

# HEMDAT YAMIM

PARASHAT NOACH

3 CHESHVAN 5769

*This week.....*

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- **Place of Adjudication When the Location of the Defendant Changes**  
(based on Halacha P'suka 46, a condensation of a ruling of the Supreme Rabbinical Court)

This edition of Hemdat Yamim is dedicated to the memory of **George Weinstein**

Gershon ben Yehudah Mayer, a lover of the Jewish Nation Torah and Land.

As well as

**R' Meir ben Yechezkel Shraga Brachfeld**

o.b.m

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## What is a Rainbow?

The point of the lead question of the title is not to introduce a scientific analysis of the phenomenon of a rainbow. It is not even to deal with the Ramban's discussion of whether a rainbow is a natural phenomenon that existed since creation or a later change in nature. The question is what the rainbow is supposed to communicate to whom. Most people would say that the rainbow is Hashem's way of telling us that He will not destroy the world again (even if we may deserve it). But the *p'sukim* (Bereishit 9:14-16) talk of Hashem "seeing" the rainbow and "remembering" the covenant, puzzling terms in relation to an omniscient G-d.

Even if we view the rainbow as a change of nature in the aftermath of the flood, it would certainly seem to now be a part of the physical world that can be easily explained by even a novice scientist. Yet, the *gemara* (Chagiga 16a) attributes special powers to it that are surprising. The *gemara* says that a rainbow is one of three things that cause weakened eyes to those who gaze at them. The Biblical support for this claim (see Maharsha, ad loc.) implies that the reason is that some form of the Divine Presence is found in the rainbow. If the rainbow is something that Hashem puts in the physical world in order to remind Him when looking at the world, why would it contain the Divine Presence?

We can better deal with our questions by looking at the other things that affect the eyes: the *nasi* (king or major Jewish leader) and the *kohanim* as they blessed the people in the *Beit Hamikdash*. Regarding the rainbow, the *pasuk* says that the Presence that Yechezkel saw resembled a rainbow in a cloud. About the *nasi*, the Torah says that [Moshe] bestowed from his grandeur of Divine origin. Comparison now teaches the following. All three things are matters in the physical world that Hashem uses as a conduit for His assistance to mankind, creating an interface between worlds, where Hashem bestows of Himself to elevate something physical to a unique level.

The Iyun Yaakov points out that it is permitted to look at a *nasi* and a rainbow, at which time we even make a *beracha*. The problem is gazing, when one looks in such a manner that makes him feel that he can "see" the Divine element that is incorporated in the physical object. There indeed may be Divine reminders. The rainbow, for example, is the result of "united" light beams that are refracted into a spectrum of light when passing through water, a basic element of our world. Indeed, the Divine Presence is unified but appears to us as being multifaceted. That is because the world man interacts in makes Hashem appear different in different scenarios. It is improper to look at the manifestation of Hashem in this imperfect world lest we come to think that we can master His Essence by what we can see of Him. Rather, we should be inspired by noticing that He does interface with this world and understand that His Essence is beyond us.

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**Question:** We made *Sheva Berachot* at *se'uda shlishit*. The question arose: should one drink the cup(s) before *Havdala* in this case?

**Answer:** The Magen Avraham (299:7) says that one who *bentches* over a cup of wine at *se'uda shlishit* should drink it. Since the cup is part of the *bentching* process, drinking it is considered the end of the meal. Just as one can finish up *se'uda shlishit* at night before *Havdala*, so can he drink the wine that is connected to the meal. However, he says, if one does not regularly recite *Birkat Hamazon* over wine, he should not drink it before *Havdala*. This is because, for such a person, the connection between the wine and the *meal* is insufficient to justify drinking before *Havdala* (see *Machatzit Hashekel*, ad loc.). The Tosefet Shabbat is not convinced that the fact that one does not always use a cup for *Birkat Hamazon* makes a difference in this regard, but *poskim* are reluctant to reject the Magen Avraham's ruling without further indications (see *Sha'ar Hatziyun* 299:24).

What would the Magen Avraham say about *Sheva Berachot* at *se'uda shlishit*? On one hand, most of us do not always *bentch* over a cup of wine. On the other, we always use a cup for *Sheva Berachot*. R. Shlomo Kluger (*Chochmat Shlomo*, ad loc.) says that although logic dictates that it is permitted to drink the cup of *Sheva Berachot* but not of *bentching* (remember, our *minhag* is to use two cups), that would diminish the status of the cup for *bentching*. Therefore, he prefers that one not drink from either before *Havdala*. The Eshel Avraham (*Butchatch*, cited in *Minchat Yitzchak* III, 113) says that the Magen Avraham would agree that regarding *Sheva Berachot*, one should drink because the *Borei Pri Hagefen* that precedes drinking must be recited for there to be seven *berachot*. Others say that it is sufficient that one always uses a cup for *bentching* at *Sheva Berachot* or at gatherings with a *minyan* (see *Tzitz Eliezer* X, 45 and *Yabia Omer* VIII, OC 33). Rav Ovadia Yosef (*Yabia Omer*, *ibid.*) also points out that, since our *minhag* is to mix the wine of the two cups together, one can drink from the *Sheva Berachot* cup without disgracing the *Birkat Hamazon* cup.

Assuming that the *beracha* of *Borei Pri Hagefen* is said and the wine is drunk, other issues and various opinions arise. R. Moshe Feinstein (*Igrot Moshe* OC, IV 69) identifies two elements of the cups of wine at *Sheva Berachot*. The fact that the *chatan* and *kallah* drink is connected to the very nature of *Sheva Berachot*, which require a cup; therefore, they should drink. That which the person who *bentches* at *Sheva Berachot* drinks is related to the general matter of *bentching* on a cup. Since his drinking is not crucial, Rav Moshe posits that it is preferable that only the *chatan* and *kallah* drink the necessary cheeksful of wine. Some say the opposite, that the one who makes the *beracha* should drink (as well as the *kallah*, since not everybody believes that women are obligated in *Havdala*) but the *chatan* should not. The latter distinction is tenuous (*Tzitz Eliezer*, *ibid.*).

Some say that it is better that people only take a sip (see *Tzitz Eliezer*, *ibid.*), which might be permitted before *Havdala* and sufficient for drinking from the cup of *Sheva Berachot*. If the one who *bentched*, the *chatan*, and the *kallah* each drank about an ounce, more opinions would be satisfied (see *Mishna Berura* 271:73). However, except for those who do well with taking careful steps to satisfy as many opinions as possible, it is perfectly acceptable for at least the three people mentioned to drink as usual from the cup(s) (*Yabia Omer*, *ibid.*).

[Two related reminders are in place. It is not a simple matter whether *panim chadashot* are needed at *se'uda shlishit* (see *Even Ha'ezer* 62:8). If Shabbat is the last day of *Sheva Berachot*, the *berachot* should probably not be made at night (see *Ask the Rabbi*, R'ei 5765).]

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# Ein Ayah

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

## Excerpts from the Introduction to Ein Ayah – part VI

[We discussed last time the importance of having the “closed statements” of the Torah (especially the instructions on practical mitzvot) and the “open statements” (the involvement in creatively expanding the texts beyond their simple meanings) complement each other.]

The matters we have discussed apply to Israel’s service on the national and individual level, through practical adherence to the Torah that is unique to them, through the crown of Torah that they merited. In this regard, the Torah says “They are a nation that dwells alone, and among the nations will not be considered” (Bamidbar 23:9). It is true that “the families of the world will be blessed through you [Avraham and his descendants]” (Bereishit 12:3). However, when things are as they should be, Israel should be contained by the walls of Jerusalem, as the *pasuk* says about Jerusalem, “For He has strengthened the seals of your gateways and blessed your sons in its midst” (Tehillim 147: 2-3). The psalm continues: “He told His word to Jacob, His statutes and laws to Israel; He did not do so for any nation, and did not let them know laws, may Hashem be praised” (ibid.: 19-20). Regarding the active *mitzvot* and their performance, Israel has no point to teach the nations or learn from their modes of service for these are “a statute for Israel” (ibid. 81:5), and Hashem separated us from all of the nations “to be for Me.”

This approach is a result of the closed statement. Torah observance and the sanctity of actions, when they will adorn Israel, will of necessity be a special sign and source of grandeur toward the nations. The good attributes and actions that a Torah education spawns on the individuals of the totality of our nation will glorify our nation when we return to the good path, the path of Hashem and the Torah of life that He gave us. Then the nations will say: “Only a smart and wise people, this great nation” (Devarim 4:6). They will desire that we bring the Torah down to them in a manner that it should be brought to influence all of earth’s nations. This will bring world peace for all of mankind in the end of days, fulfilling the *pasuk*, “for the increasing of authority and for endless peace” (Yeshaya 50:7).

However, since Israel has forsaken good, and in relation to the practical close-statement part of the Torah, they improperly want to resemble the nations, they breached the walls of the closed statement and did not strengthen the seals of the walls of Jerusalem. In our great sins, blessing and peace, which depend on the perfection of humanity, which itself is connected to the perfection of Israel, have eluded us and are being delayed. The increase in peace, which should come along with the open statement, is closed, and that part of the Torah whose light should be open to all of the inhabitants of the land, is closed in a narrow seal, while the gates of Jerusalem are breached and foxes are walking through them.

Matters are interconnected. When ideas will be expanded and the view of all of the details of ethics and belief will increase, we will be able to strengthen weak hands and fragile hearts and return those who have been distanced from Torah back to its strength through grace and healthy logic. That is why I believe that explaining the *aggadic* sections of *Chazal* along the lines of belief and the obligations of the heart is something that is particularly necessary these days. Those works that are produced in these fields should be appreciated as major steps to bring merit to the masses and return people to their Father in Heaven. This is why I have taken upon myself, according to my weak strength, to join this effort and pray that Hashem will bless me with success and the ability to sustain the effort.

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# P'ninat Mishpat

## Place of Adjudication When the Location of the Defendant Changes

(based on Halacha Psuka, vol. 47- A Condensation of a Psak by the Beit Din of Jerusalem, vol. IX, pp. 141-144 )

**Case:** A man (*pl*) is a neighbor and shares a roof with an apartment that had been owned by a woman and her children (*def*) but since had been transferred to the ownership of the children (the woman still lives there). *Pl* wants to divide the ownership of the roof in order to build on part of it. *Def* do not want to allow the construction and want to adjudicate the matter in B'er Sheva, where they live. *Pl* wants the case to be heard in the area of the apartments, where he lives, and points out that his physical frailty makes it difficult to travel to B'er Sheva.

**Ruling:** The *gemara* (Sanhedrin 31b) cites a *machloket* about a case where the plaintiff wants to adjudicate locally, and the defendant wants to go to the *beit va'ad* (place of eminent experts). It concludes that we follow the request of the lender because a "borrower is a servant to the lender." Thus, it is the plaintiff who should have more say as to where the case will be heard. It is true that the Rama (Choshen Mishpat 14:1) says that the *minhag* is that one cannot force a defendant to adjudicate away from his area, and thus usually cases are heard in the defendant's area. The Gra (CM 14:18, based on Bava Kama 46b) explains that the rationale that a case is usually heard in the defendant's place is that "one whose teeth hurt should go to a doctor," meaning that the question is not just who is the plaintiff, but who needs *beit din* to help have the matter adjudicated.

The Maharival (II, 97) explains that the reason for the practice that the plaintiff adjudicates in the defendant's city is that the defendant is expected to feel more bound by the authority of the local *beit din* and accept its rulings. Since the rule is for the plaintiff's good, if this can be attained specifically in the plaintiff's place, that is its proper place, as is the case here.

Our case is not a standard one in regards to location. When *pl* bought his apartment, the potential litigant with whom he would have to deal was the mother. When she transferred her rights to her children, she was, in effect, causing *pl* to trouble himself to deal with possible litigation in a distant location. This is similar to what the Rama (CM, 73:10) describes, when one borrows money and then moves elsewhere, while leaving behind resources that can be used for payment. In such a case, he says that the defendant has to come to the place where the transaction transpired. This ruling is designed to prevent people from borrowing money and running away to a distant land. Furthermore, since the idea of following the defendant's location is for the plaintiff's benefit, in a case like this, where *pl*'s health makes it difficult to travel, we should revert to the original preference, that the case is heard in the plaintiff's location.

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