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Founder and President

# HEMDAT YAMIM

## Parashat HaShavua

Vaeira, 1 Shevat 5777

### Exodus – Version II and III

Harav Yosef Carmel

Our *parasha* describes, on one hand, the troubles Moshe encountered on the way to the liberation of Bnei Yisrael and, on the other hand, the great miracles that accompanied that process. The prophet Micha coined the phrase about the hope for such recurring miracles, when he said: "Like the days that you left the Land of Egypt I will show you miracles" (Micha 7:15).

We will concentrate now on parallel words of two other prophets. One received prophecy about a possible liberation that could have followed the prototype of the Exodus, but it was made conditional on the mending of the nation's ways. The second prophet informed the people that the liberation was canceled because the nation did not succeed in repenting as necessary.

The first prophet was Yoel, in a powerful prophecy that ends with words we know well from the Pesach seder. He speaks of the "day of Hashem" coming soon, a day of darkness, with a great swarm of locusts. He speaks of the stench (reminiscent of the description of the frogs in Egypt). In the midst, he speaks of the need of returning to Hashem (Yoel 2:11-13). Yoel also speaks of the spirit of Hashem engulfing young men and women and even slaves and maid servants, which is reminiscent of the revelation at Sinai. Finally, he speaks of "*v'natati moftim bashamayim uva'aretz – dam va'eish v'timrot ashan* (I shall place wonders in the heavens and the earth – blood, fire, and pillars of smoke)," which we recite in the *Hagadda* to describe the plagues in Egypt. So we see that the prophecy gave the nation the possibility of reliving those historical moments.

A few generations after this, the prophet Amos turned to Bnei Yisrael and told them that they had failed. The day of Hashem turns from a day of liberation to a day of trouble. Using many of the same images and words as Yoel, he says that the pestilence associated with Egypt would fall on Israel as would the stench, since they did not return to Hashem (see Amos 4:9-10). "Those who desire the day of Hashem, why do you want the day of Hashem, as it will be darkness and not light" (ibid. 5:18). The prophet promises darkness falling in the daytime and "they will search out the word of Hashem and not find it" (ibid. 8:9-12).

We ask ourselves what specifically was missing, which caused this tragic turnaround. Why were there darkness and a lack of connection to Hashem, when the positive was anticipated? Why did the plagues afflict Israel instead of their enemies?

The answer provided by the prophet is clear. It was social corruption and a failing of the judicial system. Money was garnered without justice, and the weaker echelons of society were taken advantage of. We will cite just a smattering of *p'sukim*: "They who turn justice into *la'ana* (a poison) and they abandon charity in the land" (Amos 5:7). "For you have turned justice to *rosh* (another poison), and the fruit of charity to *la'ana*." "... to decrease the measure and increase the size of the coins and corrupt the scales, to sell poor people for money and the destitute for shoes" (ibid. 8:5-6).

The clear conclusion is that to return to the days of the Exodus, a society based on charity and justice is necessary. There must be honesty and fair paying of taxes no less than Shabbat observance and *kashrut*. The rich must support the poor and not take advantage of them. The State of Israel has a strong foundation to build a society based on truth and kindness in all aspects. Let us pray that we will succeed in strengthening the positive and merit our own Exodus-like liberation.

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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

## To Whom to Sell One's Apartment?

**Question:** My apartment is for sale, and the apartment's present renter and my nephew are interested in buying it. Do laws of precedence apply here? If so, does it make a difference if someone offers more than others?

**Answer:** Our response cannot cover all elements of your case without hearing the claims of all affected sides. Our response is intended to inform you of your responsibilities based on your account.

There are two levels of precedence regarding selling land. One is non-binding. In this regard, a relative has precedence over those with no connection to the seller, but a *talmid chacham* and a neighbor have greater precedence (Shulchan Aruch, Choshen Mishpat 175:50).

A *bar metzra* or *matzran* (he who lives on the boundary) has a higher level of precedence, including the possibility of legal action. Specifically, if a sale that ignores a *matzran's* rights occurs, he can take the land from the buyer for the sale price (Shulchan Aruch *ibid.* 6). This is a *takana* based on doing the "good and straight thing" to give the opportunity to buy property to one who can benefit more than others, classically when he can connect the properties. A *matzran's* rights are not intended for cases of innate loss to the seller (Rama *ibid.* 23). Therefore you have a right to sell to whoever agrees to the highest final price or best conditions for you.

Being a relative does not give such rights. There are no *gemarot* about a renter, but there is discussion (Bava Metzia 108b) of a similar case (i.e., temporary connection to land), when one has a lien on land (*mashkanta*). *Rishonim* and *Acharonim* debate several questions regarding renters and *mashkanta*, including whether a *matzran* has precedence in renting a property next to his and whether a *matzran* can demand the land already sold to its renter. Regarding continuing to rent the property as opposed to bringing in a new renter, the Taz says the renter has rights, the Pitchei Teshuva (175:27) brings a dissenting view, and the K'tzot Hachoshen (175:3) says it depends if the owner has good reason to want the renter out.

The Shulchan Aruch (*ibid.* 60) says that a renter's connection to a property adjacent to his rental is insufficient for him to take it if sold to someone else. What about the sale of the rental property itself (without compromising the renter's existing rights)? On one hand, combining properties does not apply. On the other hand, being able to acquire property to which he has become accustomed may count as maximization. The Shulchan Aruch (*ibid.* 63) says that here too, the renter does not have *matzran* rights.

However, matters are not that simple. Regarding *mashkanta*, the Rama (*ibid.* 57) argues on the Shulchan Aruch and rules that the lender, who holds the lien of the property, can claim the purchase rights. The S'ma (175:116, cited by Netivot Hamishpat 175:67) claims that the Rama likewise argues with the Shulchan Aruch and gives purchase rights to the renter on the rental property, as well. In some ways, a renter is better than *mashkanta* based on the concept that rental is like a sale (Bava Metzia 56b). The Pitchei Teshuva (175:28) cites several who assume that the Rama does not argue regarding rental (the main claim is that a lien is more significant long-term than a rental). On the other hand, the Shulchan Aruch's author (see Beit Yosef, CM 175) does not totally reject *matzran* rights to a renter but stresses that it is not strong enough to extract property from one who bought the land. Since you are asking about the proper actions before having sold, there is reason to give the renter preference.

Therefore, you have a choice between a relative's weak halachic preference and a *machloket* about a renter's possible full *bar metzra* rights along with the likelihood of some level of his precedence. This seems to be a case where discussion can be helpful. The parties should know that while you care about the interests of each, neither seems to have a clear halachic advantage over the other. We hope you will be able to resolve things without hurt feelings.



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# Ein Ayah

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

## Spotting Miriam's Well

(condensed from Ein Ayah, Shabbat 2:295)

**Gemara:** One who wants to see Miriam's well (which sustained Bnei Yisrael in the desert) should go to the top of the Carmel, gaze, and see something (Rashi - a boulder) that looks like a sieve in the sea. This is the well of Miriam.

**Ein Ayah:** The generation that dwelled in the desert contained within it the spiritual power of every individual until the end of all generations. They fulfilled "... the kindness of your youth, the love of your nuptials, your following me in the desert" (Yirmiya 2:2).

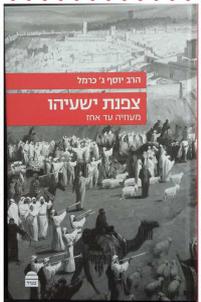
The foundation of "upper life" which stems from the depth of Torah, is hidden among the waters of the Great Sea (i.e., Torah), which emanates from the brilliance of the Elevated Wisdom, the source of knowledge, may He be blessed. It is, though, not simple to draw from this sea to quench the thirst of every heart, for each person to feel his great connection to the sanctity of Israel, which stems from the sanctity of Hashem and the Torah. This depends on the power of the good and pure emotion. The place of this emotion in man's limited heart changes according to the situation. However, this emotion, which is the basis of Israel's connection to their Savior and to the Torah, is infinitely powerful.

The source of pure emotion was inherited from the generation of the desert in the merit of Miriam, along with the Torah of the Living G-d. Women tend toward a high level of emotion. Due to Miriam's deep connection to Hashem, she was worthy to set the foundation of Jewish emotion. It is unlike regular emotion, which stems from the heart's stormy reaction to a recent event and is therefore fleeting. Rather it is part of the Great Sea, the Sea of Torah, which is the source of infinite wisdom and truth.

At the time of Eliyahu, when Israel reached their lowest level, they were moved to return to Hashem by seeing the wonder of the true prophet being answered with fire from the heaven. They accepted the yoke of Heavenly Kingdom and declared: "Hashem is G-d" (Melachim I, 18:39). Since they had reached such a low level and had "turned their heart backward" (ibid. 37), they still did not connect to divine intellect, and the light of Torah which they had abandoned did not yet shine upon them. On the other hand, the power of Jewish emotion that was hidden in their heart was awakened. Even though this emotion is not readily visible, as it is swallowed up among a multitude of various emotions, it can be seen by looking deeply.

Ostensibly, emotion and awakening is unstable, as it can be emptied out just as it can be filled. However, Jewish sanctity connects the entire nation to its Maker within the depths of the sea of wisdom. It is powered from the storehouse of spirituality, which contains all the grandeur in the world. So if an event causes the diffusing of emotion, it is refilled by the surrounding waters of the sea, i.e., true, infinitely wise ideas. This causes the utensil (i.e., the heart) to always be filled with water, even though it is too "porous" to hold any given idea over time.

Seeing Miriam's well in its eternal form seems impossible because emotions that fill the heart seem fleeting, making them like a sieve through which water flows. However, one can go to the top of the Carmel, the place where the ever-echoing call of "Hashem is G-d" was uttered by the nation's masses even at a time of low spirituality. This was possible because of their natural propensity for holy emotion, even when it is indiscernible amidst their abandonment of the ways of Torah. If one looks, he will see a sieve, which one cannot count on to hold water, but, within the sea, it will always contain water. The emotions present are not the fleeting ones that are produced by specific events, but those that emanate from eternal divine emotion and light that are connected to Torah and divine truth. This is the eternal well of Miriam.



**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

## Connection between a Leak and a Broken Washing Machine

(based on ruling 73016 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** The plaintiff (=pl), who lives underneath the defendant (=def), had problems with his washing machine, causing the circuit breaker to fall several times over several months. A few months into this period of time, pl noticed moisture in the wall near the electric socket to which the washing machine was plugged in, coming from a leak from def's apartment. Def had the leak fixed within a reasonable amount of time. When the washing machine continued to give problems after the leak was fixed, pl ordered a technician, who said that the machine's electric card had been ruined. The technician explained and wrote on the receipt that the cause of the problem was moisture in the wall. Pl is suing def for 1,000 shekels in repairs. Def does not think he is responsible for the damage but offers 250 shekels as a compromise. Pl rejects the offer and wants payment based on strict law.

**Ruling:** No one saw moisture from def's apartment damage pl's washing machine. Rather, only with the use of circumstantial evidence might one be able to connect the two. Generally, we do not extract money based on such evidence (Rambam, Nizkei Mamon 8:14), unless the connection is unusually compelling in a way that there are no viable alternatives. For slightly weaker claims, there can still be a moral obligation to pay, which *beit din* can translate into grounds for a compromise (see Beit Yitzchak, Yoreh Deah II:114).

In this case, pl did not meet the necessary level of evidence. The lack of synchronization between the signs of a leak and the problems with the washing machine are telling. True, pl, a single man who often has his laundry done elsewhere, explained that he barely used the machine after the leak was discovered. (*Ed. note - The ruling presents some technical facts on the topic of damage to electrical appliances due to electrical current problems, but we will skip them.*) Even so, there are many things that can cause a change in currents that could damage the electric card. Pl has no way of proving that another such an event did not happen during the few months over which the problems were playing out.

The "testimony" of the technician is of little importance. He was partial, having being paid by pl, and the unusual form of testimony, a comment on a receipt of payment, without any interrogation in *beit din*, leads much to be desired as evidence.

Regarding the possibility of compromise, one reason for it is when a litigant would be in need of making an oath in order to support his position. While a claim by a plaintiff can be enough for such an oath, there could not be grounds for an oath in this case because we view pl's claim as one based on doubt. Even though pl views his claim as definite, he cannot know that the water caused the problems. Furthermore, def has no reason to swear since the disagreement is not about disputing facts known to the parties.

Therefore, there are neither grounds for extracting money based on proof nor even based on compromise, and def is exempt.

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