



# HEMDAT YAMIM

Parashat Hashavua

Teruma, 4 Adar I 5782

Harav Shaul Israeli zt"l  
Founder and President

## More on Helping the Weak in *Beit Din*?

Harav Yosef Carmel

Last week we dealt with reconciling the fundamental obligation to relate equally to the two litigants with the idea of helping the poor/weak, explaining that by taking control of the adjudication out of the hands of the sides and specifically their lawyers, "levelling the playing field" is both fair and crucial help for the weak. This week we will learn about the related concept of "*p'tach picha l'ileim*," literally, opening up one's mouth for the mute (Mishlei 31:8).

This *pasuk* concludes, "... to the judgment of the 'sons of passing/switching.'" The next *pasuk* continues: "Open your mouth, judge with justice, and the judgment of the poor and destitute." The implication is that the judge should say things that will help specifically the poor. How can one do that while still being faithful to "Do not give preferential treatment to the poor"?

Who are the mute for whom the judge should open his mouth? Rashi connects it to the parallel second half of the *pasuk*, which he explains as the sons of those who have passed on, i.e., orphans, who lost their father, who could have helped them in such matters. The *midrash* on these words says that the orphans generally are not as equipped with the skills of making claims and also, in dealing with properties and businesses inherited from their father, they are often unfamiliar with that which went on in a way that would enable them to know the claims to make (Bamidbar Rabba 10:4). Rashi does not explain how making claims on behalf of the orphans would be permitted based on the laws of a judge's impartiality or how this is related to the next *pasuk*, which deals with the poor.

The Talmud Yerushalmi (Sanhedrin 3:8) tells that Rav Huna used to speak up for one for whom he knew of a correct claim that would help him in *beit din* when the litigant himself did not know the claim. According to Rav Huna, the "mute" does not need to be a specific type of person, but anyone who happens not to know a true fact or claim that could help them. But is it permitted to help out anyone – rich, poor, or otherwise?

The Rambam (Sanhedrin 21:11) makes a careful compromise between the concerns. The case in which a *dayan* is allowed to suggest claims is when he recognizes a cogent claim for a party who seems to know it but has difficulty articulating it because of his emotions or because of a weak intellect. He instructs to get the litigant started in expressing the claim and, importantly, to be very careful about when to do this, so that "he should not be like a lawyer." This is in line with the Rambam's approach of weaving together words of *Chazal* from different places and finding the "golden mean." The *dayanim* need to find the balance between the obligation to be totally objective and impartial between litigants despite differences and yet not let one take advantage of the other's weaknesses.

We pray that our *beit din* network will always succeed in finding the right balance. This will help us be deserving of Hashem's making a sanctuary within which He can live among and within us (see Shemot 25:8).

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Those who fell in wars for our homeland. May Hashem avenge their blood!



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

by Rav Daniel Mann

## Different Drinks for Kiddush

**Question:** If I do not want to drink wine/grape juice, may I use other drinks for *Kiddush*?

**Answer:** The *gemara* (Pesachim 107a) prescribes wine to make *Kiddush* upon, and this generally applies across the board, for the two *Kiddushes* of the day, as well as *Havdala*. (We will not discuss other ceremonial occasions (e.g., *brit mila*, cup for *bentching*.) However, we see in a story in the *gemara* that in a case in which *shechar* (date liquor) is *chamar medina* (we will translate it as the major replacement for wine as a central drink), it may be used for *Havdala*. The *gemara* then continues to bring the opinion of Rav Huna that *shechar* should not be used for *Kiddush*. The Rosh (Pesachim 10:17) views the matter as a *machloket Rishonim* if the *gemara* posits that even *chamar medina* is invalid for *Kiddush* or whether we could be lenient as we are regarding *Havdala*.

The Shulchan Aruch (OC 272:9) cites different opinions on whether one can use *shechar* for *Kiddush*, but he and the Rama prefer the opinion (attributed to the Rosh) that at night one should not use other drinks as a substitute for wine, but should rather should use *challa* for *Kiddush*, whereas in the daytime, *shechar* is preferable to bread. The Rosh explains the distinction as follows. Bread is the main part of the meal, and *Kiddush* is closely dependent on the meal, which makes *challa* the best alternative to wine. However, in the daytime, the essential *Kiddush* is just the *beracha* with which one starts the meal (the *p'sukim* recited are just a preference – Mishna Berura 289:2), whereas at night there is a whole separate *beracha* of *Kiddush*. If, then, making *Kiddush* on *challa* would consist of saying *Hamotzi*, it would be the same as if he had a meal without *Kiddush*.

Regarding the night, then, it is very difficult to use any drink as an alternative to wine. One reason is that it is the main *Kiddush* of the day can be a *mitzva* from the Torah (although the element of the wine itself is only Rabbinic). Another is that the *Kiddush* at night is connected to the *pasuk* of “**Zachor** (remember) *et yom ...*” and in various places in *Tanach* we find a connection between *zechira* and wine (Eliya Rabba 272:14). This is in contrast to *Kiddush* in the day, which is not connected to *zechira*. Also, the *minhag* has developed to be much more lenient on this matter in the day (including in the regular practices of great rabbis – see Bach, OC 272:10) than at night.

One of the problems with *chamar medina* is that determining what counts as such is very elusive. The simplest reading of the *gemara* and the opinion of most *Rishonim* (see Beit Yosef, OC 272) is that it only applies when there is a lack of available wine. The Rambam (Shabbat 29:17) is somewhat more expansive about what is *chamar medina* (the main drink drunk as wine in that place), although on the other hand he rules that *chamar medina* may be used only for *Havdala* and not for *Kiddush*, apparently even during the day. The Taz (OC 272:6) posits that when wine is expensive (presumably, expensive is relative to the abilities of society and perhaps the person), it is permitted to make *Kiddush* on *chamar medina*.

There are few drinks in contemporary society (which likely differ from place to place) that are considered *chamar medina* according to a consensus of *poskim*. Whiskey (there is much discussion about how much one must drink) and beer have been on the “short list” for generations (see Shemirat Shabbat K'hilchata 53:9-10), and some have added natural fruit juices and coffee, with milk and soft drinks/soda being “lower on the totem pole” (see *ibid.*).

In our generation, with a wide variety of wine/grape juice available at cheap prices, the pendulum has rightly turned toward making *Kiddush* only on them. The best reasons to still use other drinks are when one ran out of them, dislikes them, or has a physical sensitivity to them. Another case is if one is very attached to a family *minhag* to use a different drink that is indeed still a notable, important drink.

**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 II

**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 a response to questions and comments of Zeidel to Rav Kook's letter (#89).]

I refer now to that which you were asked about what I wrote on the reason behind the prohibition of *sha'atnez*. [Rav Kook wrote that the use of wool for garments has a somewhat negative moral element in that man "steals" a living thing's hair to use for himself, which should be separated from the use of linen, which is made with man-planted vegetation, which contains no negative element.] You were asked: why then is it not forbidden to mix in fabrics of wool and cotton (which, like linen, is a man-raised fabric)?

In order to answer the question, I need to raise the general issue of inquiring into the reasons behind *mitzvot*. The practical *mitzvot* are like the form of the letters and words through which we are able to understand the concepts. If one word would be sufficient to understand the concept, is it possible to ask why there was not also another word that could express the same idea?

Certainly, the word that is engraved with the light of the world must be seen as clearly as can possibly be. In order to fully appreciate this, we must pursue knowledge of Hashem, and the highest level of thought must be etched in the image of the choicest of people. The idea [of not mixing the morally problematic with the morally fine] is properly connected to the concept of clothing, which is something that is worn for honor and grandeur, and not just for covering up that which is unseemly or protecting from the cold. The latter are related to the low and vulnerable side of man and also come about due to moral deterioration, which we believe will be redirected positively through the power of Torah. Therefore, linen, which comes from flax, was the most adorning garment in the ancient world, and thus appropriate for the unification between practice and the very lofty concept behind it. This is better than to connect the concept to lower-level garments, which are results of necessity and weakness.

Finally I will relate to what you wrote regarding Rashi's opinion, that Hashem remembered [at the time of Noach] the merit of the animals that did not ruin their moral standing [by interbreeding]. This merit is the foundation behind the fact that certain animals were chosen to survive and others were not. Because their moral tendencies were not subverted, they were fit to be involved in populating the world.

This has nothing to do with free choice, just as having the merit of coming from righteous antecedents has nothing to do with free choice. On the other hand, there is no basis for the claim that animals have no elements of free choice. Certainly, their free choice is much more limited than that of mankind. However, for every living thing, according to its level of advancement, there is also an element of choice that it has. This is also the foundation of its development in the future until the time about which it is said, "They will not do evil and will not destroy on My whole mountain of sanctity" (Yeshayahu 11:9).

In fact, the newest studies of the animal kingdom increasingly corroborate that which I have said, although they have actually been preceded by the Torah, by means of the prophets, at length. Indeed, the word of Hashem will remain true forever.

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

Nir Rephael ben Rachel Bracha  
Yisrael ben Rivka

Rivka Reena bat Gruna Natna  
Arye Yitzchak ben Geula Miriam  
Together with all *cholei* Yisrael

Neta bat Malka  
Meira bat Esther

# P'ninat Mishpat

## Effective Matchmaking?

(based on ruling 80111 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** In Nov. 2019, the plaintiff (=pl) turned to the defendant (=def), a matchmaking business, to find a match for her son. In the process, def's director (=ddef) convinced pl, a senior-citizen widow, to sign up for herself as well, and so she signed on two identical contracts. They describe def's system of building a base of options for clients but say that results, including numbers of introductions, cannot be promised. The non-refundable payment is 6,000 NIS for a year with an additional amount if a suggestion leads to marriage. The son received six suggestions, one of which resulted in a date, in the course of a few months. Pl received four suggestions, most of which she considered non-starters, before travelling abroad. Pl wants her money back from both contracts, especially the one for herself, as she was/is not interested in the service or dating and was tricked into it by ddef. Although pl signed the contracts, she was not aware and would not have agreed to its being non-refundable, which should be invalid because it is an unreasonable condition.

**Ruling:** In a previous ruling, we analyzed similar no-refund clauses. If taken literally, the business could do no work and still not have to refund, and this cannot be, even if the payment is described as a registration fee. If the service was reasonable, then even if the results were not great or the client's interest changed, then the clause is reasonable.

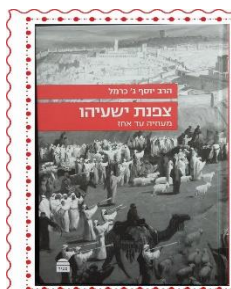
The unsubstantiated claims that pl, an articulate, retired professional did not read the one-page contract or could be pressured into signing such an agreement are not to be taken seriously. Such an approach would raise questions about virtually any agreement (see Dr. Shilem Warhaftig, Dinei Chozim, p. 16-)! Even if there were some form of "coercion," in many parallel cases this would not be grounds to nullify an agreement made with knowledge (see Bava Batra 47b).

We thus must take a look at the service provided in each case. Regarding the son, it appears that they got off to a relatively good start with ideas. Although the effort seemed to have waned with the beginning of the Corona pandemic, def agreed happily to continue their efforts. Therefore, pl is not entitled to a refund regarding her son, unless, in the coming nine months, def does not do a reasonable job.

Regarding suggestions for pl, the two sides do not differ very much regarding the facts, and it does not seem that they advanced any ideas that would have been feasible. Therefore, we allow pl to cancel her agreement, just that def can keep 2,000 NIS for the work they put into the matter until now. The rest, though, def must return.

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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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