

לעילוי נשמת
מרת עקא עדנה
צפורה ע"ה וסרטל
בת משה מנחם הלוי ז"ל



על דשא

AL EI DESHE

Weekly Torah Insights and inspiration on the Parsha from the Rosh Yeshiva Shlit"a of Gur

Ikar and Tafel: When Priorities Become Distorted

גלתה יהודה מעני ומרב עבדה היא ושבבה בגוים
לא מצאה מנוח.

Yehudah went into exile because of affliction and great servitude; she dwelled among the nations but found no rest. (Eichah 1:3)

All too often, people invest in peripheral stringencies or symbolic practices while neglecting the foundations of avodas Hashem. We must direct our efforts where they matter most.

Rabbi Yosef di Segovia, one of the disciples of the Arizal, explains the *pasuk* as follows: גלתה יהודה — *Yehudah was exiled*. For what sins were they exiled? מעני ומרב עבדה — *Because of their spiritual poverty and their excessive stringencies*. What does this mean? Although they were lacking in basic observance of Torah and mitzvos, they busied themselves with stringencies and acts of piety not required

by *halachah*. This reflects a troubling phenomenon: The people devoted great effort to adopting personal stringencies yet failed to uphold the fundamental requirements that form the core of Torah life. This distortion of priorities led to their exile.

The *Birkei Yosef*¹ cites Rabbi Yosef di Shigovia's teaching as a practical halachic ruling in a discussion regarding a mixture containing sesame seeds of gentile origin, which is exempt from *maaser* (tithing). He writes: "While adopting extra measures of piety (*middas chassidus*) and being stringent in one's own home is praiseworthy, it is even more important to first ensure that one is meticulous in the more serious fundamental obligations. Otherwise, he risks being included among those described as מעני ומרב עבדה — *spiritually impoverished yet observing excessive stringencies*."

The Mashgiach, Rabbi Gedaliah Eisner, once noticed a young, newly married man who had taken upon himself the stringency of not carrying on Shabbos within the *eiruv*. The Mashgiach said to him, "Every *kabbalah* (personal commitment) is meaningful, and it is certainly praiseworthy to show care for the sanctity and laws of Shabbos.

Must Beis Din Judge Against Its Will? The Question of the Mahari Ben Lev

ואצוה את שפטיכם בעת ההוא לאמר שמע בין אחיכם ושפטתם צדק בין איש ובין אחיו ובין גרו.

And I commanded your judges at that time, saying, "Hear [disputes] between your brothers and judge righteously between a man and his brother and the stranger with him." (Devarim 1:16)

Rashi (*Kesubos* 110b) derives from this *pasuk* a positive mitzvah obligating judges to render judgment between one person and another.

In *Responsa Mahari Ben Lev*,² he discusses whether a court can be compelled to judge against its will. There are two issues under consideration: First, must a court accept valid testimony when presented, or can it choose to reject it? And second, can the judges refuse to serve in this case, or are they obligated to act as judges?

Rabbi Shlomo Eiger³ offers a proof to resolve the doubt raised by the Mahari Ben Lev. He cites *Tosafos* (*Makkos* 6a), who asks: How can anyone ever be executed, if the relatives of the accused can join the valid witnesses and invalidate the entire testimony based on the rule that if one of the witnesses are found to be a relative, all the witnesses are invalid? If *beis din* is not forced to

² Vol. 3, *siman* 1

³ *Responsa*, vol. 2, *kesavim*, *siman* 52; *Sefer Hai'karim*, *ikar a'alem*, *anaf* 4; and hinted to in the margins of the *Maharsha* on *Makkos* 6a

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But sometimes, a person's relationship with Hashem resembles a negotiation — he offers something in order to feel entitled to something else. A person may feel that his *avodah* is lacking, and to make up for that, he takes on a stringency. He tells Hashem, '*Ribbono shel Olam*, I'll give You this, I won't carry on Shabbos, but in return, I'll allow myself the pleasures of this world.' In such a case, the *chumrah* is not sincere, but an effort to silence his conscience and allow himself worldly pleasures."

This was the path of the early Chassidim: They constantly examined their actions, distinguishing between obligation and stringency. They welcomed stringency only when it stemmed from sincere *yiras Shamayim*.

For example, there are those who promote that all of *Klal Yisrael* should wear *techeiles* in their *tzitzis*. Certainly, it is a meaningful mitzvah, and every Jew should want to fulfill it. However, the great Torah leaders of previous generations did not accept this practice, neither in the time of the holy Radzyner Rebbe, who claimed to have rediscovered *techeiles*, nor in our generation.

I was once asked a question from overseas about a young man eager to wear *techeiles*, even though it was not the practice of his family or community. They asked what guidance should be given. I answered simply:

"The Torah says in the *parashah* of *tzitzis* (*Bamidbar* 15:39), *And you shall remember all the commandments of Hashem and perform them, and you shall not stray after your heart and after your eyes*. If the young man accepts upon himself that whenever he fails to guard his eyes properly, the next day he will wear his *tallis katan*

without *techeiles*, then his choice has value. In this way, *techeiles* transforms from a mere *chumrah* into a tool for spiritual growth, reminding him of the true purpose of the mitzvah."

The point is not to criticize those who wear *techeiles*, as there is certainly nothing wrong with doing so. But it serves as an example of the need to distinguish between *ikar* and *tafel*, between foundations and extras. All too often, people invest in peripheral stringencies or symbolic practices while neglecting the foundations of *avodas Hashem*. We must direct our efforts where they matter most.

The idea that exile results from distorted priorities is clearly expressed in the words of Chazal. The tribes of Gad and Reuven, who were wealthy and owned many flocks, chose to settle outside of Eretz Yisrael. Rashi (*Bamidbar* 32:16) notes that they prioritized their animals over their children. This is seen in their words: *We will build pens for our sheep here and cities for our children*. Moshe rebuked them: לא כן עשו את העיקר עיקר ואת הטפל טפל — *That is not the proper way. Make the primary primary and the secondary secondary*. Put first things first and treat the secondary as secondary.

The holy Rebbe Yechezkel of Kozhnitz points out that Moshe was not merely correcting the order of their words. If it were only a matter of phrasing, he would have said, "Mention the primary before the secondary." Instead, he emphasized a deeper point: *Make the primary primary and the secondary secondary*. Why? The *Chovos Halevavos* teaches, "The tongue is the pen of the heart." What a person says reveals what he truly thinks and feels. The words Reuven and Gad used exposed their distorted values — that

their possessions were more important than their children and spiritual mission. For this inner distortion, says the Midrash, they were punished and were the first to go into exile.

In contemplating our longing for the *Geulah*, especially during these days, we must pause and ask ourselves: What are we truly yearning for? Are we focused on what is truly important, or are we distracted by the extras? Are we seeking closeness to Hashem, or merely an easier life?

The Rebbe Reb Zusha of Anipoli once stayed in the home of a simple villager. In the middle of the night, Reb Zusha wept as he recited *Tikkun Chatzos*, mourning the exile of the *Shechinah*. The villager asked him why he was crying, and Reb Zusha explained the pain of the *galus*, the loss of the Beis Hamikdash, and the promise of Mashiach who will return us to Eretz Yisrael.

The villager replied, "But we already have our *kretschme* (inn) and animals, why would we want to leave? Instead of us going to Eretz Yisrael, it would be better if Mashiach takes all the non-Jews who trouble us there, and we'll stay here in peace."

Sadly, sometimes our prayers for redemption are not about closeness to Hashem, but stem from our desire for comfort. We want the hardships to be removed while everything else stays the same. In the darkness of exile, we may find that even our desire to draw close to Hashem is hidden. We must *daven* for the revelation of our true inner desire, and that we come to understand the essence of the Jewish soul — what it longs for, what it was created to accomplish, and the sacred mission for which it was sent into this world.

סעודה שלישית, פרשת דברים, תשפ"ג, מאמר ב')

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accept testimony against their will, *Tosafos* would not have a question, as *beis din* could simply refuse to accept the testimony of the relative. With this question, *Tosafos* seems to assume that the court is obligated to accept the testimony of the relative, even if it is presented against the court's will.

According to Rabbi Shlomo Eiger, if *beis din* must accept testimony, that requirement would extend even to invalid testimony from a relative or disqualified individual.

In contrast, the *Yeshuos Yisrael*⁴ and *Teshuvos Yeshuos Malcho*⁵ take issue with Rabbi Shlomo Eiger's conclusion. They maintain that *beis din* is only obligated to accept testimony from qualified witnesses whose statements can serve as the basis for a halachic ruling. In the case of invalid witnesses, such as relatives or those halachically disqualified, *beis din* has no obligation to accept their testimony, even if it would have the effect of invalidating the valid witnesses they accompany.

As for why *Tosafos* did not simply answer that *beis din* could reject the relative's testimony, these commentaries explain that *Tosafos*'s question pertains to a case where *beis din* is unaware of the witness's disqualification. Since the court is unaware of his status as invalid, they do not refuse his testimony, allowing it to join with the testimony of the valid witnesses and disqualify the entire group.

The *Yeshuos Yisrael*'s position that the testimony of invalid witnesses is not accepted against the court's will aligns with his understanding of the Mahari Ben Lev's

question, namely, whether *beis din* is forced to function as a court against their will (see *Yeshuos Yisrael, Choshen Mishpat* 3:2, 28:9).

However, when it comes to the separate question of whether *beis din* may refuse to accept such individuals as witnesses, one could argue that discretion applies specifically to valid witnesses, whose testimony forms the basis for a halachic ruling. In contrast, with invalid witnesses, whose statements cannot be legally regarded as testimony and whose only role is to disqualify other witnesses through association, the concept of acceptance does not apply. Since their words carry no legal weight as testimony, *beis din* merely hears them without any formal act of acceptance.

The other halachic requirements for accepting testimony, such as hearing it during the day and before three judges, apply even to invalid witnesses, and without these conditions their testimony cannot disqualify others. This raises a question: Why, when it comes to *beis din*'s discretion, do we treat the testimony of invalid witnesses as having no formal status and say the court merely listens without accepting it, while in other respects it is treated as if it requires formal acceptance?

The answer is that the external procedures and requirements of *beis din* remain the same. However, the actual halachic concept of *beis din* accepting testimony applies only to valid witnesses. Therefore, the statement of invalid witness is effective even against the consent of *beis din*.

The *Yeshuos Yisrael*⁶ maintains that the Torah disqualified relatives from testifying

because they are viewed as inherently untrustworthy. According to this view, the idea that their words are not formally accepted by *beis din* follows logically, since their statements are treated as untrue and halachically meaningless. Yet even according to the dissenting opinions, such as the *Beis Meir*⁷ and the *Chiddushei Harim*⁸ who hold that the relative is not suspected of lying and is disqualified purely by Torah decree, the conclusion remains the same. Despite the credibility of the witness, the Torah renders his words in court void of halachic standing. Therefore, there is no concept of formal acceptance of his testimony, and thus, there is no real acceptance of his testimony, and it is not subject to the discretion of the court.

The *Yeshuos Yisrael* suggests, in explaining *Tosafos*, that when *beis din* unknowingly accepts the testimony of a disqualified witness, the entire group is thereby invalidated. This interpretation, however, appears difficult in light of his own assertion that the testimony of invalid witnesses is only effective when *beis din* knowingly and willingly accepts it. One could therefore argue that in such a case, *beis din* never intended to accept the disqualified witness, and thus were not functioning as a court with respect to him.

It must therefore be explained that since the witnesses are inherently disqualified and their testimony does not constitute halachically accepted evidence, there is no concept of retroactively annulling *beis din*'s decision to hear them as judges.

בנאות דשא, פרשת דברים, מילי דאורייתא, שנת תשפ"ג

⁴ *Siman* 36

⁵ *Even Ha'ezer* 38

⁶ 46:18

⁷ *Even Ha'ezer* 17:9

⁸ *Choshen Mishpat* 33:5

Between Brothers

ואצוה את שפטיכם בעת ההוא לאמר שמע בין אחיכם ושמעו צדק בין איש ובין אחיו ובין גרו.

And I commanded your judges at that time, saying, "Hear [disputes] between your brothers and judge righteously between a man and his brother and the stranger with him."
(Devarim 1:16)

The Sfas Emes explains that this *pasuk* hints that a judge must not be haughty in rendering judgment. Although judging is a mitzvah, the judge should not see himself as superior due to his role. His approach should be marked by humility and a sense of reluctance to sit in judgment over others. He should feel that, although he would prefer to avoid judging, once others bring their case before him, he has no choice but to listen and judge, as the Torah issued a command to compel him to overcome his reluctance. Therefore, the *pasuk* states, *Hear between your brothers.*

On a deeper level, the *pasuk* is not simply commanding the judge to hear both parties. Instead, *hear between your brothers* suggests that the judge should encourage each side to listen and understand the other's perspective.

Whether the dispute is before a court or in daily life, the obligation is the same: Each party must be willing to listen and understand the other. The Torah's language is deliberate; it does not say "between the litigants" but "between your brothers," reminding us that in every disagreement we must remember that the one opposing us is our brother. Even if you are correct, you must still act with respect and never forget that we are all brothers. As the Rebbe of Belz once said, "A Jew is recognized by how he behaves when he is in the right."

The hearing the Torah requires between brothers is not merely external listening, but a sincere effort to understand the other person. In fact, the Gemara often uses the term "hearing" to mean "understanding," as in the common phrase: לא שמיעא לי, כלומר: *I do not hear, meaning I do not agree.*

This lesson is especially meaningful during *Bein Hametzarim*, the Three Weeks of mourning. Fittingly, each year the words *hear between your brothers* is read on the Shabbos before Tishah B'Av, reminding us to keep our hearts open — to hear, to understand, and to draw close to every Jew.

A person should always seek closeness with others. The fact that another behaves coldly and draws back is not a license to retreat even further. Chazal only said such a thing in reference to Torah: "If you forsake Me for a day, I will forsake you for two" (Rashi to *Devarim* 11:13). But with friends,

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the opposite is true. One must make the effort to bridge the gap, to come closer, to understand, and to judge others favorably.

In that merit, may it be Hashem's will that He too will judge us favorably.

(סעודה שלישית, פרשת דברים, תשפ"ג, מאמר ג')