

OVERVIEW of the Daf

1) Taking the law into one's own hands (cont.)

R' Ashi offers another explanation why a person cannot take back a public path that is located on his property.

The Gemara wonders why the person who tried to exchange the public path with another is not allowed to take back his original path.

This position is associated with R' Eliezer.

R' Eliezer's position is unsuccessfully challenged.

An alternative explanation of the Mishnah is presented to account for Rabbah bar bar Huna's statement that halacha does not follow R' Eliezer.

The way the public acquires proprietary rights on a path is explained.

The source for this means of acquisition is explained.

The interpretation of this pasuk according to Rabanan who disagree with R' Eliezer is presented.

A case where Rabanan agree with R' Eliezer is noted.

The Gemara defines the width of a path that runs through vineyards.

2) A private path

A Baraisa presents an alternative size for a standard private path than the measurement presented in the Mishnah.

R' Huna states that the halacha is like the opinion in the Baraisa.

A contradiction between two teachings of R' Huna is noted and resolved.

3) A public path

A Baraisa defines the sizes of different varieties of paths.

R' Huna identifies the source for the Baraisa's final ruling.

4) Clarifying the Mishnah

The reasons a king's path and a path to a funeral have no limit are explained.

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REVIEW and Remember

1. Why is the owner of the field not allowed to take back the path he gave to the public?

2. How did Avrohom Avinu acquire the land of Eretz Yisroel?

3. What are מעמדות?

4. What are the standard dimensions of a catacomb?

Distinctive INSIGHT

Avraham acquires the Land of Canaan

אמר רבי אלעזר מאי טעמא דרבי אליעזר? דכתיב קום התהלך בארץ לארכה ולרחבה כי לך אתננה. ורבנן משום חביבותא דאברהם...

The Gemara discusses the manner by which the public may acquire a path through a field. R' Eliezer holds that the path can be acquired by the public's walking through the field, while the Chachamim hold that walking alone is inadequate, until they perform some formal act which demonstrates ownership upon the land, such as plowing or fixing the fence around the field.

Sefer פרשת דרכים notes that R' Eliezer holds that Avraham Avinu's walking through the land constituted a חזקה. We can conclude from here, therefore, that Avraham Avinu had the status of a Jew in terms of his power to acquire land, as Rambam (Hilchos Mechira, 1:17) rules that only a Jew can acquire using a חזקה, as opposed to a בן נח, who cannot.

Rabbi Akiva Eiger points out, however, that the entire discussion regarding Avraham Avinu and whether his status was that of a Jew or that of a בן נח only refers to the period of his life after he performed the mitzvah of bris milah, but before the milah, his status was certainly that of a בן נח, and the command at the beginning of Parashas Lech Lecha to walk through the Land of Canaan to acquire it was before the milah.

Regarding the opinion of Rabbanan who say that walking around an area is not an adequate manner of קנין, Ritva explains that Avraham took possession of the Land of Canaan by means of the very words and the command of Hashem. This was an application of the concept of אמירתו לגבוה כמסרתו – להדיט דמי – a verbal statement in the domain of consecrating items is as binding as actual transfer of objects in the secular domain. Alternatively, we can say that Avraham not only walked through the land, but he also performed a חזקה as he settled it, and this is the manner by which he became its owner.

Or HaChaim (to Bereshis 13:15-17) explains that Avraham acquired the Land of Canaan as Hashem uprooted the entire land, and He brought it and laid it out before Avraham to show it to him. There is no greater act to acquire a land other than to uproot the entire landscape at once. Still, however, the fact that the Torah describes this event in terms of Avraham's walking through the land (קום התהלך בארץ) is enough of a reason for R' Eliezer to say, in general, that land may be acquired with walking around it.

כוס ישועות understands the episode of Avraham with an opposing view. He writes that even Rabbanan agree that although in general land may not be acquired simply with walking around it, nevertheless, Avraham's bond with the Land of Canaan was so strong that he was able to be an exception, and to succeed in acquiring the land with his walking around it, a type of קנין which is usually not recognized as being valid. ■

HALACHAH Highlight

Does a mourner change his seat on Shabbos?

אם כן אף בשבת מותר לעשות כן

If so even on Shabbos it is permitted to do this (ma'amados)

The Gemara discusses the ma'amados that were performed when the mourners were returning from a funeral. It is clear from the Gemara that these ma'amados could be performed even on Shabbos. Nimukei Yosef¹ points to this Gemara as grounds to criticize what he felt was an incorrect custom. There is a custom that mourners change their seats in shul during their period of mourning. Some mourners refused to change their seats on Shabbos, claiming that if they were to change their seats on Shabbos it would be an overt expression of mourning which is not permitted on Shabbos. We see from our Gemara that it was permitted to practice the ma'amados ritual on Shabbos even though it was mourning-related. The reason, explains Rashbam, is that they were only performing the ma'amados rather than actual mourning. This teaches that sitting as a means of expressing honor to the deceased is permitted on Shabbos, so too, it is permitted for a mourner to change his seat during his period of mourning even on Shabbos.

Beis Yosef² disagrees and explains that ma'amados were conducted in the cemetery so that a large number of people could gather together but when a mourner sits in the "mourners section" he is publicly observing mourning practices on Shabbos. Shulchan Aruch³ codifies this position.

STORIES Off the Daf

Hashem is our King

"דרך ערי מקלט שלושים ושתים אמות..."

Rav Shimshon Pincus, zt"l, explained that the Pesach seder is our yearly acceptance of Hashem's kingship in the world, and uses a teaching from today's daf to illustrate this.

"When the Beis HaMikdash stood, Hashem was recognizably the king of the world in general and over the Jewish people specifically. Let me bring one example of many to illustrate just how His kingship was more recognizable when the Beis Hamikdash stood. We can see how Torah formed the fabric of the Jewish people's lives in Eretz Yisrael by examining the

roads during that time.

"In Bava Basra 100 we find that while in general public roads were sixteen amos wide, the roads which led to the arei miklat were thirty-two amos broad. Rav Huna brings a verse to support this. 'תכין לו הדרך'—prepare the way for him.' We must recall that in those days, people would often travel either by wagons drawn by horses or by oxen. Although sixteen amos, which computes to eight meters, was sufficient for this purpose, the roads leading to the ערי מקלט were fully double this, a full sixteen meters wide.

"In addition, these especially wide roads had to be kept in good repair, with no holes or other impediments. It is quite likely that they went over the roads daily to ensure these essential conditions. But what need was there for all these precau-

tions? This was only to make it easier for a person who killed through negligence to escape to the ערי מקלט. When he is pursued by the גואל הדם, Hashem wished for him to be able to escape easily, so all possible impediments were removed to make it all the harder for the גואל הדם to catch him. This is how the world looks when it runs in accordance with Hashem's will: He has such mercy even on a murderer.

"Although today it is no longer as easy to see that Hashem is the king of the world, He is still our king, both in general and over every detail of each of our lives. It is to renew our acceptance of His kingship, that we have the seder each year."¹ ■

1. הגדה של פסח, תפארת שמשון, עי ליה-לינו ■

(Overview...continued from page 1)

5) Ma'amad ceremony

Three Beraisos are cited that elaborate on the ma'amad ceremony.

A related incident is recorded.

Abaye's assertion in the previous incident regarding the location of the ma'amad ceremony is unsuccessfully challenged from a Baraisa.

6) MISHNAH: The Mishnah begins to discuss the structure of catacombs. ■

Rema⁴ cites the opinion of Nimukei Yosef who permits the mourners to change their seats on Shabbos and notes that that is the common custom and it should not be changed. Shach⁵ explains that it is not considered an overt observance of mourning since there are many times people will change their seat in shul. Rav Moshe Feinstein⁶ mentions the dispute between Shulchan Aruch and Rema and notes that Arizal is also quoted as ruling that one should not change his seat in shul on Shabbos. Birkei Yosef, however, writes that regular people should not follow the ruling of Arizal since it appears haughty. Furthermore, since the Vilna Gaon also agrees that one should change his seat Shabbos it appears, concludes Rav Feinstein, that that position should be followed. ■

1. נמוקי יוסף מ"ט. (דפי הר"יין בסוף העמוד).
2. בית יוסף יו"ד סי' שצ"ט ד"ה כתב נמוקי.
3. שו"ע יו"ד סי' שצ"ג סעי' ד'.
4. רמ"א שם.
5. ש"ך שם סק"ו.
6. שו"ת אג"מ יו"ד ח"א סי' רנ"ז. ■