



HEMDAT YAMIM

Parashat Hashavua

Vayishlach, 19 Kislev 5784

Harav Shaul Israeli zt"l
Founder and President

“Not Yaakov ... but Yisrael”
Harav Yosef Carmel

We have explained in the past that our third patriarch's journey to Charan was characterized as a trek by foot, making the name Yaakov, from the root *akev* (heel) appropriate at that time. The journey of return to the Land ends in our *parasha*. It is highlighted by his victory over the Angel of Eisav, as a result of which he received a new name, Yisrael.

The middle letters of Yisrael form the word *rosh* (head). This symbolizes Yaakov's desire to reach the head of his famous ladder. There are other, related, appropriate meanings. Head also symbolizes leadership, being the head and the first (*rishon*). For example, when Shimi ben Geira came to greet David when he returned from his exile during Avshalom's rebellion, he is called the "*rishon* of the whole House of Yosef" (Shmuel II, 19:21).

The connection between leadership/strength and Yaakov's new name is explicit, as the angel explains it: "... for you have acted with authority (*sarita*) with angels and people and have succeeded" (Bereishit 32:29; this *pasuk* can be translated in many ways). The root is found elsewhere in this meaning in verb form, as Avimelech is described as ruling over Israel for three years with the word "*vayasar*" (Shoftim 9:22).

In many ways, *sin* and *shin* are the same letter, so *yashar* (straight) is also a form of the same root. Shimshon, then, may have intended for a double entendre, when he asked his father to take for him a Philistine wife because she was *yashar* in his eyes (ibid. 14:3). He not only meant that he liked her but that she was his means of obtaining dominion over her people.

The meaning we would like to focus on is of *yashar* in the realm of ethics. *Chazal* call *Sefer Bereishit*, *Sefer Hayashar*, because the patriarchs were ethical. In one of the most uplifting sections in the Torah commentaries, the Netziv, Rosh Yeshiva of Volozhin (the greatest Torah center in Europe at its time), explained the difference between a *tzaddik* (righteous) and the preferable *yashar*.

The Netziv refers to the nation at the time of the destruction of the Second Temple as having many *tzaddikim* and people who were dedicated to Torah and its study, yet they were a difficult generation – these people were not *yashar* in the way they led their lives. Because of baseless hatred, they accused those who did not share their philosophy of being heretics, causing violence and discord, which led to the destruction. Hashem "cannot stand" such *tzaddikim*, and yearns for *yesharim*, truly ethical people, like the patriarchs. Even though the *tzaddikim* primarily acted with good intentions, Hashem was justified in bringing the destruction of the Temple.

The Netziv continues to point out that the patriarchs acted in good faith and with cordiality even with lowly idol worshippers, seeing them as partners in building the world. Avraham prayed for the people of Sodom, even though he hated them due to their wickedness. The *midrash* (Devarim Rabba 3:15) says that Avraham was chosen over all of the other righteous people because he tried to defend and find the good in all sorts of people.

So, Yaakov, who started off as "an unblemished man, who sat in tents" (Bereishit 25:27) was crowned as Yisrael, both *tzaddik* and *yashar*. May we merit leadership by people who are both *tzaddikim* and *yesharim*.

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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

Whose Pronunciation Should the *Oleh* Use?

Question: In my *shul*, the “functionaries” do the *havara* (custom of pronunciation) as they like. This week, the *ba’al korei* (=bk) did Sephardi/Israeli, while I did the *berachot* of my *aliya* in Ashkenazis. When reading the *kri’ah* along with him, should I have been using my *havara* or his?

Answer: First, we must investigate the roles of the *oleh* and the *bk*. In the *gemara*’s time, the *oleh* read the Torah aloud for the *tzibbur*. In Tannaic times, only the first *aliya* had an opening *beracha* and the last one had an ending *beracha* (Megilla 21b), and all the middle *olim* did was read the Torah. The Rambam (Tefilla 12:5) describes *kri’at haTorah* as the *olim* doing the *laining*. Other *Rishonim*, though, report a *minhag* that a *bk lains*, whereas the *oleh* makes the *berachot* and reads along quietly (Shulchan Aruch, Orach Chayim 141:2).

The consensus is that the *bk*’s reading is the halachically significant *kri’at haTorah*, which needs to be done carefully, as the point is for the *tzibbur* to hear (see Sha’ar Ephrayim 3:1; Mishna Berura 142:3). (The Maharil (Shut 23) considers the possibility that the *oleh*’s reading can also count for the *tzibbur*.)

The Rosh (Megilla 3:1), though, requires the *oleh* to read along with the *bk*, for if he does not, his *berachot* are *l’vatala*, because his *beracha* cannot connect to the *bk*’s *laining* but must relate to his own reading. The Shulchan Aruch (OC 139:2-3) rules that one who is unable to read from the Torah even with the *bk*’s help (whether due to blindness or ignorance), may not receive an *aliya*, but the Rama (ad loc.) allows it. The Taz (OC 141:3) argues on the need to read along, as he understands the Yerushalmi (Megilla 4:1) to say that when the one making the *beracha* listens to the reading, the *beracha* is connected to the reading. The She’eilat Ya’avetz I:75 rejects the Taz, saying that listening can connect one to a text but cannot make it count as if the listener read that text from a *sefer Torah*, as is required for *kri’at haTorah*. We generally *pasken*, albeit likely because of the great need, to allow even a blind person to get *aliyot* even though he cannot read along (Mishna Berura 139:12-13). In many, many *shuls* it is also clear that not everyone reads along, and it is rare for *gabbaim* to try to enforce it. (The She’eilat Ya’avetz considers it conceivable, but probably wrong, that one who follows in the *sefer Torah* the words he listens to is considered as if he read them with his lips.) Thus, reading along is not a critical need.

However, it is certainly proper to follow the Rosh’s ruling that the *oleh* read along, which the Rosh says he should do “quietly and **precisely**.” This desire for preciseness should be tempered by the fact that we make no real effort to ensure such quality. We allow non-proficient readers to get *aliyot*, and *Acharonim* point out that we do not trust the *oleh* to read well enough for the *tzibbur* to fulfill the *mitzva* by his reading (see Mishna Berura ad loc. 10). Also, given that an *oleh* reads quietly, we have no way to correct him if he reads inaccurately.

One can fulfill recitation-based *mitzvot* in a different *havara* from his own, which is what one should do when leading a congregation with that *havara* (see Igrot Moshe, OC III:5; Bemareh Habazak III:1). Therefore, it is not a problem for him to follow the *bk*. However, there is generally a preference to do things one’s own way for a “private *mitzva*” when it is not offensive to the public (see *ibid.*). Since it is most likely the *oleh*’s reading is a personal matter (the *berachot* are more complex – see Bemareh Habazak *ibid.*), one’s own *havara* is conceptually preferable. However, it is easier for those who do not know *dikduk* well to “parrot” the *bk* than to try to make the proper adjustments for his own *havara*. While his failure in that regard is unlikely to ruin the meaning, which would make it correctable if he were the *bk* (see Rama, OC 142:1), it is better to avoid mistakes than to use one’s *havara* (see *ibid.*). Therefore, except for *olim* who are proficient enough to make the adjustments consistently, it is better to follow the *bk*.

“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.

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Igrot HaRe'aya - Letters of Rav Kook

Preparation for *Shemitta* – #177 – part I

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

Recipient: This is a public letter to the residents and farmers of the agricultural settlements of *Eretz Yisrael*.

Body: The upcoming year, 5670, is a *Shemitta* year (Sabbatical year, during which there are major limitations in *Eretz Yisrael* on agricultural work and on use of the Land's produce), according to the count that is customarily used. This is based on the accepted opinions from the times of the *Geonim* and the *Rishonim* from way back in history.

From the time the *New Yishuv* took root in the Land and started including agricultural work, the question of *Shemitta* has turned into a major question. This is because of our status as a small, vulnerable entity.


We are but a minority in the Holy Land, which is mainly occupied by non-Jews. Also, the main part of the *Yishuv's* economy is based on production and marketing of wine and other produce of the Land. Due to these two fundamental reasons, as well other reasons, it is in no way possible to fulfill the *mitzva* of *Shemitta* according to all its laws and prohibitions, which would include stopping all work of cultivation, making all the produce ownerless, and having to treat the produce as possessing sanctity of *Shemitta*. This would by necessity cause the whole *Yishuv* to be totally destroyed, Heaven forbid. If during the course of the year, the commercial connections are stopped, the few farmers that exist will have to leave the Holy Land because of an inability to support themselves in this poverty. Because there are so few fellow Jews in the Land at this time, the agricultural communities will be desolate and abandoned. [This flies against the spirit of the Torah, which is a Torah of] "Its ways are ways of pleasantness and all its paths are peaceful," and bring life and blessing forever.

Therefore, venerable, brilliant rabbis got together and dealt with this problem in previous *Shemitta* cycles and identified several factors that make the halachic imperative of keeping the laws of *Shemitta* weaker these days than they were in ancient times: 1. Many halachic authorities posit that the laws of *Shemitta* in our days apply only according to Rabbinic law. 2. The land of *Eretz Yisrael* is, based on the "law of the kingdom," owned by the king. Therefore, those who live on and work the land are only like sharecroppers on a non-Jew's land. 3. There are also doubts as to the count of years, i.e., we do not know for sure which year is actually *Shemitta*. Other side reasons can also affect matters.

In truth, none of these reasons and even their confluence suffice to cancel the laws of *Shemitta*, Heaven forbid, as we will explain: The first reason, that it is only Rabbinic, does not [necessarily] take away at all from the obligation to keep it and from its severity. After all, we say: "The words of the Scribes are more beloved than the words of the Torah itself" (Yerushalmi, Berachot 1:4). The idea that the king owns the land is also not enough of a reason [to change things significantly] for a few reasons.

Also, the doubt about the count of years does not make it permitted [to ignore *Shemitta*]. For one, we have already decided and work with a clear assumption about the count of years, accepted by our great rabbis, the *Rishonim* and the most brilliant of the generations, with the concurrence of the head teacher, the Rambam. According to their count, 5670 is the year of *Shemitta*. Also, it is not possible to maintain a doubt about the year and be lenient based on that, as we would fully uproot a *mitzva* based on doubt. However, since we sometimes find that the Rabbis give permission to be more lenient regarding a law that they legislated than by a Torah law, this is significant when combined with other reasons to be lenient, especially when the need to be lenient is very pressing.

We will continue from here next time.



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 VII

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

Case: The plaintiff (=pl) and the defendant (=def) opened a center that provides therapy for children. According to their agreement, def, who has a similar center elsewhere, was responsible for the finances and infrastructure. 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," but pl never received profits. After three years, acrimony brought them to separate, and *beit din* oversaw the transfer of the business to pl, with compensation due to def. [In this last installment, we will deal with several minor claims of injustices, each one presented in the ruling section.]

Ruling: Pl demands that def return 10,000 NIS that a municipality mistakenly gave her for a Purim program she ran as the sides were parting, for which she billed the municipality and paid taxes, after she did the program without the help she asked for from def. Def explained why he was unable to provide the help and claimed that, in any case, based on the timing, the money belongs to him. Ruling: Based on *beit din's* arrangements for transfer of the business, all monies received for services rendered before May 1 belong to def. It does not make a difference if def helped or did not. If pl (improperly) sent the municipality an invoice which resulted in her paying taxes, she caused herself the problem and does not receive compensation.

Pl demands half of the income from special events, which netted 189,000 NIS, based on an oral agreement due to the fact that pl was not being paid profits. Def denies such an agreement. Ruling: A few factors weaken pl's claim. There is no circumstantial evidence of such an agreement or of an early claim of that money. Pl raised the claim in *beit din* at a late point in the adjudication. The sides' written agreement lists such events as a basic obligation of pl, not a special, additional one. We also reasoned that pl might have made up for doing less therapy than expected by doing more of other things, such as special projects. Therefore, without substantiation, pl will not get anything from this claim.

Pl's husband provided many services for the center and allowed it to use his property and has not gotten paid; the value of these is scores of thousands of NIS. Def's only response was that the claim was made too late. Ruling: The Rama (Choshen Mishpat 264:4) rules that when one does a service for his fellow without being asked, we normally assume that he is to be paid, not that he was doing it for free. The Chatam Sofer (Shut V:119) says that delay in requesting pay is not an indication of waiving his rights. However, pl, in her summary of claims, explained that since the work had been done under false pretenses (regarding the chances of pl receiving profit), she can ask for money now. This means that she admits *mechila* previously, and she did not sufficiently prove the false pretenses. Additionally, the recipient of the award would be pl's husband, but he is not a litigant in our proceedings. Therefore, there is no award of payment.

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Ori Leah bat Chaya Temima

Arye Yitzchak ben Geula Miriam
Yerachmiel ben Zlotta Rivka

Neta bat Malka
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