.

The Rambam (ibid.) continues that we learn from "*anshei chayil*" (men of valor) that the *dayanim* must be strong in keeping *mitzvot* and discerning about their actions – conquering their evil inclinations so that nothing bad can be told about them. Included in this is that they have the bravery to save a litigant from someone who is trying to harm him. The Rambam gives two meanings to *anshei chayil*. One is that he fulfills, "Who is brave? One who conquers his inclinations" (Avot 4:1). The second is that he is not afraid of the consequences of taking a righteous stand.

It is clear that the Rambam did not mean to uproot the simple meaning of the term, i.e., one who has served in the army and has been brave in defending his compatriots from dangers, as this is what the term means throughout *Tanach*. The Rambam does not mention it because this application was not operative in his times. In our days, not serving in the army precludes one from being accepted among the entire community. That is the reason that, more than three decades ago, when we founded Eretz Hemdah, our mentor, Rav Shaul Yisraeli, made service in the army for all those who were obligated in the draft, as a requirement for acceptance to Eretz Hemdah. Serving in the regular army and continuing in reserve duty do not take any greatness in Torah away from our young rabbis; to the contrary, they only give greater meaning to this status.

Finally the Rambam explains "those who hate reward," as one who is not preoccupied with his finances and does not run after the accumulation of money. That is the reason that we set a consistent policy that any service we provide for the public is without demand of pay. This includes delivering lectures, officiating at weddings, and answering halachic inquiries. Despite the fiscal challenges, our fellows and their wives put all their stress on growing as broad scholars, not on accumulating a nice livelihood.

We hope that we will succeed in returning things to the way they once were, where the judicial system was our pride, with *dayanim* who care only about justice. heaven and earth and thereby sanctify Hashem's Name through a knowledge that "its ways are ways of peace.

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**Eretz Hemdah**  
Deems: Harav Yosef Carmel, Harav Moshe Ehrenreich  
2 Bruriya St. corner of Rav Chiya St.  
POB 8178 Jerusalem 91080  
Tel: 972-2-5371485 Fax: 972-2-5379626.  
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# Ask the Rabbi

by Rav Daniel Mann

## Reciting *Kri'at Shema* at the Very End of its Time

**Question:** My *shul* sometimes misses *sof z'man Kri'at Shema* (=szKS) by a few minutes. The rabbi instructs people to say the three *parshiyot* of *Shema* before *davening*, but I usually go ahead to make *Kri'at Shema* on time and wait during the following *beracha* for the *tzibbur* to catch up. Is that an improvement and/or a perfect system?

**Answer:** Those who listen to the rabbi do *Kri'at Shema* on time. They also repeat *Kri'at Shema*, and can say the *berachot*, based on the *gemara* (Berachot 10b). So the system of reciting *Kri'at Shema* before *davening* is responsible (see Rama, Orach Chayim 46:9). However, several *Acharonim* point out that the recital of *Kri'at Shema* that is used to fulfill the *mitzva* is best done along with its *berachot* (see Mishna Berura 46:31).

But there are two ways to understand that preference: 1. Like there is a full requirement to finish *Kri'at Shema* by szKS, so there is a preference to recite its accompanying *berachot* by then. 2. A complete *Kri'at Shema* requires being sandwiched by its *berachot*. Your practice's advisability depends on this question. After doing *Kri'at Shema* at its time, you complete it with its final *beracha* only a few minutes later, so according to #2, you are fine. According to #1, you did not finish the last *beracha* in time. Another test case is if one recites *Kri'at Shema* before *davening* but the second time and its *berachot* end up being on time. The *Acharonim* (ibid.) say that it is still best to not have had intention to fulfill the *mitzva* the first time; this proves that #1 was their intention.

But could #2 also be true – that the *berachot* are best when done before szKS? Consider the *machloket* whether one has one more hour to recite the *berachot*, until *chatzot*, or all day (see Beit Yosef, Orach Chayim 58). Rav Hai Gaon, accepted by the Shulchan Aruch (OC 58:6) takes the strict opinion. If the *berachot* need not be by szKS, why can't they be all day? Many answer that it is parallel to the end time of *tefilla* (Mishna Berura 58:25), and very likely because the *berachot* are not as linked to *Kri'at Shema* as they are to *tefilla* (ibid.), whose time ends a (halachic) hour after *Kri'at Shema's* (Shulchan Aruch, OC 89:1). If this is the whole story, your system solves the problem because you finish the *berachot* before the end time of *tefilla*. Yet one can still argue (as there are indications) that there are two elements of *birchot Kri'at Shema* – it is related both to *Kri'at Shema* and to *tefilla*. One can then argue that while one can say the *berachot* after szKS, this is because of *tefilla*, but the *Kri'at Shema* element has been lost.

The Levush (OC 58:6) explains Rav Hai Gaon's requirement by the end of the fourth hour by saying that it is somewhat the time of waking (which is the rationale for szKS). The Malbushei Yom Tov (ad loc.) argues that there is no source for a later "semi-wakeup" time. We suggest the following to explain the Levush. When saying that szKS, which is a Torah-level law, is when the last people wake up, we need to give those people time to do all they need to get up to *Kri'at Shema*, which now includes much of *Shacharit*, on time. Perhaps the Levush meant that *Chazal* wanted everything related to *Kri'at Shema* to be in the direct post-wakeup-time, but with *Kri'at Shema* already out of the way, the fourth hour is "spillover time" in this regard. Thus, even if we relate *birchot Kri'at Shema's* time to *Kri'at Shema's*, we can still say that the fourth hour is *l'chatchila* because it is in spillover time.

Your system is recommended, in certain circumstances, by a few *Acharonim* (see *Tefilla K'hilchata* 3:24). Considering that I did not find in those or other sources that one should try to finish *Ga'al Yisrael* by szKS, your system is fine in this regard. (The system requires sophistication and planning to: get ahead, be at a good place during *Kaddish/Barchu*, wait without *hefsek* after *Kri'at Shema*. Thus, this is not for everyone. Acting differently from your surroundings can also be an issue. So you might want to discuss with your rabbi if and how to use your system.)

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# Ein Ayah

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

## Removing the Light to Keep it Pure

(condensed from Ein Ayah, Shabbat 9:44)

**Gemara:** Moshe broke the *luchot* (Tablets) based on the following derivation, using a *kal vachomer*: If regarding the *Korban Pesach*, which is only one of the 613 *mitzvot*, the Torah says, “No one [whose actions have] removed [him] from the nation may eat from it” (Shemot 12:43), regarding the entire Torah and Israel are [considered like] apostates, all the more so.

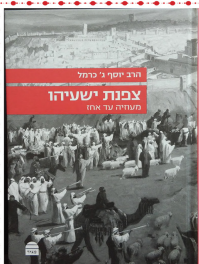
**Ein Ayah:** When a source of great light is given divinely to one who is not fitting for it, it ruins him and ruins the world. This is because, in the process, the light source itself loses some of its greatness and is polluted by being connected to something which is out of synch with the sequential order of the world.

There is also an “order” in the world that includes sporadic jumps, in regard to which it is not as important to separate between great things and problematic ones. However, even for a lofty matter of “jumping,” there are requirements that need to be met in order for it to be correct to be connected. Such a matter is Pesach, which is related to the skipping and jumping that Hashem did in Egypt [from house to house].

The great surprise that occurred in Egypt, as Hashem revealed his Divine Presence and took a nation out from the midst of a nation, was unprecedented in the world (see Devarim 4:34) and forever stands as a miracle in which matters jumped out of their ordinary ways. [Despite its exceptional nature,] it left an impression on those connected to it, which provides the basis for limited human life to have values that are well balanced. That is the reason that the *Korban Pesach*, even though its related events were so out of the ordinary, is still off limits to one who has become an apostate.

Realize that as being a single *mitzva* within the 613, *Korban Pesach* does not absorb the full element of order and sequence, which are part of the manner in which the world is built, internally and externally, in regard to people and the heavenly world. It follows that when people mix up what is divine and break from the principles of faith, even if it appears to be by means of actions and feelings and one does not actually decide to reject Hashem, still this status causes a contradiction if the person were to want to be connected to holiness. This is all the more a problem if people with these severe problems try to associate with the Torah as a whole, as it is all encompassing. As such, one cannot remove from it the requirement of sequential values, as this would be a great danger to the world, to Israel, and to the revelation of the Torah.

It would be a tragedy to connect the Torah [as represented by the Tablets] to the drastic deterioration that occurred as a result of the sin of the Golden Calf. Therefore, it was necessary to hide the light, lessen it, and break the vessel (the *luchot*) that connects the holiness of the Torah to the actual world. Only this could save the nation, the world, and the lofty light itself. Hiding the light is what led the way to its future revelation at the End of the Days so that it will never disappear or be diminished. “Hashem will be for you an eternal light, and your G-d will be your glory. Your sun will never again set, and your moon will never cease to come, for Hashem will be your light eternally and the days of your mourning are complete. Your nation are all righteous people, they will forever inherit the land, the scion of My plantings, the work of My hand in which to see glory” (Yeshayahu 60:19-21).



### 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 IV

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

**Case:** Plaintiff 2 (=pl2) was the contractor for major renovations of the defendant's (=def) home; plaintiff 1 (=pl1) was the supervisor. Pl2 was well behind schedule and was fired by def. [Over the last three installments, we presented that def had the right to fire pl2, determined how to appraise the amount pl2 should receive for the work already done, and discussed a variety of damages. We continue with damages that are not damages to a specific object but are more general.] Def claims around 20,000 shekels for being forced to live in a house that was in poor condition for a long time, which caused great discomfort and psychological distress. She also demands 10,000 shekels for the job being finished late and 2,800 shekels for the delay in preparing the adjacent housing unit, which earns 2,800 shekels a month rent.

**Ruling:** Regarding living in a home that was in disrepair for a long time, we generally accept the description of the difficulties. On the other hand, we must point out that with a relatively minor advancement of pay to other workers after deciding that pl2 would not continue, def could have solved most of the serious problems. Her decision not to do so should not obligate pl2 to pay. We also generally do not levy payments for causing distress. Therefore, the compensation to def for not getting the job done at the time that it should have will be addressed within consideration of how much pl2 deserves for the work that he did do.

Regarding the loss of income from the housing unit that was delayed in being constructed, we say the following. The halacha, regarding whether damage payments are due for preventing one from receiving profits that he was hoping for, is complicated (see a survey in Eretz Hemdah-Gazit's ruling 70072). Some *poskim* say that if the profits could be relied upon without the need for any special skill or good luck, then one who prevents this "sure thing" is obligated (see Machaneh Ephrayim, Ribbit 41). Because the sides signed our arbitration agreement, which gives *beit din* the authority to obligate payment even in cases of lost profits when it views this as just, we decide to obligate pl2 for half of the month of lost rent that def claims. Regarding the delay in being able to move back to the home, since the sides did not set a payment schedule and def did not specify actual monetary damage that emerged from it, we will not require payment.

.....  
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It is possible to contact writers via [info@eretzhemdah.org](mailto:info@eretzhemdah.org)

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