



Harav Shaul Israeli zt"l  
Founder and President

### Moshe and Yehoshua – A Torah of Life

Harav Yosef Carmel

Last week, we saw the Chatam Sofer's thesis that working the land of *Eretz Yisrael* is a *mitzva* and comparable to putting on *tefillin*. This week we continue discussing the spiritual significance of Torah students serving in the army of an independent Jewish state.

According to the simple reading of the *p'sukim*, military leadership has deep spiritual roots. Avraham Avinu, the greatest leader of his generation, personally led 318 disciples, the Torah students of that time, into battle to rescue his nephew Lot from captive armies (Bereishit 14:14).

Even according to the *midrash*, cited by Rashi, that Avraham took "one person," this was Eliezer, who soaked in his master's Torah and taught it to others. According to most opinions in the *gemara* (Nedarim 32a), including Rav, Shmuel, and R. Yochanan, Avraham's decision to bring his students to battle was entirely positive. Even the one dissenting opinion (Rav Avahu) that criticizes Avraham for enlisting his students does not oppose Avraham's own involvement in the war.

Rav Avahu's opinion requires careful analysis. He states that Avraham was punished with his descendants' enslavement in Egypt for 210 years because he employed *angaria* (forced labor) on *talmidei chachamim*. However, this criticism does not apply to the present-day situation, as Avraham's battle was not an obligatory war. Talmudic use of *angaria* always refers to coercive hard labor. One such example is King Asa of the Kingdom of Yehuda, who was criticized (Sota 10a) for conscripting "all of Yehuda without exception" (Melachim I, 15:22). This refers to a civil war with Ba'asha, King of Yisrael. Asa went as far as to pay the king of Aram to attack fellow Jews in the Galilee. By conscripting Torah scholars for this unjust conflict, Asa falsely proclaimed it a *milchemet mitzva* (obligatory war). This cannot be compared to defending Jews under attack, where all agree that universal participation is required.

The two greatest Torah scholars, who were the first links in the transmission of the Torah from Sinai – Moshe and Yehoshua (Avot 1:1) – both engaged actively in *milchemet mitzva*. They thereby taught us how Torah leadership should respond to security threats. Yehoshua fought Amalek. As the *midrash* tells us, Moshe himself struck down the giant Og.

We will continue next week, but in the meantime, we point out that we cannot and should not force military service. This is not the way to unite our nation in this *mitzva*. Instead, we call upon the leadership of the Charedi community, our brothers and partners in many ways, to approach the IDF and Israeli government with the following declaration: "We want to be partners in the sacred *mitzva* of protecting our nation and state, as has occurred throughout Jewish history. We make this offer with the just demand that the spiritual needs of Charedi soldiers be fully ensured."

Such a declaration would increase *kiddush Hashem*, enhance respect for Torah, and bring the entire nation closer to our Father in Heaven.

#### Hemdat Yamim is dedicated to the memory of Eretz Hemdah's beloved friends and Members of Eretz Hemdah's Amutah:

Rav <b>Shlomo Merzel</b> z"l Iyar 10, 5771	Rav <b>Yisrael Rozen</b> z"l Cheshvan 13, 5778	Mr. <b>Moshe Wasserzug</b> z"l Tishrei 20, 5781	Rav <b>Reuven &amp; Chaya Leah</b> <b>Aberman</b> z"l Tishrei 9, 5776 / Tishrei 20, 5782	Prof. <b>Yisrael Aharoni</b> z"l Kislev 14, 5773
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Those who fell in wars for our homeland. May Hashem avenge their blood!



# Ask the Rabbi

by Rav Daniel Mann

## Minyan or Tallit and Tefillin?

**Question:** Right before entering *shul* for *Shacharit*, I realized I forgot my *tallit* and *tefillin* (=t&t). If I would go home to get them, I would effectively miss *tefilla b'tzibbur* (it was the last *minyan*). What is preferable – to *daven* at home with t&t or *daven* in *shul* without them?

**Answer:** If you were just missing a *tallit*, it would clearly be better to *daven* with a *minyan* (Ishei Yisrael 12:19). Arguably, it is improper to recite *Kri'at Shema* (=KS), whose third *parasha* commands to wear *tzitzit*, without a *tallit* on, like doing so without *tefillin* is (see *Berachot* 14b). However, not all agree that it is an issue because the *mitzva* applies only if one is wearing a four-cornered garment (*Tosafot ad loc.*). Furthermore, you presumably are fulfilling the *mitzva* with your *tzitzit*. While we are somewhat concerned that the *tzitzit* garment is not large enough for the *mitzva* (*Darchei Moshe*, *Orach Chayim* 8:3) and there are other advantages to *davening* with a *tallit* (including covering one's head with it), most Ashkenazi single men demonstrate that this is far from critical, as they men rely on the assumption they are big enough (see *Living the Halachic Process III*, F-7).

Regarding *tefillin*, we mentioned the *gemara* that it is problematic to do KS without them, because it contains their commandment. Important sources (see *Tosafot ad loc.*, *Shulchan Aruch*, OC 25:4) extend this to *Shemoneh Esrei* (=SE). This is not an absolute rule, as we recite KS without *tefillin* when *sof z'man* KS is before our *davening* and we will later repeat KS with *tefillin* on (see *Yabia Omer I*, OC 4). Which is stronger – the preference to *daven* with a *minyan* (*Shulchan Aruch*, OC 90:16) or reciting KS/SE with *tefillin*?

The *Magen Avraham* (66:12) writes that one who is waiting to borrow *tefillin* should forgo SE with a *minyan* in order not to *daven* without them. His source is based on what we might call the halachic transitive property of inequality: If one enters *shul* when the congregation is about to start SE of *Shacharit*, he must not skip straight to SE because the importance of *davening* SE immediately after mentioning *geula* is greater than that of *davening* SE with a *minyan* (*Shulchan Aruch*, OC 111:3). Nevertheless, if one attains *tefillin* between *geula* and SE, he should put on the *tefillin* at that point, despite the resulting break (*ibid.* 66:8.). This shows that the importance of *davening* with *tefillin* is greater than the proximity of SE to *geula*. If SE with *tefillin* is of greater importance than the proximity of *geula* and *tefilla*, and that proximity is of greater importance than SE with a *minyan*, it follows that *davening* SE with *tefillin* is more important than *davening* SE with a *minyan*.

We have shown (*Living the Halachic Process IV*, A-3) how to deflect the *Magen Avraham*'s proof and pointed out that some disagree with him, but the *Mishna Berura* (66:40) and most *Acharonim* (see *Ishei Yisrael ibid.*) accept his ruling. However, especially because the *Magen Avraham* is already a *chiddush*, we need not extend the choice to prefer the *tefillin* over *minyan* to your case because you would lose other things as well. Although we consider *minyan* more important for SE than for being able to recite other *devarim shebekedusha* (see *Chayei Adam I*:19:1), it is very possible that the *Magen Avraham* would agree that the two together are more important than *tefillin* for *davening*. You can add to that the value of *davening* in a *shul* (*Shulchan Aruch*, OC 90:9). Therefore, we would recommend to stay in *shul* rather than *daven* at home and put on t&t and repeat *Kri'at Shema* after going home.

You may have overlooked better alternatives. Many *shuls* have spare pairs of t&t or people to borrow from at some point in *tefilla*. (In order to make a *beracha* on a *tallit* and fulfill the *mitzva*, one must acquire it temporarily (*ibid.* 14:3); for *tefillin*, it just must not be stolen (*ibid.* 25:12).) Another possibility was to return with t&t and although not making it to SE with the *tzibbur*, partake in some of the *devarim shebekedusha*. (You would just need to ensure that you did not miss *sof zman* KS or *tefilla*.)

## “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

## False Accusation of Non-Kosher Soap – #333

**Date and Place:** Yafo, 5 Nisan 5670 (1910)

**Recipient and Background:** Rav Chaim Berlin, the Chief Rabbi of Jerusalem

**Body:** Matters have developed so that I must trouble your honor with my letter. The matters, indeed, affect me to the essence of the soul.

I do not know what has happened to Yerushalayim, that it has come to be that it has been publicized that the *Badatz* (rabbinical court) has deemed forbidden to use the soap made in Jewish-owned and operated factories, and specifically in the factory of Mr. Kodransky and his partners in Beit Arif, which is called Ben Shemen. I have been in the factory and I saw that everything was done according to the most complete standards of *kashrut*, and there should be no concerns about it. I appointed one of the people involved, who is a person dedicated to Torah and is G-d-fearing, to supervise to make sure that everything remains kosher.

How is it possible to destroy the Jewish community of the Holy Land with pronouncements forbidding products without any basis in fact? I do not know who has deceived the rabbis of the *Badatz* to do such a horrible thing. Why would people not want to sit with me and discuss the matter in friendship and brotherhood, getting to the depths of the matter based on the concepts of Torah and *mitzvot*? Certainly, your honor will act to rectify this matter, to improve the Holy Land and help its builders to the extent that he can, thereby removing the eternal disgrace and desecration of His Name from the rabbis of Israel.

The respected businessman Mr. Kodransky and the outstanding businessman Mr. Ashkenazi, the owners of the factory, will be traveling, to defend their business, in which they invested large sums of money. I trust that you will greet them warmly, as befitting such dignified people, and that you will join with us in figuring out a way to remove such aspersions on products that are made as part of the efforts to build the Holy Land.

**A Review of this Column's History and an Announcement:** Over the past 25 years, this column has been devoted to the teachings of influential thinkers and *poskim* who have profoundly shaped Eretz Hemdah. For approximately eight years, we shared insights from the halachic and philosophical works of our beloved mentor, Rav Shaul Yisraeli *zt"l* – who, among his many accomplishments, founded and guided Eretz Hemdah from its inception until his passing in 1995.

After completing the materials suitable for this format, we turned our attention to translating the works of the renowned and revered Rav Avraham Yitzchak Hakohen Kook. Rav Kook was Rav Yisraeli's mentor and, of course, continues to be, posthumously, a spiritual guide for us and for significant portions of the Torah world, particularly in *Eretz Yisrael*. We dedicated over a decade to working through the four volumes of *Ein Ayah*, before moving on to *Igrot Hare'aya*, Rav Kook's correspondences. With this piece, we have now completed the first volume of his letters.

Recently, a meaningful development has prompted us to return to our origins. A few months ago, Rav Yisraeli's son-in-law, R. Yisrael Sharir, published an important, new, three-volume set of *Si'ach Shaul*, which presents Rav Yisraeli's teachings and addresses on various topics of Torah thought. This publication has inspired us to once again share Rav Yisraeli's Torah insights with English-speaking readers. Beginning next week, this column will resume its original title: *Moreshet Shaul*.

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

**Itamar Chaim ben Tzipora**

**Nir Rephael ben Rachel Bracha  
Ori Leah bat Chaya Temima**

**Arye Yitzchak ben Geula Miriam  
Neta bat Malka**

**Tal Shaul ben Yaffa  
Meira bat Esther**

*Together with all cholei Yisrael*

# P'ninat Mishpat

## End of Tenure of Development Company – part II

(based on ruling 77097 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** The defendants (=def), an association of people having homes built in a project, hired the plaintiffs (=pl) to serve as their development company to handle the building of dozens of apartments. After years of work and progress made in the project's actual building, disagreements arose, and def fired pl after paying them partially. Pl, who claim to have finished 82% of the work, are suing for 1,300,543 NIS, which they claim is still owed to them. Def, who claim that pl completed only 42%, do not believe the contract between them is binding, and are countersuing for 6,715,342 NIS for damages pl caused during their involvement. [We will deal with the some of the elements of this dispute (the full ruling covers 75 pages) in installments.]

**Ruling: Payment for watchmen:** Pl paid for watchmen to secure the building site for 10 months, paying 114,000 NIS, and is demanding reimbursement because the agreement obligated def to pay. Def claims the right to withhold the money in lieu of the money pl allegedly owes them.

Def implicitly admits that the amount demanded is fundamentally due to pl. The contract contains a provision that disallows withholding money due without permission of the other side or an arbitrator. Therefore, def must pay the 114,000 NIS for the watchmen.

**Responsibility for flawed work:** Def complains of many flaws in the building from pl's time of work and claims pl must pay because they are responsible for selecting and supervising the contractors and subcontractors.

Pl is indeed legally required to arrange and supervise others' work, but this does not normally include financial responsibility. Pl can be sued for not doing a reasonable job in the selecting process (limited in many cases because def must approve the contractor(s)). Pl employed multiple building supervisors, and there is no credible claim that the supervision was not done responsibly. Furthermore, even if pl were irresponsible in supervising, the first level of responsibility is on the (sub)contractors, and after def replaced pl, they were required to register the complaints with the (sub)contractors and, if necessary, sue them. Therefore, pl need not pay for any of the flaws raised.

**Windows:** Def claims that pl improperly built the window frames in a manner that would fit only windows that pl imports from abroad so that they could receive extra profit as an importer and when def refused, pl did not provide an alternative of Israeli windows, which def had to find. Def demands reduction of what pl received on the project as well as 17,000 NIS for having to chisel the window frames for a new size of window.

Beit din found in the sides' correspondences that pl informed def early enough of their recommendation to import the windows, and did not receive money for arranging the windows. Their recommendation does not make them liable, and it is not problematic to try to make extra profit if they did not withhold information. Whether there was a need for extra chiseling or that was unchanged requires expert testimony to determine, and it serves the sides' interests to not pay for such testimony. Therefore, we employ compromise and obligate pl 10,000 NIS for this.

Comments or questions regarding articles can be sent to:

[info@erezhemdah.org](mailto:info@erezhemdah.org)

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