



HaRav Shaul Israeli zt"l  
Founder and President

# HEMDAT YAMIM

## Parashat HaShavua

Shelach, 26 Sivan 5778

### Torah-Based Law and Rav Yisraeli

Harav Yosef Carmel

The special relationship between *Eretz Yisrael* (*eretz hemdah* = the desired Land) and *Am Yisrael*, is at the heart of our *parasha*. The sin of the *meraglim* (the spies), who checked out the Land of Canaan and "came to despise *eretz hemdah*" (Tehillim 106:24), has accompanied the nation throughout its history.

Chazal teach us that when the Torah says, after the spies' report, "The nation cried on that night," this refers to the night of Tisha B'Av, on which we mourn the destruction of our Temples (Ta'anit 29a). Hashem said: "You cried for no reason; I will set for you a crying that will last for generations" (ibid.).

Rav Yaakov Lorberbaum, known as "the Netivot," explains in a similar light the beginning of *Megillat Eicha*: "How did the city with a large population sit alone? It was like a widow. The important nation among nations was plundered. She will cry in the nights with her tear on her cheek." Most commentaries explain that the second *pasuk* is a consequence of the first. In other words, because there was destruction, there was crying. However, the Masoretic texts have a break between the *p'sukim*, implying that there is not a regular progression between the ideas. Rav Yaakov understood that this indicates the opposite order. Because there was crying in the night, at the time of the *meraglim*, the *Beit Hamikdash* was later destroyed.

One of the special laws of *Eretz Yisrael* is that one is required to establish rabbinical courts with *dayanim semuchim* (full ordination and authority). There were a Supreme *Beit Din* in the Lishkat Hagazit section of the Temple, special courts of 23 *dayanim*, and regular courts of three in every city (see Rambam, Sefer Hamitzvot, Aseh 176).

A Jewish government in *Eretz Yisrael* is necessary for the existence of a Torah-based judicial system. More than 2,000 years ago, along with the collapse of the Jewish kingdom, the *beit din* system crumbled. The Romans also decided that by forbidding ordination, they could ensure that the Jews would not return to independence in *Eretz Yisrael*.

This week we commemorate the 23<sup>rd</sup> *yahrtzeit* of our leader, Rav Shaul Yisraeli z.t.l. One of the challenges with which he charged us was to strengthen adjudication in Israel according to Torah law. He viewed the establishment of a network of *batei din* to rule according to Halacha and be integrated with public life in Israel, whose rulings would be upheld by the Law of Arbitration, as an important step in the reestablishment of national life. We will succeed even further if a work of the scope of the Shulchan Aruch, which will aid in the application of Halacha to modern applications in the State of Israel, will emerge.

When Israel was established 70 years ago, the Knesset adopted Ottoman and English law as the basis for the Israeli court system. Jewish law has not yet turned into its cornerstone. 500 years earlier, there were three efforts of legal codification occurring simultaneously. The Shulchan Aruch, written by Rav Yosef Karo in Safed (along with the Rama in Cracow) was accepted as the basic code of Jewish life, at a time when the rebuilding of Jewish life in *Eretz Yisrael* was beginning. *L'havdil*, the British Empire, under Elizabeth I, completed the codification of English law and Suleiman the Great did the same for Ottoman law.

Let us pray that we will soon see the fulfillment of Rav Yisraeli's vision. *Mishpat Ivri* will be an ever-growing force in the laws of the State and will replace the Ottoman and English systems. The more our Eretz Hemdah-Gazit network sanctifies Hashem's name, the sooner this will occur.

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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 Bruria St. corner of Rav Chiya St.  
POB 8178 Jerusalem 91080  
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# Ask the Rabbi

by Rav Daniel Mann

## Leaving a Client with Half the Bill

**Question:** A real estate agent (=Shimon) tried to interest my friend (=Reuven) in a project and suggested that they meet over a meal to discuss it. After each ordered a meal and the discussion proceeded, Shimon realized the deal would not materialize. When the waiter brought the bill, Shimon paid only for his own meal. Reuven was annoyed, as he believes it is customary for an agent who invites a potential client to pay. Shimon argued that he never said he was treating and the *halacha* is that even if one invites someone to his home and does not explicitly tell the guest their meal is free can charge for it (Rama, Choshen Mishpat 246:17). Who is right?

**Answer:** [We have determined that this question is for halachic curiosity and not to be used to make a claim. This allows us to discuss the matter generally, and to do so less rigorously than if this were a *din Torah*.]

Shimon was mainly accurate in citing the Rama (based on Terumat Hadeshen I:317), except that even if it is implicitly clear from context that the provider intends to give the food for free, the recipient is exempt. This enables Reuven to claim that common business practice that the professional who is wooing a potential client pays (we take no stand on the veracity) overcomes the standard halachic assumption.

However, two distinctions make things difficult for Reuven. First, in the Rama's case, the provider has to extract money, which puts some burden of proof on him. In contrast, the restaurant accepted Shimon's claim that he must pay only his own meal and Reuven for his own. Indeed, if Shimon would have run out, Reuven would have to pay for his own meal without complaints against the restaurant. So, Reuven wants Shimon to reimburse him and therefore has to provide relatively more proof.

More importantly, in the Terumat Hadeshen's case, there is more room to claim that the provider decided to charge after the food was given. In this case, it sounds that Reuven agrees that Shimon never intended to pay, if Reuven were not interested in the project (just that he is annoyed by it). Putting the indications together, Shimon never obligated himself, even if Reuven thought he did.

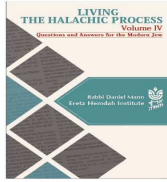
Perhaps, though, Shimon caused Reuven damage by causing him to order his meal. On one level, where is the damage? Reuven received a meal that is worth the money he paid! Yet, the concept of *d'mei basar b'zol* is relevant. This means that when one eats something expensive when he was justified to believe he would not need to pay, he pays only at a discount rate (see Bava Kama 112a). Thus, the difference between that rate and what Reuven paid might count as damage.

Sometimes, one who causes another to spend money based on an assurance which he does not see through, has to pay. One case is when one tells his co-litigant to travel to court and the former does not come; he has to pay for the uncalled-for expenses (Rama, Choshen Mishpat 14:5). However, the restaurant date was not pointless for Reuven. Besides the meal, it had the potential to facilitate great benefit for both Shimon and Reuven (many believe that a good venue for a business meeting is valuable). The fact that it did not work does not retroactively make the effort uncalled for. While this could induce Shimon to pay, it also means that Reuven was not damaged. Although we cannot get into a complete analysis of sources and factors we were not supplied, my experience/intuition lead me to expect that Shimon could not be compelled to pay.

That does not mean that Shimon acted properly. If Shimon was aware that Reuven expected him to pay, and especially if this encouraged Reuven to listen to Shimon's sales pitch, then Shimon violated *g'neivat da'at* (deception). The *gemara* (Chulin 94a) includes in this prohibition relatively innocuous cases in which the deception could cause a party to give something of value due to a favor he thinks he received. There is reason to suspect that Shimon did that. It would be laudable but not required if, as *teshuva* for *g'neivat da'at*, Shimon reimbursed Reuven, at least partially.

**Do not hesitate to ask any question about Jewish life, Jewish tradition or Jewish law.**





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# Ein Ayah

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

## One's Grasp of Torah within the Realm of Various Grasps

(condensed from Ein Ayah, Shabbat 6:59)

**Gemara:** Two *talmidei chachamim* (Torah scholars) who discuss together matters of Halacha in a calm manner, Hashem listens to them, as it says: "Then the fearers of Hashem had speech (*nidberu*) one with his friend, and Hashem listened and heard" (Malachi 3:16). "*Dibur*" refers to calmness, as the *pasuk* says "He will remove the resistance of nations beneath you" (Tehillim 47:4).

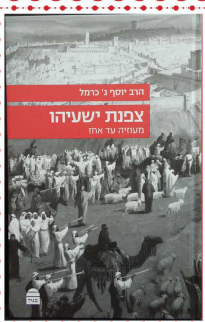
**Ein Ayah:** There are various levels of intellectual/spiritual understanding. The higher level, which is the most elevated goal of all human endeavor in general and, specifically, all matters of spirituality, is such that all the "branches" of details and details of details stem from it. The details then proceed to develop in a manner that they become complicated and can even change according to the viewpoint of each one of the people who are occupied in the process of using them to broaden their spirituality.

Since there is a divergence between people's grasp of the concepts, and one is often contradictory to the other, resistance of one outlook to another is naturally created. However, the intellectual resistance and the opposite ways of understanding are themselves part of the divine "listening," which is all-embracing. The divine source that finds expression in all the individual elements of Torah and wisdom lends itself to be received differently by different receivers.

Therefore, to the degree that the broad divine light dwells in the hearts of those who delve into the branches that emanate from it, so will there develop more willingness to relate positively to different and even opposing outlooks to one's own. He will know how to use elements of ideas that are at first glance contradictory in order to come to a broader divine light, which is hidden amongst all the various details.

It is not just that the ability and willingness to listen calmly to ideas that are distant from one's own views when one seeks Torah truth comes from from the impactful divine light. The impact of succeeding in using this divine step actually increases the lofty spirit so that it can turn into a pleasant moral norm. The phenomenon of *talmidei chachamim* discussing things in a calm manner flows from a peace that is of divine origin, as Hashem himself is called *Shalom* (Vayikra Rabba 9:9). This peace flows over all the details of Torah and Halacha, which are expressed in different ways that fit the spirit of each individual. Actually, they are only sparks of the "great torch" of the "soul of Hashem," which shines light in many different spiritual manifestations with different shades. The habit of being receptive to others' ideas prepares a person to be able to listen to lofty things, which are actually greater than the personal specific outlook of one who is dissecting the details of a *halacha*.

As the *gemara* says, since they discuss matters calmly, Hashem listens to them. In fact, the light of Hashem will fill the chambers of their hearts and open up broad gateways of tranquility. This will enable them to receive different types of light and unite them in a pleasant spiritual package that comes from the glow of divine wisdom and a "storehouse of light," from Hashem who lives forever.



### 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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## Payment to a Lawyer when Agreement is in Dispute - part II

(based on ruling 69031 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** The plaintiff (=pl) is a law office that provided extensive legal services to the defendant (=def). Pl sent an agreement to def, which states that the payment rate per hour of various lawyers would be as accepted in the firm, with a 25% discount; pl was to bill def on a quarterly basis. Def wrote back that because he wants success, he demands that Adv. N will supervise all the work done. Pl sent def a bill for 72,978 shekels for a period of four months. Then, a meeting took place between def and N, about which each had different recollections. Def claims that it was agreed that he would pay 50,000 shekels immediately and another 50,000 shekels if he would win the litigation (he lost). N denies that he agreed to any change in the payments. Subsequently, pl continued to work, and they sent, 8 months later, a bill for 207,189 shekels. Def claims that the agreement was not valid because he was not told the rate of each lawyer, he was out of the country when it was claimed he signed it, and it was changed afterward. Additionally, because pl did not bill quarterly and because N did not handle everything, there was breach of contract.

**Ruling:** [Last time, we saw that we do not accept def's claim that the original agreement for payment was changed.]

Was the lack of quarterly billing, as prescribed in the agreement, a material breach of contract? In general we would say that it is not. However, three factors made this delay particularly problematic: the first bill after the sides' discussion was eight months later; the amount of money due was approximately three times the amount of the bill which had agitated def; given def's complaints about pricing, he had a right to know how things were progressing so he could plan his steps. The claim that sending a bill is problematic from a tax accounting perspective if the client does not pay right away is irrelevant. It is pl's problem to figure out and does not exempt him from carrying out his duty. We rule that pl will be considered in breach of contract from the time they were two months late.

Therefore until Oct. 2007, def will have to pay according to the agreed upon rates. Beyond that, the matter is complicated. One who does work without a pay agreement, gets paid according to the benefit he provided if his services were sought, and only according to expenses if his services were not sought. Here, he was interested in the work provided. However, we understand that def would not have continued to seek the help if he knew the price. Here, also, the benefit is questionable. On the one hand, the project never went through. On the other hand, at the time the service was provided, the service was considered of value.

This is then similar to the case of one who ate meat, thinking he inherited the cow from his father and it turned out that it belonged to someone else. The halacha there is to pay 2/3 of the going rate. In our case, though it seems fair to us for him to pay only 1/3 of the original asking price [details beyond our scope].

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