



HEMDAT YAMIM

Parashat Hashavua

Noach, 6 Cheshvan 5784

Harav Shaul Israeli zt"l
Founder and President

Who is Older? Who is Younger? What Did Cham Want? Harav Yosef Carmel

In the Torah's mention of genealogy, in the first ten generations, only one descendant per generation is listed. All three of Noach's sons are listed because of the centrality to the Torah of Noach's family.

Time after time, the Torah presents the sons as Shem, Cham, and Yefet, in that order. However, there is significant complexity on their age order. In Bereishit 10:21, in describing Shem, the *pasuk* calls him "the brother of Yefet, the *gadol* (bigger?)." It can be read that Shem is older or that Yefet is. According to the latter possibility, the regular order is inaccurate, if it refers to age. Also, when the Torah details the descendants of these sons (Bereishit, ch. 10), Yefet's descendants are presented first, followed by Cham's; Shem's descendants are presented last.

A lot may depend on what "*gadol*" means. Rashi posits that it means the oldest and that it refers to Yefet, like the detailed lineage section implies. In this, he follows Targum Onkelos and is followed by Ibn Ezra. If so, the five times the order is different are stressing that it is not the age that interests us but the spiritual significance, which is why Shem is mentioned first. The question then begs why Cham, the cursed son, comes before Yefet. Therefore, the Ramban posits that "the *gadol*" actually refers back to Shem, who was indeed the oldest son.

All agree that Cham was not the oldest. Indeed, in the aftermath of Cham's sin against Noach, it says that Noach knew that which his *katan* (little) son did (ibid. 9:24). Rashi, who posits that Cham was not the youngest, explains that it means that he was a lowly person. (Ibn Ezra explains differently.)

This discussion brings us to a central theme in *Sefer Bereishit* – the struggle over firstborn rights. We find this matter regarding: Yishmael and Yitzchak, which prompted Sarah to send away Yishmael; Eisav and Yaakov, in which Eisav was unwilling to give up his claims, even though he sold his status to Yaakov; the firstborns of Leah and of Rachel, an episode that has a great impact on the second half of the *sefer*.

Unfortunately, throughout human history, one with claims to the throne would try to enhance his status by taking, including by force, a wife from an important family. We find this with the "*bnei haelohim*" (ibid. 6:2) and by Shechem the son of Chamor in regard to Yaakov's daughter, Dina (ibid. 34:2). This is also related to Reuven's action of "tampering with Yaakov's bed" (ibid. 35:22).

If so, we can present the following explanation of Cham's terrible sin against Noach, with the help of Cham's son C'na'an. This was his way of asserting Cham's claim to the leadership of mankind, when his father would die. The result was that for his sin, he received the opposite, not leadership but slavery, putting his descendants under the dominion of the children of his more principled brothers (see ibid. 9:25-27). Despite Noach's curse, Cham (as expressed by the actions of descendants) still tried to assert himself. The first emperor in the world was his descendant, Nimrod. Cham's descendants took control of the most important land, Eretz Yisrael. At the end, though, the one who ultimately received that land by divine decree is Avraham, the choice descendant of Shem.

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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

Naming for One, Thinking of Another

Question: Sometimes a man dies and his widow offers family members a monetary gift if they name a baby after him. If someone wants to do so, to be nice and also for the money, but they do not want to connect their son spiritually to the deceased (let's call him Uncle David), may they tell everyone they are naming for U. David but intend for David Hamelech?

Answer: We must warn about two limitations: 1. There are differences between similar cases; 2. We are not experts in the kabbalistically-oriented elements of giving a name. But we can generally discuss the value of naming after a deceased person, questions of honesty, and practicalities.

Names have significance in different ways. *Chazal* (including in *Berachot 7b*) focus on the meaning of the name's impact on a person's life for good or bad. More recent sources mention the idea of tapping into the good qualities of the one named after and bringing benefit to the deceased (see sources in *Otzar Habrit 6:4*). *Poskim* discuss how naming after a parent and, likely, a grandparent (not an uncle) falls under the *mitzva* of *kibbud av va'em* (see *B'tzel Hachochma I;35*). It is clear from sources and logic that intention connects the baby to the person he is named for (the benefit to the deceased is not shared by every departed David).

We will not advise parents whether to name their babies based on ideas, sound, a relative, or a *tzaddik*. Hopefully, monetary gain is not a major factor but "a factor" in choosing between names under consideration. It is common and not controversial to have in mind for both a relative and a *tzaddik(a)* who originally inspired that name's use. It is very possible that this brings credit to the former and blessing to the child due to the latter. (We make no promises or predictions.)

For what is the aunt paying? Three main things deserve appreciation: 1) The parents' sacrifice by not giving a name they prefer (assuming David is not their preferred name).

2) Honoring and creating a living remembrance of U. David, which has innate value and can bring psychological solace to the living. This exists as long as the parents are consistent in telling the family the baby is named in U. David's honor.

These two are unaffected by the parents' intentions, and if this is what the aunt has in mind, there is no problem.

3) The prospect that the naming will benefit U. David's *neshama*. If this *segula* element is the (or a significant part of) aunt's intention, then it would be *geneivat da'at* to not intend for the baby to be named after U. David in a significant (not necessarily exclusive) way and take the money. One violates that prohibition when he gives the impression of a bigger favor than is true when it might bring reciprocity (*Shulchan Aruch, Choshen Mishpat 228:6*; see this column, *Lech Lecha 5778*), all the more so when a gift is promised. While one does not violate *geneivat da'at* over the recipient's needless assumptions, a certain level of spiritual intention for the deceased is a valid assumption.

Two principles regarding doing things that make others feel good may compete. On the one hand, there is the *halacha* of *geneivat da'at*. On the other hand, one wants to make the recipient feel good and certainly not be insulted (see *Yevamot 65b*). Out of concern for honesty, should someone say: "Don't think my Shabbat invitation is because we are friends but because the rabbi told me no one else is willing to invite you"!

If they are unwilling to have basic intention for U. David and the aunt cares about #3, the parents should give their preferred name and explain that it was important for them. If multiple relatives have turned down the offer, insult should be weighed versus deceit. A good solution is to give a double name, with intention that the David part is for U. David. This shows willingness to be connected to him, dispels a misconception of his exclusivity, and "protects the child" from unwanted connection (see *Igrot Moshe, Orach Chayim IV:66*; *Otzar Habrit 6:8*)

In real cases, parents can seek family and/or rabbinic guidance to reach a balanced solution.

"Behind the Scenes" Zoom shiur

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

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Igrot HaRe'aya - Letters of Rav Kook

Making Sure There Will Be a *Din Torah* – #173

Date and Place: Yafo, 1 Kislev 5669 (1908)

Recipient: Zev Gluskin, the head of Carmel Wine and the Organization of Wine Producers.

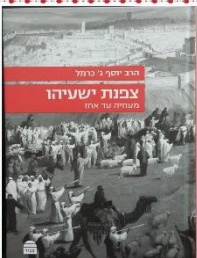
Body: It is very unpleasant for me, but I am compelled to speak briefly about that which happened to Mr. Z.G. (by chance the same initials as the addressee). Any attempt to [allow a defendant to] run away from the laws of Israel in the Land of Israel, when he is aided by formal helpers from among the public attorneys, will always remind me of the bringing of Pompey to the gates of Jerusalem by two litigants, Hurkenus and Aristobolus. How damaging was that litigation!

We have cause to call out in pain about the degradation and the subservience, which is embedded in the feeling of contempt for the judicial system of Israel in the Land of Israel. This is especially painful in the time that can be called by the honorable name of the stirrings of national renewal, even though it is to a very small degree. What travesty did they find in the justice of the Torah of Life, whose honor lights the whole world, that they should stray from it?! Is it because they sometimes feel that the attribute of mercy opposes the attribute of judgment (i.e., that the Torah's justice is too strict)?! Is that the approach of the Torah alone? Where do we find legal systems of the world that employ the attribute of mercy? No one should know as well as men of commerce (apparently, this is what one or both of the litigants were) that the world cannot be sustained at all with the attribute of mercy, but rather with an exact attribute of justice. The idea of combining the attribute of mercy along with the attribute of judgment cannot blur the form of justice to even the minutest degree. It is a pillar of iron for justice that one is not permitted to give preference to the poor.

Of course, my complaint relates to the people who are overjoyed to involve themselves in the litigation of the aforementioned Mr. G., and have troubled themselves to remove it from the framework of our holy Torah. It is so upsetting to me that they are supported by our distinguished Organization of Wine Producers.

Mr. G. said that he would accept even a panel chosen by *zabla* (each litigant picks one *dayan* and those *dayanim* choose a third *dayan*), just that he wants that the third, central *dayan* should be a Torah scholar, one who has familiarity with the judgment of the Torah. Is this a travesty?! Is the Torah so despised that it "can't even be served for dessert" (based on Petichta, Eicha Rabba 10)!? If even this is not acceptable to the other side, and my rebuke will be treated like a voice that calls out in the desert, at least the two sides should choose the two sides for a panel of *zabla* to decide who will be the central *dayan* for the panel, and the decision of that preliminary panel should be followed.

I know that you, my honored friend, are not involved in this matter, but I have no one else to speak to that there is a chance that people will listen to; only you are the one who might be able to help.



**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

Compensation for Transfer of Business to One Partner – part I

(based on ruling 78039 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl) and the defendant (=def) started a business that provides therapy for children. According to their agreement, def, who has a similar center elsewhere, was responsible for the finances and infrastructure (e.g., payment from parents and *kupat cholim*, paying workers, insurance, purchases, upkeep). Pl was to serve as a therapist, be in charge of day-to-day operations, interact with parents and workers, and plan events. The business and grounds rental were in def's name. Pl and def were supposed to get small salaries and then split profits equally after reaching "the point of balance." After three years of receiving less salary than discussed and no profits, despite the growth of the operations, pl started complaining about compensation, and was unsatisfied with the explanations and that she/ her husband had limited access to records that would show the amount of profit. Pl and def reached a level of acrimony that made it difficult to continue the partnership, and each side wanted the business.

Ruling: [First, *beit din* decided about how to end the partnership. In later installments, we will see about the basis for compensation for the one who lost his part in the business.]

While each side wanted the business and argued that it was rightfully theirs, def demanded guarantees that pl would not compete in the future and was disturbed by the prospect of pl and her husband, who lived near the center and many clients' families, would be a "thorn in def's side." It became clear it was more workable for pl to get the center, whereas def would continue with his own center and receive significant compensation from pl. Def reluctantly agreed. Following are provisions of *beit din*'s decision (on March 22, 2018) regarding separation.

The date of transferring operations is May 1, 2018. Def will receive income and pay pl and third parties that which relates to operations until then if requests for payment were received by May 7. Def will pay by May 31.

Both sides may petition *beit din* if they believe the other side is not keeping this agreement, and *beit din* will hold a hearing soon thereafter to rule on it. Pl is responsible for damage payments that relate to activity before May 1 (even if the claim comes in later).

During pl's first three months of operation of the business, she will pay 2,500 NIS per month as a down payment on the compensation, after which, *beit din* will decide about continuing such payment. If pl will claim that def is not cooperating properly in transferring operations, she may appeal to stop these payments. During this time, pl can continue using the center's name and remaining infrastructure. By the end of July, pl will change the center's name and create new relationships with insurers, *kupot cholim*, workers, etc., instead of def.

Def can take any movable object from the center, after two weeks' warning, or leave things of value. These decisions will be reflected in *beit din*'s final ruling.

Def may open up a competing business as long as it is not within the present municipal boundaries.

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

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