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# HEMDAT YAMIM

## הַמְדָתָ יָמִים

### Parashat HaShavua

Vayechi, 14 Tevet 5780

#### Service in the Israeli Army and Lineage – part II

Harav Yosef Carmel

We saw last week that there were several prominent soldiers in David's armies with names that imply that they were not Jewish. We began discussing whether this could be the case.

The *gemara* in Kiddushin (76a-b) already raises the issue. The *mishna* discusses those whose role in society is confirmation that they must be Jewish (in such cases it is easier to vet their offspring for marriage with "kosher" Jews). One opinion says that one who was a member of David's army was to be presumed to be a kosher Jew. Rashi explains that when they would be conscripted for a month at a time, their names and family names would be written, and they would be careful about their lineage.

The *gemara* cites a *pasuk* (Divrei Hayamim I, 7:40) as corroboration: "All of these were Sons of Asher, the heads of the houses of the fathers, chosen, brave soldiers, the heads of the leaders, and they had confirmed status for the army for battle ..." The *gemara* also explains why their lineage would be checked – "so that their merit and the merit of their fathers would assist them." Then the *gemara* asks from David's soldiers who do not appear to be Jewish. "Presumably Tzelek the Amoni was from Amon? No, he was Jewish and he just came from the region of Amon. There was Uriya the Chitite? No, he came from the region of Chet but was a full Jew." The *gemara* has more trouble with Itai the Gitite because a different *gemara* (found also in Avoda Zara 44a) says that they used him to nullify the *avoda zara* status of the crown of one of the kings. The *halacha* is that such a process can be done only by a non-Jew – see some of the halachic principles on the matter in Shulchan Aruch, Yoreh Deah 146:1.

Indeed, the conclusion of the *gemara* is that there were some people in David's forces who were of non-Jewish origin and who had not converted, despite their involvement in the Jewish kingdom. The Tashbetz (Shut III, 96), asked whether Uriya was Jewish or not, references the *gemara* as to the status of Uriya and Tzelek, and concludes that it is not altogether clear. Next week, we will look for a conclusion to these questions.

In the meantime, we want to give our encouragement to the soldiers of the IDF, who are on guard in our Land, wherever they may be. We also pray for the speedy recovery of those who have been injured.

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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

## A Late *Tachanun*

**Question:** The *chazan* skipped *Tachanun*, and everyone assumed there was a *chatan* or a *brit*. After *davening*, the *chazan* said he just forgot *Tachanun*. People disagreed about whether we could/should say *Tachanun* at that point. What is the *halacha*?

**Answer:** The Shulchan Aruch (*Orach Chayim* 131:1) says that one must not speak between *Shemoneh Esrei* and *Tachanun*, based on “students of the Rashba’s” (see *Beit Yosef*, OC 131) comment on the following *gemara* (*Bava Metzia* 59b). After Rabbi Eliezer’s major dispute with his brother-in-law, Rabban Gamliel, the former’s wife was afraid that the intensity of his *Tachanun* could cause harm to her brother, so she always interrupted him when it was time for *Tachanun*. The Rashba reasons that she could not have prevented him from saying *Tachanun* all day, but just made him stop and/or speak at the right time, to lower its efficacy. This taught the Shulchan Aruch and others of the danger of interruptions at that time.

What does the above teach us about the required level of connection between *Shemoneh Esrei* and *Tachanun*? The conviction that a break makes *Tachanun* less effective does not necessarily mean that *Tachanun* need not or should not be said after such a break or that it lacks value. The Rashba/Shulchan Aruch’s understanding of the story of Rabbi Eliezer strongly implies that R. Eliezer recited *Tachanun* after the break. The Rivash (412) claimed that his wife bothered him until he forgot to say it, also implying he would have said it later. Thus, at this point, we would say: “Better late than never.”

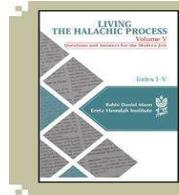
The Taz (OC 131:10, which seems to contradict Taz, *Yoreh Deah* 376:2) complicates the matter. He discusses whether non-mourners who *daven* at an *avel*’s house, where *Tachanun* is omitted because the presence of “strict judgment” makes it not worthwhile to recite *Tachanun* there, should make it up when they get home. He says not to do so based on the halacha that *Tachanun* should come without an interruption after *Shemoneh Esrei*. It is unclear if that means it is not required or wrong (there are kabbalistic sources for such a possibility – see *Shulchan Hatahor* 131:16), unnecessary, or somewhere in between. This seemingly indicates that you would not say *Tachanun*, in your case, at the end of *tefila*. (Change of place does not seem to be the issue – see *Magen Avraham* 131:1).

However, the Taz’s claim is surprising, considering the indications from the *gemara* and the *p’sak* (*Mishna Berura* 131:2) that *b’dieved*, if one made a break, he says *Tachanun* anyway. How could the *gemara*’s case be a model for a ruling not to say *Tachanun* at all? The *L’horot Natan* (VI:7) raises the possibility that continuing *tefila* is worse than talking, and in the Taz’s case (and ours), it could be too late for *Tachanun*, not just of reduced value. However, he posits that this is not so and that the Taz would agree in our case to say *Tachanun*. Here, at the time of *Tachanun*, there was an obligation to recite it, which was pushed off on technical grounds (the *chazan*’s mistake). The Taz spoke only about a case that at the correct time, there was no obligation (albeit based on the circumstances). What he says is that it is not created later at an unnatural time (which, in turn, we learn from the *halacha* that it is important not to break).

The *Derech Hachayim* (42:7) implies that the Taz would not say *Tachanun* after any break. However, the *Derech Hachayim* (42:1) and *Eliya Rabba* (OC 131:1), who are accepted by the *Mishna Berura* (131:2), reject this view. Rav SZ Auerbach is also cited (*Halichot Shlomo* 11:2) as instructing to say *Tachanun* if it was accidentally skipped, even after *laining*, and presumably also after *davening*.

Some contemporary *poskim* (*Ishei Yisrael* 26:(1); *Dirshu* 131:3) cite an account about the Chazon Ish and a very cryptic reaction of Rav Chaim Kaniefsky which may indicate to not say *Tachanun* once *Chatzi Kaddish* was said. While the stakes are low (see *Rivash ibid.*) in both directions, we recommend saying *Tachanun* if it was skipped by mistake, as this approach has a stronger basis in the sources/logic.

**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.)

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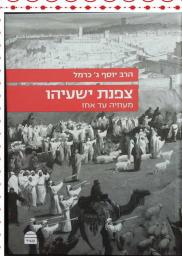
(condensed from Ein Ayah, Shabbat 9:105)

**Gemara:** [Our gemara deals with the aftermath of the argument between Moshe and the angels, at the end of which the angels accepted Moshe's arguments.] Immediately, every one of [the angels] became a friend and gave [Moshe] something, as the pasuk says: "You went up to the Heavens, you took 'captives'; you took presents of man" (Tehillim 68:19) – as a reward for the fact that they called you a man, you took presents.

**Ein Ayah:** The fact that the Torah was revealed throughout the universe is that which brought the physical and spiritual worlds to a connection of harmonious unity. The foundation of this unity is man's set of characteristics, that specifically because he has lowness that brings him down to earth, he connects all of existence from its beginning to its end. This reveals the previously unknown love and the feeling of being connected to everything in the world. The recognition that the light of Torah shines onto the bottom of man's material status and is a light of life and blessing for all of the universe brings this unity. This automatically creates a connection to all of the powers of creation so that they give each other and impact upon each other with their individual spiritual lights. [This can be fitting compensation for the angels] for being deprived of receiving the impact of the Torah on a continual basis. Man stands out for having greatness that comes from his lowness. He is a creation who is lowered to the depths of materialism yet has within him all of the special spiritual characteristics.

Once the secret became known to all of the angels, the connection became strong, and everyone loved Moshe. This was not just a theoretical love, but one that had a practical impact, as every angel gave him something. This was the great victory of the "man of G-d" (i.e., Moshe, based on Devarim 33:1), as the pasuk says: "You went up to the Heavens, you took 'captives'; you took presents of man." This is because all of the powers of creation came under the general control of Hashem, as became revealed by the aura and grandeur of the Torah.

This revelation's impact and the presents were described as "presents of man." In other words, it was only because they realized man's lowness, which proved that man is able to connect the creations of the Heaven and of the earth, which becomes special when it is adorned by reaching its highest point, when the light of Torah shines upon them. Indeed with the potential for lowness, the ability to connect the universe depends on the hidden power of the wonderful human soul. The soul shines its light on others when the unblemished Torah appears in all of its levels. Therefore, it is the attribute of being a man that gave Moshe the right to the many presents of the angels.



### 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 Hemda-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

## "Don't Let the Bedbugs Bite" – part I

(based on ruling 78030 of the Eretz Hemda-Gazit Rabbinical Courts)

**Case:** The plaintiff (=*p*) ran group tours that, one Shabbat, used the defendant's guest house (=*def*). Over Shabbat, *p* felt bites but assumed they were mosquito bites. When the symptoms recurred at home and she discussed the matter with group members and *def*, she figured out that she brought bedbugs home from *def*, from which the others and *def* were also suffering. *Def* sent an exterminator to *p*'s house, but their one-time treatment did not help (it helped other group members but not *def*). *Def* entered a grueling three-month extermination regimen, which solved the problem. *P* ended up throwing out all of their bedroom furniture. *P* is suing for the value of the discarded furniture (30,000 shekels); expenses of massive washing and drying fabrics, including damage to the washer and dryer (7,000 shekels); buying new temporary (out of fear of recurrence) furniture (15,000 shekels); distress (10,000 shekels). *Def* responded that it was possible that someone in the group brought the bedbugs to *def* (they did not have problems before, and did have afterward). *Def* argued that they were not at all negligent and paid for an exterminator for all involved beyond the letter of the law. (*Def* has insurance for the claims but relinquished their rights to them by adjudicating in *beit din* instead of secular court.)

**Ruling:** First we will deal with the basis of the halachic principle to be used. It is possible to obligate someone based on classic Halacha or standard local practice. Establishments on the level of *def* are expected to be insured, and insurance companies generally adjudicate only in secular court. Rav Asher Weiss (Techumin XXX, p. 278) posits that one may sue *kupot cholim* (=*KC*) doctors for malpractice in secular court even if they receive more payment than they would get according to Halacha. This is because *KC*'s insurance companies are the ones to pay in practice, and they obligate themselves to the patients according to the rulings of these courts.

He gives the following answers to the question that the insurers are actually only taking responsibility in reference to their doctors, and in the question between the patients and the doctors, the doctors are basically exempt from paying for bodily damage (Bava Kama 84a): 1. The Rama (Choshen Mishpat 1:2) says it is possible to force a damager to appease the injured beyond the letter of the law. 2. *KC* promises good care for its patients, which includes a valid, albeit implied, obligation of malpractice compensation. 3. The insurance company earmarks premium money for paying for X number of cases, which are, in effect, paid by the patients; it is just a matter of determining which patients are the proper recipients.

We will base ourselves on Rav Weiss' reason #2 and differ in one point. Rav Weiss does not consider it feasible for *beit din* to determine the awards according to industry assumptions; we believe *beit din* can make those determinations (with the help of experts). It is as the S'ma (26:11) says that if two sides obligate themselves to adjudicate in non-Jewish court, they must adjudicate in *beit din*, but *beit din* applies the obligations that the courts would have.

Our *batei din* also hold parties to accepted societal norms of certain elements of monetary interaction. We may do this without determining how specific secular courts apply the principles, but based on our judgment.

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We daven for a complete and speedy *refuah* for:

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