



HaRav Shaul Israeli zt"l  
Founder and President

# HEMDAT YAMIM

## Parashat HaShavua

Bamidbar, 2 Sivan 5777

### The Two Countings of the Nation, Yom Haatzmaut and Yom Yerushalayim

Harav Yosef Carmel

Over the last few weeks, we proved that Torah and *Chazal* saw a deep connection between *Brit Bein Hab'tarim* and *Kriat Yam Suf*. Avraham was concerned that, even if his children were to inherit *Eretz Yisrael*, they would still be subservient to Egypt. We explained that Hashem promised that when Bnei Yisrael would leave Egypt and cross the sea, their subservience would end and their independence in *Eretz Yisrael* would begin.

We continue this week by delving into the connection to *Parashat Bamidbar* and Yom Yerushalayim. In Avraham's "second *aliya*" at age 75, he became "*shomer mitzvot*" and went to the "place that Hashem will choose." Yerushalayim turned into the future capital of Israel, where *Am Yisrael* would come three times a year to the *Beit Hamikdash*.

The Land that Avraham was drawn to originally was the place that Hashem had chosen. Let us now return to our *parasha* and see how this piece completes the picture. The counting at the beginning of Bamidbar is repeated nearly 40 years later with almost exactly the same numbers, yet they had two very different goals.

The second counting was in preparation for the conquest which would turn the Land of Canaan into *Eretz Yisrael*. The first counting, in our *parasha*, was done regarding "the army of Hashem." Rashi explains that when Hashem brought down His Divine Presence, he counted the nation, one month after the opening of the *Mishkan*. The army of Israel has to include these two elements – conquest and sanctity – as the *pasuk* says: "Your camp shall be holy" (Devarim 23:15).

The Exodus had two end goals: 1) Acceptance of the Torah at Sinai as a holy nation; 2) Entering *Eretz Yisrael* and obtaining the land as a sovereign nation.

On Yom Haatzmaut we celebrate the latter, and on Yom Yerushalayim we celebrate the former. The Divine Providence surrounding the events is fascinating from a spiritual perspective. We first received independence and only nineteen years later were able to free Jerusalem. In the War of Independence, the Jewish quarter fell to the Jordanian Legion, to return only in the Six-Day War to the eastern part of the city and the Western Wall. Many people blamed David Ben Gurion for not allocating enough resources to defend Jerusalem in 1948. By establishing the state, Ben Gurion took upon himself a massive responsibility, knowing that all the Arab armies would attack the fledgling state and try to obliterate it. The strongest and most professional army was the Jordanian Legion, trained by British officers and possessing the most advanced weaponry. If the Legion would have focused on attacking other fronts, there is a good chance they would have prevented the State from surviving. Yet by Divine Providence they focused on Jerusalem, and thus the State survived. Ben Gurion decided to focus the troops on expanding the borders to sustain the State, but the cost was the Jewish Quarter.

Nineteen years later, the Legion once again attacked Jerusalem, bombarding the west from the east. This, through the grace of G-d, allowed us to unite the city. Yom Yerushalayim now joined Yom Haatzmaut. The two countings that we saw in the Torah once again took place. The motif of Pesach and Kriat Yam Suf was joined by Yom Haatzmaut, while Shavuot/ Matan Torah, was joined by Yom Yerushalayim.

This is the day that Hashem made; let us rejoice and be happy!

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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

## Davening Early on Shavuot

**Question:** In a *shul* with many elderly members who have trouble staying up late, may we have a *minyan* for *Ma'ariv* of Shavuot before *tzeit hakochavim* (=tzeit)?

**Answer:** The idea of waiting until *tzeit* to start Shavuot is not found in *Chazal* but arises first in early *Acharonim*, beginning with the Masat Binyamin (Chiddushei Dinim, Orach Chayim 4). The matter is related to the idea that since Shavuot follows a 49-day period, it should not start before its time. One can ask whether the problem is that *Shavuot* is “not ready,” or whether Shavuot can start early but it is improper to “shortchange” the *omer* period.

The Netziv (Meishiv Davar I:18) sees in “you shall call, on the midst of this day, a holy convocation” regarding Shavuot (Vayikra 23:21) a special rule that it cannot start early. This puts the stress on Shavuot. However, the earlier sources (Masat Binyamin *ibid.*, Shelah, beginning of Massechet Shvuot) focus on “they shall be seven complete (*temimot*) weeks” (Vayikra 23:15), positing that starting Shavuot early impinges on the completeness of the *omer* period. (This is likely related to the concept of counting promptly on the first night because of *temimot* – see Mishna Berura 489:2). L'horot Natan (VII:31) prefers the earlier sources and claims that, as a result, one who made *Kiddush* early fulfilled his *mitzva* and need not repeat it.

From what Shavuot element(s) must one refrain? The Masat Binyamin, Shelah, and Magen Avraham (intro. to Orach Chayim 494) refer only to *Kiddush*, and the Shelah says explicitly that *Ma'ariv* (and *Kiddush* in *shul*) can be done earlier. The Taz (intro. to OC 494) says that *Ma'ariv* should also be delayed. The Pri Megadim (*ad loc.*) stresses the Taz's cogency based on the fact that regarding several *halachot*, *Ma'ariv* ushers in a new day. The Mishna Berura (494:1) posits that *Ma'ariv* should wait until *tzeit*, and this is the widespread *minhag*. (Hitorerut Teshuva II,31 likes the delay of *Ma'ariv* for a side reason. Because people stay up all night and do not recite *Kriat Shema Al Hamita*, it is important for *Kriat Shema* to be after *tzeit* (see Rashi, Berachot 2a).)

What about candle lighting? Since it can be done on *Yom Tov* and usually ushers in Shabbat (see Shulchan Aruch and Rama, OC 263:10), it is logical to compare it to *Kiddush* and *Ma'ariv*. However, while there is an opinion to wait for candle lighting, the *minhag* is to light at the regular *Yom Tov* time (see Halichot Shlomo, Moadim 12:2). One explanation is that it is not an absolute acceptance of Shabbat. One could claim that women, who are the ones who accept Shabbat with lighting, may ruin *temimot* because they are exempt from counting. However, L'horot Natan (*ibid.*) argues powerfully that this application of *temimot* is not a function of the *mitzva* to count, but of respecting the time period's integrity, which applies also to women.

The main reason, though, is probably that there is no intrinsic problem at all. One violates no *mitzva* by doing an act of Shavuot, and *omer* is seven complete weeks anyway. *Chazal*, who are our source of formal *limudim*, are silent on the matter. Rather, the matter of waiting, even though the rule is that one may perform Shabbat and *Yom Tov* activities early, is a *minhag* instituted because it looks like (language of the Shelah) we are shortchanging the *omer*. Thus, there is no need to separate between the time of *omer* and Shavuot absolutely, but only according to the extent the *minhag* prescribed. There is a consensus regarding *Kiddush*; it has extended for most to *Ma'ariv*; only a few apply it to candle lighting.

Because many classical *poskim* allow early Shavuot *Ma'ariv*, it is legitimate for a *shul/minyan* with a special need to do so, despite the prevalent *minhag*. If feasible, it should be stressed that only those with a real need attend (it is unclear if accommodating children's sleep patterns qualifies). It is proper to communicate that all who can should not make *Kiddush* before (the earliest opinion of) *tzeit*. The level of compliance need not affect plans for *Ma'ariv* unless it is known there is widespread “abuse.”



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# Ein Ayah

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

## The Perils of Excessive Wealth for Future Generations

(condensed from Ein Ayah, Shabbat 5:8)

**Gemara:** The female sheep go out on Shabbat “*kevulot*.” What is the meaning of “*kevulot*”? Their tails were tied below them so that the male sheep would not be able to mate with them. What is the source that the word *kevulot* implies not being able to bear fruit? It states in Melachim I (9:13): “The *kavul* land until this day”. What does the word *kavul* imply? Rav Huna explains that the people were “*kavul*” with silver and gold. Rava said to him: Because they were *kavul* in silver and gold – He was not happy? He (Rav Huna) answered: Yes. Since they were so wealthy and spoiled, they were unproductive and did no work for the King.

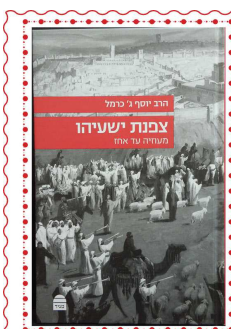
**Ein Ayah:** The success of humanity regarding its contribution to the future of society is dependent on the connection to good results and elevation that accompany all elements of its actions. Therefore, also regarding the development of the world, the best way forward is when one generation works to add blessing to the life of the next generation. For then the creation of fruit works in a positive framework. But if things change and one generation does not add value to the next generation and even diminishes the development of the next generation, this will lead to a strange and unnatural state that will create a crisis.

Hence when wealth is gathered in a disproportionate manner in one generation in a certain society, it will diminish the value of working, and this nullification will bring about a barrenness and lack of blossoming of the land. It is the next generation that will feel the lacking. The next generation, after all, will need to be in a more developed stage, which the new generation needs to be born into due to its special needs. When the previous generation did not contribute its part, the new generation will be in a bad situation under great pressure.

This is a truism both in material and in spiritual matters. Therefore, riches can act as a “*kevel*”- something that stunts the freedom of growth and development regarding work, which is the foundation for Hashem’s blessing in this world.

The *gemara* explains that the *pasuk* is referring to people who became wealthy and spoiled, and they did not work. The freedom of the natural tendency to improve matters for the future is restrained so that “fruit” does not develop. The people will not be able to grow and compete with lands that work due to necessity. This will then be called “a *kavul* land until this day,” as there is no positive change as the generations pass. Therefore he stated correctly that a disproportionate amount of wealth will bring ruin to future generations, and this is against the will of the Master of All Beings, may He be blessed, Who established the land and its inhabitants. “He did not create the land to be in chaos, but rather to be settled”(Yeshayahu 45:18).

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### 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

## Calculating Late Penalty According to Contract or Law – part II

(based on ruling 75030 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** The plaintiff (=pl) bought property from a building company (=def), which was supposed to complete construction by 20.06.2014. After negotiations, the contract included a penalty of 2,800 shekels a month against def for lateness, starting from two months after the target date. Pl received the apartment more than 18 months late. According to a new law, a buyer is compensated for more than 60 days of lateness (retroactively from the beginning) according to the following schedule – 150% of the apartment's rental value for the first 8 months; 125% of the value after that. Buyers cannot waive their legal rights. Pl claims that the apartment's value is 4,200 shekels and claims 105,275 shekels. Def claims the payment should be drastically reduced on two general grounds. Since the contract included an arbitration agreement to *beit din*, Halacha, which recognizes the sides' agreement, rather than the law, should be binding. Therefore: 1. The monthly rate is 2,800. 2. Payments start only after two months. 3. The contract gives a two month extension for the buyer's requesting building changes, which pl made. Furthermore, the following delays, which were beyond def's control, push off the target date: 4. (Arab) workers could not come to the site during the fighting in the summer of 2014. 5. The water authority illegitimately delayed connecting the water supply, which delayed by months receipt of a *Tofes 4*, needed for legal occupancy. 6. The fire department improperly delayed approval for several weeks. 7. Pl refused to receive control of the apartment for two months after it was ready.

**Ruling:** Now we will apply the Law of Sales (*Homes*), which, we saw last time, is binding here.

The law gives a grace period of 60 days, similar to the contract, but with the following difference. According to the contract, the first 60 days are exempted from payment. According to the law, if the 60 days are exceeded, the contractor has to pay also for the first 60 days.

The law allows the sides to agree to excuse the seller for "delays over which the seller does not have control and the risk for their occurrence and the consequences are not upon him." The sides' contract does stipulate that, and therefore we will analyze each delay def claims. We reject pl's categorical claim that def should have expected and taken into account all the delays in setting the target date.

We must distinguish between delays that affected construction of the apartment and those affecting utility infrastructure. Even if we accept the claims regarding each element, we will not add one on to the other in exempting def because delays in one did not stop def from progressing in the other. Delays claimed regarding the apartment covered less than six months, and therefore we will calculate the potentially larger delays in infrastructure.

We reject def's claims regarding the fire department delay. Def's correspondence with the municipality illustrates that def placed the sanitation room in an unauthorized place. Their attempt to negotiate an agreement to allow them to keep it was reasonable. However, the delay stemmed from def's mistake, for which they are responsible.

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