

# HEMDAT YAMIM

PARASHAT VAYEIRA

17 CHESHVAN 5769

*This week.....*

- **Political Negotiations – Yes or No? - A Glimpse from the Parasha**
- **Standing for Modim D'Rabbanan and Talmidei Chachamim - Ask the Rabbi**
- **Excerpts from the Introduction to Ein Ayah – part VIII (final installment)**
- **from the Writings of Harav Avraham Yitzchak Hakohen Kook, z.t.l**
- **Validity of Witnesses Who Attest to Being Unfit Witnesses**  
(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

Hemdat Yamim is endowed by Les & Ethel Sutker of Chicago, Illinois in loving memory of

**Max and Mary Sutker**  
and **Louis and Lillian Klein, z"l.**

## Political Negotiations – Yes or No?

Harav Yosef Carmel

This week, as last, we find Avraham negotiating with leaders, this time, Avimelech, the *Plishti*. He approached Avraham, seeking a peace treaty, stating: "Hashem is with you in all you do" (Bereishit 21:22). The section concludes with Avraham establishing a home in B'er Sheva, where he called out in the Name of Hashem (i.e., a spiritual center). Was this agreement a positive one? What caused Avimelech to seek a treaty?

The Rashbam says that the miracles for Avraham motivated Avimelech. However, one can also identify a political purpose. The previous story tells about Avraham sending away Hagar (the daughter of Paroh) and Yishmael. This certainly cooled relations between Avraham and the Egyptians. The *Plishtim*, rivals of the Egyptians for the international route through their land, grabbed the opportunity to strengthen their ties with Avraham. As a result, Avraham advanced his monotheism movement in the south of Israel.

Despite the accomplishment, the Rashbam strongly criticizes Avraham. He made a peace treaty with his descendants' future enemies, thus delaying his descendants' ability to take over the Land when the time came. Therefore, Hashem made things difficult for Avraham (the *akeida*). The Rashbam strengthens his thesis with a *midrash*. The seven months that the *aron* was under *Plishti* control, the seven wars in which the *Plishtim* defeated the Jews, and the seven *tzaddikim* who thereby died correspond to the seven sheep that Avraham presented to Avimelech during their treaty. These were terrible consequences for Avraham's descendants from a deal that, despite containing important religious achievements, was improper.

The Ramban, though, viewed this episode positively, as an example of Israelite relations with kings that allow the former to stay in their Land. How can the Ramban answer the Rashbam's arguments? We have shown elsewhere that the Ramban made the following assumption that is supported by modern archeological discovery. The *Plishtim* of the patriarchs' time were not the nation who later fought with Israel as they settled the Land after leaving Egypt. The former *Plishtim* were descendants of Cham; the latter were Kaftorim who came from the area of Crete and conquered the coastal planes of the Negev and inward. This approach is supported by a *gemara* (Chulin 60b), which says that after Avraham made an agreement with Avimelech, Hashem had the Kaftorim conquer and pave the way for Israel to eventually take over the Land. If so, there was no contradiction between what Avraham promised and what Yehoshua had to carry out.

Let us pray that Hashem will lead the hearts and actions of our leaders, who are involved in international negotiations, to avoid agreements that contradict our *mitzva* to control the Land, as the famous passage of the Ramban confirms we are obligated to do.

Let us pray that the world will understand that the real dominion is Hashem's and all will want to attach themselves to His Kingdom. **Eretz Hemdah** is the premier institution for training young rabbis to take the rigorous Yadin Yadin examinations. **Eretz Hemdah**, with its distinctive blend of Religious Zionist philosophy and scholarship combined with community service, ensures that its graduates emerge with the finest training, the noblest motivations resulting in an exceptionally strong connection to Jewish communities

**Question:** I see people using a semi-rising motion at the beginning of *Modim D'Rabbanan* (what the congregation recites when the *chazan* gets up to *Modim*) and when a *talmid chacham* walks by? Is that correct? What are the rabbinical sources on the matter?

**Answer:** The two practices are based on different sets of sources and, apparently, logic.

The Shulchan Aruch (Orach Chayim 127:1) rules, based on the Yerushalmi (Berachot 1:5), that when the *chazan* gets up to *Modim*, the congregation should also bow. The *gemara* (Sota 40a) discusses the different possible texts people should recite at that time, out of which has arisen the text we use. The classical sources do not talk about standing at that point (although many require or suggest it throughout *chazarat hashatz*- see Rama, OC 124:4). However, *Acharonim* (Yechaveh Da'at V, 11; Ishei Yisrael 24:38) point out that since it is required to bow, it becomes necessary to stand to make that possible. We see the connection between standing and bowing regarding the halacha of one who is unable to stand for *tefilla*, who should try to stand at least at the places that he needs to bow (Shulchan Aruch, OC 94:5).

Regarding what part of *Modim D'Rabbanan* requires bowing, there are multiple opinions and *minhagim*. These are primarily: at the beginning, at the beginning and end, and throughout (see Shulchan Aruch, OC 127:1). Based on the above, the time that one should be standing would correspond to the opinions on the bowing.

The next question is then whether semi-standing is considered standing. Regarding *Shemoneh Esrei*, where one certainly should stand, the Shulchan Aruch (OC 94:8) says that one should not even lean on a lectern or another person. The Mishna Berura (94:22) points out that, in general, standing while leaning is not considered standing if the person would be unable to continue standing in that position if the object were removed. Depending on how high off the chair one lifts himself, it is questionable whether the average person would be able to keep himself suspended if the chair were removed after what you call a semi-rise. Can we, then, justify the practice you describe?

It appears that one can find some justification in significant, albeit minority sources. The Rambam (Tefilla 9:4) says about the bowing at *Modim D'Rabbanan*: "All of the people bow down a little, and they should not bow too much." This basic idea is found in the Yerushalmi (ibid.), but there is much discussion as to whether this is specific to *Modim* or whether not bowing too much is a general guideline (see Beit Yosef, OC 127). In any case, the Bach explains the Rambam that there should be a less than usual bow by *Modim D'Rabbanan* for the following reason. Since the people have already *davened Shemoneh Esrei* and bowed at *Modim*, they shouldn't need to do so again. The reason they do is to avoid looking as if they disagree with the enthusiastic praise of Hashem the *chazan* is involved in. (For this reason, one who is in the midst of his own *Shemoneh Esrei* at that time bows along with the others- Mishna Berura 109:10). Therefore, it is best to suffice with a small bow. It is very possible that according to this approach, it is also unnecessary to stand fully. Although the Magen Avraham (127:1) and Mishna Berura (127:2) do not *pasken* like the Bach, it still could explain the *minhag*.

The matter of partially standing up for a *talmid chacham* is based on the following. The *gemara* (Kiddushin 32) discusses whether a *rav* can be *mochel* (relinquish) the honor coming to him, which we rule that he can (Shulchan Aruch, Yoreh Deah 242:32). The *gemara* tells of a *rav* who seemed to be *mochel* yet was slighted when someone did not move from his chair in his proximity. It explains that he should have at least done a *hidur*, which Rashi explains as a slight movement to show that he would like to stand up. This compromise semi-rising is accepted by the Shulchan Aruch (ibid.).

**"Living the Halachic Process"** - We proudly announce the publication of our first book in English. "Living the Halachic Process" a selection of answers to questions from our Ask the Rabbi project. A companion CD containing source sheets for the questions is also available. In honor of the book's debut we offer it at the special rate of \$20 (instead of \$25). Contact us at [info@eretzhemdah.org](mailto:info@eretzhemdah.org)

Have a question?..... e-mail us at [info@eretzhemdah.org](mailto:info@eretzhemdah.org)

# Ein Ayah

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

## Excerpts from the Introduction to Ein Ayah – part VIII (final installment)

[Last time, we discussed the ideas behind aggadic interpretation, which often need to be proved by time and/or refined by skeptics' criticism. The resulting ideas are more safe and helpful.]

This phenomenon has arisen again in recent times when, initially a small group of holy and deep-thinking people, expanded the teachings of ethics through the principles of *Chasidut*. This development caused a storm in the Jewish world. Before it was possible to see the impact the new approach would have on the hearts of the masses, there was concern over it. The “brakes” applied to *Chasidut* due to opposition to it were necessary and helped prevent great damage that could have come from “students who did not study from their teachers sufficiently.” Even the loftiest ideas can be perverted into damaging things. After the raucous has settled, *Chasidut* has developed new “plants” that we can use to serve Hashem and expand the true words of ethics and *aggada* to light the way. The multitude of approaches helps clarify matters. As long as all are pointing toward one target, the path that leads to the House of the Lord of Yaakov, these and those are the words of the Living G-d. These add vitality and strength to Israel and honorably renew the shining face of the true Torah to make it great and widespread.

“*Talmidei chachamim* increase peace in the world” (Berachot 64a) refers to scholars who learn seriously and also spend time emulating veteran *talmidei chachamim*. They delve to the depths of the Torah, extracting the correct halacha from the sources. So too in the field of *aggada*, a *talmid chacham* can enter the light-filled path and, if he knows it well, can avoid the thorns, beasts, and bandits who may frequent the path. We must strive to come to correct conclusions also in the important area of *aggada*, which requires a tremendous amount of work.

In the realm of halacha, we must hear the various opinions and reasoning, which emerge from the logic of the Torah that was given by Hashem to Moshe but can lead different rabbis to different legitimate decisions (see Chagiga 3b, regarding *eilu v'eilu divrei Elokim chayim*). Also regarding *aggada*, philosophy and proper service of Hashem, all of the ideas of the sages of all generations emanate from one Torah source and are focused on lighting the candle of Israel and bringing man from the ways of death to those of life. Therefore, the more distinctions there are in terms of style and content and the more knowledge that is thereby spread, the more there will be peace, brotherhood and friendship. However, to be on the level to spread such light and peace, one must work very hard studying the breadth and depth of the Torah. That which motivates people to do so is the expansion of the words of *Chazal* in *aggada* through knowledge and straight logic.

[*Rav Kook then explains the sefer's name. “Ein” is based on the sefer, Ein Yaakov, which gathers the gemara's aggadot. “Ayah” humbly refers to a pasuk that mentions the inability of a bird of that name to see (see Iyov 28:6). We must assume that it also relates to the acronym of his name, Avraham Yitzchak Hakohen.*]

It is my prayer at this time of good will to You, Hashem, who gives wisdom from His mouth, that I shall utter only truth. Save me from mistakes in the fields of halacha and *aggada*. May I be successful to bring to fruition that which I desire for the honor of Your Holy Name. Grant me the spirit of wise counsel, strength, and the fear of Hashem. May I merit seeing the joy of Your nation, when You will bring salvation from Zion to Your glorious nation, Israel. I end with the *pasuk's* words of thanks, “Hashem, my G-d, I will thank Your Name for You have done a wonder” (Yeshaya 25:1) and pray for the future, “Even until old age, Hashem, may You not forsake me until I tell of Your strength to the generation and Your power to all who come” (Tehillim 71:18).

### Responsa B'mareh Habazak, Volumes I, II, III, IV, V and VI:

Answers to questions from Diaspora rabbis. The questions give expression to the unique situation that Jewish communities around the world are presently undergoing. The answers deal with a developing modern world in the way of “*deracheha, darchei noam*”. The books deal with the four sections of the Shulchan Aruch, while aiming to also take into consideration the “fifth section” which makes the Torah a “Torah of life.” (Shipping according to the destination) **Special Price:** 6 volumes of Responsa Bemareh Habazak - \$75 (instead of \$90)

# P'ninat Mishpat

## Validity of Witnesses Who Attest to Being Unfit Witnesses

(based on Halacha Psuka, vol. 48, condensation of Mishpetei Shaul, *siman* 5)

**Case:** A husband brought witnesses who testified that his wife acts in an immodest manner, which could be grounds for her requiring a *get*. The two witnesses were asked about their level of Torah observance. One said that he keeps Shabbat somewhat and puts on *tefillin* on Shabbat and *Yom Tov*. The second witness admitted to traveling on a bus on Shabbat.

**Ruling:** If valid witnesses testified before *beit din* that the witnesses indeed violated Shabbat, we would disqualify the witnesses. This is based on the Shulchan Aruch (Choshen Mishpat 34: 1-2) that a *rasha*, as defined as one who violated *aveirot* for which the punishment is *malkot* (flogging) or worse, whether he did so out of desire for the sins or to anger Hashem, is an unfit witness. However, in our case, *beit din* was not presented with testimony of *kosher* witnesses of such violations. Rather, they spoke against themselves. Thus, we apparently should apply the rule: "One does not disqualify himself [as a witness] based on his own account but only based on witnesses who testify against him, for one does not make himself a *rasha*" (ibid.:25).

However, the Hagahot Maimoniot (Geirushin 13:20) in the name of the Ra'avya says that one may accept accounts that would not ordinarily be accepted due to the credibility of the source but are matters that are easy to find out about. Although the Ra'avya discussed a different type of case, *beit din* reasoned that we can accept the principle regarding matters of a witness' general public behavior, and thus we should believe the witness when he says that he regularly sins.

Regarding the witness who says that he puts on *tefillin* on Shabbat and *Yom Tov*, he demonstrates great ignorance and a desire to lie to *beit din*. This resembles the Rama's (Shut 13) case of low-class people whose behavior makes them suspect of being invalid witnesses. He says that they are invalid even without specific testimony about sinning that automatically disqualifies. Rabbi Akiva Eiger (I, 99) questions the Rama, since ignorant or troublesome people are disqualified only rabbinically, and the issue the Rama discusses is regarding matters of Torah level. However, he does not argue with the Rama's ruling. The Beit Meir explains the Rama as follows. People of such description are at least suspect of being invalid from the Torah, in which case, we have no right to make the husband of the woman about whom they testify divorce her. In our case, there is a further issue. The witnesses' testimony is to be used to try to force a woman to accept a *get* against her will, which is something that is forbidden by *Cherem D'Rabbeinu Gershom*. To allow questionable people to facilitate such a thing would be a leniency, not a stringency, which cannot be done in this questionable manner.

### ***Do you want to sign your contract according to Halacha?***

The Rabbinical Court, "[Mishpat Vehalacha BeYisrael](#)" serves the public in the matter of dispute resolution according to the Halacha in a manner that is accepted by the law of the land.

While drawing up a contract, one can include a provision which assigns the court jurisdiction to serve as an agreed upon arbitrator.

Tel: (02) 538-2710 [beitdin@eretzhemdah.org](mailto:beitdin@eretzhemdah.org) Fax: (02) 537-9626

**Founder and President: Harav Shaul Israeli zt"l Deans: Harav Yosef Carmel, Harav Moshe Ehrenreich**  
**ERETZ HEMDAH 5 Ha-Mem Gimmel St. P.O.B 36236 Jerusalem 91360**

**Tel: 972-2-537-1485 Fax: 972-2-537-9626**

**Email:** [info@eretzhemdah.org](mailto:info@eretzhemdah.org) **Web:** <http://www.eretzhemdah.org>