



# HEMDAT YAMIM

חמדת ימים

## Parashat Hashavua Vayishlach, Kislev 14, 5785

Harav Shaul Israeli zt"l  
Founder and President

### The Visits in Beit El of Yaakov/Yisrael – part I

Harav Yosef Carmel

When Yaakov Avinu first visited Beit El (in Parashat Vayeitzei), he was an empty-handed, lone fugitive, later self-described as “crossing the Jordan with my stick” (Bereishit 32:11). Upon his return to the Land, he had already earned the name Yisrael, and he was a very rich (see Bereishit Rabba 73:43) national leader, who had his own encampments and fighting force (see Bereishit 32:1-2, 10).

His “journey” began (ibid. 28:2-22) and ended (ibid. 35:1-15) in Beit El. In both cases (ibid. 28:19; 35:15), the Torah uses almost the exact same language to describe that Yaakov called the place of his encounter with Hashem, Beit El (literally, the house of Hashem). As a national leader, he continued the lead of his grandfather, Avraham.

Avraham (called a prince – ibid. 23:6), led a fighting force into battle. He was not afraid to take on a powerful Mesopotamian army that had captured his nephew (ibid. 14:14-16) and defeated them in a brilliant nighttime attack, and freed the captive soldiers and civilians. Avraham negotiated and made pacts with kings (e.g., with Avimelech, King of Plishtim – ibid. 21:27-32). Avraham was also active in spiritual leadership, which attracted many people to his “camp.” On the *pasuk* “the souls they made in Charan” (ibid. 12:5), the *midrash* (Bereishit Rabba 39:14) says it refers to the men and women, respectively, that Avraham and his wife Sarah converted.

Yaakov acted similarly. He prepared for war (see ibid. 32:8-9 with Rashi) and fought with the angel of Eisav, who admitted that Yaakov was a leader, which should reflect itself with the name Yisrael (see ibid. 29). Yaakov and family carried out negotiations with the ruler of Shechem, reaching an agreement that started to be implemented. After Shimon and Levi caused a crisis (we will not get into Yaakov’s grievances with Shimon and Levi’s excesses), the Torah reports that the people of the region were afraid of the divine protection that they sensed Yaakov’s family enjoyed (ibid. 35:5).

*Midrashim* also attribute significant numbers of conversions to Yaakov (Bereishit Rabbati, pp. 152-3). One of the hints in the Torah to this is Yaakov’s instructions to those who went along with him to remove the idols from their midst (ibid. 2), a step that is the first condition for conversion. The existence of these converts is not only hinted to in Sefer Bereishit but also in Sefer Yehoshua.

In the Torah section (ibid. 35:1-6) that discusses the removal of the idols from Yaakov’s encampment, Hashem told Yaakov that the time had come for him to make an altar to Him in the place where Hashem had appeared to him as he was about to leave the Land. The idea of erecting an altar and calling out in the Name of Hashem appears already when they were just approaching Shechem (ibid. 33:18-20). Next week we will try to understand the connection between these two episodes of using the altar.

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# Ask the Rabbi

by Rav Daniel Mann

## Changing Diapers in the Proximity of *Sefarim*

**Question:** Is it permitted to change a baby's diaper in the vicinity of or in a room with *sefarim*? If it depends, what are the parameters?

**Answer:** We start with sources (including a thorough *teshuva* by the Machazeh Eliyahu 5-6), from which we gleaned many of our sources. However, we must also think in terms of common practice and feasibility.

The halachic issues are exposing holy articles to private parts and to excrement. Regarding the former, the *pasuk* (Devarim 23:15) requires separation between uncovered private parts and holy things (see Shabbat 150a). The *gemara* (Shabbat 120b) says that one upon whose flesh Hashem's Name is written may not bathe because it is forbidden to stand naked in front of the Name of Hashem. The Magen Avraham (45:2) extends this prohibition to wearing *tefillin* or bringing Torah texts into a place where people are undressed. The Shemirat Shabbat K'hilchata (24:30) says based on this that one may not erect a partition before holy *sefarim* on Shabbat to allow removing a baby's diaper because it is a **halachically necessary** wall.

However, there are strong grounds to distinguish between an adult and a baby. While the Shulchan Aruch (OC 75:4) forbids reciting *Kri'at Shema* before the private parts of a young child, the Rama (ad loc.) permits it until the age of 3 for a girl and 9 for a boy. Even those who forbid it, do so as a *chumra l'chatichila* (Mishna Berura 75:5) because of its impact on one's thoughts (not as an objective *erva*), and this should not be a problem for holy articles (see Radbaz V, 1028; Machazeh Eliyahu *ibid.*). While the Rama (OC 275:12) cites a *minhag* not to leave a naked child before Shabbat candles because of disgrace to the *mitzva*, it is illogical to apply the *minhag* to changing a diaper. (When Shabbat candles alone provided light, were parents expected to change diapers in the dark?!).

The other issue is the excrement in the diaper. (Only at the age of several months is a baby's stool problematically unseemly – Shulchan Aruch, OC 81:1.) One is forbidden to bring holy things such as *tefillin* into a bathroom (Shulchan Aruch, OC 43:1). However, the problem is likely not the excrement itself, but the status of the place and/or the possibility he will relieve himself while there. Indeed, the Magen Avraham (43:11) permits (when necessary) going into alleyways with excrement with *tefillin* on. It is also more lenient when the exposure of the holy article to the unseemly matter is passing (Be'ur Halacha to 43:5; Shut Ramah Mipanu 59). The Machazeh Eliyahu (*ibid.*) proves that the exposure is not forbidden from the fact it is permitted to urinate with *tefillin* on if it is not in a set bathroom (Shulchan Aruch *ibid.*), even though sources indicate that is at least as bad as exposure to excrement.

How can we be so lenient considering the prohibition to recite holy things within the vicinity of excrement (Berachot 25a; Shulchan Aruch, OC 79:1)? The Machazeh Eliyahu explains that it is not the proximity between the holy utterings and the unclean surroundings but when a person's domain is impacted by an unclean area, he becomes unfit to engage in holy things. If an area becomes taken over by the excrement, then holy things cannot be done there, but a limited amount of time in which a room contains excrement does not have this impact.

What will one following stringent opinions do about *mezuzot*? Shemirat Shabbat K'hilchata (*ibid.*) presents a not-simple leniency – the wrapping of the *mezuzah*, which many anyway do, counts as a separation. We believe that the stringency is unnecessary in the first place, as above. Furthermore, the way our houses now have *sefarim*, Torah-based wall hangings, etc. all over the place makes it impractical to be *machmir* regarding changing diapers, and it also makes the encounter not offensive. It is not surprising that the broad practice is to not require precautions when changing diapers in regular areas. We hope our homes are blessed with several children and many *sefarim* and that changing diapers does not cause undue difficulty.

### “Behind the Scenes” Zoom shiur

Eretz Hemdah is offering the readership to join in [Rabbi Mann's weekly Zoom sessions](#), analyzing with him the sources and thought process behind past and future responses. Email us at [info@erezhemdah.org](mailto:info@erezhemdah.org) to sign up (free) or for more information on joining the group.

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



# Igrot HaRe'aya - Letters of Rav Kook

## Possibilities of Creating Religious *Moshavot* – #284 – part II

**Date and Place:** 1 Adar II, 5670 (1910), Yafo

**Recipient and Background:** Rabbi Dr. Meir Lerner, Rabbi of Altuna (Germany), who for years had interest in the settlement of *Eretz Yisrael*.

**Body:** [We continue with more answers to Rabbi Lerner's inquiries.]

2. The price of land varies greatly, based on location and based on the quality of the land – choice, average, and low quality – as well as many other details. Around the area of the *moshavot*, the land goes for approximately 30-50 francs per dunam. In contrast, in new places, like Rafah, one can purchase for cheaper, approximately 5-8 francs per dunam. On the other hand, conditions of settlement are much more onerous in places that are far from where others live, to the extent that the expense is almost the same thing. Experts say that it is more worthwhile to pay the greater sum near the [existing] *moshavot* than to buy cheap land in distant places. If, though, hundreds of families join up to buy together, then one can also buy in distant places and establish a new locality, and the more people there are, the easier and safer it is.

Regarding crops, not all the places are the same. When the matter will hopefully come to fruition, it will be possible to clarify exactly. However, according to today's market situation for wine, it is impossible to base a new settlement on it. For an orange grove, there is a need for a big investment in securing a well and installing special machines. When the settlement is blessed with riches, this is a good business, and one can obtain land that is fitting for this. But what is more correct is to work hard on simple agriculture, so that orchards are minor compared to growing wheat, barley, and vegetables. [It is best] when the farmers are not business owners but are people who eat the produce (i.e., subsistence farming) and live in peace on the holy soil with good will and happiness with Hashem and service of Him. For simple agriculture, the Galilee is more fit than Judea, the latter of which is better for fruit trees.

3. Regarding farmers, there are trained people for farming who are fully religious, and it is better to put them on the land than to bring in new people.

4. The full price of settling an average-sized family with all the resources it needs is assumed to be 17,000-20,000 francs.

5. You can use the number above to figure out how much it would cost to start a whole *moshava*. Granted, some expenses are smaller when shared by many people, but you must consider also public expenses and especially things having to do with religion, e.g., *kashrut* and public *mitzva* obligations.

To start a *moshava* of five or ten people, you can certainly only do so close to an existing *moshava*. This can be done in Kastina (near today's Kiryat Mirachi). Also, the people of Kastina are simple people who keep Torah and *mitzvot*, and it would be proper to join up with them and increase the settlement together.

I find it necessary to encourage you to continue the great work with the Moriah organization and concentrate on strengthening our holy religion in the New Yishuv in the Holy Land. One can approach such a task without incredible resources. The fundamental achievement of "planting the tree of life in its place" (i.e., religious success in *Eretz Yisrael*) could expand to all of the scattering of Israel. This is because the very involvement in the strengthening of serving Hashem uplifts those who toil in it, and this will also strengthen religion throughout the Diaspora. If one tries to directly strengthen religion in the whole world, it will be too vast a challenge, and if the effort is unsuccessful, it will cause disappointment and weakening of resolve for those who involve themselves in it.

Paradoxically, we should learn from the actions of those who destroy religion, who focus all of their energy on the Holy Land. This is the strategy that those who are faithful to Judaism should take. Let us put all of our energy into improving the building of the Holy Land according to the path of the Torah, and as a result it will make the stature of fear of Hashem greater everywhere that Jews live.

We daven for a complete and speedy *refuah* for:

**Itamar Chaim ben Tzipora**

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**Ori Leah bat Chaya Temima**

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# P'ninat Mishpat

## Realtor Fee Despite the Buyer's Refusal?

(based on ruling 83117 of the Eretz Hemdah-Gazit Rabbinical Courts)

**Case:** The plaintiff (=pl), a real estate broker, specializes in special deals. He shared with a family member (=fm) information of a contractor (=con) under pressure to sell an apartment in a building under construction. Fm was not interested but passed on the information to a relative of his (=def), who eventually bought it for a big discount. Pl was involved with def mainly behind the scenes, and def claims that he thought pl worked for con. Soon before the sale went through, fm told def that pl wanted "something" for his efforts, and def's lawyer informed him that pl asked for a brokerage fee (without mentioning an amount). Def told both that he was unwilling to pay beyond what he envisioned when agreeing to a price with con and claims he said he would rather back out of the deal. Pl and def did not discuss the matter directly. Pl is suing def for 1.5% fee (=31,500 NIS), a discount from his normal 2%.

**Ruling:** There are two grounds for obligation to pay for services: agreement (missing here); benefit received (debated here; see Shut Harashba IV:125). In this case, an Israeli law (from 2012) precludes a realtor's ability to demand a fee without a detailed contract. The point of the law is to prevent situations of dispute whether a fee is warranted and how much it is. The law is designed even for cases where the benefit from the work is clear. *Beit din* generally accepts this law, although in certain cases, where its logic is not pertinent and not levying the fee would cause an injustice, our *beit din* may obligate, at least partial, payment. This is based on the presumption that the rabbinic community should be in agreement with a law for it to be halachically binding (Shut Chatam Sofer, V:45).

Def seems to have received great financial advantage from the purchase, pl did put serious work into it, and pl could likely have marketed it to someone else. Therefore, it seems unfair for def not to pay anything. Although def said to fm and his lawyer that he was unwilling to pay, the Pri Tevuah (cited in Pitchei Teshuva, Choshen Mishpat 264:3) says that he must pay for the benefit received. The Chazon Ish (Bava Batra 2:6) agrees in cases where the recipient's benefit is evident and it is unfeasible for the provider to take back the benefit provided. Since some disagree with the Pri Tevuah or limit the ruling to cases where the recipient never showed interest in the service (see Pitchei Choshen, Sechirut 8:(64)), the matter depends on a *machloket*. Although def's claim that he was not interested in the purchase if he had to pay more was not proved, we cannot extract payment out of doubt.

At times, it may be possible to force someone to pay, especially to a worker, beyond the letter of the law (see opinions in the Rama, CM 12:2). However, here, pl bears some fault, as he had ample opportunities to have def sign a contract. While pl's demand for payment may have been miscommunicated before the contract was signed, it behooved pl to inquire how def responded to it. His failure to do so seems to indicate that pl preferred to make sure that def bought the property and then to try to receive payment based on moral persuasion. Therefore, *beit din* exempted def totally.

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