



# HEMDAT YAMIM

**Parashat Hashavua**

**Ki Tisa, 18 Adar 5783**

Harav Shaul Israeli zt"l  
Founder and President

## The Basic Law of a Person's Dignity and Freedom – part IV

Harav Yosef Carmel

As we have been seeing, the Torah laws, given thousands of years ago, include some whose literal applications are no longer common, but they serve as inspiration for contemporary application of the societal sensitivities. We are now ready to discuss moral lessons learned from the laws of *ama ivriya* (young, female servant).

As opposed to a male Jewish servant, who can sell himself as an adult and can be sold for stealing and not reimbursing, there is only one way for a girl to become an *ama ivriya* – her father is unable to feed his children (possibly as a deterioration brought on by sin – see Kiddushin 20a), and so he gives his daughter to a family of means. Even then, there are serious restrictions on her use. In return for her domestic help, the family is supposed to see to all of the girl's physical and emotional needs, in the present and the future.

From the time of the giving of the Torah until quite recently, a single woman had almost no way of living in dignity. Therefore, out of concern for the girl, the man who "acquired" her from the destitute family must obligate himself to marry the girl or have her marry his son, when she becomes of age. It is in this light that the girl is seen and treated properly as she grows up. If they do not live up to this expectation, she automatically goes out free when she is old enough to marry, so she can do so. Then *beit din*, as the representative of the community, will look after her needs (if her father is still unable to do so), and make sure she is protected from abuse.

We pointed out last week that this whole situation is one we want to avoid, as it is a last-ditch step. The Torah also stresses that she is not her master's property and can thus not be sold to someone else. In fact if he tries to do so, the Torah calls it "*bigdo*," his betrayal. If they want her to be with them permanently, it is only through marriage, a full marriage with all the rights of a wife. This includes financial and emotional security, which the Torah refers to with the words *sh'eir*, *k'sut*, and *ona*. It is interesting that the laws of what every wife can expect from her husband are learned from what the Torah prescribes regarding an *ama ivriya* who turns into a wife.

"If these three things he does not do for her, she goes free without money" (Shemot 21:11). This means that if she was not married to her "master" or his son and was not "redeemed" by someone, then she goes out for free when she shows the early signs of womanhood. The Rashbam adds that *beit din* is responsible to ensure that this indeed happens. Rav Sa'adia Gaon derives that if she became sick while in his charge, he remains obligated to pay for her medical care even after she leaves. This is another lesson – to look out for the health and welfare of one's workers.

So, we see that the Torah long ago led the way in protecting dignity in dealing with much more difficult social situations than we experience today. The idea of concern for the dignity of those weaker than we is a lesson that always needs to be studied.

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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

## Learning during *Kaddish*

**Question:** I give a *shiur* to a few people before *Shacharit* and aim to finish when *davening* begins, with *Rabbi Yishmael/Kaddish D'Rabbanan*. Sometimes we are not quite finished then, in which case, we try to answer *Kaddish's* main recitations, although we sometimes get caught up and fail to respond. Someone complained that continuing to learn during *Kaddish* is *assur* and a disgrace to *Kaddish* and the people listening to it. I don't see it that way but said I would ask.

**Answer:** It is good that you plan to finish by *Kaddish*. Hopefully you learn with your *tallit* and *tefillin* on and have *davened* up to there. It would be a shame to either need to skip parts of *P'sukei D'zimra*, speed through it, or be behind the *tzibbur*. We will focus on *Kaddish*, as you ask.

There are three possible objections to a *shiur* continuing during *Kaddish*: 1. Listening/answering *Kaddish* has innate precedence over learning; 2. The learning can transmit one's rejection or disregard for *Kaddish's* content. 3. The learning can disturb those trying to focus on *Kaddish*.

1. One may/should answer the main responses of *Kaddish*, *Kedusha* and *Barchu* in the midst of almost any part of *davening* (Shulchan Aruch, Orach Chayim 66:3). The only debate is whether this is so if one who is *davening* in one *minyan* should respond to what he hears from another *minyan*. On the one hand, there is no *Kaddish* quota, so that any prompt makes responding important (Igrot Moshe III:89). Others say that the sources on non-participants responding are to permit answering, not obligating it, and so in multi-*minyan* locations (e.g., the *Kotel*) one does not have to harm his *tefilla* by having his focus wander from *minyan* to *minyan* (see Tzitz Eliezer XI:3; Yabia Omer VI, OC 20).

Only the study of the loftiest scholars (see Shabbat 11a) can push off the normal requirements of *tefilla* (Igrot Moshe OC II:27). Some people opt to learn Torah during *chazarat hashatz*, and even there most *poskim* oppose it (Mishna Berura 124:17; Kaf Hachayim, OC 124:16). On the other hand, the problem may be that less learned people will speak/not listen without a good reason (Mishna Berura *ibid.*). Therefore, some permit learning Torah in one's head (see Dirshu 124:27). However, during *Kaddish* and *Kedusha*, one's mind must be only on them, not learning (Mishna Berura 125:1).

2. If one is among a *minyan* who are up to *Kri'at Shema*, he must say the first *pasuk* along with them, even if he has already recited *Kri'at Shema*, in order to not appear reluctant to recite his allegiance to Hashem (Shulchan Aruch, OC 65:2). *Poskim* extend this idea to other central parts of *davening*, including such a major joint recitation of praise to Hashem as *Kaddish* (see Igrot Moshe *ibid.*). When one is at a *minyan*, not answering a different *minyan* need not look a rejection (Tzitz Eliezer *ibid.*). However, in your case, learning audibly in the beginning of your *minyan* is publicly indicating that joining everyone in declaring praise of Hashem is not at the top of your priorities, which is included in this problem.

3. The local *rav* or *gabbai* can best consider the technical and communal elements of what is an unacceptable disturbance to others. However, the concept is generally applicable. We note that the Mishna Berura (566:12), regarding the *minhag* to collect *tzedaka* on a fast day as a "*kofer nefesh*," says that the *gabbai* should not go around announcing it during *chazarat hashatz* because it disrupts concentration.

The remaining question is whether these matters apply to the entire *Kaddish* or just the public's responses. Regarding *chazarat hashatz*, *l'chatchila* one is to listen to every word but answering the *berachot* (while knowing which one is being said each time) is sufficient *b'di'eved* (Mishna Berura 124:17). However, regarding *Kaddish*, the need to listen to every word seems stronger (Mishna Berura 125:1).

In terms of bottom line, your *shul*-mate is right. Since stopping learning "on a dime" is difficult, try to stop a little earlier, making *Kaddish* the **absolute** endpoint.

### "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](mailto: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.**

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# Igrot HaRe'aya - Letters of Rav Kook

## Why *Moshavot* Do Not Appoint Rabbis – #146 – part I

**Date and Place:** 17 Sivan 5668 (1908), Yafo

**Recipient:** Rav Yitzchak Isaac Halevi. We have featured letters to him several times before.

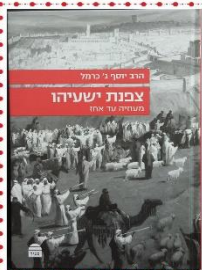
**Body:** The situation in the *New Yishuv* is not as religiously strong as [standard, even “integrated”] Diaspora communities. In the Diaspora, as soon as the community reaches a few tens of families, they already feel the need to appoint a rabbi who can make rulings on religious matters and so that in general they will have a full Jewish structure. Here we have *moshavot* that are average-size towns, with populations of more than 100 families, and they have barely even started to look to appoint a rabbi. There is only one big *moshava* with a rabbi, Petach Tikva, and that was started, in the first place, by Jerusalemites from the *Old Yishuv*, and they worked on appointing a special *rav*.

When I started my contact with the *moshavot* (Rav Kook was a regional rabbi for the *moshavot* in addition to being the rabbi of Yafo), I found clearly that if we had important rabbis in every *moshava*, the situation regarding Judaism would be on a higher level. I started to speak about appointing local rabbis, and I found that the factors that have prevented the appointment of rabbis include internal and external ones.

One of the external factors is the challenge of paying his salary, since the financial situation is weak. In some cases, the fact that the *moshavot* receive financial support gets them in the habit of not paying for their communal needs from their own pockets. However, this by itself would not prevent appointments. The *Shomrei Torah* organization and the *yeshivot* in Yerushalayim are always ready to help and pay most of the salary. If some money is missing, every *moshava* has special individuals who fear and care about Hashem, and they are always willing to give money with all their hearts, for the support of Judaism, so that it would be easy to pick up the missing amount. Thus, the main external problem is easily overcome.

The main thing is thus the internal factors. The basis of it all is that the *New Yishuv* cannot stand the atmosphere, the style, and the characteristics of those trained in the *Old Yishuv*. This is not something that applies only to the “lightweights” who despise the Torah and the *mitzvot*. Rather, a large part of those [who feel this way] are fine people, people who are dedicated to Torah and have fear of Heaven. The vital movement of the *New Yishuv*, with its love of life and bravery, broadness, and national pride, cannot stand the bowed back, the wrinkled faces, and the sadness which shows fright and weakness of the heart. They are bothered by the wandering eyes that show resignation and hatred of life, and they are turned off by foreign, eastern clothes. When these things join together with the weakness that accompanies poverty, it brings reactions of shock together with mockery to [a member of the *New Yishuv*] who is used to European life, whether he has a little or a lot of exposure. These matters cannot be accepted in the *New Yishuv* without consternation.

When this is the standard style among those who were trained in the *Old Yishuv*, then there is great opposition among the members of the *moshavot* to the idea of hiring a rabbi. When I looked into the matter, I realized that even if we can overcome this lack of compatibility, and we will force in rabbis, they will not at all bring the desired benefit, as long as the internal lack of compatibility, which is deep in man’s spirit, is not removed.



### 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

## Was There a Sale to Renege on? – part II

(based on ruling 81138 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** The plaintiff (=pl), a real estate investor, negotiated with the defendant (=def) about apartments to be built in a building under Tama 38 (strengthening and expansion of buildings). They agreed (on some level) that pl would buy three apartments for 3 million NIS. The two then signed a handwritten document titled "Summary of Loan + Purchase Agreement of Apartments." Later, they agreed that pl would buy a fourth apartment for 600,000 NIS. Under the guidance of a lawyer (=lyr), who discussed the legal challenges, they reached an agreement of principles. Later pl signed an agreement to lend 1.5 million NIS each to a company that def owns and to a company which def owns in partnership with another person (=prtn). Lyr testified that the reason the payment was presented as a loan, with interest and guarantees, rather than a purchase, was due to tax issues. Eventually it was supposed to have led to purchase contracts and erasure of the interest. The sides progressed close to a final agreement and payment. However, after some disagreements, and a couple of months later, def returned the "loan money" with an additional sum for interest, as written in the original agreement. Pl claims that the money given in relation to the loan agreement was purchase money. Pl brought several proofs from documents that indicate that there was really a sale, not a loan, and that their agreement is no less than a *zichron devarim* (memorandum of understanding). Pl wants to go through with the purchase of the four apartments. If that cannot be done, he demands a fine of 10% as written in the agreement of principles. Def argues that there were only advanced negotiations about the purchase, and the loan was just one stage in the process. He raised different indications (including that the agreement of principles is unsigned) that the sale had not been finalized. Def also claims that prtn approved only the loan agreement. Prtn did not agree for *beit din* to adjudicate.

**Ruling:** [Last time we saw that the "loan" was payment for a purchase but that the contract does not represent a finished sale.]

Although the payment was presented as a loan, it was in the framework of a sale. Actually even a loan can be a fulfillment of a *kinyan kesef* (Shulchan Aruch, Even Haezer 28:9), even if not all of the sales price is paid (ibid., Choshen Mishpat 190:2).

Nevertheless, there are a few obstacles to a ruling that an enforceable sale took place. 1) Prtn did not sign on to the arbitration, and therefore even if we believe the sale is binding, we could not give pl the properties.

2) Since the apartments are not yet built, the transaction is on a *davar shelo ba la'olam* (something that still does not exist or cannot be transferred); a *kinyan* cannot transfer such a thing (ibid. 209:4). On the other hand, one can obligate himself to make a sale when it will be possible (ibid. 60:6), although there is a *machloket* (Ktzot Hachoshen 203:2 vs. Netivot Hamishpat 203:6) whether it works regarding the obligation to sell a specific article. The agreement of principles uses a language of obligation to sell, but it is unsigned. We reject the contention that sending an email of a mainly complete text of the agreement is equivalent to a signature. It is clear from the parties and the lawyer that they did not intend to distinguish between a direct *kinyan* and an obligation to sell. Therefore it does not make a difference that obligation to sell is common in such documents.

*We will continue next time.*

Comments or questions regarding articles can be sent to: [info@erezhemdah.org](mailto:info@erezhemdah.org)

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