

OVERVIEW of the Daf

1) Husbands and wives (cont.)

The reason is explained why the Baraisa cited numerous verses to teach what would seem to be the same principle.

R' Pappa questions whether these verses do, in fact, teach that a husband inherits his wife's property.

Abaye notes that at least one of the verses must be interpreted as referring to a husband inheriting his wife's property.

R' Pappa disagrees with Abaye's interpretation even of this verse.

2) A woman whose parents are from different shevatim

Abaye questions why the earlier Gemara stated that a woman without brothers whose parents are from different tribes must marry a man from the tribe of her father when this would cause the land she inherited from her mother to go to a different shevet.

A possible answer is suggested but rejected by Abaye.

The Gemara discusses whether property is considered to have been transferred from wife to husband as soon as they marry.

A Baraisa is cited that supports the position that a woman is restricted from marrying someone from another shevet out of concern of the inheritance of her son. ■

REVIEW and Remember

1. Why was it necessary for R' Yishmael to cite numerous verses to prove his point?

2. Why did Abaye declare it unreasonable that Pinchas purchased the hill where he was buried?

3. Explain the phrase בסבת הבן.
4. What is the source that the Torah is concerned about סבת הבעל?

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 By Dr. and Mrs. Moshe Nitekman
 In loving memory of their mother
 מרת מאשא ליבא בתרי נחמי', ע"ה

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 לע"נ ר' חיים יצחק בן מרדכי יהודה הלוי
 Henry Erdfrucht, a"h

Distinctive INSIGHT

Owning one's own grave

דאם כן נמצאת שדה חוזרת ביובל ונמצא צדיק קבור בקבר שאינו שלו

In its proof that a husband inherits from his wife, the Gemara cites a series of verses, and finally concludes with the verse from Yehoshua (24:33) where we find that Pinchas who buried his father, Elazar, in a land which he had not inherited from his father. The Gemara asks, from where did Pinchas own land that he did not inherit from his father (Ra'avad, in Shitta Mikubetzes, explains that this land was in the hills of Ephraim, and the kohanim only received parcels of land in the territories of Yehuda, Shimon and Binyamin)? It must be, the Gemara notes, that Pinchas inherited it from his wife.

The Gemara challenges this assertion. Perhaps Pinchas purchased the land, rather than inheriting it from his wife. The Gemara responds by pointing out that land bought in Eretz Yisroel is returned to its owner at the yovel year. If Pinchas had bought this land, this would mean that the land in which Elazar was buried reverted back to the seller's ownership at yovel, and this tzaddik would then be buried in land not owned by the family, which would be a disgrace. It must be that Pinchas buried his father in land that was not purchased, but rather owned by him outright, such as would be if he had inherited it from his wife.

Some Rishonim note that even without the yovel consideration, the field in which Elazar was buried was still not owned by him, but by his son, Pinchas. This, however, is not a problem. The Gemara only considers it to be a disgrace if the field is owned by someone outside the family. It is not a disgrace if a father is buried in land owned by his son or by a family member.

Chasam Sofer (שו"ת יו"ד סי' של"א) brings some who say that the Gemara does not mean to say that the tzaddik himself is embarrassed or hurt by being in a grave that he or the family does not own. Why should it make a difference to him where he is buried? Also, from where do our sages determine that there is anything wrong with a stranger owning the grave? After all, the verse does not write "קבורתכם" to require that a grave be personally owned by the deceased. They therefore explain that the disgrace is for the surviving

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 l'ilui nishmas
 חנה פריידל בת הרב חיים יוסף
 Irene Weiss
 by her son Harry Weiss

HALACHAH Highlight

Exhuming a body to bury it in a plot purchased by the deceased

ונמצא צדיק קבור בקבר שאינו שלו

It turns out that the tzadik (Elazar) was buried in a grave that was not his own

Rambam¹ writes that it is prohibited to exhume a body for the purpose of burying it in another location. This prohibition is in force even if the grave is moved from a disgraceful location to a more honorable one. If, however, the body is to be moved to a field owned by the deceased, it is permitted even if the body will be moved from an honorable location to a more disgraceful one. Radvaz² cites authorities which explain that the restriction is based on the assumption that moving the body causes the deceased to become frightened that he is about to be judged. He disagrees with this explanation since this explanation would not allow for the exception mentioned by Rambam to move the body to his own field. Therefore, he suggests that the issue is one of disgrace (בויון) for the deceased. The reason moving the body to his own field is not a disgrace, explains Kesef Mishnah³, is that people prefer to be buried near their relatives. Citing Ramban, Kesef Mishnah mentions two additional circumstances in which it is permitted to exhume a body for burial in another location. One exception is to move the body to Eretz Yisroel, and the second exception is if the body was buried with the intent to move it

(Insight...continued from page 1)

family members. Here, they paid for a plot in which to bury their relative, and when yovel arrives the plot reverts back to its original owner.

Chasam Sofer contends that the disgrace is for the deceased himself. Although there is no source that one must own his grave, the verse in Yechezkel (37:13) indicates that a grave is the property of the one buried there. Avraham also made great efforts to acquire מערת המכפילה before burying Sara. These, and other sources, indicate that it is best to own one's grave. ■

to some time later to another grave.

Later authorities discuss whether it is permitted to exhume a body for the purpose of burying the body in a grave that the deceased purchased for his burial. Sefer Gesher Hachaim⁴ writes that it is permitted to move the body from a grave that is not his own to a grave that he owns. This allowance applies not only when the deceased was buried in someone else's property but even if he was in an ownerless field or a field where the owner gave permission for the deceased to be buried in that field. It is, nevertheless, permitted to exhume the body to bury it in a grave the deceased he purchased for himself. He bases this ruling on our Gemara that indicates that it is preferable for a person to be buried in his own property. ■

1. רמב"ם פ"ד מהל' אבל הט"ו.

2. רדב"ז על הרמב"ם שם.

3. כסף משנה שם.

4. גשר החיים ח"א פכ"ו אות י' א סעי' ב'. ■

STORIES Off the Daf

Communal decisions

"דובין מיזבן לא מצית למימר..."

A certain community cemetery was running out of space. The community leaders could see that unless the resurrection of the dead occurred within the next ten years, they could no longer manage burials. They began to look into purchasing land for a new cemetery, but it soon became apparent that this was not so easy. The owner of the land adjacent to the old cemetery was not willing to sell and when they looked elsewhere, they could not find a suitable spot.

Eventually they approached the local governor to try to convince him to sell

from the municipal acreage, but he was only willing to do so on his terms. "I will sell the land and even do it cheaply but only if you keep using it for the designated purpose. If you cease burying there for a certain amount of time, I will receive the land back and it will be your responsibility to remove those already buried there."

The community wondered if this was permitted. After all, there was a large Jewish community in their city and it seemed only natural that there would be burials the foreseeable future. On the other hand, it was a bit cavalier to agree to a condition that could force them to remove all those already buried.

When they consulted with Rav Yitzchak Elchonon Spector, zt"l, regarding this question he replied that this was

definitely forbidden. "We see this is prohibited from Bava Basra 112. There we find that it is forbidden to bury on land that will be returned during the Yovel, since how could Pinchas have buried Elazar in land that was not his own? How can we take such a chance with an entire community, which includes many tzaddikim? In addition, it is forbidden to move a grave for no reason."

He concluded, "Besides, the Gemara does not say they would have removed the tzaddik from his grave, merely that he would have rested in another's property. Presumably, if there had been a chance that he would have been removed, it would have been forbidden outright!"¹ ■

1. שו"ת עין יצחק, ח"א, יו"ד, סי' ל"א.