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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

Mishnah

Similarly, if an olive press was built in a rock and above it was a garden, and the roof of the press was broken through, the owner of the garden can descend and sow below [on the floor of the press], until the press-owner repairs the vaulting [to provide a support for the garden above]. If a wall or a tree fell into a public thoroughfare and caused damage, he [its owner] is free from liability. But if he was given a [fixed] time to cut down the tree or pull down the wall, and they fell: if within the period, he is not liable; after that period, he is liable. If a man's wall was near his neighbor's garden and it collapsed [into the garden], and when he (the neighbor) demanded, "Remove your stones," he replied, "They have become yours," he is not heeded. If, however, after the latter agreed [to the proposal [and removed them] he said, "Here are your [removal] expenses, and I will take back mine [the stones]," he is [likewise] not heeded. If a man engages a laborer to work for him on straw or stubble, and when he demands his wages, says to him, "Take the results of your labor for your wage," he is not heeded. If after he agreed [to the proposal] he said to him, "Here is your payment, and I will take my property," he is [likewise] not heeded. (17b4 – 18a1)

How much of the roof must have fallen? Rav said: the greater part of it; Shmuel ruled: four [handbreadths]. Rav said: the greater part of it, but if only four [handbreadths,] one can sow partly on one level and partly on another. Shmuel said: four [handbreadths]: one cannot [be expected to] sow partly above and partly below.

Now, both [disputes] are necessary, for if we taught [it] in connection with a dwelling, [it might be said that] only there does Shmuel state his ruling, because it is unusual for a man to dwell partly in one place and partly in another; but with respect to sowing, where it is quite usual for a man to sow here a little and there a little, I might say that he agrees with Rav. While if only the present dispute were stated, [I might argue that] only here does Rav hold this view; but in the other case, he agrees with Shmuel. Hence both are necessary. (118a1 – 118a2)

If he was given a [fixed] time. And what time is given by the court? Rabbi Yochanan said: thirty days. (118a2)

If a man's wall etc. The Gemara asks: But since the last clause teaches: here are your [removal] expenses, it follows that he [the garden owner] has removed them. Thus, it is only because he removed them; but why so? Let his field effect possession for him! For Rabbi Yosi son of Rabbi Chanina said: A man's courtyard effects possession for him even without his knowledge!

The Gemara answers: That is only where he [the original owner] desires to grant him possession; but here he merely seeks to evade him. (118a2 – 118a3)

If a man engages a laborer to work with him on straw etc. Now, both are necessary. For if only the first were stated, that when he proposes, "Let them be yours," he is not heeded, [it might be said that] that is because he [the

garden owner] has no wage claim upon him; here, however, that he [the laborer] has a wage claim, I might argue that he [the employer] is listened to, because it is proverbial, 'from your debtor accept [even] bran in payment,' while if this clause [alone] were taught, [it might be that] only in this case, once he [the worker] accepts the proposal, is he [the employer] not heeded, because he has a wage claim upon him; but in the former case, where he has no wage claim upon him, I might think that he is heeded; hence both are necessary. (118a3)

He is not heeded. The Gemara asks: But has it not been taught in a Baraisa: He is heeded.?

Rav Nachman said: There is no difficulty; here [in the Mishnah] the reference is to his own work, there [in the Baraisa], to his fellow's.

Rabbah said to Rav Nachman: [When he is employed] on his own, what is the reason [that he is not heeded]? It is because he [the worker] can say to him, "You are responsible for my wages." [but when employed] by his fellow he can also say to him, "You are responsible for my hire"! For it has been taught in a Baraisa: If one engaged an artisan to labor on his [work], but directed him to his fellow's, he must pay him in full, and receive from the owner [of the work actually done] the value of the labor whereby he benefited!

Rather, said Rav Nachman, there is no difficulty: here it refers to his own; there, to that of hefker.

Rava raised an objection (from a Baraisa) against Rav Nachman: That which is found by a worker [while working for another] belongs to himself. When is that? If the employer had instructed him, "Weed or dig for me

today," but if he said to him, "Work for me today," [without specifying the nature of the work], his findings belong to the employer!

Rather, said Rav Nachman, there is no difficulty: here [in the Mishnah] the reference is to lifting up; there, to watching.¹ (118a3 – 118a5)

Rabbah said: [Whether] 'watching' [effects possession] in the case of hefker is disputed by Tannaim. For we learned in a Mishnah: Those who keep guard over the aftergrowth of the sabbatical year are paid out of temple funds. Rabbi Yosi said: he who wishes can donate [his work] and be an unpaid watcher. They [the sages] said to him: you say so, [but then] they are not provided by the public. Now, surely, the dispute is on this question: the first Tanna holds that 'watching' hefker effects possession; hence, if he is paid, it is well, but not otherwise. While Rabbi Yosi maintains that 'watching' does not effect possession of hefker; hence, only when the community go and fetch it is possession effected.

And what is meant by: you say [etc.]? They said as follows to him: From your statement [and] on the basis of our ruling, [it transpires that] the omer and the two loaves are not provided by the public!

Rava said: That is not so, for all agree that 'watching' effects possession of hefker; but they differ here as to whether we fear that he will not deliver it wholeheartedly. Thus, the Rabbis hold that he must be paid, for otherwise there is the fear lest he does not deliver it wholeheartedly, while Rabbi Yosi holds that this fear is not entertained.

¹ In both instances the reference is to hefker. But if the worker was engaged to tie sheaves, thus having to lift them up, his employer acquires title to them, and therefore must pay him. But

if his work was to keep guard, the mere watching does not effect possession, and therefore his employer can force him to accept them as his wages.

And what is meant by: you say? They said as follows to him: from your statement, [and] on the basis of our ruling that we fear that it will not be surrendered wholeheartedly, the omer and the two loaves are not provided by the public.

Others say: Rava said: all agree that 'watching' does not effect possession in the case of hefker; but they dispute here whether we entertain a fear of violent men. The first Tanna holds that the Rabbis enacted that he shall be paid four zuz, so that violent men may hear of it and hold aloof; while Rabbi Yosi holds that they did not enact [thus].

And what is meant by: you say? They said as follows to him: from your statement, [and] on the basis of our opinion, [it follows that] they are not provided by the public. And when Ravin came, he likewise said in Rabbi Yochanan's name: they differ as to whether we fear [the action of] men of violence. (118a5 – 118b1)

Mishnah

If a man takes out manure into a public thoroughfare, it must be applied [to the soil] immediately after being taken out. Mortar must not be steeped in the street, nor may bricks be formed there. Clay may be kneaded in the street, but bricks may not be [molded]. When one is building in a public road, the bricks must be laid immediately after they are brought. If he causes damage, he must pay that which he damaged. Rabban Shimon ben Gamliel said: one may prepare his materials even thirty days beforehand. (118b1)

The Gemara asks: Shall we say that our Mishnah does not agree with Rabbi Yehudah? For it has been taught in a Baraisa: Rabbi Yehudah said: when it is the time for manure to be taken out, a man may put his manure out into the street and leave it heaped up for full thirty days, that it should be trodden down by the foot of man and

animal for on this condition did Yehoshua allot the land to Israel!

The Gemara notes: It may even agree with Rabbi Yehudah, for he admits that if he thereby causes damage, he must liable to pay.

The Gemara asks: But have we not learned: Rabbi Yehudah said: In the case of a Chanukah lamp he is not liable, because this was done under authority. Surely that means, under authority of the court?

The Gemara answers: No. It means the authority of a mitzvah.

The Gemara asks: But it has been taught in a Baraisa: All those whom the Rabbis permitted to commit a nuisance on the public thoroughfare, if they cause damage, they are bound to pay; while Rabbi Yehudah exempts them! Hence it is clear that our Mishnah does not agree with Rabbi Yehudah. (118b2 – 118b3)

Abaye said: Rabbi Yehudah, Rabban Shimon ben Gamliel, and Rabbi Shimon all maintain that wherever the sages gave permission [to do a certain thing] and damage was thereby caused, there is no liability. 'Rabbi Yehudah', as stated. 'Rabban Shimon ben Gamliel', — for we learned: One may prepare his materials even thirty days beforehand. 'Rabbi Shimon', — for we learned: if he placed it [a stove] in an upper story, there must be a flooring of three handbreadths deep under it; but for a small stove, one handbreadth; nevertheless, if he causes damage, he must make it good. Rabbi Shimon said: All these measurements were stated only so that if he causes Damage, he is free from liability.

The Gemara cites a Baraisa: Once the stonemason has delivered [the stones for building] to the chiseler [for polishing and smoothing], the latter is responsible [for any damage caused by them]; the chiseler having

delivered them to the hauler, the latter is responsible; the hauler having delivered them to the porter, the latter is responsible; the porter having delivered them to the bricklayer, the latter is responsible; the bricklayer having handed them over to the foreman, the foreman is liable. But if after he had [exactly] laid the stone upon the row, it caused damage, all are responsible.

The Gemara asks: But has it not been taught in a Baraisa: Only the last is responsible, whilst all the others are exempt?

The Gemara answers: There is no difficulty: the latter refers to time-work; the former, to contracting. (118b3 – 118b4)

DAILY MASHAL

ERETZ YISRAEL

Hashem said to Avram... raise now your eyes and look... for all the land that you see, to you I will give it, and to your descendants forever. Arise, walk through the land, through its length and breadth, for to you I will give it.

Viewing and Walking The above pesukim relate that Hashem told Avram to do two things: to look upon that land and to walk its length and breadth. What is the goal of these two things? According to the Gemara by walking the length and breadth of Eretz Yisrael Avraham effected an acquisition of the land. This act constitutes a form of acquisition known as *chazakah* – demonstrating a proprietorial relationship with the land. And what of the first instruction, to “look upon the land”? What was its role? Presumably this was purely a matter of having Avraham preview the land that he would then acquire by walking through it. However, it is interesting to note a discrepancy between these two pesukim:

- When Hashem tells Avraham to look upon the land, He states that He will give the land to Avraham “to you *and to your descendants forever*.”
- When He subsequently tells Avraham to walk through the land, he states only that “to you I will give it.”

Why does the “preview” of the land describe a more permanent gift than its actual acquisition? The Meshech Chochmah explains that in fact, by viewing the land, Avraham was doing more than merely previewing.

When Vision Effects Acquisition The halachah states that although acquisition normally requires some form of act, there are times when something can be acquired just by looking at it. Our Gemara informs us that one can acquire an ownerless object (*hefker*) through looking at it. Accordingly, it is possible that by viewing the land, Avraham actually came thereby to acquire it! However, this would only be the case if Eretz Yisrael was considered ownerless at that time. Was that the case? Furthermore, if indeed Eretz Yisrael was considered ownerless, and could be acquired by simply looking at it, what was the purpose of additionally instructing Avraham to walk its length and breadth?

Two Levels of Relationship with the Land

The Meshech Chochmah, explained by Rabbi Immanuel Bernstein, explains that our relationship with the land exists on two levels. Of course it is ours in the physical sense, to dwell there as a nation with all that that entails. However, beyond that, as we know, Eretz Yisrael has unique, elevated spiritual properties, which are available to those who dwell there.

To put this into a conceptual framework: Halachah distinguishes between *kinyan haguf* – ownership of the thing itself, and *kinyan peiros* – ownership of the rights to use it. When it comes to Eretz Yisrael, primary and essential ownership (*kinyan haguf*) rests with one who is able to connect with the spiritual qualities of the land,



while physical possession is in the category of usage rights (*kinyan peiros*). The question for us to consider is: which of these aspects had been taken ownership of prior to Avraham's arrival in the land?

- In physical / temporal terms: the people of Canaan populated the land before Avraham arrived. In this respect they enjoyed an element of ownership of the land, one which would need to be transferred to Avraham.
- In spiritual terms: *no one* had hitherto accessed the higher qualities of Eretz Yisrael. In this respect the land was *hefker*!

Therefore, since Hashem wanted to grant Avraham full ownership over the land, He instructed him to do two things. Firstly, He told Avraham to look at the land, thereby acquiring the *spiritual* connection to and ownership of Eretz Yisrael. Since this aspect of the land was ownerless, Avraham could acquire it through *looking* at it. Additionally, Hashem wished to grant Avraham ownership of the *physical* aspect of the land. Since the Canaanites were currently living there, it was not considered ownerless in this respect, and hence this required an actual *act* of acquisition – to walk the length and breadth of the land.

Moreover, since the spiritual aspect of the land can never be owned by anyone other than the Jewish people, the first pasuk which describes spiritual acquisition states that the land would be given to Avraham and his descendants, forever.

However, since the Jewish people would not always enjoy temporal control of the land, the second pasuk, which describes the acquisition of that element, states that it will be given “to you”, but does mention Avraham's descendants, for there was no guarantee the Jewish people would necessarily enjoy uninterrupted control of the land in from that point onwards.

“Raise up your eyes and see.”

Based on this idea, the Meshech Chochmah provides a deeper level of understanding Hashem's opening words to Avraham, “raise up your eyes.” On a straightforward level, these words refer to Avraham physically raising his head so as to allow him to look around in all directions. However, Meshech Chochmah explains that these words are actually describing an *elevated way of seeing*. In physical terms, Avraham did not immediately see the effects of his acquisition of the land: the Canaanites who then populated the land did not recognize him as its owner. Additionally, as we know, when the time came that he needed a plot to bury Sarah, he was forced to pay an exorbitant amount for it. Nevertheless, in a more elevated sense, reflected in the words “raise up your eyes,” Avraham fully acquired the land – immediately and permanently – by fulfilling Hashem's instructions in that pasuk, “and look upon the land.”

Active Ownership

A final fascinating point which emerges from the Meshech Chochmah here is that Avraham's spiritual acquisition of the land enabled him to access and actualize its elevated qualities. This means that the unique properties known to us regarding Eretz Yisrael, such as Hashem's direct supervision and interaction with it, the special mitzvah and merit of living there etc. were all initiated and “activated” as a result of Avraham coming into ownership of it! This means that not only do the Jewish people attain *their* highest levels of sanctity when they are in Eretz Yisrael, the land itself attains *its* sanctity as a result of its connection with the Jewish people, as initiated by Avraham Avinu.