



Harav Shaul Israeli zt"l  
Founder and President

# HEMDAT YAMIM

Parashat Hashavua

Yitro, 24 Shevat 5784

## On Justice and the Right of Appeal – part I

Harav Yosef Carmel

The situation of the judicial system, as described in our *parasha*, has parallels in our days. [*This d'var Torah was written last year, during the tensions over judicial reform.*]

Moshe's court had an extreme backlog, and a positive judicial revolution was needed. After deliberations between Moshe and Yitro, agreement was reached, and Hashem gave His approval. Those primary principles form the basis of judicial Halacha to this day.

Yitro was troubled when he saw people lining up to speak to Moshe from day to night. He argued that this would tire out both the nation and Moshe and would eventually become totally untenable (Shemot 18:13-18).

Yitro also made recommendations as to criteria for being a judge: industrious men (who are strong and unafraid of people), those who fear Hashem, men of truth (and only truth), and those who hate bribery (and are not attracted to money) (ibid. 21-22). They put together a committee to vet candidates. With the correct number of such people, broken up into jurisdictions of different sizes (judges for thousands, judges for hundreds, judges for fifties, judges for tens), the workload on Moshe would be lightened.

After accepting the recommendations, Bnei Yisrael were unable to find enough people who fit **all** of the qualifications. This is hinted at by the *pasuk* (ibid. 25), and confirmed by *Chazal* (Midrash Aggada, Shemot 18:25). When a project deserves very ambitious standards, even if these cannot be fully met, it is still critical to aim for the highest.

In the Halachic Midrash, we find an important guideline for the mutual relationship between the nation and its judges. "[Moshe] appointed judges and commanded them to put up with the difficulties imposed on them by the populace ... and commanded the nation to treat the judges with respect" (Mechilta D'Rabbi Shimon bar Yochai 18:25).

There are two further points upon which we wish to concentrate. 1. Moshe and Yitro discussed different categories of cases that would come before the judges: "big (*gadol*) matters," "small (*katan*) matters," and "difficult (*kasheh*) matters." What is the difference between these categories? 2. How did the courts of different levels, from the judges of tens all the way up to Moshe, operate? How does it compare to today's court levels all the way up to the Supreme Court? Understanding these matters will help us understand how a proper judicial system should work, and we will take that up next week.

This is the time [*again, written a year ago*] to warn the nation. The State of Israel, and by implication, the entire Jewish nation, is at a crucial period of time in many ways. Extremism in the public discourse and the great divide within sections of the nation, which finds expression in harsh language, is bubbling in the streets and media, and it has destabilized the basis for joint existence. This is the time to take responsibility and seek out common ground. While we continue to strive for perfection, we must not do it at the price of irreparable social fracture.

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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

## Reciting Holy Things Near Garbage Containers

**Question:** I recite *Birchot Hashachar* on the way to *shul*, and recently Tehillim as I walk the streets. May I continue doing so while passing trash cans or dumpsters?

**Answer:** The Torah (Devarim 23:13-15) commands soldiers to keep their encampment holy by covering excrement (*tzo'a*). Uttering holy matters (of all sorts - Rambam, Kriat Shema 3:4) near unseemly things is forbidden and disqualifies matters such as *tefilla* (Berachot 22b).

Trash containers can create an “unholy” area on three potential bases: 1. Human feces (as described by the above *pasuk* and found in diapers); 2. Materials, such as meats and other foods with a very foul odor after decomposing count as *tzo'a* (Berachot 25a; Shulchan Aruch, Orach Chayim 79:8); 3. A receptacle that is affected enough by *tzo'a* to be considered unseemly itself (*graf shel re'i*) (Berachot 25b; Shulchan Aruch, OC 87:1). In regard to all of these, one may not speak holy things within four *amot* of the end of the smell, and may not face it within his eyesight (Berachot 25a, 26a; Shulchan Aruch OC 79:1; *ibid.* 87:1).

Walking down a street, trash cans and their contents are always within eyesight. Could this preclude all holy matters on our streets, e.g., *berachot*, Tehillim, sharing *Divrei Torah* with family, singing at a *hachnasat sefer Torah*?! This is neither practiced nor reasonable. (In Talmudic times, garbage dumps (*ashpa*) stored *tzo'a* long-term (and truly stunk), and were at a fair distance from living quarters – refraining from sanctity in their vicinity was logical.)

Our streets enjoy two main points of leniency. 1. Due to prompt garbage collection, offensive odor is rare except for small amounts of residue. Thus, the distance of separation due to smell is at most slightly more than four *amot* from the trash receptacles. 2. *Tzo'a* is almost always covered, often multiple times (plastic bags for diapers and decomposing matter; being surrounded by non-smelly garbage; a closed garbage bag that takes it outside; the dumpster's covering). We thus fulfill the Torah's command to cover *tzo'a*, which solves the problem (Shulchan Aruch, OC 76:1).

Is it a problem if there is an uncovered trash container or one with an overflow of bags? The *gemara* (Berachot 25a) says that *tzo'a* does not affect people in a nearby but different domain. Receptacles in areas with apartment buildings almost always have the dimensions for a different domain. The Shulchan Aruch (OC 79:2) cites, without a clear preference, a *machloket Rishonim* whether this leniency applies when the excrement is visible to the person. The stringent opinion is a potential problem. On the other hand, the other coverings usually solve the problem, at least if one cannot smell the garbage (see *ibid.*).

The prospect of treating a trash receptacle as a *graf shel re'i* is our biggest potential problem; nothing will help, as it is not covered and therefore it should not be in sight. However, the consensus of *poskim* is lenient on the matter (see *Ishei Yisrael* 53:36) for several reasons. First, *graf shel re'i* applies only to somewhat absorbent materials, e.g., pottery and wood, not metal (Shulchan Aruch, OC 87:1; see *Mishna Berura* ad loc. 6) and hard plastic (*B'tzel Hachochma* VI:26). Second, much of what is put into them are non-*tzo'a* materials and any *tzo'a* rarely touches the receptacle (*ibid.*). I would add that *graf shel re'i* is something that stands out as “disgusting” and people naturally keep a distance from it. Common things on respectable streets cannot turn entire streets into a garbage dump. The practice, even of great *talmidei chachamim*, is that one may engage in *kedusha* on them (see *Halichot Shlomo*, *Tefilla* 20:1).

In summary, one walking down the street may assume the presence of covering and the absence of offensive smell when involved in holy things (see Shulchan Aruch, OC 76:8). *Midat chasidut* might be that if he notices open or overflowing receptacles with open or ripped garbage bags, he will look away (*Ishei Yisrael* *ibid.*), and when alone, one might pause holy speech within four *amot* of receptacles (see *Mishna Berura* 87:6).

### “Behind the Scenes” Zoom shiur

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# Igrot HaRe'aya - Letters of Rav Kook

## Deeper Literature – #188 – part I

**Date and Place:** 19 Shevat 5669 (1909), Yafo

**Recipient:** Rav Isser Zalman Meltzer, Rabbi and Rosh Yeshiva of Slutzk. Rav Isser Zalman overlapped with Rav Kook in the Volozhin yeshiva and was also a great lover of *Eretz Yisrael*. Years later, they would reunite in Jerusalem, with Rav Kook as the Chief Rabbi and Rav Isser Zalman as the Rosh Yeshiva of Yeshivat Etz Chaim, where many of Rav Kook's most prominent supporters taught and studied. Rav Meltzer was the author of *Even Ha'eze* on the Rambam, and, of significance here, was the editor of the Torah Journal, *Yagdil Torah*.


**Body:** I have received the *Yagdil Torah* journal, including your open letter. During these days of great preoccupation with the holy work that is placed on my weak shoulders, which is so tiring, I have not secured the strength to pay my debt of respect and love for you, my respected colleague and thank you for the desirable flowers (the journal) with which you have honored me with the first edition. I hope that the publication will spread and that it will be adorned with many and great desired fruit, people who support your hand and those who stand behind your flag, helping in practical and spiritual ways. Then the matter will grow, and there will be offshoots to increase Torah and widen its goals.

To show my affection for your good enterprise, I will write a short remark, regarding a matter that affects us significantly in our holy work of growing the Jewish community of the Holy Land, which we pray Hashem will give to His nation with His light, opening gates of redemption and the lines of light of the aura of Hashem's decree of salvation and mercy. This will occur when the clear end of days comes to the mountains of Israel. *Eretz Yisrael* is beginning to bear branches and fruit for the holy nation, who return from exile, and increasingly are settling in the place where we pitched our tents in days of old. (The referenced halachic ideas of Rav Kook are found in *Mishpat Kohen*, *siman* 21.)

Now let me write a bit about the second stated purpose of your journal (to give inspiration to those with a Torah background who have been drawn to the works of those who are not true to Torah beliefs). Undeniably, there is great value in literature that is presented with all of the modern tools in order to strengthen and repair the many problems in the House of Israel. However, oh friends whom I love with heart and soul, we must be ready to provide more than words of encouragement that come from the heart – which are indeed sometimes good. Rather we mainly require words of intellectual depth coming from the thinking mind.

The ability to do this will return to us when we pave a path for the elite, outstandingly talented among the young Torah scholars and make sure that they are conversant in the in-depth part of the Torah (i.e., Kabbalistic/philosophical thought), which is the source of every lofty thought and every delicate and holy feeling. By increasing knowledge in this abandoned part of the Torah, and by adorning it, in all of its subjects and tools, we will quickly create men of the heart with great power, who will be able to speak in the city gates ideas that will return a spirit of life to our nation's heart. Our nation is fainting from terrible thirst for the word of Hashem.

It is true that not all minds or all hearts are fit for lofty spiritual intellectuality and for internal holy emotions, which I mention. However, Israel is not a widower (i.e., we have many resources). From the choice, young, holy "flowers" of Torah scholars there will always be, and certainly now when such skills are crucial, a significant number of people whose spirit leans in the direction of serious study of spirituality, with great toil and intellectual depth, desire, and internal happiness.



**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

## Should the Will be Updated? – part I

(based on ruling 82121 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** Reuven and the defendant (=def) were married in a second marriage for each. Reuven wrote a will, leaving his main possession, a large, commercially used building, exclusively to def, and not to his children (=pl). Pl claim that in the year before his death, Reuven expressed several times to his children (sometimes in def's presence) that he wanted them to receive significant portions of the inheritance. After his death, def also expressed her plan to give pl significant proceeds from the sale of the building, if she sold it. After operating the business for a few years, as Reuven wanted (claiming she did so as long as she was capable), def sold it for 1.6 mil. NIS. [Part I deals with the claim that Reuven meant to give pl an inheritance, despite the written will]. Pl say that once, when Reuven was in a quite good state of mind (which declined over time after writing the will), he told a son and his lawyer that he wanted pl to receive 60% of the property with def and her children receiving 40%. One of pl claims that Reuven gave him a note detailing who would receive each part of the property. Pl presume that the will was written under def's pressure, and that his main reason for giving the whole property to def was that he wanted her to operate his beloved business. Def admits some of Reuven's sentiment that his children share the inheritance, but she denies that there were specifics. She also points out that often, Reuven was not mentally fit.

**Ruling:** If Reuven orally bequeathed parts to pl in the midst of his final illness, it is considered a *matnat schiv meirah* (=mscm), which is binding in certain cases in which such a gift during a time of health would not be valid (see Shulchan Aruch, Choshen Mishpat 250). The Rosh (Shut 83:4) says that the recipient needs witnesses for the mscm unless the gift is in his possession (in which case migo increases his credibility).

There is a *machloket* why the Rosh requires witnesses. According to the Ginat Veradim (5:12), the witnesses are not needed to validate the present but only to prove it occurred. However, The Maharam ben Chaviv (13) said that the witnesses are needed to give the declaration a status of a serious, binding gift. The difference between the approaches is in cases where the existing inheritors admit a mscm was done. Maharam ben Chaviv does agree if the inheritor admits the mscm was done with a high level of intent.

In our case, we cannot know now the level of intent in Reuven's statements or whether he spoke that way to appease his disappointed children. In any case, def denies that there were any specific, definitive declarations. Although there was a claim of a hand-written "document," pl did not produce it. Additionally, def claimed that Reuven was then incapable of writing such a document. Furthermore, pl admit that during that period of time, Reuven's level of cognizance was not strong.

Therefore, clarifications of Reuven that contradict his will, which was certified as binding, lack legal standing. We continue next time with analysis of def's agreement to share the inheritance with pl.

Comments or questions regarding articles can be sent to: [info@erezhemdah.org](mailto:info@erezhemdah.org)

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