



# HEMDAT YAMIM

## Parashat Hashavua

Matot Masei, 1 Av 5781

Harav Shaul Israeli zt"l  
Founder and President

**Yirmiyahu Comforts Too**  
Harav Yosef Carmel

Most of the *p'sukim* in the early sections of *Sefer Yirmiyahu*, which make up the first two *haftarot* of the Three Weeks, consist of rebuke and prophecies of doom. Yet, they also contain sections of *nechama* (consolation). "See, I have appointed you over the nations and kingdoms – to uproot and smash and destroy and ruin, to build and to plant" (Yirmiyahu 1:10). We also find: "Go and call out in the ears of Yerushalayim, saying: 'So says Hashem: I remembered for you the kindness of your youth, the love of your nuptials, your going after Me in the desert, in a land that is not planted'" (ibid. 2:2).

The same type of language is used in Yirmiyahu 30-31. "...an eternal love I have loved you, therefore I have extended grace to you ... You will still plant vineyards in the mountains of Samaria, planters plant ..." (ibid. 31:1-4). "Just as I was diligent in their regard to uproot and smash and destroy and ruin and do bad, so will I be diligent in their regard to build and to plant" (ibid. 27).

There is an interesting development. In the opening prophecy, the builder and planter is Hashem. In the later ones, Hashem calls upon Bnei Yisrael to build the cities and plant the orchards of *Eretz Yisrael*. He also said: "You will still plant orchards ... place for yourself road marks, put your heart on the road that you traveled, return O virgin of Israel to these cities of yours. How long will you avoid it, you wayward daughter? For Hashem has created something new, a female will encircle a male" (ibid. 4, 20-21).

For close to 2,000 years, *Am Yisrael* waited for a miracle from the Heavens, that a liberator would appear as a messenger from Above and bring redemption to Israel and the world. The approach of waiting was strengthened by the *midrash* of *Chazal* known as the three oaths, which opposed Israel taking decisive action to return to the Land of their own volition. The fear of the oaths and the expectation of an "awakening from Above" combined to hold us back from action. But Yirmiyahu took a stand, arguing that we should not be inactive, as we saw above: "How long will you avoid it, you wayward daughter?" That which it continues "For Hashem has created something new, a female will encircle a male" is based on the famous metaphor that in our relationship with Hashem (upon which *Shir Hashirim* is based), Hashem is the male, and we are the female. Here, then, Bnei Yisrael are expected to be active instead of passive. And indeed, the Gra called on his disciples to take action and move to *Eretz Yisrael*, which hundreds did, despite the enormous difficulties. On the other hand, the rest of Bnei Yisrael at that time was still "avoiding it."

The push came more than a hundred years later, when Binyamin Zev Herzl (whose *yahrtzeit* is around now) succeeded in creating a national movement that changed the mindset of the nation and the world. Yirmiyahu's call for road marks (*tziyunim*) took on a new meaning with the rise of *Tziyonim* who built the Land. Many members of the nation have flocked to the Land, and the ingathering is still in progress. May we merit to fulfill more and more of Yirmiyahu's comforting and exciting prophecies of national renewal, after thousands of years in the painful exile about which Yirmiyahu is famous for prophesying.

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



**Eretz Hemdah**  
Deans: Harav Yosef Carmel, Harav Moshe Ehrenreich  
2 Bruriya St. corner of Rav Chiya St.  
POB 8178 Jerusalem 91080  
Tel: 972-2-5371485 Fax: 972-2-5379626.  
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by Rav Daniel Mann

## Learning in a Cemetery

**Question:** I work in a cemetery on upkeep in the area of the graves. May I listen to Torah *shiurim* with earphones on site?

**Answer:** The *gemara* (Berachot 18a) forbids “holding a *sefer Torah* and reading it, wearing *tefillin* on his head,” wearing *tzitzit* in an obvious manner, *davening*, and reciting *Kri’at Shema* in a cemetery/close to the deceased, due to the concept of *lo’eg larash* (literally, mocking the pauper). *Chazal* applied “One who mocks the pauper blasphemes his Maker” (Mishlei 17:5) to one who performs actions (especially *mitzvot*) in front of the deceased in a way that “reminds” them that they are now incapable of doing such special activities. The Shulchan Aruch (Yoreh Deah 367:3) forbids speaking words of Torah there even if not from a *sefer*, and there is a question whether holding a *sefer Torah* without reading from it is forbidden (Pitchei Teshuva ad loc. 2). The Beit Yosef (Orach Chayim 23) infers from the *gemara*’s language of *tefillin* on the head that *tefillin shel yad* are not a problem because they are not visible. He rules, therefore, that covering *tefillin shel rosh* (Shulchan Aruch, Orach Chayim 45:1) and *tzitzit* (ibid. 23:1) is sufficient.

How should we view listening to recorded Torah with earphones? In certain contexts, *limud Torah* refers to that which is spoken. The Shulchan Aruch (OC 47:4) rules that one does not need a *birkat haTorah* before learning Torah in his head, and this apparently includes reading with his eyes only from a *sefer* (Taz ad loc. 3; Mor U’ketzia, OC 47 may disagree). The Gra (ad loc.) disagrees because contemplating Torah is included in the *mitzva*. In that context, the Shaarei Teshuva (47:2) reasons that listening to *divrei Torah* is like speaking them; it is unclear if that applies to listening to a recording rather than a person (see Halichot Shlomo 6:5).

However, it is likely that what defines *limud Torah* in our context is different. It is apparently assumed that one may not read Torah with his eyes from a *sefer* in a cemetery because it is clear what he is doing. Presumably all would forbid one to listen to a *shiur* without earphones. In the other direction, we have seen that full-fledged *mitzvot* such as wearing *tefillin* may be done when the *mitzva* is concealed.

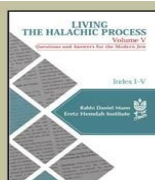
How noticeable must something be to be forbidden? Reciting *Kri’at Shema* and *tefilla* are forbidden even though they need not be audible or from a book (Shulchan Aruch, OC 62:4). Is that because it is usually discernable, or because it is active, which may make it worse than just leaving covered *tefillin* or *tzitzit* on? If so, is listening (and/or putting on the recording) to a *shiur* active, or do we view it as coming from an outside source to a passive listener?

Some sources may indicate that a *mitzva* can be forbidden even if not seen, if there is a visible sign that it is taking place. The Taz (OC 45:2, accepted by Mishna Berura 45:3) says that one needs to cover not only the *tefillin shel yad* but also the *retzuot* on the finger. Presumably it is not because of the *retzua* on the finger itself (which is not a full-fledged *mitzva*), but because it is a sign that he is wearing *tefillin* on his forearm. Similarly, the Shiltei Gibborim (45:1) says that one may not carry a *sefer Torah* in a cemetery even if it is fully covered because people realize what the bulge is. Would we say, then, that someone who sees you with the earphone will figure out you are listening to a *shiur*? Is it enough that you might be using it for something else? Would we follow what one would guess about you or about most people?

We have been unable to conclude that your situation is discernable enough to be forbidden. We add in the leniency of the Netziv (Ha’amek She’ala 14:6) that since in our days, bodies are buried deeper than ten *tefachim*, *lo’eg larash* does not apply. So we will not rule to deprive you of the opportunity of *limud Torah*. You should seek your employers’ agreement, to ensure you are not guilty of lowering the quality of your work or upsetting others around you. Also, try to conceal what you are doing as best as you can.

**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

## How to Sue a Resident – Letter #37

**Date and Place:** 18 Iyar 5666 (1906), Yafo

**Recipient:** The council of Rechovot

**Body:** Mr. Y. G. showed me the council's response to him, that you are unwilling to adjudicate in *beit din* with an individual until he first pays the amount that the municipality has demanded of him. I am hereby obligated to inform you, distinguished people, that according to Torah financial law, the right that the community has in such adjudication is to request collateral from the individual litigant before they begin adjudication, if they have doubts about whether he will pay after an award has been ruled. They do not have a right to demand payment of outstanding claims [prior to adjudication].

I hope that you will not allow any break from the standards that are required for adjudication and that you will carry out the matter according to the rules. I want to set the time for a hearing as part of the adjudication by this upcoming Shavuot (within 17 days).

## Praise for a Book on Agricultural Halacha – Letter #38

**Date and Place:** 16 Tammuz 5666 (1906), Yafo

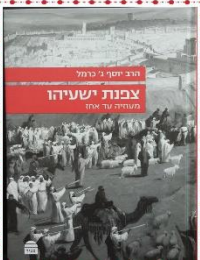
**Body:** I have seen a person who is diligent in his work for Heaven's sake, my friend, who is sharp and knowledgeable, G-d-fearing and complete, Avraham Shimon Yermah. He is one of our dear brothers who has settled the holy soil in the agricultural settlement of Petach Tikva. He has been inspired to organize a fair share of the laws of tithing and other critical *halachot*, in an orderly fashion and with clear language, for the benefit of our brethren who work the sacred soil and those who inhabit it.

I went over a significant part of his writing and found his words to be accurate and insightful, as he based himself on the words of our rabbis, the *poskim* from the periods of the Rishonim (1000-1500) and Acharonim (1500 and on). Sometimes he added on an additional element of his own, using sound logic. The few things I thought deserved critical comment are presented within the book.

In our days, when we have merited to see a sizable portion of our nation of Hashem living in the Holy Land, we have a greatly increased obligation to strengthen our resolve to approach the study and adherence to the laws of agriculture, both on the general and the detailed level. Therefore, regarding any literary work on the topic, especially when it is written by one of our brethren who not only writes about the topic but fulfills the matters actively in a proper manner, as he is a laborer of the fields who follows the *halachot* with great diligence, it is all the more appropriate to have special excitement about the book.

Since his interest in this project is fully for Heaven's sake, to strengthen the Torah and *mitzva* observance, and not for money, which he is not lacking, we should thank him and bless him for his efforts in writing on the topic. We should view it like a "fire-offering" by the author and a blessing for our brethren who live in the Land of Life.

May Hashem show him national liberation in the near future, so that we can see the return of all of Israel to the Holy Land with all its inhabitants, to fulfill the *mitzvot* of the Land as they were given, with the grand edifices restored and cities built on top of their ruins. May those redeemed by Hashem return with eternal joy.



**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

## What Determines the Builder's Responsibility – part I

(based on a partial ruling in case 73081 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** The plaintiff (=pl), a contracting company, built the defendant's (=def) house among others in a project, and each claims the other owes money, based on a comparison between the original terms and what was actually carried out. There were various determinants for what needed to be done: 1. The contract; 2. Blueprints; 3. The specifications; 4. The decisions of the building inspector (=ins). *Beit din's* expert began work to determine the factual basis for *beit din's* decisions but requires *beit din's* decision to form a ruling. The main dispute relates to the fact that pl built less than what was laid out in the contract and specifications. According to def, when something is clear in these documents, the inspector is not authorized to forgo them and exempt pl from paying the difference. Additionally, the contract gives special status to the inspector's instructions only when they are written down in the project's ledger, which ins did not do. Pl argues that since ins' decisions were discussed with and approved by the landowners' representatives, these decisions are authorized to uproot whatever was written elsewhere. Pl points out that the contract was the same for different types of apartments in the project, so that ins' input was absolutely necessary and must be binding.

**Ruling:** A major part of the disagreement relates to the fact that there are different parties in the project. In actuality, the *yazam* (project developer) is the *yishuv*, who hired ins and was in charge of the major elements of the project on behalf of the different homeowners. On the other hand, the contracts, signed by individual landowners and pl, describe the agreement as one between individuals and a contractor. Therefore, pl views the decisions of ins, which were approved by the landowners' representatives as having legal standing for all, even when they contradict the specifications that def (and others) had been given.

According to the updated rules of precedence in decisions, which def signed, ins is indeed authorized to make decisions. The rules do state that this is the case when it is written in the project's log. It is possible to view that provision as essential, i.e., that an oral decision is not binding even when it is not disputed that it took place, or to look at it as only descriptive, i.e., ins is expected to write things down so that questions do not arise as to what he said, but when not in doubt, his decisions are valid. According to logic and common practice, the latter is correct; matters that are evident regarding parties' intentions supersede written word (Tosafot, Kiddushin 49b).

Even though we accept ins' instructions as determining that which should have been done, this does not mean that ins is authorized to relinquish def's contractual rights. Therefore, if an element from the specifications was not carried out, def is entitled to have the value of that element reduced from the amount due to pl.

*We will continue next time with other elements of the partial ruling.*

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

**Nir Rephael ben Rachel Bracha**  
**Yisrael ben Rivka**  
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