



## Public Pathways

The *Mishnah* (6:7) discusses the cases where the public have been using a pathway through a person's property. The owner then decided to give them a different pathway, on the side, instead. The *Mishnah* explains that the pathway that he designated is indeed given over to the public, yet he would not be able to seize that original path. In other words, but the paths are now public thoroughfares. We shall try to understand this *Mishnah*.

The *Gemara* (99b) probes why this attempt backfired. *Rashi* explains that the public does not lose out since they still have a pathway through this person's field. Why then does it not work? The *Gemara* asks if it because he took the matter into his own hands to resolve without going to *Beit Din*. *Rashi* explains that it cannot be the case, since one is able to if he would be suffering a loss.

The *Gemara* presents three answers. *Rav Zvid* answers that this is because there is a concern that the passage he would provide them with will be a less direct passage through field. Given that it is handed to the public and there is not single person responsible, it is unlikely that anyone will object to this initiative which is to their detriment. Put simply it is a *gezeira*. *Rav Masharshaya* explains in a similar vein, but that the *Mishnah* is only referring to a case where he gave them a worse pathway. The *Ritva* explains that that is why the *Mishnah* chose the term *tzad* (side) for location of the second path. *Rav Ashi* however explains that if the new allocation was a direct pathway through the field, moving the passage in any direction will always be less convenient for someone.

The *Rashbam* explains that there is no practical difference between the opinions of *Rav Zvid* and *Rav Ashi*. The law in our *Mishnah* applies in all cases. The merely differ in their explanation of the rationale behind the *Mishnah*. Note that this differs with the *Meiri's* understanding, who explains that according to *Rav Ashi*, if the path was moved in a way that was beneficial to everyone then it would indeed work. This understanding of *Rav Ashi* would bring him more in line with *Rav Marsharshaya* than *Rav Zvid*.

The *Gemara* however is still not satisfied and asks that the he was unsuccessful in seizing the first path, then why can he not take back the path he attempted to given them in its stead. The *Rashbam* explains that the owner should be able to state that what he gave over was in error.

The *Gemara* answers, that one is not allowed to ruin a public pathway, provided it was not stolen from the owner of the land through which it passes. This explains why he cannot touch the original path. The *Rashbam* explains that this was also certainly be the case if he willing handed over that path. In our case, that would be the second path, assuming it had already been used. Once they started using it, it is "*assur*" to damage.

The *Meiri* notes that the *Gemara* explains that it is *assur* (forbidden) to ruin a public pathway. He explains that handing over something to the public is like handing over something to *shamayim* (or *hekdesh*). He stresses that the connection between the two is because when one is engaged in the needs of the public it is considered like the needs of *shamayim*.

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**Revision Questions**

בבא בתרא ו' ג' - ח' ד'

- In what case is the purchase of wine that subsequently became vinegar considered a *mekach ta'ut*? (ג': ו')
- What is debated regarding the purchase of land to build a "house"? (ד': ו')
- What restrictions are placed on one that owns a well in the property of another person? (ה': ו')
- What other case is similar to the one in the previous question? (ו': ו')
- When do these restriction not apply in this case? (ז': ו')
- What is the law regarding a case where a public pathway is running through person's field, and he allocates a another pathway on the side of his field as a replacement? (ח': ו')
- How wide is: (ט': ו')
  - A private path?
  - A public path?
  - A "king's way"? What else is the same width?
- How large is a grave site? (Include both opinions) (י': ו')
- What is excluded when a person sells another a *beit kur* of "soil"? And when is it included? (יא': ו')
- How is the *beit kur* measured? (יב': ו')
- What is the law if the actual land is smaller or larger? (יג': ו')
- How is the law different if the seller said:
  - "Approximately a *beit kur*"? (יד': ו')
  - "A *beit kur* between these markers"? (טו': ו')
- According to *Ben Nanas* what is the law if the seller used both the terms "measured" and "approximately" when selling the *beit kur*? (טז': ו')
- Regarding a case where a person sells half a field: (יז': ו')
  - On what basis is the division determined?
  - On whose property is the dividing fence built?
- How wide is a *charitz*? A *ben charitz*? (יח': ו')
- Which three cases are: (יט': ח')
  - *Nochlin u'manchilin*?
  - *Nochlin ve'lo manchilin*?
  - *Lo nochlin u'manchlin*?
- List the order of people that inherit? (כ': ב')
- How many portions did the daughters of *Tzlofchad* receive? (כ': ג')
- From what inheritance does the *bechor* not take a double portion? (כ': ד')
- Regarding the previous question, what other special law applies to that inheritance? (כ': ח')

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8 December ז' כסלו	9 December ח' כסלו	10 December ט' כסלו	11 December י' כסלו	12 December יא' כסלו	13 December י"ב כסלו	14 December י"ג כסלו
Bava Batra 8:5-6	Bava Batra 8:7-8	Bava Batra 9:1-2	Bava Batra 9:3-4	Bava Batra 9:5-6	Bava Batra 9:7-8	Bava Batra 9:9-10

