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# HEMDAT YAMIM

## Parashat HaShavua

**Bechukotai, 27 Iyar 5778**

**Capital before King**

Harav Yosef Carmel

In the blessings that open our *parasha*, Hashem promised: "I will place my Sanctuary in your midst" (Vayikra 26:11), and *Chazal* identify this as the *Beit Hamikdash* (Sifra, Bechukotai 1:3; Rashi). In order for the people to begin their preparations to accept this blessing, first the location of the *Beit Hamikdash* had to be decided based on prophecy (see Devarim 12:5). The Torah does not state where this place was to be, and this uncertainty continued for more than 400 years after the Exodus from Egypt.

The steps towards discovery began in earnest as the monarchy was emerging, at the time of Shmuel, Shaul, and especially David, even before the latter had the crown put on his head. David fled from Shaul and went with Shmuel to Nayot in the Rama. Shaul found out and sought them, but along the way he was overcome by the "spirit of Hashem," and began to prophesy (Shmuel I, 19:18-23).

*Chazal* (Yalkut Shimoni, Shoftim 910) understood that the name of the place Nayot in Rama was a hint to the *Beit Hamikdash*, which was *rama* (in a high place) and was the *noy* (adornment) of the world. The place was on the joint border of the tribes of Binyamin and Yehuda. This would enable the drawing together of these critical factions in the nation, representing the descendants of the matriarchs Rachel and Leah. Therefore, when David became king over all of the nation, he captured Yerushalayim and appointed it as the eternal capital of the Jewish nation, united and unifying – the city to which all are connected (see Tehillim 122:3).

Unfortunately, at the moment that Avshalom rebelled against his father David and received popular support, David did not want to remain in the city and fled (see Shmuel II, 15:14). The head *kohanim*, Tzadok and Evyatar, wanted to join David with the *aron* from the *Mishkan* containing the *luchot habrit*. However, David told them to return the *aron* to Yerushalayim, where David would return if Hashem would have him merit it (ibid. 25-26).

David, the great believer, did not give up on the dream of Yerushalayim as the eternal capital – the center of the nation from a spiritual and political perspective. By leaving the city behind intact, he was announcing that it must remain the center even without him. "If I am correct, I will be able to return; if I am not correct, I will not return, but Yerushalayim will remain the center."

David is the one who set the formula: while leaders come and go, the capital remains. Because of his stance, David became an eternal part of our history. "Yerushalayim, for generation after generation" (Yoel 4:20). "David King of Israel lives and remains."

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# Ask the Rabbi

by Rav Daniel Mann

## Getting a Kite Down from a Tree on Shabbat

**Question:** If one flies a kite on Shabbat and it gets stuck in a tree, may he extricate it from the tree?

**Answer:** We wrote in the past about whether it is permitted to fly a kite on Shabbat. We concluded that there are not sufficient grounds to forbid it, despite the possibility a person could make mistakes in the process (as is possible regarding many permitted Shabbat activities). Your question relates to an important scenario, especially because kites often get stuck in trees.

It is certainly forbidden to climb the tree in order to free the kite. It is forbidden to climb trees on Shabbat, out of concern that one who does so will pull off a branch or fruit from the tree (Beitzta 36b). Although there is discussion if this prohibition applies to totally barren trees (see Eiruvim 100b), the *halacha* is that it applies to all trees and firm vegetation (Shulchan Aruch, Orach Chayim 336:1) as long as it is above three *tefachim* off the ground (ibid. 2). It is also forbidden to lean a ladder against the tree and climb the ladder, due to a prohibition to use a tree or that which is considered the "side of the tree" (Shabbat 154b; Shulchan Aruch ibid. 13).

Is it permitted to, without climbing, free the kite by pulling on the kite strongly? In many cases in which the kite is strongly intertwined with the leaves and branches, pulling strongly enough to remove the kite will certainly knock off parts of the tree even if that is not his intention (*p'sik reishet*). Assuming that one has no use for what comes off, this would be only a Rabbinic violation of Shabbat even if were done on purpose (see Shabbat 73b). According to most *poskim*, a *p'sik reishet* is forbidden even on a Rabbinic prohibition (Mishna Berura 314:11; Yabia Omer I, OC 19 cites *poskim* on both sides of the debate).

What about cases in which it is not definite that any part of the tree will be severed? It is forbidden to shake trees or parts of trees (Rama, OC 336:13; Mishna Berura 336:63, based on Beit Yosef in the name of Orchot Chayim). This is forbidden because it is using the tree (see above) (see Shabbat 155a; Aruch Hashulchan, OC 336:37). Since this is not just a violation of *muktzeh*, it is forbidden not only when one does so directly with his hand, but even with another instrument, e.g., the kite string (see Shabbat 155a). This is apparently so even if he did not do so intentionally but as a *p'sik reishet*. Seemingly whenever one has to pull on a caught kite, branches and leaves will be moved.

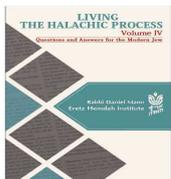
Even if one could just lift the kite out without moving anything, it would still be forbidden. The *gemara* (ibid.) forbids placing things on a tree, as it is prohibited to use a tree on Shabbat. The Rama (OC 336:1) is among those who say that it is likewise forbidden to remove things from a tree. Some understand that the Rosh (Shabbat 5:2) does not view removing things from a tree as using it (see Shevet Halevi IV:74). This is part of the Shevet Halevi's grounds for allowing one to easily pick a *tallit* that accidentally fell on a low bush. However, assuming the part of the tree in question is at least 10 *tefachim* (about three feet) high, there would still be a prohibition out of concern one might climb the tree in order to remove the object (see Rosh ibid.; Mishna Berura 336:12; Shevet Halevi ibid.). Indeed, the Shemirat Shabbat K'hilchata (16:7) forbids removing a ball on Shabbat from a tree upon which it fell, whether doing so by hand or with the help of a pole. While it is not necessary to point this out from a halachic perspective, note that the chances one will come to climb the tree to rescue the kite are probably higher than in the classic case of placing something in a tree above ten *tefachim*.

In conclusion, once the kite is stuck in the tree, it should not be taken down on Shabbat, in any manner. This is something the kite flyer should consider before flying it. A rabbi might be wise to consider the chances that kids will know/remember this *halacha* and be disciplined enough to follow it, when setting policy for his community.

**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.)

## The Complexity of Being Based on Simplicity

(condensed from Ein Ayah, Shabbat 6:51)

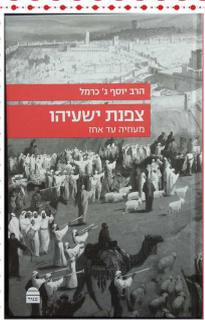
**Gemara:** [In the previous gemara, Rav Kahana had been involved in a discussion in which he did not think a certain proof from a *pasuk* was viable because the *pasuk* was to be taken metaphorically. His partner to the discussion responded that a *pasuk* is not to be totally removed from its simple meaning.] Rav Kahana said: When I was eighteen years old, I had already learned all of the Talmud [as it existed at the time], but I did not know that a *pasuk* is not to be totally removed from its simple meaning. What does that statement teach us? That one should first accumulate knowledge and later learn how to analyze it.

**Ein Ayah:** Material and spiritual characteristics always develop in a coordinated manner. Therefore, values can be learned one from the other because there is a secret unity that runs through all of existence. For that reason, if something exists in one element of the world, it will exist in some similar form throughout existence, just that they differ due to the difference between the situations involved. Indeed, the material and spiritual come together under the canopy of world existence. Whatever finds expression in one finds expression in the other, with appropriate differences according to the fundamental difference between these significantly different realms. However, when we place one form of the value opposite the other, we will see that one can be learned from the other in a most complete manner.

When something physical is enhanced, it must be finished up by thereby having the person to whom it is connected be completed and grow as a person. Only when the quality and quantity of a person's physical power is complete will the person be ready to add on more fruit of life. Our Rabbis teach us that the age of eighteen is the time for marriage (Avot 5:21). When the person in question is a man of elevated status, it is proper for this to be accompanied by the accumulation of all pertinent spiritual acquisition. This is when a person knows everything that he can by remembering what he was taught and absorbing it into his mind.

Only after he has quantitatively accumulated the material available can he move on to spiritual fertility, with analysis following the amassment of knowledge. Then the blessing of creative ideas can come forward with all its attractiveness and clarity. When one excels in this regard, he realizes that the basis for the loftiest spiritual ideas is the simplest and clearest understanding of each matter. The deeper levels are best understood when the simple explanation is clear, as that is the ground-level of spirituality upon which the rest sits. One needs great depth to understand all of the spiritual levels, not just how each one stands on its own, but how the different levels must be connected from the beginning of their growth until their most beautiful flowering. Only when the simple basis is clear will one appreciate how everything is connected in a manner that is full of life, in a truthful and permanent way.

When one begins to learn, he cannot appreciate the multi-level connection and the beauty of that which is the simplest level and how it impacts all levels. That is why first a person learns on the level that is the ultimate truth. Only afterward can he appreciate how even the simple level is as beautiful as it is and that a *pasuk* is not to be totally removed from its simple meaning.



### 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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## Obligation to Enable Registering a Purchase – part II

(based on ruling 76084 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** The plaintiffs (=pl) bought an apartment from the defendants (=def) in a project that is handled by a *chevra meshakenet* (= cm; developers who bought rights to buildings from the government and are responsible for registering changes in ownership). Pl paid and moved in a few years ago, but def has been unwilling to sign a form requested by cm, which states that the sellers have no further claims against cm regarding the apartment. Due to this, cm has refused to register the apartment in pl's name. In the first hearing, def said they want to sue pl for the damages of delaying payment and informing the authorities of the sale too early. They implied that if paid for damages, they would sign the form. In the second hearing, def claimed that signing the form will damage them, but they failed to coherently explain the nature and source of the damage. Pl claim that def is required, according to their contract, to sign any document needed for transferring ownership. The form in question is a standard one, def have never explained their refusal to sign, and it does not make sense that they should have claims regarding an apartment that they sold years ago. Def say that there is no legal obligation to sign documents that cm presents without justification and now claim that they are part of litigation against cm that has not been resolved. Pl points out that the contract states that there are no outstanding legal matters with the apartment. Def did not follow up after the hearing with documentation about the litigation, as requested. Pl demands 3,000 shekels per day that def refuse to sign the form.

**Ruling:** Last time we saw that the sale of the apartment between pl and def was final.

Is the agreement in par. 7.1 of the contract that def will sign documents to carry out their obligations binding and relevant to our case? While it is not clear that cm should be requiring this document, as pl admit, once they do, it makes the document necessary for pl and thus incumbent upon def.

In general, an obligation to perform an action (*kinyan devarim*) is not binding. However, the Shulchan Aruch (Choshen Mishpat 243:9) rules that if one promises one who buys from him that he will write a document to confirm the sale, once the sale goes through, he is required to write the document. R. Akiva Eiger (ad loc.) does not understand why this is not a *kinyan devarim*. However, Rav Shimon Shkopp (Gittin 8) explains that it is not an independent separate obligation, but rather it naturally goes along with the outcome of the sale. This applies to our case as well.

Can one enforce this obligation to sign the document (e.g., by *niduy*), or is it just grounds for voiding the sale? Regarding the obligation to register a sale in the Land Registry, Emek Hamishpat (16) cites Rav Elyashiv as saying that it can be enforced. Furthermore, there is a *machloket Acharonim* whether standard business practices (such as an obligation of *kinyan devarim*) are binding according to Halacha (see Piskei Din Rabbaniim XIV, p. 343). There may also be a halachic obligation for def to sign under the rubric of *hashavat aveida* (helping another avoid monetary loss). We are of the opinion that *beit din* has the right and responsibility to enforce such obligations.

*We will continue with the question of def's claims to be exempt from acting in this case.*

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