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# HEMDAT YAMIM

## Parashat HaShavua

**B'haalotcha, 19 Sivan 5778**

**About the Kushite Woman**

Harav Yosef Carmel

The Torah states that Aharon and Miriam's negative speech about Moshe had to do with the *isha kushit* (simple translation being, the Kushite woman) that he took (Bamidbar 12:1-3). Several years ago, we discussed the opinions in *Chazal* that there was nothing derogatory about her being a Kushite, and actually to the contrary. However, there are some *Rishonim* who see in this matter a point of contention against Moshe and his wife, who left her father's home to follow Moshe into the desert.

Let us try to uncover the disagreement based on the adjacent Torah account. After broad segments of the population complained to Moshe, Moshe turned to Hashem with the request to return his mandate: "I am not able, by myself, to bear the entire nation" (Bamidbar 11:14). Hashem suggested a solution to the problem: gather seventy men to serve as leaders to lighten the load on Moshe Rabbeinu (ibid. 16-17). As the story unfolds, seventy people presented themselves and were filled with the spirit of Hashem. Of them, two (Eldad and Meidad) prophesied publicly in a manner that upset Yehoshua, although Moshe calmed him down (ibid. 26-29). What was the content of their prophecy? The *gemara* (Sanhedrin 17a) reports that it was: "Moshe will die, and Yehoshua will bring Israel into the Land."

This claim raises a chronological issue, as the decree on Moshe not entering the Land, happened later, when Moshe hit the stone to bring forth water for the people to drink rather than speak to it (Bamidbar 20:7-13). The idea behind what Moshe had done was that he had returned the nation to the period when they were not led by speech, but by physical miracles (see more in Tzofnat Yeshayahu, pp. 198-208).

The *gemara* (Megilla 18a) famously says: "*Mila b'sela, shtika b'trei*," which we normally take to mean, that a word is worth a *sela* (a certain weight of a precious metal), but silence is worth twice as much. However, the Gra applies these words differently – to our topic. Had Moshe said a word (*mila*) to the rock (*sela*), the two (Eldad and Meidad) would have remained quiet and not have reported that Moshe would not be entering the Land (as he would have, if not for that sin).

Let us continue along these homiletical lines and point out that Moshe's wife, Tzipora, was the first to perform "*mila b'sela*," as she circumcised their son with a rock (Shemot 4:26) and thereby saved Moshe's life. This allowed him to return to Egypt, liberate the people from there, and present them with the Torah. He merited being the trusted interlocutor between Hashem and the people, and his words are the most firmly believed even in comparison to all the other prophets. Indeed, although Moshe made a mistake by hitting the rock, it is still forbidden to argue with Moshe. This applies to the simple people within the nation, at his time and throughout all the ages, and even to the greatest of leaders, such as Miriam and Aharon.

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# Ask the Rabbi

by Rav Daniel Mann

## Answering Amen to a Beracha You “Do Not Believe in”

**Question:** If someone from Israel (who does not recite “*Baruch Hashem l’olam ...*” [=bHlo]) is abroad (where they do recite it), I understand that he does not recite it but does answer *amen* in deference to the *tzibbur’s minhag*. Considering that he views the *beracha* as not called for, isn’t it a *hefsek* between *birchot Kri’at Shema* and *Shemoneh Esrei*. Similarly, should one who does not put on *tefillin* on *Chol Hamo’ed* say *amen* to the *beracha* of one who is doing so?

**Answer:** We can extend your excellent set of questions, based on your assumptions. Perhaps one should recite *bHlo* with the *tzibbur* even though he does not usually do so. If it is not justified to say *bHlo*, why isn’t responding *amen* a forbidden *amen l’vatala* (see Shulchan Aruch, Orach Chayim 215:4), as you asked regarding *tefillin*, irrespective of *hefsek*?

Let us first look at the basis of *bHlo*. This set of 18 *p’sukim*, which are completed with a *beracha*, were instituted post-Talmudically because people were often afraid to stay for *Ma’ariv* at night. The 18 *p’sukim* were a reminder/replacement of sorts for *Shemoneh Esrei* they were missing; *Kaddish* was instituted to follow these *p’sukim* (Tur, OC 236). The question is whether this institution continued when people went back to staying for *Ma’ariv*, and there are indeed different opinions (see Shulchan Aruch and Rama, OC 236:2). Most Ashkenazim in *chutz la’aretz* recite it, as the Rama implies, whereas the universal practice in *Eretz Yisrael* is not to do so, likely due to the opinions of the Gra, the Shulchan Aruch Harav, and the Arizal (see Kaf Hachayim, OC 236:14).

In general, one whose place’s *minhag* is not to recite a certain *beracha* and is *davening* in a place where they recite it (e.g., Hallel in *shul* on *Seder* night) does not recite the *beracha* unless he is the *chazan* (see Igrot Moshe, OC II:94). *bHlo* is different in a couple of ways (see Mishneh Halachot V:29). On the one hand, the importance of reciting it is relatively low, and not all agree that it is necessary even abroad. On the other hand, all agree that it was once deemed proper, and many *poskim* who do not say it, do not consider it pointless, just insufficiently justified. As a reflection of these (and perhaps other) factors, the consensus is that one who is just visiting *chutz la’aretz* does not say it (assuming people will not notice his divergence (see Tefilla K’hilchata 19:(49)), whereas a *chutz la’aretz* person does not say it while in Israel, at least if *davening* with a *minyan* (Mishneh Halachot *ibid.*).

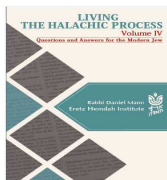
Regarding *amen*, the question is a little harder. While it is forbidden to answer *amen* to a *beracha l’vatala*, many *poskim* limit what is considered *l’vatala* in this regard. The *Be’ur Halacha* says that one is allowed to answer *amen* to a *beracha*, which according to the listener’s *p’sak*, is not called for. When someone praises Hashem appropriately, based on a legitimate opinion, it is fit to receive an *amen* (Pri Megadim, EA 215:1). Answering, though, is optional because the obligation to answer *amen* does not extend to a case in which it is only a doubt if the *beracha* and its *amen* are called for. The Har Tzvi (OCI:38) goes further, requiring to answer *amen*. Yabia Omer (IX, 38), regarding a Sephardi answering *amen* to a *beracha* on Hallel on Rosh Chodesh or to an Ashkenazi woman’s *beracha* on a *mitzva* in which she is exempt, disagrees and rules not to answer. Your question about *tefillin* on *Chol Hamo’ed* (in *chutz la’aretz*, where there are two legitimate opinions as to whether to put them on) would seem to depend on this question, and the majority opinion is that he may answer *amen*.

Regarding *bHlo*, it would seem that, indeed, because of the problem of *hefsek*, it is better not to voluntarily answer *amen*. On the one hand, a *hefsek* between *birchot Kri’at Shema* and *Shemoneh Esrei* is less severe at night (see applications in Shulchan Aruch, OC 236:2; Mishna Berura 236:7 and elsewhere). However, since answering *amen* to *bHlo* is almost definitely not a requirement, it is better not say it (see similar idea in B’tzel Hachochma IV:25).

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

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# Ein Ayah

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

## The Virtues of the Right and Even the Left

(condensed from Ein Ayah, Shabbat 6:58)

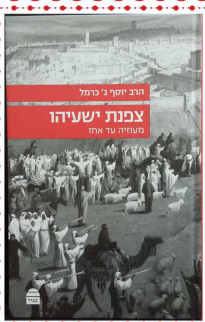
**Gemara:** That which it says, “Long life in its (the Torah’s) right; in its left, riches and honor” (Mishlei 3:16) ... Those who go to the right (go about Torah the correct way) have long life and certainly they have riches and honor. Those who go to the left have riches and honor but not long life.

**Ein Ayah:** Torah is connected to lofty directions in a person’s life that give him a clear outlook on life and a grand type of sanctity. In this realm, the more a person elevates his soul to the highest spiritual light, the more the Torah makes the essence of his life greater. It glorifies his desire for life so that he is able to carry out the most lofty and important goals, which burst forth from the proper heart with the strength of a lofty soul. Indeed, the heavenly light always shines on one who studies Torah for the proper reasons. This is what is meant by one who turns to the right side and the depths of the related currents of life.

The greater that certain ideas are and the more power and skill they require to be brought to fruition to improve the world, the more Divine Assistance the person who wants to provide them will receive. Specifically, he will have a longer life, during which he will have the strength needed to act. Additionally, he will be provided with the means to carry out the plans he wants to implement, especially riches and honor.

However, such special people will not be expected or able to bring about the desired changes on their own, since they want to impact on the application of the Torah in a broad manner. Therefore, other good people who are involved in Torah, even though they are not on the same level of purity of intent and characteristics, need to be involved. When there is a broader base of involvement in Torah, the higher level of spirituality is promoted, and those who are capable of the highest level will attain it.

In order for this to be successful, those good but imperfect people who “go to the left,” while not being fit for the full blessing in which their spirituality attains for them long life, will at least be deserving of riches and honor. These are means through which to carry out good spiritual matters on the broad general base. For those “who go to the right,” not only will they be privy to the material blessing to help them carry out their goals, but they will also receive the increased vitality related to long life so that they will have enough power to elevate and sanctify life. This is the main goal of those who go to the right, i.e., who study Torah for the most noble reasons and look forward to light. They will be deserving of long life and all the more certainly, riches and honor.



### 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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## Payment to a Lawyer when Agreement is in Dispute - part I

(based on ruling 69031 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** The plaintiff (=p) is a law office that provided extensive legal services to the defendant (=def). P/ sent an agreement to def, which states that the payment rate per hour of various lawyers would be as accepted in the firm, with a 25% discount; p/ was to bill def on a quarterly basis. Def wrote back that because he wants success, he demands that Adv. N will supervise all the work done. P/ sent def a bill for 72,978 shekels for a period of four months. Then, a meeting took place between def and N, about which each had different recollections. Def claims that it was agreed that he would pay 50,000 shekels immediately and another 50,000 shekels if he would win the litigation (he lost). N denies that he agreed to any change in the payments. Subsequently, p/ continued to work, and they sent, 8 months later, a bill for 207,189 shekels. Def claims that the agreement was not valid because he was not told the rate of each lawyer, he was out of the country when it was claimed he signed it, and it was changed afterward. Additionally, because p/ did not bill monthly and because N did not handle everything, there was a breach of contract.

**Ruling:** First, *beit din's* investigation into the matter reveals that def was in the country on the day the agreement was signed. In any case, there is no question that someone who was authorized by him signed it, so that the agreement did serve as the basis for p/s work until something changed.

P/ claimed that advocate S told def the price for each lawyer, which def denies. Actually, the agreement is binding in any case, as the agreement refers to a pricing table, and had def asked to see it, there is no reason to think he would not have received it. If he decided not to ask, he accepted the rates, which are within the norm of large firms.

P/s claim that he only has to pay for a successful outcome is not supported by the documentation. P/s letter states that because he wants success, he wants N involved, but that implies that ultimate success in the case is not a condition. Regarding the claim that N had to work the case, in fact N was involved and supervised, which is all the agreement requires. All indications are that this case was handled like those in many large law firms - a senior lawyer oversees a staff of younger lawyers, who do most of the "leg-work." Therefore, the level of N's involvement is not grounds for breach of contract.

Regarding the claim that the engagement terms were changed, the burden of proof is on def that a change was made. The witnesses he brought were all based on hearsay, i.e., they reported how def reacted to the meeting, not what N had said. The fact that p/ did not bill until later does "raise eyebrows," and we will discuss consequences of that below [next week's issue]. However, this does not prove that there was a new agreement that there was no longer what to charge until the case was over and won.

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