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Bava Basra Daf 102

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Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h

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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

Burial Areas

The Gemora cites a Mishna: [This Mishna discusses cases where buried bodies were found, and there is a doubt whether this location is a graveyard, or whether these are isolated corpses, which were buried here by chance, with the intention of exhuming them after a few days, and transferring them to a cemetery. It was the practice to inspect the roads which were suspected of being tamei, and to cleanse them of their tumah on behalf of pilgrims ascending to the Beis HaMikdash, those offering the korban pesach, and those bearing food in a state of purity; if individual graves were found on the road, the question arose whether it was permitted to exhume the corpses. Indeed, the law is that a corpse acquires its place; therefore, if even a single grave is found there, and the grave is known, for the corpse had been buried there with permission, it is prohibited to exhume the corpse from there, but rather we mark the place, so that it will be noticeable to people passing by; if, however, the grave was found there by chance, and it was not known, the Mishna teaches us that in such a case, exhumation is permitted.] If one finds a corpse for the first time (in this location) lying in its usual manner, he may remove it and its tefusah (surrounding earth). [It is regarded as temporary, and therefore, it is permitted to move.] If a person found two, he may remove them and their tefusah. If he found three: If between this one (the first one) and that one (the third one), there is a separation from four to eight amos, then this is a graveyard. [They cannot be moved, and the entire area is assumed to be tamei.] He must inspect from there outward twenty amos. If he found one at the end of twenty amos, he

inspects from it outward twenty amos, for there is a basis for the matter. Although, if he found it initially (just this corpse), he may remove it and its tefusah.

The Mishna had stated: If between this one (the first one) and that one (the third one), there is a separation from four to eight amos, then this is a graveyard.

The Gemora asks: Whose opinion is this Mishna following? It cannot be that of the Rabbis, for they say that a burial chamber is four by six amos (so there can never be a separation of eight amos)! It cannot reflect Rabbi Shimon's viewpoint as well, for he says that a burial chamber is six by eight amos (and therefore, corpses should never be separated by less than six amos)!?

The Gemora answers that the Mishna is, in fact, following Rabbi Shimon's opinion, but it is in accordance with the version of Rabbi Shimon's view as reported by the following Tanna in a braisa: If he found several corpses close to each other, and there was not between them (any three of them) a separation from four to eight amos, the surrounding earth belongs to them but the ground is not regarded as a graveyard. [It is regarded as temporary, and therefore, it is permitted to move.] Rabbi Shimon ben Yehudah said in the name of Rabbi Shimon: The intervening ones (the corpses lying in the middle) are regarded as if they did not exist (except one of them) and the rest are combined (to form a



group of three) if the distance is from four to eight *amos*.
[Evidently, a burial chamber is four by eight *amos*.]

The *Gemora* asks: Since we have concluded that the *Mishna* is in accordance with Rabbi Shimon, let us consider the final clause of the *Mishna*: He must inspect from there outward twenty *amos*. Whose opinion is this part of the *Mishna* following? According to Rabbi Shimon, the distance should be twenty-two *amos* (for each chamber is eight *amos* and the courtyard between them is six *amos*), and according to the Rabbis (*who maintain that each chamber is six amos long*), it should be eighteen!?

The *Gemora* answers: It may, in fact, be according to the Rabbis, but he is required to search diagonally (*and the diagonal of the chamber (six by four amos) is slightly more than seven amos, which is rounded off to eight; this was done in order to ensure that all corpses will be found, for one corpse might be shorter than another, or it might have been placed further into the wall*).

The *Gemora* asks: But if one of the chambers is searched on the diagonal, shouldn't the other one also be searched on the diagonal, and consequently, the distance should be twenty-two *amos*!?

The *Gemora* answers: The Rabbis required searching on one diagonal, but not two.

Alternatively, Rav Shisha the son of Rav Idi answers: The *Mishna* is, in fact, following Rabbi Shimon's opinion, but the burial chamber we are dealing with is one of babies who

died when under thirty days old (*usually*), and therefore, they are much smaller graves.

The *Gemora* asks: But if one of the chambers is for these corpses, shouldn't the other one be the same, and consequently, the distance should be eighteen *amos*!?

The *Gemora* answers: We only assume that one of the chambers was made for this purpose, not two.

The *Gemora* asks a contradiction between the view of the Rabbis mentioned above in the *braisa* and their view mentioned in the following *Mishna*. The *Gemora* also asks a contradiction between the view of the Rabbis mentioned above in the *braisa* and their view mentioned in the following *Mishna*. We learned in a *Mishna*: If a vineyard is planted with less than four *amos* between the rows of vines, it is not considered to have the status of a vineyard (*for it cannot be plowed*). These are the words of Rabbi Shimon. The *Chachamim* say: It is a vineyard, and we see the middle vines as if they are not there. [*The Rashbam explains that Rabbi Shimon is stating a leniency, that other things can be planted there because it is not considered a vineyard, and the Chachamim are being stringent.*] The Rabbis contradict themselves (*for they disregard the middle rows of vines, but they do not disregard the corpses in the middle*), and Rabbi Shimon does as well (*for he maintains that the corpses in the middle are disregarded, but not the vines*)!?

The *Gemora* answers: There is no contradiction between the two rulings of Rabbi Shimon; for there (*by vines*), people do not plant vines with the intention of pulling them out (*so they cannot be disregarded*), but here, a burial may sometimes take place at twilight (*before darkness*) and the

corpse is put there temporarily. There is also no contradiction between the two rulings of the Rabbis; for here, since the corpse is disgraced, (*by being buried with so many other corpses in close proximity*), the area cannot be regarded as a grave, but there (*by vines*), the planter may think, “Whichever vines will be fine, I will keep, and whichever are not, I will use them for firewood (*and consequently, the middle ones can be disregarded*). (101b – 102b)

WE SHALL RETURN TO YOU,

HAMOCHER PEIROS

Mishna

If one says to his fellow, “A *beis kor* (*the amount of land needed to plant a kor’s (30 se’ah) worth of barley seed; this equals 75,000 square amos*) of soil (*which indicates that the land should be fit for planting*) I am selling to you,” if there were there clefts ten *tefachim* deep, or rocks ten *tefachim* high, they are not measured with it (*for that area cannot be used for planting*). If it was less than that, they are measured with it (*for it is expected that some of the land would not be suitable for planting*). And if he said to him, “About a *beis kor* of soil I am selling to you,” even if there were clefts deeper than ten *tefachim*, or rocks higher than ten *tefachim*, they are measured with it. (102b)

INSIGHTS TO THE DAF

Burying a Stillborn

The *Gemora* says that they would make special graves inside the burial chamber especially designed for *nefalim* (*stillborns*). This would indicate that there is in fact a *mitzvah* to bury a *neifel*.

The Rema in Hilchos Yom Tov (526:10) writes that one is not allowed to bury a *neifel* on Yom Tov, rather he should be buried the next day.

The source is from the Hagahos Maimonies who holds that there is no *mitzvah* to bury a *neifel*.

However, the Magen Avrohom (20) says that in his opinion, there is a *mitzvah* to bury a *neifel*.

The Hagahos Maimonies cites the *Gemora* in Pesachim (9a) which implies that there was a pit that was designated to throw *nefalim* into, implying that there isn't any *mitzvah* of *kevurah* (*burial*).

The Gr"a also takes this approach - that the fact that they were thrown into a pit indicates that there isn't a *mitzvah* of *kevurah*. But, the Magen Avraham disagrees and holds that being thrown into a pit would qualify as a *kevurah*. Furthermore, the Magen Avraham cites a proof from the Toras Kohanim which says that a *Kohen* cannot become *tamei* for his son or daughter that is a *neifel*; this implies that there is a *mitzvah* of *kevurah* because if there wouldn't be a *mitzvah* of *kevurah*, it would be obvious that a *Kohen* cannot become *tamei* since he can only make himself *tamei* for the purpose of *kevurah*. Finally, he cites our *Gemora* which says that they would make graves for *nefalim*, implying that there is a *mitzvah* of *kevurah*.



The Magen Avraham concludes by saying that the *Gemora* in Nidah implies that not only would there be a *mitzvah* of *kevurah* for a *neifel*, but there would even be a *la'av* (transgression) of *ba'al talin* (delaying the burial of the deceased overnight).

On this last point, the Noda Beyehudah (OC *Kamma*, end of 16) says that he doesn't understand where the Magen Avraham is drawing his proof from that there is a violation of *ba'al talin*. The Noda Beyehudah argues that logically, the *la'av* of *ba'al talin* is a *halachah* in providing respect to the deceased, which would not apply to a *neifel*.

The Machatzis Hashekel tries to justify the proof of the Magen Avraham that there would be a *la'av* of *ba'al talin*, from Tosafos in Nidah (57) who says that the Cutheans would temporarily bury the *neifel* with the intent of moving them later. If they were going to move them later, why bury them temporarily? This implies that there would be a violation of *ba'al talin* that would compel one to bury the *neifel* temporarily.

It would seem that Tosfos in Pesachim (9a) also holds that there is a *mitzvah* to bury a *neifel*. Tosfos writes that the *Kohen* who leaned over to check if there was a *neifel* in the pit was a fool. Why? It was because even if it was his own child, a *Kohen* can only make himself *tamei* for a viable person, not a *neifel*. Tosfos continues by saying that the *Kohen* couldn't make himself *tamei* because it wasn't a need of the deceased. This implies that if it were for the purpose of burying the deceased, he would be able to make himself *tamei*, presumably because there would be a *mitzvah* of *kevurah* (proof to Magen Avraham).

But, perhaps Tosfos means to say that a *neifel* is always considered not for the need of the deceased since there isn't any *mitzvah* of *kevurah* (like the *Hagahos Maimonies*).

DAILY MASHAL

I sell you a *beis kur* (5,000 square cubits) of earth

An ancient, anonymous song for Shabos Chanukah, *Ichlu Mashmanim*, appears in sidurim and is chanted in some communities. The whole composition sings the praises of food, meals, meat dishes, wine and miscellaneous culinary delights to be consumed on that Shabos and the line ending each stanza goes: "A *beis kur* sell or lease; rent a *beis kur* for Shabos Chanukah!" In his Responsa (137), Mahari of Bruna, a pupil of the *Terumas HaDeshen*, remarks that no Torah scholar could have written the song as a Chanukah meal is not defined as a *se'udas mitzvah*. Others even stress that only foolhardy people could have composed it, as evident from its contents (*Orchos Chayim*, 670:8). On the other hand, some rebbes, such as Rebbe Pinchas of Koritz zt"l, sang it on Shabos Chanukah and a few scholars attribute it to Rabbi Avraham Ibn Ezra as the initial letters of its lines form *Avraham*. Those favoring the song were somehow able to lend its contents a spiritual connotation and some surmise that *beis kur* is used as a pun: In Old French a yard for raising and fattening poultry was called a *bas court* ("low courtyard" – the final s was then, as in certain dialects today, pronounced). The message, then, is "Sell your *beis kur*" – your field – and rent a *bas court* for Shabos Chanukah.