

THE BAIS HAVAAD

HALACHA JOURNAL

Family, Business, and Jewish Life through the Prism of Halacha

VOLUME 5781 • ISSUE XXXIII • PARSHAS NO'ACH



SEEKING JUSTICE: HOW TO FILL A SUPREME COURT VACANCY

What qualities are desirable in a judge?

Adapted from the writings of Dayan Yitzhak Grossman

The drama of Judge Amy Coney Barrett's confirmation hearings for the Supreme Court associate justice seat of the late Ruth Bader Ginsburg is currently playing out in Washington. A superstar on the right, she is a staunch religious, judicial, and (presumably) political conservative. In this article, we consider some of the qualifications the Torah establishes for judges in its narrative of Yisro's advice to Moshe.¹

PARASHAS YISRO

The Torah relates that Yisro advised Moshe to seek out and appoint as judges "men of accomplishment, G-d-fearing people, men of truth who despise money."² The commentaries

explain these several phrases in various ways.³

Rashi explains that these are four distinct qualities, including "men of accomplishment," i.e., wealthy ones, who will not be tempted to flatter or curry favor with litigants, and "people who despise money," i.e., men who will turn over on their own initiative money that is rightfully theirs but cannot be proven to be so, and would therefore be seized from them by the court.⁴

The Ramban explains that "men of accomplishment" is a general expression meaning men competent to serve as judges, particularly in a large society (or alternatively, energetic and vigorous men), and the remaining phrases are the individual qualifications that

¹ We do not consider here the most obvious halachic disqualification of Judge Coney Barrett to serve on a Bais Din, even were she a Jew: her gender.

² Shemos 18:21.

³ In addition to the sources cited in the article text, see Alshich ibid.

⁴ Rashi ibid., as explained by Ramban ibid.

A PUBLICATION OF THE
BAIS HAVAAD HALACHA CENTER

105 River Ave. #301, Lakewood, NJ 08701
1.888.485.VAAD (8223)
www.baishavaad.org
info@baishavaad.org

Lakewood • Midwest • Brooklyn • South Florida

לע"נ הרב יוסף ישראל
ב"ר משה גרוסמן זצ"ל

Dedicated in loving memory of
HaRav Yosef Grossman zt"l



Excerpted and adapted from a shiur by
Dayan Yosef Greenwald

PARSHAS NO'ACH

THE MAKINGS OF MARRIAGE

And the earth became corrupt before
G-d, and the earth became full of
robbery.

Bereishis 6:11

'Became corrupt' is an expression of
immorality and idolatry.

Rashi ibid.

In light of the violation of the standards of morality by the generation destroyed in the Flood as well as the lack of standards of modesty today, it behooves us to review the differences between a Jewish and non-Jewish marriage. According to the Rambam (*Ishus* 1:1), *b'nei No'ach* can meet in the marketplace and, simply through mutual consent, create a marital bond. The Rambam continues that following the giving of the Torah, a Jewish marriage, on the other hand, requires a tangible *kinyan* on the part of the husband, viewed by two witnesses, symbolizing a more serious commitment on the part of the parties that creates an existential bond between them.

The Ran (*Nedarim* 29) explains further that the husband alone performs the *kinyan* because the woman is essentially releasing herself ("*mafkeres atzmah*") to

(continued on page 2)

You Can Say That Again

Q Can I make havdalah for my wife if I have already fulfilled the mitzvah myself?

A It is questionable whether women are obligated to recite havdalah, which is why it is generally recommended for women to have a man recite havdalah for them rather than reciting it themselves (which they could do for kiddush if necessary). The problem is that if the man already fulfilled his havdalah obligation, perhaps he cannot recite the *brachos* again for his wife because she may not actually be obligated.

(continued on page 2)

Q&A from the
BAIS HAVAAD
HALACHA HOTLINE

1.888.485.VAAD(8223)
ask@baishavaad.org

(continued from page 1)

such competence comprises. Accordingly, when the Torah subsequently relates that “Moshe chose men of accomplishment,” it means that he indeed found fully qualified candidates.⁵

The Seforno, on the other hand, follows Rashi in understanding “men of accomplishment” to be a specific qualification, although he explains that quality differently, as “expert and assiduous at clarifying and getting to the truth of the matter and bringing it to its conclusion,” and he accordingly explains that Moshe was unable to find candidates possessing all the ideal qualifications, and was therefore forced to forgo the attribute of fear of G-d in order to secure investigative expertise, since competence is more important than piety.⁶

We shall soon see, however, that unlike the Ramban and the Seforno, Chazal apparently understand that Moshe was unable to find candidates possessing any of the qualifications enumerated in Parshas Yisro (with the possible exception of “G-d-fearing people”).

The Kli Yakar interprets “men of accomplishment” to mean those who are strong and will not be cowed by the powerful;⁸ “G-d-fearing people” to mean humble ones; “men of truth” to mean those capable of discerning truth from falsehood; and “people who despise money” to mean wealthy ones (since the poor are susceptible to bribery).⁹

The Netziv explains “men of truth” to mean those possessing *seichel hayashar* (a straight mind) capable of finding truth, “because there can be a person who fears G-d and seeks the truth, but is (still) unable to arrive at the truth.”¹⁰

PARSHAS DEVARIM

In Parshas Devarim, Moshe recapitulates that he sought¹¹ “distinguished men, wise,

5 Ramban ibid. Or Hachaim ibid. v. 21 explains the qualifications differently, but also maintains that Moshe ultimately did find fully-qualified candidates, since “we cannot say, chas v’shalom, that he could not find within Israel ‘G-d-fearing people, men of truth, etc.’”

6 Seforno ibid. v. 25.

7 See n. 18. The Mishneh Lamelech (Hilchos Sanhedrin 2:1) raises the question that this apparent position of Chazal is explicitly contradicted by the Torah’s statement here that Moshe did find “men of accomplishment,” and he has no resolution. Pri Ha’adamah (ibid. 2:7) offers an answer which I do not understand.

8 Ha’amek Davar ibid. v. 21 explains similarly.

9 Kli Yakar ibid. v. 21.

10 Ha’amek Davar ibid.

11 The Torah here does not mention Yisro’s involvement. See Sifri v. 15;

understanding, and well known to your tribes” and eventually obtained “distinguished men, wise and well known.”¹² The Midrash Rabbah explains that these are three further qualifications beyond the ones in Yisro—wise, understanding, and well known—for a total of seven qualifications, and the reason the Torah splits the list and does not enumerate them all together is to teach us that “if candidates possessing all seven are not found, we bring those possessing four; if those possessing four are not found, we bring those possessing three; and if those possessing three are not found, we bring those possessing one.”¹³ The Gemara notes that Moshe was indeed unable to find men of understanding,¹⁴ and the Sifri declares that Moshe was only able to find candidates possessing three of the seven qualifications: “distinguished men,” i.e. righteous ones, who were “wise” and “well known.”¹⁵

The Rambam, however, counts “wise” and “understanding” together as one qualification, and accordingly adds an additional qualification of humility. He explains “well known” to mean individuals generally popular due to their noble character and refined manner; and “men of accomplishment” to mean men meticulous in their observance of mitzvos with an accordingly high reputation, and additionally men who are stout hearted and able to save the oppressed from their oppressors.¹⁶

The Rambam writes that judges “need to possess” all seven of these qualifications. Some *poskim* maintain that this is merely *l’chatchilah*, but in practice, we appoint judges with as many of them as we can find (as per

Ramban v. 18; Gur Aryeh v. 15.

12 Devarim 1:13,15.

13 Devarim Rabbah 1:10.

14 Eruvin 100b.

15 Sifri ibid., cited by Rashi ibid. Since the Sifri is counting “distinguished men” as one of the qualifications, there would seem to be a total of eight, four in Yisro and four in Devarim. This basic question is raised by the Mishneh Lamelech ibid., who reaches no resolution. Some explain that “distinguished men,” i.e., righteous men, of Devarim is equivalent to “G-d-fearing people” of Yisro (Pri Ha’adamah and Lechem Yehudah, in his first approach to ibid. 2:7), and some suggest that the Sifri is equating “wise” and “understanding” (Lechem Yehudah in his second approach).

16 Hilchos Sanhedrin 2:7. The Tur C.M. siman 7 cites this Rambam, and the Shulchan Aruch ibid. se’if 11 codifies it in brief. The Rambam considers *yiras shamayim* and humility as two distinct qualifications, whereas the Kli Yakar cited above considers them one. The Acharonim struggle to reconcile the Rambam’s list with the Midrash Rabbah and Sifri: see Mizrahi al Hatorah Devarim ibid.; Lechem Mishneh ibid.

the midrashim cited above),¹⁷ while others assert that all seven are absolutely required, for at least one of the three judges hearing a case.¹⁸ Some explain that even according to the latter opinion, the absolute requirement is only enforced where candidates with the requisite qualifications are available, but all agree that if no such candidates are available, we appoint the most qualified ones that are available.¹⁹

17 Radvaz and Lechem Mishneh ibid.

18 Shu”t Mabitz chellek 1 siman 280 at the beginning and end of the responsum. Cf. Pri Ha’adamah ibid.

19 Birkei Yosef ibid. os 33. Cf. Halacha Pesukah ibid. pp. 136-39.

Q&A from the BAIS HAVAAD HALACHA HOTLINE

1.888.485.VAAD(8223)
ask@baishavaad.org

(continued from page 1)

However, the halachic bottom line is that women are indeed obligated, so you may recite havdalah for your wife in this case.



DAYAN YOSEF
GREENWALD

There is a concern, however, regarding the *bracha* of *borei me’orei ha’eish* on the *ner*. There is a discussion whether this *bracha* is a *birkas hanehenin* (a *bracha* recited before deriving benefit), like that recited on food, or a *birkas hashevach* (a *bracha* of praise), like that recited on seeing lightning. With regard to *birkas hanehenin*, one person cannot fulfill the obligation of another unless he derives benefit (e.g., by eating something) as well. In contrast, one may recite a *birkas hashevach* on behalf of another even when one does not have the obligation to recite it himself. Thus, if the *bracha* on the *ner* is considered a *birkas hanehenin*, you would not be able to recite it again for your wife, but if it is a *birkas hashevach*, you would. *Lema’aseh*, the prevalent custom is that a man can recite the *bracha* on the *ner* for a woman even after previously fulfilling the obligation himself.

(continued from page 1)



allow the man to make a *kinyan*.

Due to this bond, a halachic *m e c h a n i s m* known as *geirushin* is required to terminate

a Jewish marriage. A *ben No’ach* lacks this bond, and the Yerushalmi in Kidushin accordingly states that there is no notion of *geirushin* for *b’nei No’ach*. According to the Rambam, this means that the husband and wife can divorce simply by expressing mutual

consent, similar to the mechanism of their marriage. Rabeinu Dovid (quoted by the Ran to Sanhedrin 18b), though, argues that according to the Yerushalmi, there is no method by which the marriage of a *ben No’ach* can be dissolved.



Business
Halacha
Services



Bais Din
and Dispute
Resolution



Zichron
Gershon
Kollel for
Dayanus



Medical
Halacha
Center



Kehilla and
Bais Din
Primacy
Initiative



Halachic
Awareness
and
Education

Join us for low healthcare costs, confidential healthcare guidance
and the freedom to use your choice provider.

440.772.0700 • UnitedRefuah.org



United Refuah
HealthShare is
not an insurance
company and
does not offer
insurance.

Scan here to receive the weekly email version
of the Halacha Journal or sign up at
www.baishavaad.org/subscribe

Elevate your Inbox.

