TRACT BABA BATHRA (LAST GATE).

(PART II.)

CHAPTER VI.

RULES AND REGULATIONS CONCERNING THE SALE OF SEEDS WHICH BECOME SPOILED, THE QUANTITY OF DUST WHICH MAY OR MAY NOT BE ACCEPTED IN THE MEASURES OF GRAIN AND FRUIT, AND WINE WHICH BECOMES SOUR AFTER SALE BEFORE DELIVERY.--CONCERNING CONTRACTORS FOR HOUSES AND STABLES, WELLS AND GARDENS SITUATED IN NEIGHBORS' PROPERTIES OR PUBLIC THOROUGHFARES IN PRIVATE GROUND, AND CONCERNING GRAVES AND CAVES FOR BURYING.

MISHNA *I.*: If one sold fruit or grain (without any stipulation), and the buyer sowed it but it did not sprout, even if this were seed of flax, the seller is not responsible. R. Simeon b. Gamaliel, however, maintains that if he sold seeds for gardens, which could not be used for eating, the seller is responsible.

GEMARA: It was taught: If one sold an ox, and thereafter it was found it was a goring one, the sale is void according to Rabh. Samuel, however, said: The seller may say: "I sold it to you for slaughtering." Let us see: If the buyer was one of those that buy for slaughtering (*e.g.*, a butcher), why then should the sale be void according to Rabh? And if he was one who buys for working purposes (*e.g.*, a farmer), why should the sale be valid according to Samuel? It treats of one who buys for both purposes (*e.g.*, if he was both a farmer and a butcher). But even then, let us see the amount he paid for it, from which we can judge whether he bought for slaughtering or for work. It treats of where the meat has increased in price to the extent of the value of an ox for working. If so, what is the difference (the buyer gets the full value for his

money in any case,)? The difference is, if the trouble of slaughtering and selling the meat should be taken into consideration (according to Rabh it should, and therefore the sale is void; and according to Samuel it should not). Again, let us see how was the case. If the seller has no cash to return, why, according to Rabh, should the sale be void, so that the buyer has to return the ox? Let him keep the ox for his money; as people say: "If you keep something in hand belonging to your debtor, even if it is bran, take the trouble to make money by it." It means when the seller is not lacking in cash. According to Rabh, the sale is void because the majority must always be taken into consideration, and the majority of cattle-buyers are traders; and Samuel maintains that only in prohibitory laws the majority is to be taken into consideration, but not in money matters.

Come and hear an objection from the following (First Gate, V., Mishna I.): "Should an ox gore a cow and the new-born calf be found dead at her side, and it be not known," etc. (see there, end

of the Mishna, p. 106). Now, according to the theory of our Mishna, the decision of the cited Mishna would not be correct, as the majority of cattle should be taken into consideration, which conceive and bring forth living offspring. Hence the dead one found at her side is dead because of the goring. Why, then, is it considered doubtful there? The doubt was, if the ox gored the cow in front, so that the premature birth took place because of terror before goring, or if the cow was gored in the back, and the premature birth was occasioned by the goring, and therefore the extent of the injury is considered doubtful. And there is a rule that such be divided.

Shall we assume that the point of difference between Rabh and Samuel is the same as that in which the Tanaim of the following Boraitha differ? "If an ox was pasturing and another one was found killed at his side, although investigation shows that the death occurred from goring, and the pasturing ox was vicious in goring, or the death occurred from biting, and the pasturing ox was vicious in biting, it is still uncertain that this ox has gored or bitten the other." R. Aha, however, said: If there was found a camel killed at the side of a biting camel, although the latter was not yet vicious, it must be taken

for a certainty that he killed the other. The schoolmen thought majority and hazakah [1] identical; for as a goring or a biting animal has a hazakah to gore, bite, and kill, it is to be taken for a certainty that the gored or bitten one found at his side was killed by him, and the same is the case with the majority.

Is it not to assume that Rabh holds with R. Aha, and Samuel with the first Tana?

Nay! Rabh may say: My decision is correct, even in accordance with the first Tana of the cited Boraitha, as the reason of his decision is not majority, but hazakah"--*i.e.*, there was not a majority of vicious oxen, but one, which had a habit (hazakah) of goring or biting, as hazakah and majority are not identical; but if there should be a majority, it would be taken into consideration. And, also, Samuel may say: My decision is correct, even in accordance with R. Aha, as his reason is the habit (hazakah) of that animal which was found near, and a majority would not be taken into consideration.

Come and hear an objection from our Mishna, which states that the seller is not responsible, even for seeds of flax. Does not the term "even" mean, although the majority is for sowing, and nevertheless it is not taken into consideration? Hence it opposes Rabh? In this point the Tanaim of the following Boraitha differ: "If one sold fruit, and the buyer has sown it but it did not sprout, if it was garden seed, which could not be used for eating, he is responsible; but if it was seed of flax, he is not." R. Jose, however, said that the seller has to return to the buyer the value of the seed, as the majority buy it for sowing only. The sages, however, answered him: There are many who buy it for other purposes.

But who of the Tanaim in this Boraitha hold not the theory of majority? Shall we assume that it means R. Jose; and the sages answered *him* that there are many people who buy seeds, etc.? Then all of them hold the theory of majority, but one takes into consideration the majority of the seed (*i.e.*, the majority of seed which is bought for sowing, and the other the majority of men)? Therefore we must say that it means, the difference of opinion between the first Tana and R. Jose, or the difference of opinion between the first Tana and the sages,

who answered *him* (*i.e.*, the statement in the Boraitha, "and they said to him," means the first Tana, not R. Jose).

The rabbis taught: "The seller has to return to the buyer the value of the seed, but not the expenses for ploughing, sowing, etc.; according to others, however, the expenses also." Who are the others? Said R. Hisda: R. Simeon b. Gamaliel. Which R. Simeon b. Gamaliel? Shall we assume from our Mishna, which states that for seeds which could not be used for eating, he is responsible, and from the first Tana's statement, that the seller is not responsible for seeds of flax, that it is to be inferred for seeds of flax only, but for other seeds which cannot be used for eating, the Tana is also of the opinion that the seller is responsible? Then they do not differ at all. Therefore it must be said that they differ in the expenses, the first Tana holding the seller must return the value of the seeds only, and R. Simeon all the expenses also (and so R. Hisda means R. Simeon of our Mishna). But perhaps the reverse is the case--R. Simeon holds the value of the seeds only, while the first Tana holds the expenses also? This presents no difficulty; for as usual the second Tana adds something. But perhaps the entire Mishna is in accordancewith R. Simeon and is not complete, but should read thus: If one sells fruits and they were sown and did not sprout, even if they were seeds of flax, he is not responsible. Such is the decree of R. Simeon b. Gamaliel, who holds that only for garden seeds that cannot be used for eating the seller is responsible. Therefore we must say that R. Hisda means R. Simeon b. Gamaliel of the following Boraitha: "If one delivered wheat for grinding of fine meal, but the miller did not properly grind it, but made it into bruised grain or bran; or if meal were delivered to a baker and he did not bake it properly, but when he took it out it fell to pieces; or if an ox were delivered to a slaughterer, and he made it illegal, each of these persons is responsible, as they are considered bailees for hire." R. Simeon b. Gamaliel said, that they not only have to pay the damages, but also for the shame of the owner in the eyes of the guests who were invited to the meal, as well as for the shame of the guests themselves; and so the same R. Simeon used to say: There was a great custom in Jerusalem, if one ordered a banquet for guests, and the host spoiled it, he had to pay for his own shame, and for the shame

of the guests. There was also another great custom in Jerusalem: "a flag was put at the door where a banquet was to be given, and the invited guests had to enter only when the flag was still at the door, but when it was taken off they were not to enter any more."

MISHNA *II.*: If one buys fruit, he has to accept a quarter' of a kabh of dust on a saah; of dry figs, he has to accept ten wormy ones in a hundred; on a cellar of wine, he must accept ten harsh ones on each hundred; if he sells him earthen jugs made in Sharon he has to accept ten unglazed ones on each hundred.

GEMARA: R. K'tina taught: By a quarter of a kabh of dust is meant peas, but not earth proper. Is that so? Did not Rabba b. Hyya Ktuspha'h say in the name of Rabba: If one has cleaned off little stones from the barn of his neighbor he has to pay him the value of wheat (*i.e.*, as if they were there, he may put them in the measure, but to put them intentionally he is not allowed)? Peas, he has to accept a quarter of a kabh on a saah, but dust he has also to accept, although a less quantity. You say less than a quarter of dust, but did not the following Boraitha state: "If

one sells wheat, he has to accept a quarter of a kabh of peas on a saah; if barley, a quarter of chaff on a saah; and if lentils, a quarter of dust." Is it not to assume that a quarter of dust is to be accepted for wheat and barley also? With lentils it is different, because they are not cut, but torn out from earth, and therefore usually a great deal of dust remains with them, which is not the case with wheat and barley; but if it is so, infer from this that for wheat and barley no dust must be accepted at all, while it is stated above that less than a kabh is to be accepted? Nay, from the statement that for lentils he has to accept a quarter nothing is to be inferred; this being stated, lest one say because there is usually much dust more than this quantity is to be accepted, it comes to teach us that it is not so.

R. Huna said: If the buyer has found more than the above prescribed quantity and sieves it, he may sieve the whole quantity he bought, without leaving any dust at all, and the seller has to fill the measure without allowing for the prescribed quantity. According to some it is the strict law, as usually one gives his money for clean fruit, but if for a trifle of dust, as

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much as a quarter of a kabh on a saah, the buyer is not very particular and does not take the trouble to sieve it; but in our case, when he is compelled to trouble himself with sieving, he may make the whole fruit extremely clean; and according to others, it is a fine, as usually no more than a quarter of a kabh ought to be found in a saah, and when there was found more, it is presumed that the seller put it in intentionally, and therefore he is fined by the rabbis.

Come and hear an objection from the following Boraitha: "If a planter undertakes to plant a field with fruit trees, the owner of it must accept empty space for ten trees on each hundred, but if, however, it was found empty for more than this, he has to plant trees on the whole empty space." Hence is R. Huna's above statement law? Said R. Huna b. R. Jehoshua: This is not a support to R. Huna, as an empty place for more than ten trees is to be considered as a separate field, and the planter who undertook to plant the owner's fields is to be considered as if he had to begin the planting in this empty field, and therefore he has to plant the whole field, which case is not similar to that of R. Huna.

"*If he sold a cellar of wine*," etc. Let us see how is the case. Whether the seller said to the buyer, "I sell you a cellar of wine" or "this cellar of wine," it is a difficulty from the following Boraitha. "If he said 'I sell you a cellar of wine,' all of it must be good; if '*this* cellar of wine,' he must give him wine which is sold in the retail stores; but if he said, 'I sell you *this* cellar,' even if it was found to be all vinegar, the sale is valid." Our Mishna speaks of the case wherein the seller said, "*a* cellar of wine," and there is no contradiction of the cited Boraitha as it should read, and the buyer has to accept the ten spoiled ones in the hundred. But has not R. Hyya taught: If one sells a barrel of wine, he must give the buyer all good wine? With one barrel it is different, as a barrel contains only one kind of wine; but has not R. Z'bid in the name of the school of R. Ossiah taught in "a cellar of wine" all must be good, in "the cellar of wine" the seller must give the buyer all good wine, but the latter must accept ten bad in the hundred; and this is the word *Outzar* ("treasure of wine") which the sages have taught in our Mishna? Therefore it must be said that our Mishna treats of the case wherein the seller said

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[paragraph continues] "this cellar," and the contradiction from the above Boraitha in the case, if "this

cellar," presents no difficulty, as R. Z'bid says, if the seller told the buyer, "I sell you wine for keeping," and the Boraitha says the words "for keeping" were not said, and therefore (the Halakha prevails thus) if the seller said, "a cellar of wine for keeping," all of it must be good; if "*this* cellar of wine for keeping," the buyer must accept ten in the hundred; if "*this* cellar of wine," without the addition "for keeping," the seller may give the buyer wine that is sold in retail stores.

The schoolmen propounded a question; How is it if the seller said, "a cellar of wine," without the addition "for keeping"? On this point R. Aha and Rabhina differ. According to one the buyer has to accept ten in the hundred, and according to the other he has not, the one who says "he must accept" inferring it from R. Z'bid, who states in the case of "a cellar of wine," all of it must be good, and it was explained above that he speaks of the case in which the seller added "for keeping," from which it is to be inferred that if these words were not added, the buyer must accept; and the other, who says the buyer must not, infers from the above Boraitha, which states in the case of "a cellar of wine" all of it must be good; and it was explained above that the Boraitha treats of the case wherein "for keeping" was not said. But to him who infers from R. Z'bid, is not the Boraitha contradictory? He may say the Boraitha is not completed, but should read thus: This is said, if the seller told the buyer "for keeping," but if not, the buyer must accept, and if the seller said "this cellar of wine" without any addition, he may give the buyer wine which is sold in the stores; but to him who infers from the Boraitha, is not R. Z'bid contradictory who, as explained, said that the seller told the buyer the wine was "for keeping"? He may say that the same is the case if the seller did not say "for keeping," and the above explanation was only in order that the Boraitha and R. Z'bid might not contradict each other; in reality, however, R. Z'bid does not agree with the Boraitha.

R. Jehudah said: On wine which is sold in stores the usual benediction may be made. (The benediction is, "Blessed be Thou the Lord our God King of the Universe who hast created the products of the vine.") and R. Jehudah means to say that

although the wine in stores is usually bad, it is still called the product of the vine. R. Hisda, however, said: What have we to do with such a wine (*i.e.*, how can such wine be called a product of the vine)?

An objection was raised: In the case of moulded bread and sour wine, and any dish of which the appearance is spoiled, the benediction should be "That all is created by His words" (hence it contradicts R. Jehudah). Said R. Z'bid: R. Jehudah admits that over wine made of kernels, which is usually sold on the corners of streets, the right benediction may be said. Said Abayi to R. Joseph: "There is R. Jehudah, and there is R. Hisda, each of them with his opinion; I would like to know how is yours, master?" And he answered, "I am aware of the following Boraitha: 'If one examine a barrel of wine for the purpose of separating heave-offering from it, for all others, and he did so for a month or two, and thereafter it was found that the wine turned into vinegar, three days is considered certain, and further on doubtful.' How is this to be understood? Said R. Johanan thus: The first three days from the examination it is to be considered certainly wine, and thereafter it is to be considered doubtful. Why so? Because usually wine becomes sour from the top, and when he tasted it, it was not sour, and if you say it had become sour immediately after he tasted it, the smell only was vinegar-like, but the taste still of wine (as the sages had a tradition that less than three days from the beginning it becomes not vinegar) and such is

considered wine. R. Jehoshua b. Levi, however, said that all he separated in the last three days is certainly vinegar, but previous to that it is doubtful. Why so? Because usually wine begins to turn sour from the bottom, and maybe when he tasted it it was sour already, of which he was not aware; and even should I admit that wine begins to turn sour from the top, my decision is still correct as it may be that it began to turn sour immediately after being tasted, and I hold that if it smells of vinegar, though the taste is still of wine, it must be considered vinegar" (hence according to R. Jehoshua b. Levi the wine which is sold in stores is not considered wine at all, and according to R. Johanan it is considered wine).

The sages of the South taught in the name of R. Jehoshua b. Levi thus: The first three days it should be considered as wine,

the last three days as vinegar, and in the days between as doubtful. But does this statement not contradict itself? The first three days it certainly is wine, hence if the smell is of vinegar and the taste of wine, it is considered wine; and thereafter they said, the last three days it is certainly vinegar, from which it is to be inferred that if the smell is of vinegar and the taste of wine, it is considered vinegar. The case was that it was found wholly strong vinegar, and it is stated above that it takes no less than three days after it turns sour to become wholly vinegar; hence it is to be supposed that in the last three days it was already vinegar. However, according to which of these two was the conclusion of R. Joseph? In this, also, R. Mari and R. Z'bid differ, one saying that his conclusion was in accordance with R. Johanan, and the other saying it was in accordance with R. Jehoshua b. Levi.

It was taught: If one sells a barrel of wine and it turns sour, according to Rabh the first three days it is considered tinder the control of the seller, and thereafter "it is considered under the control of the buyer." Samuel, however, maintains that the seller is not responsible even when it was still in his barrel, as this is to be considered the fate of the buyer.

R. Joseph acted in accordance with Rabh concerning beer of dates, and according to Samuel with wine, the Halakha, according to Samuel, however, prevails in every respect. [1]

MISHNA *III*.: If one sells wine and it turns sour, the seller is not responsible; if, however, it was known that the nature of his wine was to turn sour (and the buyer was not aware of it), the sale is void. If he said, "I sell you wine, prepared with spices, in good order," the wine must remain in good order until the feast of Pentecost. (Afterward it may become spoiled by heat.) If the seller sold the buyer old wine, it must be from last year; and if he said "very old," it must be aged not less than three years.

GEMARA: Said R. Jose b. Hanina: All this is said of the case wherein it was delivered to the buyer in his own jugs; but if it was placed in the jugs of the seller, the buyer might say: "Here are your jugs and your wine." Why then may not

the seller claim: You ought not to keep it so long? It means that while selling, the seller told the buyer "for keeping." But what compels R. Jose to such a difficult interpretation, in which the

jugs were the buyer's, and the seller says "for keeping"? Why is it not simply said that the jugs were the seller's and he said nothing? Said Rabha: It is because the further statement of the Mishna, "that if it was known that the nature of the seller's wine was to turn sour the sale is void" was a difficulty to him. Why, then, let the seller claim he ought not to keep it so long? We must then say, that the Mishna treats of the case wherein the seller told the buyer "for keeping" (he therefore interpreted the whole Mishna, that such was the stipulation), and infer from this that so it is. He, however, differs with R. Hyya b. Joseph, who said that the fate of one causes the spoiling of his wine; as it is written [Habakkuk, ii. 5]: "And even the wine of a proud man rebels."

Said R. Mari: If one is proud, he is not tolerated even by his family, as the above verse reads "the proud man whose house will not stand," which is to say that he is not tolerated by his household. R. Jehudah in the name of Rabh said: A commoner who disguises himself in the garment of a scholar, cannot enter into the habitation of the Holy One, blessed be He; and this is deduced from an analogy of expression, *Nvie*, which is to be found in Ex. xv. 13. The Hebrew expression in the above cited verse is also *Y'nvie* (literally, "dwelling," "inhabit").

Rabha said: "If one sells a barrel of wine to a storekeeper (with the stipulation that he shall sell it at retail and then pay the owner), and a half or a third of the wine turns sour, the law is that the seller must accept the return of his wine; and this is said only in case the faucet was not changed by the storekeeper, but if it was changed and placed near to yeast, there is no responsibility, and there is also no responsibility if the storekeeper kept the wine over the market day." He said again: "If one has accepted wine for half interest, with the intention of taking it to the suburb of Dwulchpht (where usually wine is dear), and by the time it reached there the price was lowered, the law is that the owner has to accept the return of the wine." The schoolmen propounded a question: How is it when the same was vinegar? Said R. Hillel to R. Ashi:

[paragraph continues] When we were at R. Kahana's he said to us, the same is the case with vinegar, as he agrees with R. Jose b. Hanina's statement above.

"*Old wine*," etc. A Boraitha in addition to our Mishna states that if it was said, "very old wine, it must keep its good quality until the feast of tabernacle in the third year."

MISHNA *IV.*: If one sells to one a place for the purpose of building a wedding-house for his son or a widow-house for his daughter, and the same is the case if a contractor undertakes to build such for him, the size must be not less than four ells in length by six in breadth; such is the decree of R. Aqiba. R. Ishmael, however, maintains that this is the size of a stable. If one wishes to build a stable for cattle, he builds it four by six. The smallest house is no less than six by eight, a large one eight by ten, and a triclinum (restaurant) ten by ten, and the height must be a half of its length and of its width. An example of this, said R. Simeon b. Gamaliel, was the building of the Temple.

GEMARA: Why does the Mishna state "a wedding-house for his son and a widow-house for his daughter"? Let it state a wedding or a widow house for his son or daughter. The Mishna incidentally teaches us that it is not a good custom for a son-in-law to dwell with his father-in-law, as it is written in the book of Ben Sira: "I have weighed everything on the scale and did not

find a thing to be lighter than bran; however, a groom who resides in the house of his father-in-law is lighter than bran, and still lighter than he is an invited guest who brings with him an uninvited companion, and still lighter is the one who answers before he has heard thoroughly the question, as it is written [Prov. xviii. 13]: 'When one returneth an answer before he understandeth (the question), it is a folly unto him and a shame.'"

"*If one wishes to build a stable*," etc. Who said this? According to some, R. Aqiba himself, and he said so; and although this is the size of a stable for cattle, it nevertheless happens that human beings live in such a building (and as the seller or the contractor did not stipulate the size, the minimum may be taken). Others say R. Ishmael taught this saying: That if one wishes to build a stable, it is the size of four by six.

"*Triclinum*," etc. There is a Boraitha: For a *quantir*,

twelve ells square is needed. What does it mean? A fore yard?

"*An example of this*," etc. Who taught this? Some say R. Simeon b. Gamaliel, and it should read thus. Whence is this deduced? Said R. Simeon b. Gamaliel: All must be judged according to the building of the Temple, and some say that the first Tana taught an example of it (and he was about to finish his statement with "the building of the Temple," but R. Simeon b. Gamaliel interrupted him saying:) Do you want to compare all common buildings with the building of the Temple; do all people build such buildings?

We have learned in a Boraitha: Anonymous teachers say the height must be not less than the length of the crossbeams of the ceiling. But why not say, simply, the height must be as the width? If you wish, it may be said that usually a house is wider at the top than at the bottom; and if you wish, it may be said that, because the ends of the beams are placed in the enclosures of the wall, they are longer than the width of the house.

MISHNA *V.*: If one possesses a well, situated on the other side of his neighbor's house (by inheritance, or even bought from him with a path), so that when water is needed he must pass through the house, he may enter and leave at the time people usually enter and leave. However, he is not allowed to take his cattle to the well, but he has to take water for them outside of the house and water them. The owner of the well, as well as the owner of the house, has a right to put a lock on it.

GEMARA: A lock on what? Said R. Johanan: Both locks may be put on the well. It is right that the owner of the well should put a lock on his well, so that no one can use the water; but for what purpose should the owner of the house put a lock on it? Said R. Elazar: Lest his neighbor, while passing his house to the well in his absence, should remain alone with his wife.

MISHNA *VI.*: If one has a garden inside of his neighbor's garden, he may enter and leave only when people are wont to do so. He must not take buyers with him to his garden, and be also has no right to pass through his neighbor's garden for the purpose of entering another field conjoining this one, when he has no business in his own garden; and only the owner of

the outside garden has a right to sow the path. If, however, a path was designated to him by court, on the side, with the consent of both parties, then he may enter and leave whenever he pleases and may also take with him buyers; however, the right to pass through to another field is not given, and neither of them has the right to sow the path.

GEMARA: R. Jehudah in the name of Samuel said: If one says, "I sell you a place of one ell for digging a well to water your dry land," it must contain the width of two ells, and he also has to add him two ells from his field to the edges of the well, on which to erect walls to prevent the overflow of the water; and if he said, "I sell you an ell for making a sewer," it must be one ell wide and one-half ell to each edge. But who has a right to sow the edges (while the walls were not as yet trade)? R. Jehudah in the name of Samuel said: The owner of the field; and R. Nharnan in the name of Samuel said: The owner of the field may plant trees there, but not sow it, as by sowing he harms the water.

R. Jehudah in the name of Samuel said again: If the walls of a channel fall, the owner of it may repair it from the material of the field upon which the walls were placed; as certainly they fall on the same field where they were placed (but the material was scattered by the wind all over the field). R. Papa, however, opposed, saying that the owner of the field may claim that the water of "your well has underwashed the material and caused it to fall"; therefore he gave another reason, that such a stipulation must have been in existence when he hired that place, for otherwise he would not have wasted his money.

MISHNA *VII*.: If there was a public thoroughfare through one's field and he took it for himself and designated another one at the side of his field, what he has given is considered the public's, and to that which he took for himself he does not acquire title. If one sells a path in his field for a private thoroughfare it must be four ells, for the public it must be no less than sixteen. A way for the government has no limit. The way for carrying a corpse to the grave has also no limit; however, the space where the people stand for condoling was determined by the judges of Ziboras of a space where four kabhs may be sown.

GEMARA: Why should he not acquire title to that thoroughfare

he took for himself, when he designated another one for the public; let him take a stick with which to drive off intruders, or do you want to infer from this that one cannot take. the law in his own hands, even when he suffered damage? Said R. Zebid in the name of Rabha: It is to be feared that if this would be allowed, one would give to the public a crooked way; but R. Mesharshia in the name of Rabha said that our Mishna treats of a case wherein the owner of the field has designated such. R. Ashi, however, maintains that a way which is placed; at one side is considered crooked, because it is near to one who resides near to this side, while it is far to him who resides on the other side, (and therefore he does not acquire title) to that which he took. But let him say to the public, "take your way and return mine" (and the Mishna states what he has given is lost). It is in accordance with R. Eliezer of the following Boraitha: "R. Jehudah said in the name of R. Eliezer, if the public has chosen a way for itself, what was done remains." But may the public be robbers, according to R. Eliezer? Said R. Gid'l in the name of Rabh: He

speaks in case the public has lost a way in this field (*i.e.*, some time ago there was a thoroughfare which afterwards was lost). If so, why then said Rabba b. R. Huna in the name of Rabh that the Halakha does not prevail with R. Eliezer? The one who has taught this statement was not aware of the other statement (*i.e.*, R. Gid'l does not approve the statement of Rabba b. R. Huna in the name of Rabh). But according to Rabba b. R. Huna, what is the reason of our Mishna's statement, that of R. Jehuda, who said above (p. 145) that a path of which the public took charge must not be spoiled? By which act did the public acquire title to the thoroughfare, according to R. Eliezer? By passing, as we have learned in the following Boraitha: If one passed (in an ownerless field) on its length and breadth he acquired title to the place he has passed, so is the decree of R. Eliezer. The sages, however, maintain that passing has no effect at all, and title is not acquired unless he makes a hazakah. Said R. Elazar: The reason of R. Eliezer is the following verse [Genesis, xiii. 17]: "Arise, walk through the land in the length of it and in the breadth of it, for unto thee I will give it." The sages say this cannot be taken for a support, however, as Abraham was beloved by Heaven, and it was said to him for

the purpose of making easier for his children the subjection of the land. Said R. Jose b. Hanina: The sages admit to R. Eliezer in case of a footpath between vineyards, because it was made for passing, title is also given by passing. When such a case came before R. Itz'hak b. Ami he decided that the plaintiff should get a footpath upon which he should be able to carry a bundle of branches on his shoulders, which in turning here and there should not touch the walls. But this is said in a case wherein the places for the walls are not yet designated; but if they were, the space should be given him, so as to put one foot after the other.

"*For a private*," etc. There is a Boraitha: Anonymous teachers say: "As much as an ass with its load could pass." The judges of the exile said: Two cubits and a half. And R. Huna said: The Halakha prevails with them. But did not R. Huna say elsewhere that the Halakha prevails with the anonymous teachers? The limit of both is "equal."

"*A public thoroughfare is sixteen ells*." The rabbis taught: A private way is four ells, a way from one city to the other is eight ells, a public way is sixteen ells, and the way to the cities of refuge (Num. xxxv. ii) thirty-two. [Said R. Huna: Whence is this deduced? From the Scripture (Deut. xix. 3): "*The* way to *them*." It should be "a way," and the word "the" makes it double.] The way of the government has no limit, as the king has the right to erect partitions, houses, and no one has a right to prevent him, and the way for burying a corpse has no limit, because of the honor of the dead. [1]

MISHNA *VIII.*: If one sells a place for digging a grave, or an undertaker makes a grave for one, the inside of the cave must be four by six, and opening into it eight niches for coffins, three on each side and two at the top and bottom. The length of the niches is four ells, the height seven spans, and the width six. R. Simeon, however, said: The inside of the cave must be six by eight, the niches must be thirteen, four on each side, three on the upper side, and one on the right side of the door and one on the left. He also makes a fore yard at the mouth of the cave six ells square, as much as the coffin with its carrier needs. He also has to open to this fore yard two,

caves from two sides. R. Simeon, however, said four to all its four sides. R. Simeon b. Gamaliel, however, maintains that all must be done according to the rock (*i.e.*, if the earth is soft more niches could be made, but if rocky the number must be limited accordingly).

GEMARA: The two niches which R. Simeon requires, one on the right side of the door, etc., how shall he dig them? If their length should be dug from the wall of the cave under the fore yard, then they will be trodden down; furthermore, there is a Mishna to the effect that one who stands in the yard of a grave is clean, but if the niches should be dug under the yard the one who stands above would not be clean. Said R. Jose b. R. Hanina: He made the niches like an upright bolt; *i.e.*, placed the bodies in an upright position. But did not R. Johanan say that asses are buried in like manner? According to him, the niches should be made in the corners. But then each of them would come in contact with the other. Said R. Ashi: If he makes those in the corners deeper (according to R. Simeon, who said that four niches must be on each side), if they were all equally dug they would come in contact. It must be said that he digs some of them deeper, and the same may be said here. [1] R. Huna b. R. Jehoshuah, however, maintains that he makes the niches crooked. (Says the Gemara:) This statement does not hold, as according to it he would have to make eight inches in the space of eleven and one-fifth ells, which is impossible. [2]

Footnotes

217:1 The translation of "hazakah" is chiefly "occupancy"; however, this term is applicable to everything which is the habit of persons, animals, etc.

223:1 The text treats concerning the benedictions on wine, beer, etc., for which the proper place is the Tract Benediction, and to which it will be transferred

229:1 The continuation of the text about graves and condolence, etc., we have translated to Tract Great Mourning, page 60.

230:1 The text is so complicated here that the commentators have to make many illustrations, and after all the matter is hardly understood. However, according to our method we could not omit this, as it is essential from the historical point of view to know how these graves are made. We have done our best to make it intelligible.

230:2 In the text are also mathematical calculations by the rule that one ell square contains one ell and two-fifths when crooked, which is not exactly correct. We have already mentioned this in a foot-note in Erubin, and therefore we have omitted the whole discussion here.

Next: Chapter VII