



# HEMDAT YAMIM

חיים ימים

Parashat Hashavua

Shoftim, 2 Elul 5783

Harav Shaul Israeli zt"l  
Founder and President

## How Do We Get a “Righteous Judgment”?

Harav Yosef Carmel

Our *parasha* opens: “Judges and officers shall you place in all of your gateways, which Hashem has given you by your tribes, and they shall judge the nation a **righteous judgment** (*mishpat tzedek*)” (Devarim 16:18). According to Rashi, the whole *pasuk* is a commandment to the people – you must appoint judges who will be careful to render proper rulings. The Ibn Ezra understands the end of the *pasuk* as addressed to the appointed *dayanim*. The Ran (Derush 11) says that *mishpat tzedek* delineates the *dayanim*'s jurisdiction – normal justice. This is as opposed to punishment beyond the letter of the law, known as *migdar milta* (to cordon off dangerous matters), which are the prerogative of the executive branch, not the judicial.

As we like to do on *Parashat Shoftim*, we will look at something related to the operation of *batei din* – this time, understanding *mishpat tzedek*. To begin, we note that there are major differences between the rules of justice in the criminal and financial realms. A major rule in criminal Halacha is that one cannot incriminate himself (Yevamot 25b). The Rambam (Sanhedrin 18:6) tries to explain the rule: we are concerned a distressed person could use the courts to commit suicide. The Rambam concludes, though, that it is a divine decree, whose exact reason we cannot expect to understand.

In the financial realm, we find the opposite legal phenomenon: “A litigant's admission is like 100 witnesses” (Kiddushin 65b). Actually, it is better than 100 witnesses: if 100 say that one is exempt and he admits he is obligated, he must pay. Paradoxically, one can even admit by denying. If Reuven claims that Shimon owes him from a loan and Shimon denies borrowing, and witnesses say that Shimon borrowed but returned the money, we say that denying having borrowed implies admission of not returning, and Shimon must pay (Bava Batra 6a).

How the admission of a party becomes binding is the subject of a *machloket*. The Mahari ibn Lev (dayan in Salonika in the 16<sup>th</sup> century) is based on the ability of a person to “give a present.” We view his admission as a new obligation he accepts upon himself (in case the admission is not true). The K'tzot Hachoshen (34:4) cites him and disagrees, arguing that the Torah treats an admission as equivalent to the credibility of witnesses (some commentators try to combine the two apparently polar approaches).

Going back to the criminal realm, we point out that, as opposed to in Israeli law, we do not allow self-incrimination. We want to avoid relying on admission of guilt that could be the product of pressure. (Those systems that accept self-incrimination employ a reenactment of the crime, which generally cannot be accurate if the person did not commit the crime.)

What is the halacha regarding monetary admission that was extracted under pressure or through the litigant's confusion or mistake? The answer is that *beit din* has to make sure that such an admission is not be relied upon. This is an application of the idea of *mishpat tzedek*.

We pray that the Jewish and democratic State of Israel will solve more financial disputes based on the Jewish rules of justice, which have been respected for many generations. Our Eretz Hemdah-Gazit *beit din* network will continue to make this our highest priority.

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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

## An Ashkenazi Joining Sephardi *Selichot*

**Question:** My neighborhood's small Sephardi *beit kneset* has difficulty maintaining an (early-morning) Elul *Selichot minyan*. I (an Ashkenazi) have joined them a few times during Elul and found it uplifting, but someone claimed that I cannot count for a *minyan* because according to my *minhag*, I am not obligated in *Selichot* then. Do I count toward the *minyan*, and is it a good idea to spend time and energy on it? May I continue with them after Ashkenazim start *Selichot*?

**Answer:** *Selichot* consist of supplications to Hashem to have mercy on us despite our shortcomings and are an aid to our regimen of *teshuva*. They are said at times when there is heightened need (e.g., on fast days over national tragedies and *Behab*, anticipating the need for *teshuva*) and/or heightened chance of success (during the days around the *Yamim Noraim* – see Rambam's (Teshuva 2:6) formulation about this period).

There do not appear to be sources indicating *Selichot* are ever an independent obligation, certainly not found in *Chazal* but not even as a formal, binding, post-Talmudic *minhag*. On fast days, it is a way of strengthening *Shemoneh Esref's* request for forgiveness –some even inserted it there (Shulchan Aruch, Orach Chayim 566:4). *Selichot* around the *Yamim Noraim* may be a more independent *tefilla* (see Batei Yosef 581:2, in the name of Rav Soloveitchik). Even so, it was not formally instituted as an extra *tefilla* like *Ne'ila*. Rather, it is a spiritual tool Hashem provided to use at our discretion (see Rosh Hashana 17b), which has developed a schedule over the centuries. All agree that from the beginning of Elul until Yom Kippur is a time for heightened spiritual steps. We start blowing shofar and reciting L'David Hashem Ori. The Ashkenazi *minhag* of having at least 10 days of *Selichot* beginning slightly before Rosh Hashana (this is tellingly fluid) is the same basic *minhag* as the Sephardi one that begins earlier. Therefore, there is no issue of your not being obligated. On the one hand, no one is **obligated** (see Yechaveh Da'at III:44 on when Sephardim do not have to do Elul *Selichot*), and everyone is strongly recommended to take part when appropriate.

Note also that while consisting of different texts, Ashkenazim and Sephardim share the structure and critical parts of *Selichot*. There is *Ashrei* and *Chatzi Kaddish*, then many supplications, separated by the *13 Middot*, then there is a *viduy*, and final supplications; we finish with *Kaddish*. The parts that require a *minyan* (*devarim shebekdusha*), *Kaddish* and the *13 Middot*, do not need ten people to recite the identical text beforehand to precede it (see Igrot Moshe, OC IV:33; this column, Shemini 5777), but must just be united for the *devarim shebekdusha*. Therefore, even one who (quietly) recites Ashkenazi *piyutim* counts for the *minyan* if he joins the Sephardi *tzibbur* for the *13 Middot*.

We applaud your joining your neighbors for a few reasons. First, you help people “use a powerful tool,” as *Selichot's* *devarim shebekedusha* parts must have a *minyan*, and everything is accepted better with a *minyan* (see Rosh Hashana 18a). Also, while Ashkenazim start *Selichot* later in Elul, you receive spiritual benefits for the early ones (we cannot evaluate any price you might pay). Learning new, beautiful liturgy is also a positive experience. Finally, although there are many “bridges” between Ashkenazi and Sephardi communities, more *achdut* experiences are always welcome, especially at times when we need *z'chuyot*.

Do things change when Ashkenazi *Selichot* have begun? Their difficulty in finding a *minyan* is a crucial factor, which can outweigh the modest advantages of keeping one's own *nusach hatefilla* (see Igrot Moshe *ibid.*). It is possible but not required (a matter of taste and circumstances) for you to recite **some** Ashkenazi *piyutim* in between the *13 Middot*. It is particularly appropriate to *daven* with them if *yirat shamayim* concerns so dictate (*ibid.*), although if it insults one's natural community, that is also a serious factor.

### “Behind the Scenes” Zoom shiur

Eretz Hemdah is offering the readership to join in [Rabbi Mann's weekly Zoom sessions](#), analyzing with him the sources and thought process behind past and future responses. Email us at [info@erezhemdah.org](mailto:info@erezhemdah.org) to sign up (free) or for more information on joining the group.

**Do not hesitate to ask any question about Jewish life, Jewish tradition or Jewish law.**

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# Igrot HaRe'aya - Letters of Rav Kook

## Appeal to Buy from Religious Winery – #160 – part III

**Date and Place:** Yafo, 5668 (probably still 1907)

**Recipient:** Rabbis in the Diaspora

**Body:** [The first parts discussed weakening Diaspora support for the agricultural produce of Eretz Yisrael due to disappointment with the secularism of many of those involved.]

Everything has a time. It is Hashem's plan to reveal an opening of hope in our days. There is a double light of salvation – spiritual and material – for Hashem's nation living in the Holy Land and settling it. Hashem has seen His nation's torment and has had mercy on its Land. He has returned the lost grandeur and honor to the new resettlement of the Land (i.e., the religious element of the agricultural sector is strengthening).


Recently there was a meeting of righteous people in the city of our strength, the holy city of Yerushalayim, may it be built. It was attended by the greatest scholars in Israel, the righteous and the brilliant, and also philanthropists who are full of the light of Torah and pure fear of Hashem. They devised a plan to "raise a flag in the name of Hashem" to elevate the status of the New Yishuv, instilling in it a life of the sanctity of complete belief in Hashem in purity, with a holy flame from the light of Hashem and His Torah. As soon as they began the project, Hashem already intervened on their behalf. Now we can all see the way to build our Desired Land is with the grandeur of sanctity, the light of Hashem's Torah, and belief in Him. Thank G-d, they are building successfully.

The great, holy organization has already built and founded religious schools in a few settlements, with a reliable spirit of Hashem, with the light of the Torah of truth and fear of Hashem. Things are brightening. However, the path is still long. This organization, Shomrei Torah, should be crowned with excellent financial resources and honor so it can raise the honor of the stature of Torah and fear of Hashem on holy soil. This will return to the New Yishuv the light of its honor in the hearts of all our brethren who constitute the entire Nation of Hashem. The affinity toward the Yishuv will increase the holy connection and concrete steps to further the commercial activities relating to the holy soil and all elements connected to expanding the Jewish community of the Holy Land from year to year. Hashem has already prepared the holy organization and is happy with its actions. They have bought properties, nice gardens and orchards that produce fruits, such as oranges and almonds. They also had the pleasant opportunity to obtain a beautiful vineyard in Rechovot, with an excellent winepress to make wine and liqueur with the most complete *kashrut* certification with the light and fervor of the sanctity of truth. This is the proper way for righteous people to build the Desired Land through truth.

Therefore, we look to Hashem to bestow His pleasantness upon us, so that influential people in Hashem's nation will return to loving the sanctity of the new development of the Desired Land, which increasingly gives the light of Torah and reliable sanctity. May Hashem strengthen the builders and increase their abilities to serve that which is holy to increase the Holy Land's settlement and building. We see Hashem's hand working to help us take root in a way of sanctity of truth, as befits the Land in which Hashem always takes interest.

We hope that the great Torah leaders and the nation's generous people will stand behind us with all of their hearts to raise the stature of the holy organization. They can do this by buying the fine wine, reminiscent of the wine of Lebanon (see Hoshea 14:8), which whitens the sins of Israel with the merit of the sanctity of *Eretz Yisrael's* Torah and the foundation of its settlement with the sanctity of Hashem, whose great Name appears on His nation and Land.

May He Who chooses the Desired Land raise a banner to and amongst the nations, and gather Israel's dispersion from the four corners of the world, so that His flock will graze in Gilad, as in days past. May He quickly bring us His light and salvation when the redeemer comes to Zion, quickly in our days. I sign as one who is tied to hope for Zion and those who care about her, who enjoys the aura of the Land's grandeur and anguishes over its destruction, looking forward to its light and salvation with Hashem's spirit on His nation and Land.



**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.

**Buy Now**

# P'ninat Mishpat

## Rights of a Yishuv on Peripheral Land – part II

(based on ruling 80083 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** The plaintiff (=pl) is a *yishuv* in *Yehuda/Shomron*. The defendant (=def) planted an orchard on unused land outside the *yishuv* without permission from anyone, which has been the subject of litigation for years. When pl wanted to build an access road for the *yishuv* through the orchard, a *beit din* ruled: def must acknowledge that he does not own the land and allow pl to build as needed; pl will reimburse def for taking land def has been cultivating. The sides signed an agreement based on this ruling. It includes provisions for compensation for def but requires him to receive permission if he wants to expand the orchard. A later agreement dealt with def's erecting structures on the land and allowed pl to build housing on the land in return for compensation. Years later, pl decided to levy taxes and security charges on def and other businesses in the *yishuv* and its periphery, claiming it is unfair for businesses to benefit while only residents pay. This would cost def tens of thousands of NIS a year. Pl now demands payment retroactively for the years that def refused to pay. Pl also demands part of the profits from the sale of part of def's operations. Def claims that pl cannot demand taxes on def's orchard because the land is outside pl's jurisdiction. Also, standard practice is for *yishuvim* to not charge farmers who cultivate the land around them, as it adds staying power to and serves as a security buffer for the *yishuv*. It is also not right to change the rules years after def is on the land.

**Ruling:** [Last time we saw that since pl does not own the peripheral land in question, they cannot demand rent or taxes from businesses.]

Because pl does not own the land and did not plant the orchard, it is not entitled to any profit from proceeds from the sale of the orchard.

Does def have to pay for security pl supplies? An expert hired by *beit din* identified valuable elements of security (fence, patrol, electrical systems) that relate to the area of the orchard. In a few places in the *gemara* (see Bava Batra 4b), there is a concept of *neheneh* – one has to pay for benefit he received from another even though there was no agreement on the matter. One example is that when Reuven builds a fence around his property in a way that also fences in Shimon's property, Shimon has to pay for the benefit he receives from that fence (Shulchan Aruch, Choshen Mishpat 158:6). In the uncertain security situation in that region, security steps are a necessity for def. This is certainly so when the fence had to be longer than otherwise necessary because of the location of the neighbor's property (see Bava Kama 20b). The recipient has to bring proof of a claim that it was provided as a present (Rama, CM 264:4).

If one took steps to protect his resources and those of his friend, the friend has to pay according to the benefit (ibid.). The *Netivot Hamishpat* (264:1) says that it depends on whether the friend's protection was part of the plan or happened without thought. In this case, steps taken show that the security was also for the benefit of def and others in similar situations.

The *gemara* (Bava Batra 7b) also rules that a community can force members of the community to take part in the costs of security. How to divide the costs, per head or according to resources that need protection, depends on whether the danger is to lives or only of theft/damage. Another version within the *gemara* is that it depends on one's proximity to the city wall. There is a question whether payment according to resources is because of ability to pay or due to the amount of benefit one receives (Chazon Ish, Bava Batra 4:7). In this case, both dangers exist, and def has significant property to be protected; he is also particularly close to the fence. Therefore, pl can levy reasonable security fees on def even if def does not live on pl's property.

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Ori Leah bat Chaya Temima

Arye Yitzchak ben Geula Miriam  
Yerachmiel ben Zlotta Rivka

Neta bat Malka  
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