

23 Adar 5777
March 21, 2017



Bava Basra Daf 58

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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

Rabbi Bana’ah

Rabbi Bana’ah used to mark out caves (*where there were dead bodies, in order for people not to become tamei*). When he came to the cave of Avraham (*by the Me’oras Hamachpeilah*), he found Eliezer the servant of Avraham standing at the entrance. He said to him, “What is Avraham doing now?” He replied, “He is lying in the arms of Sarah, and she is looking at his head.” He said, “Go and tell him that Bana’ah is standing at the entrance (*and wants to enter*.)” Avraham said to Eliezer, “Let him enter; it is well known that there is no desire in this world (*and I do not have to conceal myself from him*.)” So he went in, looked at the cave (*to determine its dimensions*), and left (*and then he marked it*). When he came to the cave of Adam, a voice came forth from Heaven saying, “You have seen the likeness of My image (*when you saw Yaakov*); My image itself you may not look at.” Rabbi Bana’ah asked, “But, I need to mark out the cave!?” The Heavenly voice replied, “The measurement of the inner one (*where Adam lies*) is the same as that of the outer one (*where the Patriarchs and the Matriarchs are; that you already measured*.)” And according to those who hold that there was one chamber above another, the response was, “The measurement of the lower one is the same as that of the upper one.” Rabbi Bana’ah said, “I saw Adam’s two heels, and they (*the radiance of his skin*) were like two orbs of the sun.

The *Gemora* notes: Compared with Sarah (*her radiance*), all other people are like a monkey to a human being, and

compared with Eve, Sarah was like a monkey to a human being, and compared with Adam, Eve was like a monkey to a human being, and compared with the *Shechinah*, Adam was like a monkey to a human being.

The *Gemora* notes: The beauty of Rav Kahana was a semblance of the beauty of Rav; the beauty of Rav was a semblance of the beauty of Rabbi Avahu; the beauty of Rabbi Avahu was a semblance of the beauty of our father Yaakov, and the beauty of Yaakov was a semblance of the beauty of Adam.

There was a certain magician who used to dig among graves (*and take the clothes of the dead*). When he came to the grave of Rav Tuvi bar Masnah, Rav Tuvi grabbed a hold of his beard. Abaye (*who was a friend of the magician*) came and said to him, “Please, leave go of him.” A year later, the magician again came, and he again grabbed a hold of his beard. Abaye again came, but the corpse did not leave him until Abaye brought a scissors and cut off his beard.

A certain man on his deathbed said, “I leave a barrel of earth to one of my sons, a barrel of bones to another, and a barrel of cotton to a third one.” [*He spoke in this way in order not to appear wealthy.*] They could not understand what he meant, so they consulted Rabbi Bana’ah. He asked them, “Did your father leave any land (*and that is what he meant when he mentioned “a barrel of earth”*)?” They replied, “Yes.” He asked them, “Did your father leave cattle (*and that is what he meant when he mentioned “a barrel of bones”*)?” They replied, “Yes.” He

asked them, “Did your father leave quilts (*and that is what he meant when he mentioned “a barrel of cotton”*)?” They replied, “Yes.” Rabbi Bana’ah said, “If so, that is what your father meant.”

There was a certain man who heard his wife say to her daughter, “Why do you not act more modestly in your forbidden activities (*her illicit affairs*)? I have ten children, and only one is from your father (*proving that it could be done in secret*).” When he was on his deathbed, he said, “I leave all my possessions to one son.” They did not know which of them he meant, so they consulted Rabbi Bana’ah. He said to them, “Go and bang at the grave of your father, until he gets up and tells you which one of you he has made his heir.” They all went to do so. The one who was truly his son, however, did not go (*out of respect for his father; the others, who were mamzeirim, were brazen and did not care*). Rabbi Bana’ah said, “His entire estate belongs to this one.”

The brothers went and slandered him before the king, saying, “There is a man among the Jews who takes money from people without witnesses or any other proof.” So they took him and threw him in prison. His wife came to the court and said to them, “I had a slave, and some men have cut off his head. They skinned him, ate his flesh, filled the skin with water and gave their friends to drink from it, and they have not paid me either its value or its rental.” They did not understand her tale at all, so they said, “Let us bring the wise man of the Jews and he will tell us.” So they called Rabbi Bana’ah, and he said to them, “She is referring to a goat-skin bottle” (*her goat was stolen, slaughtered, skinned and eaten, and they made a water bottle from its hide*).

They said, “Since he is so wise, let him sit by the gate and act as judge.” He saw that there was an inscription over the entrance, “Any judge who is summoned to court (*to respond to a monetary claim against him*) is not worthy to be called a judge.” He said, “If that is so, any person

can come and sue the judge and so disqualify him. It should say the following: ‘Any judge who is summoned to court and judgment is issued against him is not worthy to be called a judge.’” They therefore added the following: “But the wise elders of the Jews say, ‘Any judge who is summoned to court and judgment is issued against him is not worthy to be called a judge.’”

He saw another inscription which said, “At the head of all death am I, blood (*the fact that people do not bleed in the proper time is the primary cause of death*); at the head of all life am I, wine (*for one who drinks wine properly will not become sick*).” Rabbi Bana’ah wondered, “If a man falls from a roof or a palm tree and dies, has he died from an excess of blood? And if a man is about to die, do they give him wine to drink so he can live? No! The following should be written: ‘At the head of all sickness am I, blood; at the head of all remedies am I, wine.’” They therefore added the following: “But the wise elders of the Jews say, ‘At the head of all sickness am I, blood; at the head of all remedies am I, wine. Only in places where there is no wine are remedies required.’” (58a – 58b)

Mishna

A drainspout (*where its water flows into a neighboring courtyard*) has no *chazakah* (*since it is not a permanent structure, the neighbor does not mind it, and his silence does not establish a chazakah*), but its place has a *chazakah*. A gutter has a *chazakah*.

An Egyptian ladder (*a small movable one that is easily moved; since it is not a permanent structure, the neighbor does not mind it, and his silence does not establish a chazakah*) has no *chazakah*, and a Tyrian one (*which is much larger*) has a *chazakah*.

An Egyptian window has no *chazakah*, and a Tyrian one has a *chazakah*. What is an Egyptian window? It is one



which a person's head cannot fit through it.

Rabbi Yehudah says: If it has a frame, even if a person's head cannot fit through it, it has a *chazakah*. (58b)

Chazakah of a Drainspout

The *Gemora* asks: What does the *Mishna* mean when it states that a drainspout has no *chazakah*, but its place has a *chazakah*.

The *Gemora* presents three explanations:

Rav Yehudah says in the name of Shmuel that the *Mishna* means that a drainspout does not have a *chazakah* on a particular side (*of the gutter*), but it does have a *chazakah* to remain on one of the two sides.

Rabbi Chanina says that when the *Mishna* said that a drainspout does not have a *chazakah*, it meant that if it was long, the neighbor is permitted to shorten it, but he has no right to remove it, for its place has a *chazakah*.

Rav Yirmiyah bar Abba says that when the *Mishna* said that a drainspout does not have a *chazakah*, it meant that the neighbor has a right to build underneath it (*for the drainspout owner has no rights in the land itself*), but he has no right to remove it, for its place has a *chazakah*. (58b)

INSIGHTS TO THE DAF

Graves and Cemeteries

The *Gemora* states that Rabbi Bana'ah used to mark out caves and it relates what happened when he went into the Cave of Machpeilah (*where the Patriarchs and Matriarchs were buried*).

The Rashbam explains that he did this in order to

determine the precise dimensions of the crypts, and after marking its borders on the ground above, people, and especially *Kohanim*, would be able to avoid becoming *tamei* (*through tumas ohel – forming a tent over a corpse*).

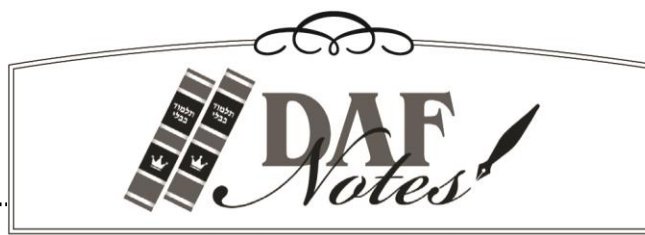
Tosfos asks from the *Gemora* in Yevamos (61a): Rabbi Shimon ben Yochai said: The graves of idolaters do not transmit *tumah* through the roof (*if the tumah source and a person or object is under the same roof*). If so, how could there be any *tumah* from the Cave of Machpeilah?

Tosfos continues that even according to the Rabbis, who disagree and hold that there is *tumas ohel* from an idolater's grave, nevertheless, regarding a grave before the Giving of the Torah, the *Gemora* in Nazir (54a) only includes it for *tumah* with respect to touching, but not through roof association!?

The Ramban explains that Rabbi Bana'ah did this out of respect to our forefathers, for although they cannot transmit *tumah*, they accepted and observed the entire Torah.

Reb Chaim Brisker writes that if not for these Rishonim, he would have said that a corpse which is in a grave after the ?Giving of the torah is considered as if it was freshly buried, and it will transmit *tumah*.

Tosfos answers that the reason idolaters are excluded from *tumas ohel* is because it is written [Yechezkel 34:31]: *Now you my sheep, the sheep of my pasture; you are adam*. You, Israel, are referred to as "Adam," man, but an idolater is not regarded as "Adam." [*The word "Adam" is the term used in the Torah regarding the laws of tumah by way of a roof; thus we see that the grave of an idolater does not transmit this tumah.*] However, we find that Avraham Avinu was referred to as "Adam," and Adam Harishon as well; accordingly, the *halachos* of *tumas ohel* would apply to the Cave of Machpeilah.



According to these Rishonim, our *Gemora* would seemingly be a proof that the graves of the righteous transmit *tumah*.

Tosfos in Bava Metzia (114b) writes that when Eliyahu said that the reason he was involved in the burial of Rabbi Akiva (*although he was a Kohen*) was because there is no *tumah* by a Torah scholar, that was only an excuse; the real reason was because the corpse had to be treated like a “*meis mitzvah*,” for everyone else was too frightened (*from the government*) to bury him.

There are, however, some Acharonim who rule that the righteous do not transmit *tumah*. Over the ages, some *Kohanim* have relied on this to attend the funerals of *tzadikim* (see Shut Minchas Eliezar 3:64). However, the vast majority of poskim have not relied on this Midrashic statement and forbid *Kohanim* from attending the funeral of *tzadikim* (See discussion in Beit Yosef YD 373; Pischei Tshuva YD 372:2; Kitzur Shulchan Aruch 202:14; Bach YD 374; Shut Divrei Yatziv (by Klausenburg rebbe) YD:231; Yechave Daat 4:58).

Rabbi Gil Student cites other *halachic* authorities who deal with this topic. The contemporary greats, including Rav Moshe Feinstein, Rav Yaakov Kamenetzky, Rav Yaakov Yitzchak Ruderman, Rav Yitzchak Hutner, and Rav Shlomo Zalman Auerbach all come down as prohibiting in their letters of approbation to the book *Ziyon L'nefesh Zvi*. [See footnotes 50 and 51 to Al Hadaf Kesubos 7/No.65/July 2 '00.] The only exception would be the actual *Nasi*, for whom the Shulchan Aruch (YD 374:11) says all (*even Kohanim*) may become *tamei*.

[See the *responsum* on this topic of graves of *tzadikim* causing *tumah* in *Eliyav ben Achisamach* (written by Rav Sender Friedenberg, formerly Rav of Prashvitz and then of Bastravtza, in 5671[1911]). See also the specific *responsa* of Rav Shlomo Kluger (1785-1869; *Tuv Taam*

v'Daas 2:Aveilus:231) who ruled that *Kohanim* could not go near the grave of the great chassidic Rebbe Rav Aaron of Chernobil, or of any other *tzadik*. See Kitzur Shulchan Aruch 202:14) that “*Kohanim hedyotim*” rely on this rule to visit the graves of the righteous, but they are mistaken and one should correct them.]

The Kaftor va’Ferech writes that Rabbi Bana’ah marked these graves in order for the future generations to know where our forefathers were buried, and this way, we would be able to pray by their gravesite that no tragedies should befall *Klal Yisroel*. This would be just as Calev separated himself from the plan of the spies and went and prostrated himself upon the graves of the Patriarchs, saying to them, “My fathers, pray for mercy on my behalf that I may be spared from the plan of the spies.”

The Ritva writes that although the *Gemora* in Taanis (16a) states that it was the custom to visit a cemetery on a fast day, they didn’t go to the cemetery in order to *daven* there because that is forbidden on the account of “*loeg lerosh*” – it is considered mocking to the dead who cannot perform the mitzvos; rather they *davened* in the streets and went to the cemetery afterwards. The Ran adds that they did not take the *sefer Torah* with them when they went to the cemetery.

The Noda B’yehuda (O”C 2:109) was asked on a year that there was no rain and there was tremendous suffering; if they would be permitted to go to a cemetery with a *sefer Torah* and *daven* there for rain.

He cites a Zohar (Acharei Mos) which states that *davening* by a cemetery inspires the souls of those buried there to inform those that are buried in Chevron (Patriarchs and the Matriarchs) who subsequently will arouse Hashem’s compassion.

However, there is a *Gemora* in Brochos (18a) which rules that a person should not enter a cemetery with *tefillin*



on his head or read from a sefer Torah in his arm. We can infer from this *Gemora* that reading from the sefer Torah is forbidden but holding it would be permitted. The Kesef Mishna in Hilchos Sefer Torah (10:6) learns that both are forbidden; reading from the sefer Torah or holding it.

The Noda B'yehuda concludes that although he is not an expert in the hidden portions of Torah, the Zohar cited does warn against bringing a sefer Torah that might be missing letters into a cemetery since this can cause terrible consequences.

The sefer Igra D'taanisa wonders why the Noda B'yehuda makes no mention of the *Gemora* in Taanis, which would indicate that one can go *daven* by a cemetery.

The Minchas Elozar discusses the permissibility of people *davening* by Kever Rochel. Some say that we are not mocking Rochel since she was living before the Torah was given; she was never obligated in mitzvos.

The Netziv rules that in his days, it would be permitted because the custom was to bury them deeper than ten tefachim from the ground and it is considered like a different domain.

The Rama (O"C 581:4) writes that there are places that have the custom to go to cemeteries on Erev Rosh Hashanah and to recite lengthy Tefillos there. The Chidah asks on this Rama from the Ritva in Taanis that states explicitly that one should not *daven* in the cemetery.

There are those that create a distinction between a compulsory tefillah and a tefillah which is only voluntary.

The Elya Rabbah (581) quotes from the Maharil that one should be careful when going to the graves of Tzadikim that your tefillos should not be directed towards those that are buried there, rather one should *daven* to Hashem and ask for compassion in the merit of these

Tzadikim. Some say that you can ask the dead to be an advocate on your behalf.

The Bach (Y"D 217) rules that it is forbidden to *daven* to the dead because of the prohibition of being "doresh el hameisim." He points out that even though we find that Calev did *daven* in Chevron by the Meoras Hamachpeila, he wasn't *davening* to the Avos. Rather, since a cemetery is a place of holiness and purity, the tefillos *davened* there will be more readily accepted.