



HEMDAT YAMIM

Parashat Hashavua Behar Bechukotai 22 Iyar 5783

Harav Shaul Israeli zt"l
Founder and President

The Kedusha of the Land and its Fruit Adapted from words of Harav Yosef Carmel for Behar 5782

Our first *parasha* contains the longest treatment of the topic we call *shemitta* – the special *halachot* that govern agricultural activity and produce on the last year of the seven-year cycle. The term, *shemitta*, appearing briefly in the Torah regarding this year, is absent from Behar's treatment of it. Based on our *parasha*, we would call the year The Seventh Year or the Year of Shabbat. In fact, in the six *p'sukim* (Vayikra 25:2-7) of the relevant section, the root of Shabbat comes up seven times.

In the weekly Shabbat, the person is the main focus of the cessation of work. In contrast, during the seventh year, the focus is on the land. Admittedly, the Torah commands the individual to refrain from agricultural activities, but most agricultural activities are forbidden only Rabbinically even at times when *shemitta* applies based on Torah law.

The *p'sukim* also stress that during this year of "rest for the land," all of those who live in the land, including non-land-owners, foreigners, and animals who inhabit it, are to benefit from the land's fruit. (The specific *halachot* that relate to this are beyond our scope.)

On the weekly Shabbat, sanctity of the day itself impacts our behavior on the day, so that our work desecrates the day. What is the parallel application regarding the seventh year's sanctity? The Ramban says that it creates a *mitzva* to eat the produce that grew on its own during the year. Several other great authorities (possibly including Rav A.Y. Kook – see Shabbat Haaretz, appendix 21) follow this approach.

Based on this approach, we can continue the thought and say that because that which grows in the seventh year is holy, it is a *mitzva* to eat it. We can even say that since the Land is especially dedicated to Hashem, eating its produce is like "eating from Hashem's table." This is a term that comes up in the *gemara* regarding eating the parts of *korbanot* that are permitted for man (see some applications in Beitza 21a).

If the produce becomes holy due to the similarity between Shabbat and the *shemitta* year, we understand why our *parasha* stresses the eating more than the prohibitions on a person's work. There is also a similar stress concerning the fruit that grows during the *yovel* (jubilee) year (see Vayikra 25:12).

The technical solution, which is still a national necessity concerning the broadest base of Israeli society, is to sell the land to non-Jews for the seventh year. This is a situation of *b'dieved* and a specially needed extraordinary ruling. It is definitely not considered fulfilling the *mitzva* of a Shabbat of the land. Without any doubt, those who are "careful" to buy only from that which grew in non-Jewish fields is in no way fulfilling the *mitzva* but is paving a "*shemitta*-bypass road," and giving up on the Shabbat of the Land.

In this post-*shemitta* year, we now have the opportunity to be past the challenges of cultivating the land and yet we still have a few months in which the fruit that have grown on existing trees have the sanctity of *shemitta* and can be eaten as a *mitzva* according to the Ramban.

Hemdat Yamim is dedicated to the memory of:

Eretz Hemdah's beloved friends and Members of Eretz Hemdah's Amutah

| | | | | |
|---|--|---|--|--|
| Rav Shlomo Merzel z"l Iyar 10, 5771 | Rav Reuven & Chaya Leah Aberman z"l Tishrei 9, 5776 / Tishrei 20, 5782 | Mr. Shmuel & Esther Shemesh z"l Sivan 17 / Av 20 | Mr. Moshe Wasserzug z"l Tishrei 20, 5781 | Prof. Yisrael Aharoni z"l Kislev 14, 5773 |
| Hemdat Yamim is endowed by Les z"l & Ethel Sutker of Chicago, Illinois, in loving memory of Max and Mary Sutker & Louis and Lillian Klein z"l | R' Yaakov ben Abraham & Aisha and Chana bat Yaish & Simcha Sebbag z"l | R' Eliyahu Carmel z"l Rav Carmel's father Iyar 8, 5776 | Mr. Zelig & Mrs. Sara Wengrowsky z"l Tevet 25 5782 Tamuz 10 5774 | R' Meir ben Yechezkel Shraga Brachfeld z"l & Mrs. Sara Brachfeld z"l Tevet 16, 5780 |
| Rav Asher & Susan Wasserteil z"l Kislev 9 / Elul 5780 | Rav Yisrael Rozen z"l Cheshvan 13, 5778 | R' Abraham & Gitta Klein z"l Iyar 18 / Av 4 | R' Benzion Grossman z"l Tamuz 23, 5777 | |
| Mrs. Julia Koschitzky z"l Adar II 18, 5782 | Rav Moshe Zvi (Milton) Polin z"l Tammuz 19, 5778 | Rabbi Dr. Jerry Hochbaum z"l Adar II 17, 5782 | In memory of Nina Moinester , z"l Nechama Osna bat Yitzhak Aharon & Doba Av 30, 5781 | R' Yitzchak Zev Tarshansky z"l Adar 28, 5781 |

Mrs. **Leah Meyer** z"l Nisan 27, 5782

Mr. **Shmuel & Rivka Brandman** z"l Tevet 16 5783/ Iyar 8, 5781

R' **Leiser Presser ben R' Aharon Yitzhak and Bracha** z"l, 24 Iyar

and members of his family who perished in the shoah Al Kiddush Hashem

Those who fell in wars for our homeland. May Hashem avenge their blood!



Eretz Hemdah
Dome: Harav Yosef Carmel, Harav Moshe Ehrenreich
2 Bruriya St. corner of Rav Chiyah St.
POB 8178 Jerusalem 91080
Tel: 972-2-5371485 Fax: 972-2-5379626.
amutah number 580120780

American Friends of Eretz Hemdah Institutions
c/o Olympian, 8 South Michigan Ave.,
Ste. 605, Chicago, IL 60603, USA
Our Taxpayer ID #: 36-4265359

www.erezhemdah.org info@erezhemdah.org

Donations are tax deductible according to section 46 of the Israeli tax code

Ask the Rabbi

by Rav Daniel Mann

Rearranging Aliyot to Enable a Levi's Aliya

Question: This Shabbat (Vayakhel/Pekudei), the *gabbai* called up a *levi* for *shvij*, and as *ba'al korei*, I knew he was going to make a *hosafa* and give *acharon/chazak* to someone else. I quickly told him the *levi* cannot come up, but that they should switch the intended *olim*, having the *levi* wait for *acharon*. After *laining*, someone suggested we should have relied on the Sephardi *minhag* that *kohanim* and *levi'im* can have *aliyot* after the first three. Who was right?

Answer: The reason a *levi* gets the second *aliya* is to honor his status, which is lower than a *kohen's* and higher than a *yisrael's* (Gittin 59b). Once there is a hierarchy, giving a *kohen* or a *levi* a lower than prescribed *aliya*, especially giving an *aliya* after another "tribesmen" can give the impression that one of them is disqualified from his status (see *ibid.*).

All agree that the three *aliyot* during the week and the first three of Shabbat and *Yom Tov* morning are given to *kohen*, *levi*, and *yisrael*, in that order. According to Sephardi practice, starting with the fourth *aliya*, we can give *aliyot* to *kohanim* and/or *levi'im*, as long as it is not to two in a row and that when we call them, we announce "... even though he is a *kohen*" (Shulchan Aruch, Orach Chayim 135:10). The Rama (*ad loc.*) says that Ashkenazi *minhag* is that they cannot get *aliyot* until after the required seven. However, Ashkenazi *minhag* has changed somewhat: *kohanim/levi'im* do not get even *hosafot* except for *maftir* and *acharon*, but they can be even back-to-back (Mishna Berura 135:36, based on the Levush). On the side of leniency, even if *acharon* is one of the seven, the importance of its finishing the reading makes it appropriate for *kohanim/levi'im* (*ibid.*).

The Taz (OC 135:9) points out the "self-fulfilling prophecy" element of these matters. If the rule is that a certain *aliya* is appropriate for a *kohen/levi*, then receiving it cannot cast aspersions on them. This observation helps justify Sephardic leniency but makes it more difficult (while still possible) for Ashkenazim to rely upon the lenient opinions, when in the *shul* at hand, it is not an *aliya* that *kohanim/levi'im* receive. In your case, since the previous *levi* received an *aliya* long before, aspersions will not go back onto him (see Beit Yosef, OC 135). However, in general, we do not leave it up to the *kohen/levi* to decide if they are willing to put up with possible aspersions upon themselves.

On the other hand, Halacha does consider other factors in this matter, including the embarrassment of coming up for the *aliya* and not being able to receive it (see Mishna Berura 135:35). (It is not fully clear if the embarrassment begins in earnest from the time one's name is called and he is thus expected to get up (see Berachot 55a), or only when he stands by the *bima* – see *ibid.* and Mor U'ketzia to OC 135). Yet, classical *poskim* do see your solution, of giving him a subsequent *aliya*, as a good remedy to embarrassment. The Shulchan Aruch (*ibid.* 6) says that if a *yisrael* was called for the first *aliya* due to absence of a *kohen* and then a *kohen* comes in before the *yisrael* begins the *beracha*, the *yisrael* waits at the *bima* until he can get the *aliya*. The Mishna Berura (*ibid.*) embraces that idea for our general case. So what you did was an excellent way to deal with the situation, and better than ignoring our *minhag* of not giving *aliyot* before *acharon*.

There may have been other viable possibilities. Even if the *yisrael* was informed about his *aliya*, until he is called up, nothing firmly binds the *shul* to give him one. Of course, decency calls for keeping one's word (see Bava Metzia 49a), but mistakes or changed circumstances can legitimize asking the *yisrael* to forgo his expected *aliya* and "compensating" him in the future. (Which idea was better might depend on a quick appraisal of who is likely to be insulted.) If it was important to give *chazak* to the *yisrael*, it was possible to give *maftir* to the *levi* (when it is fine to split the *berachot* and the *haftara* reading is a good question – see Rama, OC 284:4; Ishei Yisrael 38:56).

"Behind the Scenes" Zoom shiur

Eretz Hemdah is offering the readership to join in [Rabbi Mann's weekly Zoom sessions](#), analyzing with him the sources and thought process behind past and future responses. Email us at info@erezhemdah.org to sign up (free) or for more information on joining the group.

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

► [SEND NOW!](#)



Igrot HaRe'aya - Letters of Rav Kook

The Study of *Machshevet Yisrael* in Yeshiva – #149 – part II

Date and Place: 4 Menachem Av 5668 (1908), Rechovot

Recipient: Rabbi Yitzchak Isaac Halevi. As mentioned, we have featured many letters between the two. The ideological negotiations between the two, around the question of Rav Halevi's help with Rav Kook's proposed yeshiva, focus this time on the importance of new styles to Torah learning not negatively impacting Torah tradition.

Body: We cannot ignore the pained cries of the greatest Torah leaders, *kabbalists* and philosophers, men of *mussar* and spirituality, over the abandonment of spirituality. Such complaints have a basis in *Tanach* and the writings of *Chazal*. Knowledge of Hashem, loving Him and fearing His awesomeness, made possible by recognition and knowledge, along with strong, healthy emotions, are fundamental to the world and all living things. It is crucial for all purposes of the Torah and *mitzvot*, for all the Talmud and Halacha.

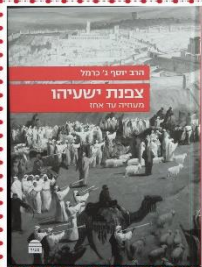
The factor that incited destroyers of the belief system to deny our religious traditions came from the dimming of the world's internal light that goes through "spiritual pipes," from generation to generation. Therefore, love of Hashem has dwindled with the lack in knowledge of Him; as feeling dried up, affection ceased. With love of Hashem missing, evil set out to paint fear of Hashem as a burden and utilize evil and ignorant denials to try to destroy it.

If love of Hashem would have continued through the spirit's sanctity and its connection to Torah light, by means of spiritual logic that is connected to the depth of practical Halacha, this would not have happened. That which they made a big deal about historical timing would not have had an impact on the authority people ascribed [to halachic positions.] For example, the fact that we devotedly follow measures that apply to "halachic objects" is unaffected by whether the measures were an oral tradition to Moshe Rabbeinu (see Bavli, Yoma 80a) or whether it was instituted by a later *beit din* (see Yerushalmi, Peah). The important thing is that the nation accepted it, which makes it the *halacha* even if it is a more recent institution, like the bans of Rabbeinu Gershom, *Takanot Shu"m*, etc. We do not distinguish between *mishnayot* composed in the early *Mishna'ic* period and those from later on; the same is true of Talmud.

On the other hand, the proper heart of a Jew is full of sanctity and love of Torah and *mitzvot*. These emanate from love of Hashem and His ways, which is connected to love of the People and Land of Israel, as one waits for the liberation of the People in the Land, as the Leader of the World set aside for them to inherit. A proper heart sees things straight and takes in proper stride the chain of generations [of Rabbinic leaders] and the influence of each one. Such a person would not think to claim that something that happened later actually happened earlier, even though it would not have bothered him if this were so.

In contrast, the heart from which everything sacred is removed looks for excuses and claims, and evilly argues that if he alters the order of history, it may be easier to destroy truths. If we let that heart remain empty and do not restore life with internal light from the holy "dew of Torah" then even if we combat the historical claims (as you, Harav Halevi, do in your books), he will find some other excuse to use against the sanctity of the Torah.

Therefore, it is necessary to not only teach history along the lines that you have set out, but also include spiritual study. This is needed to provide the emotional element of Torah study and learn lessons to inspire our present generation.



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.

Buy Now

P'ninat Mishpat

Who Breached the Contract? – part IV

(based on ruling 81087 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl), who owns a chain of eateries, made a franchise agreement with the defendants (=def) to open a branch in a region of Israel. Def received, among other things, use of the chain's trademarks and experience and pl's commitment to rent a place to open the branch and receive a license. Pl and def were each to own 50% of the branch. Def were to pay 300,000 NIS under a payment plan, including 25,000 NIS to be paid directly and 100,000 NIS put into an escrow account, both soon after signing. The contract stated that either side who would breach the contract would have to pay 150,000 NIS. Def did not make the initial payments. Each side is suing based on the breach of contract clause, pl, because def did not pay, and def, because pl did not rent a place for the branch.

Ruling: [We have seen that def are to pay for breach of contract, but the question now is whether the amount written in the contract is binding.]

Pl was damaged by breach of the franchise agreement by lost opportunity and unrewarded effort, but damage was only in the tens of thousands, not 150,000 NIS. Since the obligation was in def's ability to control and the listed payment is exaggerated compared to damages, it is considered an *asmachta* (an obligation one took because he did not expect to have to pay it), which is generally not binding (Shulchan Aruch, Choshen Mishpat 328:1-2). Is this case one of the exceptions to that rule?

Tosafot (Bava Metzia 66a) gives two explanations why we honor penalty agreements for a broken engagement: 1. It is an accepted societal practice (along the lines of *situmta*). 2. The matter embarrasses the "victim." #2 indicates that the obligation may not be exaggerated. #1 is based on the idea that whereas *asmachta* lacks *gemirut da'at* (full consideration), if something is known to be binding, one who accepts it considered it well. Whether we accept distinction #1 may depend on the *machloket* cited in the Pitchei Teshuva (CM 201:2) whether *situmta* works to transfer an object that did not exist at the time of agreement. However, that might be a technical problem, for which *situmta* is less helpful (see Rav Elyashiv, Piskei Din Rabbaniiim V, p. 265). Not only do the Rambam/Shulchan Aruch (CM 207:16) not accept Tosafot and require a different system to overcome *asmachta*, but the Rama (ad loc.), who accepts Tosafot, does so only based on the second distinction, not based on it being accepted practice.

While it is not simple to ignore the law of the land and local practice regarding monetary matters, Israeli law gives the courts the prerogative to decide whether to enforce penalty clauses to the fullest degree. Often, they do not. Instead of either accepting or rejecting the clause, it is reasonable to use it as a guide to figure damage based on a **high** estimation of what **could be** the damage even if it is not proven (see Pitchei Choshen, Kinyanim 21:(25)). This is an accepted approach in our *batei din*. In this case, we will also factor in that pl also did not carry out all the obligations he accepted. Therefore, we will set the amount that def have to pay for breach of contract at 25,000 NIS.

Comments or questions regarding articles can be sent to: info@erezhemdah.org

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

Nir Rephael ben Rachel Bracha
Ori Leah bat Chaya Temima

Arye Yitzchak ben Geula Miriam
Yerachmiel ben Zlotta Rivka

Neta bat Malka
Meira bat Esther

Together with all *cholei* Yisrael

Eretz Hemdah is the premier institution for training young rabbis to take the Israeli Rabbinates' rigorous Yadin Yadin examinations. **Eretz Hemdah**, with its distinctive blend of Religious Zionist philosophy and scholarship combined with community service, ensures that its graduates emerge with the finest training, the noblest motivations resulting in an exceptionally strong connection to Jewish communities worldwide.