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# HEMDAT YAMIM

## Parashat HaShavua

**Bamidbar, 29 Iyar 5780**

**“All the Congregation of Bnei Yisrael” – for Yom Yerushalayim**

Harav Yosef Carmel

“Count all of the congregation of the Sons of Israel by their families by the houses of their fathers ... from twenty years of age and above, all who go out to the army in Israel...” (Bamidbar 1:2-3). There is a stress in the *p’sukim* on “all.”

This week we celebrate Yom Yerushalayim, on the 53<sup>rd</sup> anniversary of the unification of the beloved city. The liberation of the city was possible, with Divine Assistance, in the merit of the dedication of the soldiers of the IDF, who risked their lives (and some gave their lives) for the sake of the sanctification of His Name and the sanctity of the Land. The special welcome that the soldier-scholars of Merkaz Harav received from their mentor and teacher, Hagaon Rav Tzvi Yehuda Kook z.t.l., when they returned from battle was the subject of jealousy (in a good way) from those students who did not merit being involved in that important *mitzva*.

The Draft Law (which some call the Exemption Law) is always on the national agenda (even when Coronavirus has relegated everything to a back seat). So we will now present snippets of the letter we wrote to a respected Jerusalem rabbi who wondered why we accept to Eretz Hemdah only those who have served in the IDF. Our mentor and teacher, Hagaon Harav Shaul Yisraeli z.t.l., reviewed this letter:

Throughout the years that Bnei Yisrael had independence in its Land, it was specifically the Torah scholars who volunteered to protect Hashem’s nation. They were the chosen when Moshe told Yehoshua to find men to fight Amalek, as they knew how to hold both the “sword of the battle of Torah” and a literal sword. The ones exempted from battle were the “fearful and weak of heart” due to their sins (Sota 44a), and even they were exempt only from optional wars. This was true from the time of Moshe/Yehoshua to Pinchas to Bar Kochva, who led Rabbi Akiva’s students. During the two millennia of lost independence, we also became used to not having the opportunity to do *mitzvot* such as going out to a just war.

We believe that our choice young men should learn in advanced *yeshivot* for a significant amount of time, as the *mitzva* of Torah study has no limit and is the building block of one’s life. They should thereby obtain the most important Torah knowledge and especially the understanding that Torah must always be the main value and preoccupation no matter what one does in life.

After the Holocaust, when we lost a third of our nation and entire *yeshivot* and religious communities were destroyed, the State of Israel fulfilled the request of leading rabbis, including the leadership of the Dati Leumi community, to allow anyone learning in a fulltime yeshiva to defer the draft until he finished his studies. This step, which goes against normal Torah values, was a correct decision which enabled the rehabilitation of the Torah world. The fact that there are now more Torah students in Israel than ever before is a merit for the State of Israel. Just as everyone should dedicate years to Torah study, so he should discuss with his mentors when he should finish his intense period in the “tents of Torah” and then serve Hashem in the realm that fits his talents and interests. As a condition to beginning a daily routine outside of yeshiva, he should make up his obligation/privilege by serving in the army.

Today, after 33 years of raising top-notch Torah scholars, we can say with certainty that it is possible to grow in Torah and serve in the highest level Torah positions, while incorporating army service into one’s life.

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**Those who fell in wars for our homeland. May Hashem avenge their blood!**



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by Rav Daniel Mann

## Use of Informal *Sefira* Counting to Solve Problems

**Question:** If one answers an inquiry about what day of the *omer* it is and does not count again that day, may he count the next day with a *beracha*? If yes, an *onen* (before funeral of close relative, who does not perform *mitzvot*) for a full day of *sefira* should be able to simulate such a statement and be allowed to continue with a *beracha* the next day.

**Answer:** The Behag (cited in Tosafot, Menachot 66a) is the source of the idea that one may not continue with a *beracha* if he missed a day of counting. He argues that missing a day makes it impossible to fulfill the command of *temimot* (seven full weeks). Most *Rishonim* disagree. The Shulchan Aruch (Orach Chayim 489:8) basically accepts the Behag, but only due to doubt – since he might be correct, we do not make a *beracha*. However, if one is unsure if he counted, he makes a *beracha* on subsequent days because of a positive double doubt, i.e., if either he did not miss a day or the Behag is incorrect, a *beracha* is warranted (Mishna Berura 489:38). The Terumat Hadeshen (I:37) says that although it is unclear if one can fulfill the *mitzva* with a daytime count, if one did so, he recites with a *beracha* on subsequent days. Most understand that this too is based on a positive double doubt (Sha'ar Hatziyun 489:45). The Mishna Berura (489:38) presents a broad rule – after a questionable count, which requires redoing but without a *beracha*, if one did not repeat, he maintains the ability to count with a *beracha* in the future, due to double doubt.

Does your case of answering a question, i.e., a proper statement in a non-*mitzva* context, create a double doubt? The Shulchan Aruch (ibid. 4) rules to avoid answering completely because such a statement compromises the *beracha* on that day's count. Thus it seems to meet the Mishna Berura's criterion for allowing a *beracha* on subsequent days. On the other hand, the Taz (489:7) contends that because the answerer clearly does not intend to fulfill the *mitzva*, it is inconsequential, and it is just a stringency to avoid an exact answer; even if he answered, he would make the *beracha* that night. The main response to the Taz is that many hold that *sefira* is Rabbinic nowadays, and Rabbinic *mitzvot* may not need intention for the *mitzva* (see Pri Megadim, 489, EA 10). According to the Taz's view of your case, it will not help to save the *beracha* in the future.

However, even those who reject the Taz are unlikely to accept your idea. An *onen* avoids doing *sefira* because according to most *Rishonim*, he is not only exempt but forbidden to do *mitzvot* – so rules the Shulchan Aruch, Yoreh Deah 341:1. Therefore, if your statement fulfills the *mitzva*, it is ostensibly forbidden for an *onen*! If it is not a *mitzva*, then it will not help going forward (see Noda B'Yehuda II, OC 27)! Also, in this case, most *poskim* should agree with the Taz – if an *onen* knows he is forbidden to do the *mitzva*, then his intention specifically not to fulfill the *mitzva* disqualifies it (see Mishna Berura 60:9).

The Noda B'Yehuda (ibid.) actually says that if one will be an *onen* for a whole day, he is probably obligated in *sefira*, so that *aninut* should not prevent fulfillment of the *mitzva* even after *aninut* is over. Since even if he is not obligated, some allow an *onen* to do a *mitzva* when it does not affect funeral preparations, he can count without a *beracha*. Many (see Pitchei Teshuva, YD 341:6; R. Akiva Eiger, OC 489:7) accept the Noda B'Yehuda; a minority (Birchei Yosef, OC 489:20) do not.

The *poskim* do not suggest your idea, which is like the Noda B'Yehuda in action but different in intention, because most assume that negative intention ruins its efficacy. It might work (the calculation is beyond our scope) according to the approach of some *Acharonim* (including Rav Soloveitchik, see Mesora III, p. 35) that there is no need to fulfill the *mitzva* to allow continuing with a *beracha*, just to do an act of counting to keep an uninterrupted count. However, since your plan contradicts the Noda B'Yehuda's quite accepted idea of counting with positive intent, we do not recommend it.

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# Ein Ayah

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

## Internal and External Belief

(condensed from Ein Ayah, Shabbat 11:13)

**Gemara:** Reish Lakish said: One who suspects those who are innocent gets bodily afflictions, as it says: “[Moshe said of Bnei Yisrael:] They will not believe me” (Shemot 4:1), and it was clear before Hashem that Israel would believe. [Hashem] said: These are believers the sons of believers, and you are going to eventually not believe. They are believers, as it is written: “The nation believed” (Shemot 4:31). They are sons of believers, as it is written: “He [Avraham] believed in Hashem” (Bereishit 15:6). You are going to eventually not believe, as it says [regarding the punishment for Moshe’s hitting of the rock]: “Since you did not believe in Me” (Bamidbar 20:12).

**Ein Ayah:** The high levels of belief in Hashem cannot be compared to any other impression that knowledge makes in the world. That is because it is a *segula* (special quality) that is the foundation of all of life and the light of a person’s essential life and glory. This *segula* of belief in Hashem, with its internal value that has no comparable distinction in the external world, is unique to Israel. It is not something that one acquires based on choices he makes, but it is a function of our holy lineage, inherited from the patriarchs.

In this internal *segula*, no impediments have power. Even if one rebels strongly in regards to the external elements of religion, such as actions, emotions, and cognitive thoughts, a holy *segula* as part of the “portion of Hashem” still lives in his midst, which makes him believe in Hashem. If we evaluate the strength of one’s belief based on these external manifestations, there can be failures in belief because the hidden light of belief does not shine there. Actually, such a failure can even affect the greatest of the great, who are the pillars that uphold the highest sanctity.

This is the secret of the sin of the “waters of quarrel.” For a brief moment, the holy eyes of the shepherds of Israel (Moshe and Aharon) looked in the direction of the revealed side of belief. Since in this element, the populace of Israel was blemished, the trustworthy shepherd (Moshe) reached the point of anger. In this revealed realm of the power of belief, an impediment to the great light of the spirit of the holy Moshe arose. This prompted Hashem to say that the regular people are believers the sons of believers, as this refers to their level from the perspective of the *segula* of belief. In other words, they have two layers of belief, that which is rooted in the forefathers and that which branched out to the children.

“To the contrary,” said Hashem, “you, Moshe, will eventually not believe. If you judged Bnei Yisrael’s belief by the external indications, then you will be tested in a similar manner and fail.” Heaven forbid, Moshe would not have strayed even for a moment from the foundation of sanctity of belief that he, as a righteous man, possessed. His lapse was only due to the fact that the people upset him to the point that it resulted in improper speech. But that was the test of faith that was presented in the most demanding way. This proved that there is a difference between the belief that one has internally and that which he expresses externally. Thus, from Hashem’s reassurance that even simple Jews were believers the sons of believers, we can extrapolate how strong the foundation of eternal belief was among the students of Moshe. After all, he was the strongest of the believers of Hashem, as he was “the man of G-d” and the master of prophets.



### 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

## How Much Acceptable Work Did the Worker Do? – part I

(based on ruling 71071 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** The plaintiff (=p), who led a staff of workers, was hired by the defendant (=def), an organization, to help in the realms of public relations/publications, fund raising, and procuring grants. Pl sent def a contract stating the areas of work and payment and asked them to sign. According to the contract, pl would send itemized reports of the work and get paid by the hour. Def never signed, but pl started working, after further discussion, and got paid the first month according to hours reported. After that month, def stopped paying, arguing that during the time pl claimed his staff worked, they did not do things they were supposed to. Specifically, pl was supposed to send grant requests to a few institutions; instead, they charged for using much of the time in making lists of grant-giving foundations, and this was done for other of pl's clients. Pl claims that def approved this and that it was agreed he would be believed about the work done.

**Ruling:** In the case of a disagreement between a worker and an employer as to whether the worker has been paid, the worker has the upper hand (Shulchan Aruch, Choshen Mishpat 89:2). However, says the Aruch Hashulchan (CM 89:5), if the dispute is not about being paid but about the quality of the work, we follow the regular rule that the burden of proof is on the one who wants to extract money.

On the other hand, the Rashba applies to similar cases the idea that when one grants reliability to his counterpart, this is binding even when he stops believing him. Piskei Din Yerushalayim VIII, p. 198 says, based on this, that although initially the employer can change his mind, once the work began based on the promise of reliability, the agreement is binding.

The question is whether there was such an agreement here. While the contract pl sent included a provision that pay would be based on reported hours, an unsigned contract is not binding, even if its content was known to both parties and not rejected. One cannot prove from the fact that def paid for one month along the lines spelled out in the contract that the contract had been accepted as a condition for the work. While it was agreed orally that pl would be paid by the hour, and it is clear that only pl could report how many hours were put in, that does not mean that def gave credibility to pl's report even in a case in which def doubted its veracity. However, since pl reported that they worked on putting together lists of grant-giving foundations and def accepted sufficiently the explanation of why it was reasonable to pay for that month, this was *mechila* of the right to reject that work as uncalled for. See Shulchan Aruch, Choshen Mishpat 126:13 and Aruch Hashulchan ad loc. 15, who posit that we do not easily enable one who paid to say that he was mistaken in doing so.

*We will continue next time with other elements of the ruling.*

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