



HaRav Shaul Israeli zt"l
Founder and President

HEMDAT YAMIM

Parashat HaShavua

Mishpatim, 27 Shevat 5779

Cooperation with the State's Legal Apparatus – Is it Possible?

Harav Yosef Carmel

Our *parasha* opens with the *pasuk*, "These are the statutes that you shall place before them" (Shemot 21:1). This is the source for *Chazal's derasha* that adjudication is to be done in front of a Jewish *beit din* and not before non-Jews or those who are not trained in Torah law (Gittin 88b). The Shulchan Aruch (Choshen Mishpat 26:1) rules this way, including in cases in which both sides agree to the non-Torah arrangement. Not only that, but one who is not careful on this matter is called a "*rasha*" and like "one who blasphemes the Torah of Moshe Rabbeinu."

From one perspective, the establishment of the State of Israel created a challenge for the *poskim* of the generation regarding the status of the secular courts in Israel. There was great pain for the Torah observant community when the government decided to base the State of Israel's law system on Ottoman and English law. This was one of the driving forces in Rav Shaul Yisraeli z.t.l.'s decision to launch our Eretz Hemdah *beit din* system, in which we have clear rules and procedures, ethical guidelines, a clear arbitration agreement, and we are careful to seat *talmidei chachamim* with great Torah knowledge and a breadth of wisdom. Such a *beit din* can recommend halachic solutions for a host of contemporary problems.

We sought partners, including the Mishpetei Eretz research center, to prepare halachic position papers on crucial issues. These position papers become the standard for the rulings of the entire Eretz Hemdah-Gazit *beit din* network. The last position paper was on the matter of payment for causing the loss of profits.

We are obviously not able to reinstate authentic Torah-level *semicha* (ordination), and we are also not able to present to the public a holistic halachic legal system that is tailor-made for a modern economy. However, we are able to present litigants with a just solution to their disputes on virtually any topic. This we do on a regular basis, with professionalism and transparency, according to the principles of Halacha and Jewish justice, as our great *poskim* have done over all the generations.

According to the guidance of Rav Yisraeli, we see cooperation with the Israeli legal system as a means of promoting the solutions to societal problems. There are even some times when the rulings of the general courts are binding according to Halacha (see Mishpetei Shaul 43, regarding a unanimous decision by Rav Yisraeli, Rav Elyashiv, and Rav Aboudi).

We should also note that it is the state's obligation to take care of the welfare and safety of the populace. This includes the penal elements of the court system. Rav Yisraeli (Amud Hayemini I,9:12) posited that a government that is supported by the people has the authority to punish those who commit felonies. This is not against the Torah as long as it is done to make society run smoothly. *Beit din* is allowed to get involved in such areas only under special circumstances.

We pray that Hashem will return us to a time of just courts, which will renew Yerushalayim to the status of the "city of justice" (see Yeshaya 1:26-27).

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Ask the Rabbi

by Rav Daniel Mann

Making Up a Skipped *Beracha* during *Shemoneh Esrei*

Question: After *Kedusha* of *chazarat hashatz*, the *chazan* went to “*R’ei v’onyeinu*” instead of “*Ata chonen*” and finished the *beracha* before people succeeded to correct him. He went back to “*Ata chonen*.” When he got up to “*R’ei v’oyneinu*,” he did not recite it, reasoning that it was incorrect to repeat it. Was he correct, and why?

Answer: Dealing with skipping *berachot* of *Shemoneh Esrei* is the subject of a *machloket* between *Amora'im* and apparently *Rishonim*. Rav Huna (Berachot 34a) says that when one makes a significant mistake during any of the sections of *Shemoneh Esrei* (first three; next thirteen; final three), he returns to the beginning of the section. Rav Asi agrees regarding the first and last sections, but regarding the middle one, he does not require going back to the beginning (*Ata Chonen*). He expresses his opinion as follows: “The middle ones have no order,” and the *Rishonim* accept the opinion of Rav Asi. (In your case, either way he had to return to *Ata Chonen*, which is the one he skipped).

Rashi (ad loc.) seems to take the *gemara’s* language quite literally, and says that since the middle *berachot* do not have an order, if one skipped a *beracha*, he can make it up at whatever point he catches the mistake. In other words, after saying the *beracha* that he missed, he continues with the next *beracha* that he had been up to before his realization. For example, if he skipped #6 and realized after #8, he would recite #6 after #8 and then jump back to #9, without repeating #7-8. In your case, the *chazan* went from #3 (*Ata Kadosh*) to #7 (*R’ei*). Therefore, Rashi would have him make up #4-6 and then skip over #7 to continue with #8. (A minority of *Acharonim* learn Rashi differently.) This is exactly what the *chazan* did, when he skipped *R’ei* because he had already recited it.

Tosafot (ad loc.) disagrees, and says that after going back to the *beracha* he skipped, he continues straight from there, even though it means that he will repeat whatever he recited between making the mistake and discovering it. In the example above, after going back to #6, he continues with #7 and continues forward, thereby reciting #7 and #8 twice. Tosafot posits that the importance of saying the *berachot* in order is important enough to justify repeating *berachot*. We are used to repeating *berachot* when something was done wrong the first time. If one forgot something, for example, *Ya’aleh V’yavo*, he goes back to *R’tzei* and continues straight. In your case, the *chazan* should have recited *R’ei* another time.

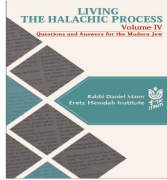
Tosafot deals with the language of the *gemara* by saying that the lack of order is only in comparison to the *halacha* found regarding the first and last *berachot*. While there, one has to go back to the beginning of the set, this is not necessary in the middle ones (rather, one starts with the one he skipped). Tosafot bring a strong proof that the order of all the *berachot* is important. The *mishna* (Megilla 17a) says that if one read *Megillat Esther* out of order, he does not fulfill that *mitzva*; the *gemara* says that the same is true for *Hallel*, *Kri’at Shema*, and *tefilla*. This indicates that this is an absolute requirement even *b’dieved* and therefore justifies repetition to get the order back in synch. (One does not have to go back to the beginning of *Shemoneh Esrei*, but rather ignores the *berachot* already recited out of order.) Indeed, the *gemara* (Megilla 17b) says that *Anshei Knesset Hagedola* instituted eighteen *berachot* “*al haseder*” (according to an order). The *gemara* then goes on to bring *p’sukim* to show the logic of each *beracha* following the one before it. There are other sets of *berachot* regarding which the order is not critical, such as most of the *sheva berachot* (see Ba’er Heitev, Even Ha’ezer 62:1) and *Birchot Hashachar* (Mishna Berura 46:20).

The Shulchan Aruch (Orach Chayim 119:3) follows the predominant opinion of the *Rishonim* like Tosafot. Therefore, the *chazan* in question did the wrong thing. Had this been realized any time during *chazarat hashatz*, he should have returned to *R’ei* and continued from there.

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Ein Ayah

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

When Increased Strength Displays Constant Weakness

(condensed from Ein Ayah, Shabbat 8:37)

Gemara: There are three animals that become more powerful when they get older: the fish, the snake, and the pig.

Ein Ayah: Advanced age adds *shleimut* (completeness) and spiritual illumination, which cause a person's physical side to decline. Even though in the animal kingdom, the spiritual side is not as recognizable as it is for humans, there is an element of spirituality that is part of their being, out of which, in the future ideal times, they will also be elevated with the whole world.

However, regarding those species that are strongly entrenched in the darkness of physicality, advanced age does not add spirituality, and they therefore are not weakened by advanced age but actually add strength. Three areas in which mankind has relatively strong spiritual tendencies are: modesty in matters of sexuality; justice; beauty. Even regarding the animal kingdom as a whole, these values have a root and seed. These spiritual tendencies cause a separation between the spirit and the body, which causes weakness during old-age.

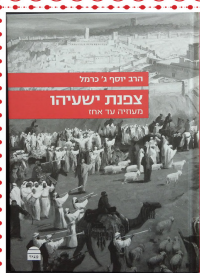
In each of these areas, there is a species that has an extreme tendency in the direction of coarse physicality rather than spirituality. Fish have a strong tendency toward sexuality without any element of keeping a distance; snakes are symbols of pure evil, without any tendency toward justice; pigs are involved in a physicality of ugliness, which is the opposite of a beautiful spirituality. Therefore, these three species have nothing that holds back their physical side from strengthening, as their lives consist of the physical side. In contrast, the human spirit strives to be more holy, just, and glorious. Therefore, in old age, the tendency toward removal from sexuality separates humans from such matters and weakens them, allowing them to have more advantages over animals. "Not with multitudes or with strength, but with the spirit of Hashem" (see Zecharia 4:6).

Seeking the Fullest Level of Beauty

(condensed from Ein Ayah, Shabbat 8:39)

Gemara: The amount of lime [that needs to be carried in the public domain in order to desecrate Shabbat] is enough to apply to the small finger of girls.

Ein Ayah: Beauty is a form of *shleimut*, and when something is missing from the matter, a small amount can make a big difference. One of the methods used by females in beautification is to apply lime [to remove hair]. Those who take the matter seriously may make sure that even their small finger has lime applied to it so that it not be left unbeautified. Since it can make even a small difference, the amount of lime used for a small finger was chosen as the amount whose carrying is of significance. Specifically, it follows the finger of a girl, because beauty applies to girls, and they are in the habit of taking artificial steps to get to a point of *shleimut*. This is similar to the realm of natural beauty, which also has to be complete.



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

Worker's Benefits

(based on ruling 69053 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl) worked at the defendant's (=def) factory for close to two years. While pl was in *miluim* (reserve duty), he received a call from def informing him he was fired. Pl refused to accept the firing, which is forbidden during *miluim* and without warning. After *miluim*, pl returned to the factory but did not actually work. Def explains that he found out that pl had been agitating against him with other workers and fired him immediately out of anger. Upon realizing it was illegal, he told pl that he would pay him but not allow him to work. Pl is suing for payment of severance pay and for lack of warning, in addition to pension, vacation pay, and recreation pay. Def says that the workers know that he cannot afford mandated social benefits and that he tries to make it up to the workers by giving raises and other benefits when he can (pl did receive payment in this manner).

Ruling: Halacha requires an employer to come to an agreement with his workers over wages and benefits before they begin working. Ahavat Chesed (at the end of the first section) explains that when he fails to do so, he leaves the door open for disputes and feelings that the other side "stole" from him. In this case, beyond the per-hour wages, def did not come to an agreement with his workers over benefits. This is improper, and we recommend that he reconsider this in the future.

In such cases, the sides are supposed to follow the local practice (Shulchan Aruch, Choshen Mishpat 331:1-2). The Rama (ad loc.) adds that something is considered local practice only when the situation comes up regularly in society. R. Akiva Eiger claims that if the custom was decided by an important authority, then it is binding even if the situation does not arise often.

In our times, most *batei din* rule based on the Israeli labor laws. These are valid according to *dina d'malchuta*, and even those who do not normally apply that rule broadly, agree when the laws form the basis of the standard local practice, which indeed they do in our days. It does appear that in this case, pl was aware at some point that he was not going to get full worker's benefits, as is evident from the fact that he did not demand paid vacation until he was fired. Nevertheless, since the law requires certain payments and sets the standard, def should pay them.

We are to view the cessation of pl's work as firing, even if pl was offered a salary in the meantime, because such an unnatural set-up is considered taking away from one's work conditions, which is equivalent by law to firing. Therefore, pl will receive 1.75 monthly salaries as severance (a month's salary per year). We exempt def from payment of paid vacation and recreation because it does seem that pl got raises he was not required to receive in lieu of such payments. Expenses of adjudication will be shared equally by the two sides.

We daven for a complete and speedy *refuah* for:

Ro'i Moshe Elchanan ben Gina Devra / Eliezer Yosef ben Chana Liba

Yair Menachem ben Yehudit Chana / David Chaim ben Rassa

Netanel Ilan ben Sheina Tzipora / Netanel ben Sarah Zehava

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