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# HEMDAT YAMIM

## הַמְדָת יָמִים

### Parashat HaShavua

Shelach, 23 Sivan 5777

#### Refaim, Eimim, Anakim, Nefilim, and Yerushalmim

Harav Yosef Carmel

The spies, who returned from their survey of the Land, described it and put special stress on the fearsome giants who occupied it (Bamidbar 13:27-33). This depiction is repeated in *Sefer Devarim* (1:28).

Various giants lived in different places in the Land historically and at the time of Moshe. There are *nefilim* (one of the names for giants) in the Land (which can, although does not have to, refer to *Eretz Yisrael*) at the time before the flood (Bereishit 6:4). Yehoshua found giants in Chevron but destroyed them (Yehoshua 11:21). We find some on the eastern bank of the Jordan in the story of the four kings and the five kings (Bereishit 14:5). In *Sefer Devarim*, we find interaction between *eimim* and *refaim* and between the Moavites, who lived in present day Jordan (2:10-11). After Yehoshua finished his conquest of *Eretz Yisrael*, there were giants remaining only in the *Plishti* areas of Azza, Gat, and Ashdod (Yehoshua 11:22). These were killed at the time of Shaul and David. While Goliath, who was killed at the hands of David, was the most famous of them (Shmuel I, 17:4,50), later sections of Shmuel (II, 21:16-22) describe the demise of others at the hands of David's servants and relatives.

In the listing of geographic locations of the Tribe of Yehuda, we learn of the following border location: "The border went to the Valley of Ben Hinom to the shoulder of the Yevusites to the south – this is Yerushalayim. The border went to the top of the mountain which overlooks the Valley of Hinom to the west, which is the edge of the Valley of Refaim to the north" (Yehoshua 15:8). The border went from the Valley of Ben Hinom, from its convergence with the Kidron Stream (near the City of David) in the direction of the top of the mountain (the place where Montefiore's windmill was built), to the west of Gei Ben Hinom, and north of the edge of the Refaim Stream (where the old first train station was). Thus, the place that we now call Emek Refaim is the place that is mentioned in *Sefer Yehoshua*. As the Refaim Stream moves westward toward the Mediterranean Sea, it flows into the Soreq Stream, which spills into the Sea in the area of the *Plishtim* (between Ashdod and Azza). Since roads are usually built in wadis along rivers and streams, the road that led from the *Plishtim* to Jerusalem ended at Emek Refaim, and thus the attacking Refaim would have come from there to terrify and endanger the inhabitants of Yerushalayim.

How fortunate are we that in the same place that the giants of all different types and names endangered the people, we witness great blessing: "It will still happen that old men and women will sit in the streets of Jerusalem and a man will hold a walking stick due to advanced age. The streets of the city will be full of young boys and girls playing in its streets" (Zecharia 8:4-5).

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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

## Nichum Aveilim by Phone and by Email

**Question:** If it is difficult for me to do *nichum aveilim* in person, may I do it by phone or by email, and is one better than the other?

**Answer:** *Nichum aveilim* is on the Rambam's (*Avel* 14:1) list of Rabbinic obligations that are fulfillments of the Torah commandment to love one's friend like himself. The Rambam (*ibid.* 7) posits that it has precedence over another *mitzva* on that list, visiting the sick, in that it is an act of kindness both to the live (mourners) and the deceased. Many provide a source that it serves the deceased from the halacha that if one dies without relatives to sit *shiva*, ten people "sit in the place of the deceased" and are visited (*Shabbat* 152a; *Shulchan Aruch*, *Yoreh Deah* 276:3).

Rav Moshe Feinstein (*Igrot Moshe*, *Orach Chayim* IV:40) is among the consensus that *nichum aveilim* by phone does not impact on the deceased and thus cannot be as good as physically coming. Therefore, anyone who should be *menachem avel* (parameters beyond our present scope) must do so in person if he can (see also *Pnei Baruch* 11:12; *Yalkut Yosef*, *Kitzur YD* 26:9).

Even in regard to *chesed* for the mourner, coming personally has advantages. The *Perisha* (YD 393:3) in finding justification for those who only say the "*nichum formula*" when visiting, posits that "coming in and sitting down to honor is considered *nichum aveilim*." While picking up the phone is worth something, it is not as demonstrative an act of honor and empathizing (speaking by phone to a *chatan/kalla* is not like being at the wedding).

Before expressing a preference between phone or email, we will analyze a halacha of *shiva* house protocol. Consolers may not speak until the mourner "opens," as *Iyov*'s friends did (*Moed Katan* 28b). What is the logic of this halacha, which has not been observed uniformly for centuries (which might be important)? The *Levush* (YD 276:1) explains that we wait to see that the mourner is in distress. Experience makes it difficult to imagine requiring an indication that the mourner is upset, and the *Divrei Sofrim* (376:2) suggests that our certainty can explain why many do not wait. The *Aruch Hashulchan* (YD 376:1) explains that *nichum aveilim* has to do with *tzidduk hadin* (accepting divine judgment), and the mourner should start the process, as *Iyov* did. Rav Y.M. Lau pointed out that we usually wait for the *avel* to say anything and suggests that it might suffice for the mourner to have done so once before all can then start speaking (see also a letter from the *Tzitz Eliezer* in *P'nei Baruch*, p. 472).

Presumably, this halacha is not a technical problem in our times when one calls or emails, especially since the *avel* speaks into the phone first and since pressing on an email is like inviting one to "speak." However, extending the *Levush*'s approach, one wants to know not just that he should speak to the mourner but should pick up on how to do so best. The *Chofetz Chaim* (*Ahavat Chesed* III:5) says that while one nominally fulfills *nichum aveilim* by saying "*Hamakom yenachem ...*," it is intended to touch the heart and lessen pain. He stresses (see also *Minchat Yitzchak* II:84, in a parallel context) the words' practical effectiveness. Sizing up the mourner's mood by observing and listening enables the *menachem* to calibrate his own speech.

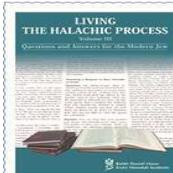
Phone has greater potential and risk than email. The positive – the interaction of conversation allows you to have a good guess of what to say. The negative – you do not see body language and do not know if your call has spoiled a good dynamic that *menachemim* are in the midst of, as it is difficult to time the call well. Email is usually shallower (barring a masterpiece), but it allows you to "drop the message off" after choosing the words carefully and have the *avel* choose when to read it (after *shiva* is also fine).

We propose with conviction that people who are close to an *avel* but cannot make it should call because their maximum potential is worth the disruption. People who are not close should use email instead (unless he knows there are few *menachemim* or can keep his call very short).



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# Ein Ayah

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

## Proper Greatness in One's Surroundings

(condensed from Ein Ayah, Shabbat 5:12)

**Gemara:** [We continue with the story involving R. Elazar ben Azarya and a cow that carried something on Shabbat.]

There is a Tannaic source: It was not his cow, but it belonged to a female neighbor. Because he did not protest her action, the cow was called his.

**Ein Ayah:** Just as greatness can be seen in major and public events, so it becomes apparent in small and private matters. Regarding Hashem, just as we say, "How great (large) are Your actions" (Tehillim 92:6), so too we are amazed about how detailed (small) are His actions. "He sits on high and lowers Himself to see" (see Tehillim 113:5-6). Only a great person, fit for significant leadership, can fully appreciate the value of a plethora of detailed *halachot* that are connected to a storehouse of sanctity when performed properly and are destructive when not taken seriously. When such a person functions properly on the broader plane he misses no detail. No application is too minute and no personal moral feeling that causes to view a matter differently detracts from the goal.

Divine Providence arranged for R. Elazar ben Azarya to be *nasi*, as he was wise, of good lineage, and very wealthy. This happened because Providence is interested in the possibility of great things and preserving spiritual matters. Preserving the exact shapes of letters over generations as well as the exact pronunciations, rules of grammar, and cantillation preserve the nation, and its importance should be recognized.

It is regretful when a great person is not sufficiently sensitive to his surroundings and his responsibility for them. He must not be restrained by his own softness, the vulnerability of the person to whom he needs to protest, or the appearance of imperfect modesty if these hinder the protection of a value. When R. Elazar ben Azarya did not live up to his greatness, we describe him as possessing but one cow. His reluctance to protest the violation of Shabbat certainly stemmed from a combination of mercy and modesty toward his female neighbor. But because of the highest standards held toward him, the smallest stain on his behavior is magnified.

Women are good at developing a *mitzva*'s significance in the emotional realm. However, Hashem's wisdom surpasses the greatest emotion even in the realm of the individual. The idea of one's animals resting on Shabbat (Shemot 23:12) appeals to the sensitive heart, but the divine beauty of this concept transcends any human emotion. A matter's honor surpasses the matter itself. The crown of the honor of Torah scholars that applied to R. Elazar ben Azarya (see Yerushalmi Sota, ch. 9) is commensurate to his personality and increased due to his status of *nasi*. The honor of the divine *halacha* that says that one's animals must rest is more lofty than the most important acts of man and the most sensitive of human emotions, even that of a woman. Only the divine light can decree that a cow cannot go out with a rope hanging from its horn. Laxity on this issue weakens the soul, which should be focused on the divine grandeur of the *mitzva*. It can extend not only to the perpetrator but to great people who witness their neighbor's action and do not take action to stop it.

A woman can be susceptible to the problem because she is liable to be drawn emotionally to the central issue and not to the details, whereas men, who are involved in the "battles of Torah," are more drawn to details. When a great man like R. Elazar ben Azarya is guilty in a matter, there is no room to mention the impact of his riches on his standing with the crown of Torah [which is why only one cow was attributed to him].

"Moshe and Aharon in his priesthood and Shmuel among those who call out in His name, they will call to Hashem, and He will answer. In a pillar of cloud He will speak to them, they will follow His statutes and He gave him a law" (Tehillim 99:6-7).

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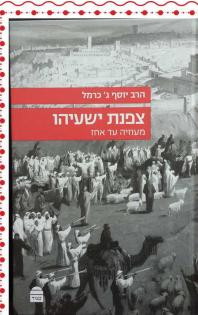
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### Tzofnat Yeshayahu- Rabbi Yosef Carmel

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

## Time of Payment of an Iska Loan – part I

(based on ruling 75109 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** [A highly condensed description follows] The plaintiff (=pl) lent/invested large sums of money to the defendant (=def), a real estate developer, over the course of a few years, and was to receive approximately a 25% annual return. He used various *heter iska* forms to permit this (in his view). The largest sum was used to buy rights to property in a multi-million shekel project. Before the project was built, pl sold his rights back to def for 1.66 mil. shekels, which was not given but became a new loan/investment. A central document summarizing the loan/investments stated that they should be paid in the near future, without mentioning dates, and required monthly interest payments of 20,000 shekels. The big project was stopped by a court order after only a percentage of the homes were built and sold. Def slowed down and then stopped making the monthly payments. Def claims that he is unable and not required to return the loan/investment until the project is resumed. Pl demands immediate payment and claims that def has fictitiously hid all his assets.

**Ruling:** We will first deal with def's claim that the return in the investment is linked to the viability of the big project, which has not yet come to full fruition.

*Beit din* recognizes that, in likelihood, the great majority of the money def received from pl was used on that project. However, that is irrelevant here for several reasons. First, in none of the *iska* documents was there any mention of the project. Since def admits that he had other building projects at the same time, it can just as easily be considered that pl's money is invested in those other properties. In fact, a standard *heter iska*, including several of the ones the sides signed, requires def to invest the money in whatever business will produce profits for pl. Furthermore, at one point, pl was indeed invested in the project and then sold his part for cash to be paid and to serve as an investment until the time of payment. It does not make sense to, at once, sell that investment and at the same time say that the proceeds are linked solely to that very project.

It is also not true that there are no profits from the project which make def deserving at this point of any return on his investment. Def admitted that the value of the land of the project went up dramatically over this period. Therefore, pl's investment, even if we were to say that it was linked to the project, did see profit. Even if liquidity makes it difficult for def to make the (full) payment, it does not mean that the money is not owed to pl.

Finally the *heter iska* employed for the largest loan/investment used the Chochmat Adam's *iska* mechanism. In that format, if the recipient of the fund wants to claim that there was no profit, he must make the claim within a month, for after this time it is considered an admission that there had already been a profit that was reinvested.

[Next time we will deal with the indications of when the payment has to be paid in practice.]

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