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# HEMDAT YAMIM

## Parashat HaShavua

Ki Tavo, 21 Elul 5778

### Imperfect Vision

Harav Yosef Carmel

We will continue with what we discussed last week – why Hashem deemed David's oldest brother unfit for kingship. We saw how Shmuel was criticized for thinking that he knew that Eliav was the proper candidate when indeed he had seen only superficially (on some level).

The Targum states that Shmuel saw that Eliav was indeed qualified for the position. Rashi follows this approach and just adds that Shmuel did not declare out loud that this was his opinion but just that he thought so in his heart. According to Rashi, why then was Eliav not chosen? (Last week, we suggested that Eliav was too aware of his own good qualities.). Rashi answers that Eliav had too great a temper, as we see when he was angered by David for his reaction to the way the soldiers dealt with Goliath's challenge (Shmuel I, 17:28). Indeed the *gemara* (Pesachim 66b) says that we learn from the story of Eliav that whoever gets angry will lose a position that was set for him by Hashem. If so, there does not seem to be criticism of Shmuel, for Shmuel was correct based on the present, and he had not been informed about what would happen to Eliav in the future. We also see how damaging anger can be, as it may determine who can and cannot be king.

The Radak says that Shmuel assumed that Eliav was the correct candidate and may even had said so, because he was Yishai's firstborn and because he was tall and handsome like Shaul. He reasoned that Hashem was interested in kings of this nature because it makes the people be in awe of him... as long as they are good and have a straight heart. The Radak says that the problem was that Eliav did not have a good and proper heart. According to the Radak, Eliav was not at all fit, and Shmuel was thus clearly mistaken.

This approach also has basis in a *midrash*. When Shaul went looking for his father's donkeys and ended up meeting Shmuel, Shaul asked Shmuel where the *ro'eh* (seer) is and Shmuel said, "I am the *ro'eh*" (Shmuel I, 9:19). The *midrash* (Midrash Shmuel 14:3) says that Hashem, inferring criticism of Shmuel, told Shmuel: "I will show you that you are not such a *ro'eh*." This came to fruition when Shmuel thought that he saw that Eliav was the king-to-be and was mistaken. Indeed, Shmuel was taught a lesson in not being careful enough with the humility of his speech. Hashem is often very exacting with his demands on great people such as Shmuel.

Let us pray that, especially in as important a month as Elul, we will succeed in watching our speech. Let us also pray to merit leaders as honest and great as *Shmuel HaNavi*.

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# Ask the Rabbi

by Rav Daniel Mann

## Paying for Unscheduled Entertainment

**Question:** I witnessed the following scenario years ago and have wondered about the *halacha*. During a wedding, a talented entertainer dressed in full costume with remote-controlled dancing puppets burst onto the dance floor. He gave a performance, which the guests thoroughly enjoyed, for 10 minutes. Each set of parents assumed the other had arranged and paid for the surprise or that it was a guest in disguise. After it was over, the entertainer approached the *mechutanim* and demanded payment. One of the sides paid, breaking their budget. Did they have to pay? What can we learn from the answer about other cases?

**Answer:** Since this case is no longer practical, we can discuss more freely both principles, and possible arguments relating to this specific case.

There are two bases for obligation to pay for a service one person provides to another: agreement to pay; payment for *neheneh* (benefit). One of the major sources about pay for *neheneh* is the *gemara* (Bava Metzia 101a), which discusses someone who planted trees in his friend's field without permission. The *gemara* concludes that if the field is fit for planting, we estimate how much the work is worth, and if it is not, the worker gets the lower of possible payments. According to Rashi (ad loc.) and the S'ma (375:2), this means the lower between expenses outlaid and benefit provided. In other words, when there is benefit but it was not done in a way that should be appreciated, there is no payment beyond expenses.

There are subjective factors that help determine whether a job was called for. For one, the Rama (Choshen Mishpat 375:4) rules that if the field that was planted was owned by a man who usually does the work himself, the outside help is considered largely uncalled for. Even though most people would appreciate the work, the main benefit is saving the owner from hiring another worker, so when he does his own work, the owner only has to pay for the benefit of not having to toil. In the other direction, according to the Shulchan Aruch (CM 375:3) if the owner "built on" the work that was done, he cannot subsequently claim that he did not gain from it. The Shach (ad loc. 3) cites dissenters. One has to weigh the circumstances in each case.

Let us analyze your case. One could claim that the work was done with the beneficiaries' knowledge, and therefore they should be responsible. However, this is wrong because their silent acquiescence was based on a misunderstanding, and agreement *b'ta'ut* does not obligate. The lack of protest could have some significance. There is an opinion that even when a recipient did benefit, he is exempt if he warned that he refuses to pay (see discussion in Pitchei Choshen, Sechirut 8:(64)), and here they at least did not warn.

Should we characterize the performance as fitting, since people enjoyed it, and enjoyment is valued at weddings? I have attended many weddings and am hard-pressed to remember such a performance. Most people pay good money for a band, and participants often do creative *shtik*, but professional *shtik* is uncommon in the circles I know, even at weddings at which expense is not a factor. Therefore, it would be difficult for the entertainer to prove that he deserves more than a return of expenses, which are presumably small.

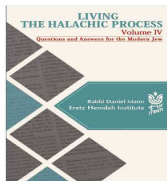
Furthermore, benefit refers to net benefit (e.g., regarding the field, the vegetation planted must be preferable to alternatives). Even if many people enjoyed, others could have been appalled by such a childish performance at a wedding. Also, the time taken on it may have taken away from "valuable" eating, dancing, interacting, etc. time. Therefore, it is again hard to ascertain that there was benefit.

In all, it is unlikely that the families could be forced to pay any significant amount of money for this uninvited performance. Although the propriety of the entertainer's actions was very questionable, paying him a not insulting amount might have been a proper act of *chessed* and/or avoiding *machloket*. (Others might argue that such a person must not be encouraged to do such things.)

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# Ein Ayah

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

## The Power of the Connection to Other Jews' Desires

(condensed from Ein Ayah, Shabbat 6:97)

**Gemara:** Is it so that whatever remedy that does not have a medical basis is forbidden due to the prohibition of “the ways of the Emorites”? Doesn’t it say in a baraita: For a tree whose fruit are dropping, one should color it with red paint and lean rocks against it? I understand that the rocks are to weaken the strength of the tree (as the fruit fall because they are too robust), but what is the logic behind the remedy of painting it red? The answer is that this is done so that people can see the problem and pray on its behalf. This is similar to the idea that a leper is supposed to call “I am impure, I am impure,” which is an example of letting the public know about one’s anguish so that many will ask for mercy for him.

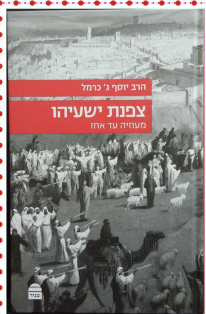
**Ein Ayah:** If certain practices have a known need and there is a basis for them in the part of existence that is clear for all to see, then they are not considered peculiar to a certain nation, even though it was a specific nation that developed them. We do not assume that the practice came due to the specific inclinations of the nation, which could make it destructive for Israel.

In contrast, when a practice does not serve a clear, palpable need, even if it might be possible to find one if one penetrated its surface, we still connect the practice to the specific character of the nation that developed it. We are therefore concerned that it might be fit for that nation, yet be illogical and create distortions for other nations. This depends on the sensitivity of each nation. Israel, in particular, has to be very careful about practices with roots from a foreign source.

However, that which brings a lot of good is not assumed to have a hidden, destructive character, as its efficacy makes it something that relates to existence of the world as a whole. This helps us understand why a tree whose fruit are dropping should have rocks leaning on it to weaken its strength.

The influence of the expression of the public’s desires regarding specific objects is legitimate when it is connected to prayer. Even though the efficacy of such a thing is not clear, still it is fine because it relates directly to Israel, who understand how internal matters have influence. This applies both to the individual and to the masses who desire that the light of Hashem shine on all elements of the world (even the ostensibly trivial). This is because Israel’s concern for things that relate to everything in the nation corresponds to Hashem’s desires regarding everything in the world. These divine desires are most felt in things that pertain to the Nation of Israel and most clearly so with things that relate to the bright light of Torah. Therefore, the most specific things in the world are connected to the desires of every specific need of an individual in Israel.

When an individual Jew turns in prayer to Hashem and seeks His great mercy, he is able to influence that which relates to the object of the need. It becomes more powerful when others join in his request. That is why it is significant when a person publicizes his pain so that others pray on his behalf. The interest of others to beseech for the welfare of friends increases the light of life, which strives towards filling in for that which is missing. The connection between people is great enough to impact both the thing of their friend for which they pray and the world in general, even a tree that is suffering due to too much plenty. When many pray, the tree can be brought back to within its capabilities. This is parallel to promoting a leper’s health when he calls out to the masses about his impurity and they pray on his behalf.



### 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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# P'ninat Mishpat

## Taking Part in Financing Road Building – part II

(based on ruling 77006 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** In 2015, the defendants (=def) obtained an extra-large plot of land on which to build their home. In 2016, some of def's neighbors petitioned their *yishuv* for financing for a temporary road to their section of the *yishuv*, but they were only able to receive partial financing. With the guidance of a *rav*, it was decided that the organizers (=pl) would levy a tax on members of the neighborhood to cover expenses. Pl have decided that def should be taxed like two households, since they built their home on two adjacent plots of land, just as def signed an agreement with the *yishuv* to pay double for infrastructure charges for electricity and water. Their contract also says that they have received two plots. Def argues that they received only one big plot, like many others in the *yishuv*, and that they paid extra for infrastructure and signed the contract as written only to avoid *machloket* with the *yishuv*. Furthermore, def argues that pl, consisting of only half the residents of the area, do not have authority to obligate neighbors to pay and that indeed only the *yishuv* as a unit can do so.

**Ruling:** Last week we saw that pl has the authority to obligate def to take part in financing the road. We now have to see whether they have to pay like the owner of one or two plots of land.

Def produced an email in which they ask for a "bigger plot" (singular), but they signed a contract that says that they acknowledged receiving two plots. It stipulated that they would have to pay double for various things unless it was decided otherwise at a *yishuv* general meeting. However, that is not a sign that there is a question as to whether they received two plots but rather the question is how a single family with two plots has to pay. Def's claim that they were forced into signing the agreement is not relevant because even if they were under pressure, they still accepted its provisions, which is the important thing (see Bava Batra 47b). Additionally, the regional council who de facto has authority like a municipality, views def's land as two plots.

As far as figuring out how much payment is appropriate, the key is the amount of benefit the homeowner can expect to get from the project (see Tosefta, Bava Metzia 11:9). In this case, the larger area, which, beyond the size of the house, also allows for more planting and agricultural-related activity, creates an expectation of more use of the road. In any case, the inhabitants have a right to estimate benefit as they see fit, as long as it is reasonable.

As far as whether there is a majority, three out of six are suing def and two are abstaining but have requested of *beit din* to decide. It is thus considered that there is a majority. Additionally, there are several indications that the *minhag* in *yishuvim* is that people do pay according to the number of plots of land. Therefore, we confirm the obligation of def to pay a double portion for the expense of the road.

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