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Daf Notes is currently being dedicated to the neshamot of

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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

Yehoshua’s Conditions

The *Gemora* cites a *Baraisa*: Yehoshua enacted ten conditions upon the division of land to the Jewish People in *Eretz Yisroel*. One of these conditions is that one can allow his animals to graze in forests (*even if an individual owns them, because people do not normally harvest these areas*). Similarly, one was allowed to gather wood from the fields that are owned by others. One is allowed to gather plants or grass from his friend’s field (*for his animals, and the owners of the field would not mind*) unless it was a field of where fenugreek was grown (*uprooting the grass would damage it*). One can cut off a branch of his friend’s tree (*to use to strengthen his own tree and the owner will not mind*) except the two fistfuls of an olive branch. The people of a city where a spring originates from are all entitled to its water. One can fish in the ocean of Tiberias as long as he does not spread a large type of trap that interferes with the boats. One may defecate behind a fence, even in a field of saffron. People may take shortcuts through fields until the second scheduled time of rain (*the seventeenth of Cheshvan*). People may walk on the side of the roads (*on the borders of fields*) due to problematic conditions on the roads. Someone who is lost in a vineyard can break branches in his way in order to find the pathway. A person who dies without having relatives to bury him acquires the place where he has died. [*The Gemora will now explain these conditions.*]

1. Animals would be allowed to graze in forests (*and the owners of the forests would not mind*).

Rav Pappa says: This is referring to small animals in large forests (*where the forest will not be destroyed*). However, small animals in small forests and large animals in large forests are not allowed and certainly not large animals in small forests.

2. One is allowed to gather plants from his friend’s field.

This was taught only with regard to little bushes and thorns, not other plants or trees. Additionally, it is only talking about when they are connected to the ground, not when they had already been uprooted (*as this is a sign that the owner probably wants them*). Additionally, this is only if they are moist, not if they are dry (*as then the owner probably wants them for firewood*). He can only gather the wood if the growth will not be uprooted.

3. One is allowed to gather grass from his friend’s field unless it was a field of fenugreek.

This implies that grass is beneficial for fenugreek. The *Gemora* asks on this from a *Baraisa*. The *Baraisa* states: If grass grew with the fenugreek, we do not make him uproot it (*due to kilayim*). [*This is presumably because*



he is going to eventually take the grass away himself because the grass harms his fenugreek!]

Rav Yirmiyah answered: This is not difficult, as one is discussing the seeds (*it is being grown for seed*) and one is discussing (*when it is being grown for*) stalks. The grass makes the seeds weaker, but it makes the stalks stronger as they spread over the grass.

Alternatively, the *Gemora* answers: One is being grown for people and one is for animals. If it is for animals, he wants the grass (*for animal food*) as well.

The *Gemora* asks: How does a person know if it is planted for people (*allowing him to take the grass based on Yehoshua's condition*)?

Rav Pappa answers: If it is arranged in rows, it is presumably for people. If it is not, it is presumably for animals.

4. One can cut off a branch of his friend's tree (*to use to strengthen his own tree and the owner will not mind*) except the two fistfuls of an olive branch.

Rabbi Tanchum and Rabbi Biryas explained this in the name of an elder: This means that one has to leave an amount of branch the size of an egg on an olive branch. On reeds and vines, he must leave a knot of the vine. On other trees, he can only take the soft shoots and branches, not the strong branches of the tree. One can take the new branches that do not produce fruit, but cannot take the old branches that do produce fruit. He can take from branches that do not get good sunlight, but not those that do. This is as the verse states, "*And with the bounty of the sun's crops (which helped the produce grow).*"

5. The people of a city where a spring originates from are all entitled to its water.

Rabbah bar Rav Huna says: They must pay money to the owner of the spring. The *Gemora* states: The *halachah* does not follow this opinion.

6. One can fish in the ocean of Tiberias as long as he does not spread a large type of trap that interferes with the boats. However, it is indeed permissible to use nets and traps.

The *Gemara* cites a *Baraisa*: Originally, the tribes stipulated with each other that they would not use these large types of traps that would block the passage of boats. Rather, they would only use regular nets and traps.

The *Gemara* cites a *Baraisa*: The Sea of Tiberias was in the portion of Naftali. Moreover, he had a fishing-net rope's length of land in the southern part of the sea, to uphold the verse, "*Inherit the sea and its south shore.*"

The *Gemora* cites a *Baraisa*: Rabbi Shimon ben Elozar says the following. Trees that are not attached on the mountains belong to all the Tribes (*they are regarded as movables and not land*). If they are attached, they belong to the tribe whose inheritance is in that area. There is no tribe that did not get inheritance including a mountain, lowlands, plains and valleys (*the Maharsha understands this refers to beaches*). This is as the verse says, "*Turn and travel, and go to the mountains of the Amorites and all of its neighbors, in the plain, mountains, lowland, in the open country and the beach.*" We also find this regarding the land of the Canaanites, the Perizzites and the Amorites before them. This is as the verse states, "*And to all of his*"

neighbors,” implying that the neighboring nations of the Amorites also had all of these types of areas in their possession.

7. One can defecate behind a fence, even in a field of saffron.

Rav Acha bar Yaakov says: This *halachah* is only necessary to teach that one can take a stone (*to use to wipe himself*).

Rav Chisda says: Even on *Shabbos* this is permitted.

Mar Zutra the Pious would use such a stone on *Shabbos* and then returned it. He would later tell his assistant during the week to make sure that it was properly covered over with plaster.

People may take shortcuts through fields until the second scheduled time of rain (*the seventeenth of Cheshvan*).

Rav Pappa says: Our fields (*in Bavel*) are even ruined by people walking through them when dew falls on them the night before.

8. People may walk on the side of the road (*on the borders of fields*) due to problematic conditions on the roads.

Shmuel and Rav Yehudah were walking together on the road. Shmuel started walking on the side of the road. Rav Yehudah asked: Are the conditions established by Yehoshua applicable even in Bavel? Shmuel answered: I say that they even apply outside of *Eretz Yisroel*.

Rebbe and Rabbi Chiya were walking together on the road, and then proceeded to walk on the side of the

road. Rabbi Yehudah ben Kenusa was walking in front of them (*on the regular road*). Rebbi asked Rabbi Chiya: Who is this person who is showing that he is greater than us? [*It was as if he was saying that he was not using this “leniency” because he was holier than them.*] Rabbi Chiya said: Perhaps it is my student Rabbi Yehudah ben Kenusa, who does everything for the sake of Heaven. When they reached him and noticed that it was indeed Rabbi Yehudah ben Kanusa, Rebbe remarked: If you were not Yehudah ben Kenusa, I would place you in *niduy* (*a form of excommunication*).

9. Someone who is lost in a vineyard can break branches in his way in order to find the pathway.

The Gemara cites a *Baraisa*: If someone sees that his friend is lost amidst the vines, he may break branches in order to bring him to a city or path. Similarly, someone who is lost in a vineyard can break branches in his way in order to find the pathway.

The *Gemora* asks: Why is the second case necessary (*as it is obvious*)?

The *Gemora* answers: It is understandable that a person who knows where his friend is can do this. However, perhaps we should say that a person who does not know where he is should have to go back to the border of the field. This is why the *Baraisa* teaches us that it even applies to the person himself who is lost.

The *Gemora* asks: Isn't this obvious, as it is a Torah law? This is as the *Baraisa* states: How do we know that one must return another lost person? The verse says, “*And you will return it to him.*”

The *Gemora* answers: According to Torah law, he can retrace his steps and go back to the border. The Rabbis instituted that he may break the vines in order to find his way. [However, he may only do so on condition that he pay the owner for the broken vines.]

10. A person who dies without having relatives to bury him acquires the place where he has died.

The *Gemora* asks a question from a *Baraisa*. The *Baraisa* states: If someone finds a dead person lying in the public domain, he moves him to the right or left side of this area. If one side is an empty field and one side is a plowed field, he is moved to the empty field. If one side is a plowed field and one is a planted field, he is moved to the plowed field. If both were either empty, plowed, or planted, he can move him to either one. [This implies that he does not acquire the exact space where he died!?!]

Rav Bibi answers: The case is where he is lying on the border of the public domain and one of these fields. Being that he is therefore going to be moved, he is able to be moved to a different side as well.

The *Gemora* asks: The *Baraisa* stated that Yehoshua made ten conditions. However, the *Baraisa* actually lists eleven conditions!?

The *Gemora* answers: The condition about walking through the paths of the fields was said by King Solomon. This is as the *Baraisa* states: If his fruit was no longer in the field, and he does not let people enter his field, what do people say about him? What does he benefit, and what harm are people doing to him?! About such a situation the verse says, "From being good do not be called bad."

The *Gemora* asks: Is there indeed such a verse (*no such verse exists*)!

The *Gemora* answers: There is a similar verse, "Do not hold back good from its owner when you have the ability to do so."

The *Gemora* asks: Are these all of the conditions of Yehoshua? The *Baraisa* states: Rabbi Yehudah says that when it is the season to take out (*dung used as*) fertilizer, a person may take it out into the public domain and gather it there for thirty days, so that it can be stepped upon by people and animals. On this condition Yehoshua said that the people can inherit the land.

Additionally, there is a condition stated by Rabbi Yishmael the son of Rabbi Yochanan ben Berokah. He states: It is a condition of *Beis Din* that a person may go into his friend's field and cut off a part of his tree to save his swarm of bees. He must pay his friend for the part cut off. There is also a condition of *Beis Din* that a person carrying a wine barrel who sees a person carrying a leaking barrel of honey can spill out his wine to save the honey, and his friend must pay him for the wine. There is also a condition of *Beis Din* that a person, who sees that the donkey of his friend which is transporting flax has died, can unload his wood and offer his donkey for the transport, and his friend will pay for the wood left behind.

The *Gemora* answers: The *Baraisa* is not dealing with minority opinions. [These last conditions are minority opinions.] (80b3 – 81b5)

INSIGHTS TO THE DAF

Reburying War Casualties

The Torah commands us to give our dead a Jewish burial (Sefer HaChinuch, Mitzvah 537), as is written, “Rather you shall surely bury him on that day” (Devarim 21:23). In addition every Jew is obligated to bury a meis mitzvah—a Jew who passes away with no one else to attend to his or her burial (Chinuch, *ibid.*).

A meis mitzvah acquires its place: Giving a dead person a proper burial is extremely important. Our sugya even teaches that one of the ten conditions that Yehoshua and his beis din stipulated with Bnei Yisrael when the Land of Israel was divided according to tribe was that when a meis mitzvah is found in a field it “acquires its plot.” If a Jew is found dead on uninhabited land, he is buried wherever his body was found; even if the land belongs to someone, the owner is not allowed to object to the burial.

Two different reasons have been suggested to explain this stipulation (Chazon Ish, Bava Kamma §14, 15, based on Tosefos, Kesuvos 17a, s.v. mevatlin talmud Torah). 1) To make it easier for the person who finds a meis mitzvah, who would otherwise have to carry him on his shoulders for a long distance until he arrives at a graveyard. 2) Yehoshua did not want the dead person to be disgraced by carrying him a long distance before reaching his final resting place.

Burying war casualties: The Chazon Ish (*ibid.*) discusses this halacha in terms of modern-day circumstances. Based on the Gemara (Eruvin 17a) the Rambam (Hilchos Melachim 6:12) rules that a Jew killed on the battlefield is considered “a meis mitzvah that acquires its plot,” and although there is someone to attend to his burial, he is interred on the spot. Regarding many

cases where soldiers fell in battle and were buried on site, the Chazon Ish was asked whether this halacha gives the battlefield the status of a graveyard, and therefore the corpses should not be removed for burial elsewhere.

He rules that it is a mitzvah to transfer them from their graves to a cemetery. In the past, when batei din were responsible for marking graves—even those found in the most remote places—there was little concern about the taharah of Eretz Yisrael. The gravesite would not be forgotten, and kohanim would know to steer clear. On the other hand, today the burial sites are liable to be forgotten, and therefore their burial on the spot where they were killed is considered a temporary measure—as if on condition that the body will be reburied in a cemetery as soon as possible.

DAILY MASHAL

The nefesh mourns over the degradation of the body

The Orchos Chaim (Y.D., p. 609) writes that proper burial is a mitzvah because it is indecent to degrade the body in which the soul once dwelled. “You see that when a person’s house is destroyed, he regrets the loss and his heart aches if it is used as a latrine. Likewise, it is painful for the soul to see the body being degraded.” R. Yehudah HaChassid (Sefer Chassidim §1163) writes that the neshama sees what is done to the body after death and this degradation disturbs it.