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Bava Basra Daf 100

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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

Paths through a Field

not allow him to seize the original path. (Rav Ashi)

The *Mishna* says that if a public path passes through a field, and the owner of the field attempted to replace that path with a new one, seizing the existing path, the public may use both paths.

The *Gemora* asks why the owner of the field may not prevent people from using the original public path, once he has replaced it with a new one. In general, if one's property is being damaged, and he has no reasonable legal recourse, he may enforce his property rights himself, including by force. In this case, his rights to the path are being violated, and he has no way of summoning the whole public to court, and thus should be able to enforce his ownership.

The *Gemora* offers three reasons that the *Mishna* says he may not prevent people from the path:

1. We are concerned that he may replace the original path with a circuitous route, inconveniencing the public. We therefore do not allow him to enforce his ownership on the original path in any case, lest he do so by providing a circuitous path. (Rav Zevid in the name of Rava)
2. The *Mishna* is limited to a case where the replacement is circuitous, and we therefore do not allow him to seize the original path, since he's inconveniencing the public. (Rav Mesharshia in the name of Rava)
3. Any new route will be circuitous to some of the public using the original path, and we therefore do

The *Gemora* asks (*according to all three answers*): But let the field owner say to them, “Take yours and give me back mine”!? [*The deal should be null and void!*]

The *Gemora* answers: This law is in accordance with the opinion of Rabbi Eliezer, for it has been taught in a *braisa*: Rabbi Yehudah said in the name of Rabbi Eliezer: If the public chose a path for themselves (*from someone's property without his permission*), that which they have chosen is theirs.

The *Gemora* asks: And, according to Rabbi Eliezer, is the public allowed to steal?

Rav Giddal replied in the name of Rav: Rabbi Eliezer is speaking of a case where their path (*which they once had*) had been lost in that field.

The *Gemora* asks: If so, why did Rabbah the son of Rav Huna state in the name of Rav that the *halachah* does not follow Rabbi Eliezer?

The *Gemora* answers: The one who reported this statement (*that the path was lost*) did not hold of the other (*that the halachah does not follow Rabbi Eliezer*).

The *Gemora* asks: What, then, is the reason for the *Mishna's halachah* (*that he can't take the path back*)?

The *Gemora* answers: It is derived from a statement of Rav

Yehudah: A boundary strip to which the public have established a right of way must not be damaged by the owner. [If people use a particular land as a walk way (*chazakah*), that path cannot be ruined even though it is situated on private property.]

The *Gemora* asks: According to Rabbi Eliezer, how does the public acquire possession of the path (*can it be with mere words; i.e., the choosing of the path*)?

The *Gemora* answers: It is acquired through walking, for it has been taught in a *braisa*: If one walked in it through the length and width of it, he has acquired the place where he walked; these are the words of Rabbi Eliezer. The *Chachamim*, however, say: Walking accomplishes nothing unless he makes a propriety act.

Rabbi Elozar said: What is Rabbi Eliezer's reason? It is written: (*Hashem said to Avraham:*) *Arise walk through the land in the length and width of it, for I will give it to you.* [Evidently, he acquired it through walking.] The *Chachamim*, however, hold that there, Hashem told him that (*since He loved him*), that his children will be able to conquer the land with ease (*for they will not be accused of being thieves*).

Rabbi Yosi bar Chanina said that the *Chachamim* admit to Rabbi Eliezer by a path through a vineyard; since it is made for walking, it is acquired through walking.

When they came before Rabbi Yitzchak bar Ammi, he said to them: He (*a buyer*) is to be given a path so wide that he may carry through it a load of twigs (*on his shoulders*) and have the capability to turn around (*in all directions without touching the walls along the path*).

This has been said only where there are walls along the path, but when there are no walls, the width of the path only needs to be the amount needed to lift up one foot and put down the other.

The *Mishna* had stated that a private path is four *amos* wide.

The *Gemora* cites a *braisa*: Others say that a private path is wide enough that a donkey with its load can pass through it.

Rav Huna said that the *halachah* follows the others. The Judges of the Diaspora said that it must be two and a half small *amos*. Rav Huna said that the *halachah* follows them. The *Gemora* concludes that both these amounts are actually the same.

The *Mishna* had stated that a public path is sixteen *amos* wide.

The *Gemora* cites a *braisa*: A private path is four *amos* wide (*the width of one wagon*). A path from one city to the next is eight *amos* wide (*so two wagons can pass by each other*). A public path is sixteen *amos* wide. A path to a city of refuge is thirty-two *amos*.

The *Mishna* had stated that there are no limits for a king's path. This, the *Gemora* explains, is because a king can break through fences to form a path for himself and no one can stop him. (99b – 100b)

Paths to the Grave

The *Mishna* had stated that there are no limits regarding a path to the grave (*for the funeral procession*). This, the *Gemora* explains, is on account of honoring the dead.

The *Mishna* had stated: The judges of Tzipori ruled that a field designated for comforting mourners after burial is the area of 4 *kavs*.

The *Gemora* cites a *braisa*: Someone who sells his burial plot, or the path to it, or the place where one stands to

deliver a eulogy and the place for the eulogy, his family can come bury him their anyway (*for the Chachamim invalidated the sale*), as otherwise it is denigrating to the family.

The *Gemora* cites a *braisa*: No less than seven standings and sittings (*standing and sitting ritual performed by the funeral; as part of the funeral procession, they would sit and listen to the leader offer eulogies on the deceased*) are to be arranged for the deceased, corresponding to the verse (*where "futility" is reference seven times*): *Futility of futilities said Koheles; futility of futilities, all is futile.*

Rav Acha the son of Rava said to Rav Ashi: What was their procedure? He replied: They proceeded according to that which was taught in the following *braisa*: Rabbi Yehudah said: Initially they provided in Judea no less than seven standings and sittings for the deceased in the following manner: The leader of the funeral procession would declare, "Stand, dear ones, stand! Sit, dear ones, sit!" The *Chachamim* said to him: If so, such a procedure should be permitted even on *Shabbos* as well (*in a case where the burial took place right before Shabbos – because there is no labor involved at all*)!?

The sister of Rami bar Pappa was married to Rav Avya. When she died, Rav Avya arranged for the funeral procession a 'standing and sitting.'

Rav Yosef said: He erred on two accounts. He erred regarding the fact that the 'standing and sitting' is to be held with relatives only, and he held it even with people who were not relatives. He also erred in the fact that this procedure was instituted only for the first day (*of the burial*), and he arranged it for the second day as well.

Abaye said: He also erred regarding the following point: This procedure was instituted to take place in the cemetery only, and he arranged them within the city.

Rava said: He also erred on the following point: This procedure was instituted only where it is the local custom, but there, it was not the custom.

The *Gemora* asks: The *braisa* above stated that they said to him, "If so, such a procedure should be permitted even on *Shabbos* as well!" Now, if it is said that this procedure is to take place only in the cemetery and only on the first day, what are they doing in a cemetery on *Shabbos* (*it is forbidden to bury someone then*)?

The *Gemora* answers: We are referring to a case where the city is near a cemetery and the body was brought to burial at twilight (*immediately prior to Shabbos, and the procedure would take place after nightfall when it was already Shabbos, for that is regarded as the "first day" with respect to the laws of mourning*). (100b)

DAILY MASHAL

Avraham Walking the Land

The *Gemora* cites a *braisa*: If one walked in it through the length and width of it, he has acquired the place where he walked; these are the words of Rabbi Eliezer. The *Chachamim*, however, say: Walking accomplishes nothing unless he makes a propriety act.

Rabbi Elozar said: What is Rabbi Eliezer's reason? It is written: (*Hashem said to Avraham:*) *Arise walk through the land in the length and width of it, for I will give it to you. [Evidently, he acquired it through walking.]* The *Chachamim*, however, hold that there, Hashem told him that (*since He loved him*), that his children will be able to conquer the land with ease (*for they will not be accused of being thieves*).

There are several explanations in the *Chachamim's* opinion.

1. Rashbam - It is a way to demonstrate to the Satan that *Eretz Yisroel* belonged to Avraham's descendants and they cannot be accused of stealing it.

2. Ramban in Lech Lecha explains that it was a *ma'aseh avos siman l'banim*. It was symbolic of the Jews taking over *Eretz Yisroel* in the future.

3. Rambam and Kesef Mishneh in *hilchos Bikkurim* write that Avraham became the *av hamon goyim* - - "the father of all nations," which means that all the nations of the world could theoretically have an equal claim on *Eretz Yisroel*. Based on this, we can explain that Avraham had to display ownership over it prior to his name being changed to Avraham.

4. It was a psychological acquisition. The purpose was to make the children of Avraham feel that *Eretz Yisroel* was theirs, so that they would be *moser nefesh* to conquer it in the future.

The reason Chazal instituted such a law is because they were afraid that the owner would provide a circuitous route, which would inconvenience the public. Another reason is that even if the new path is straight, it will still inevitably inconvenience some people. Since people from both sides of the field use this path, if it's moved to the right, it will trouble those who come from the left, and vice versa.

INSIGHTS TO THE DAF

Public Paths

A path that is used by the public is considered public property. Therefore, if a path is used by the public passes through a private field, the owner may not take away the path. Such a scenario can happen if this path was always used, even before this owner came along and bought this field.

Furthermore, if the owner of the field decided to provide a path for the public on the edge of his field instead of the one running through the middle of his field, the public may use both the old and new paths. Even though this seems unfair to the owner, for after all, he has provided an alternate means to walk across his field, nevertheless, they may use both.