



ERETZ HEMDAH

ASK THE RABBI SERVICE

RAV DANIEL MANN



לעילוי נשמת
יואל אפרים בן אברהם עוזיאל זלצמן ז"ל

Reusing a Grave

Question: I, a relatively new rabbi, was looking through the records of my community's cemetery and learned that some of the places that I thought were "available" for use have actually been used for corpses that were later removed, to be buried in *Eretz Yisrael* or a cemetery the family requested. May we use these plots, and if so, are there any conditions that must be met?

Answer: The *gemara* (Sanhedrin 47b) discusses the permissibility of using a grave and/or the material it was made of, for other purposes. In that context, the *gemara* distinguishes between a "grave that was built," which becomes forbidden, and a "grave of earth itself," which remains permitted, because one cannot make the ground forbidden. The Tur cites a *machloket* on the parameters of a built grave. R. Yeshaya reasons that since, generally, material that was detached from the ground and then becomes attached keeps the status of a detached object, the earth that was dug up and then placed back to form the grave is forbidden. The Rosh points out that the *gemara* implies that a standard grave, which is dug up from the ground, does not become forbidden, and he therefore reasons that the problem is

only for mausoleum-type burial. One could understand that according to R. Yeshaya, it would be forbidden to reuse the gravesite, since much of it is soil was removed and returned, whereas the Rosh would permit it. It is not fully clear which opinion is primary as practical *halacha* (see Shulchan Aruch and Rama, Yoreh Deah 364:1; *ibid.* 363:3, 5; Da'at Kohen 207).

However, there are other grounds for leniency. The Rashba (Shut I:537) says that the prohibition on grave-related matters is on the benefit of those who are living, who are obligated in *mitzvot*, and that live people do not halachically benefit from the burial of the deceased. While the burial itself is not benefit for live people, as the fulfillment of *mitzvot* (i.e., to bury a deceased) is not halachically considered forbidden benefit, *Acharonim* wrestle with the fact that money is usually involved in the process. Some see it as a problem for the cemetery owners to sell the used grave, and thereby receive money for it (see Gesher Hachayim II, 4:3). Rav Kook (Da'at Kohen 202) recommends having the sellers stipulate that they are selling the part of the land that was not dug up and returned, but it is not unanimous that this works (see Gesher Hachayim *ibid.*). Shevet Sofer (YD 104) says that in a situation in which the inheritors would have had to pay for a burial spot, if they would receive the already used grave for free, this saving of money would be forbidden benefit.

The above complications apply only to things that were brought from elsewhere (like bricks and boards), and perhaps even

Eretz Hemdah, the Institute for Advanced Jewish Studies, Jerusalem, is headed by Rav Yosef Carmel and Rav Moshe Ehrenreich, founded by Rav Shaul Yisraeli, zt"l, to prepare rabbanim and dayanim to serve the National Religious community in the Israel and abroad. Ask the Rabbi is a joint venture of the OU, Eretz Hemdah, and OU Israel's Torah Tidbits.



the earth that was taken off and returned (see Rama ibid.). Therefore, it is best not to reuse these materials when using the plot (i.e., that which is beneath and to the sides of the coffin) (Bemareh Habazak III:71).

The matter is arguably more lenient when those who were exhumed were buried there with the intention that this would occur, as then the burial might not cause permanent prohibitions after the deceased is removed (see Pitchei Teshuva, YD 363:6). However, the *gemara* (Sanhedrin 48a) implies that if preparations were made for the use of the deceased [after his death – Bemareh Habazak ibid.] then even if the burial itself was done with the intention for him to remain temporarily, the prohibition continues after the exhumation (see Shulchan Aruch, YD 364:1). Since it appears that you do know about the history of the burials, we will not get into further details on the matter.

There is also a monetary or quasi-monetary matter of making sure that the first “owner” of the grave has no outstanding issues with the cemetery. Geshet Hachayim (ibid.) demonstrates why the inheritors of the deceased have halachic authority to agree to end any claims to the ground that could cause a problem. ■

SINCE 1974

Zimuki

JERUSALEM REAL ESTATE

****SALE!**

NEW LISTING – OLD KATAMON, GARDEN DUPLEX.

Small st. private entrance beautiful family property.

A 180 sqm 4-bedroom duplex with a 120 sqm private garden and a 40 sqm rental unit.

Price: 9,000,000 NIS



****SALE!**

OLD KATAMON – HAGDUD HAIVRI ST. GARDEN APT.

One-of-a-kind architectural design! Luxury garden apartment – 150 sqm + 50 sqm private garden

- 4 bedrooms + study
- 3 full bathrooms
- Private entrance
- Private parking

Price: 12,500,000 NIS



Ruth Abrahami
054-8070677

Looking for Clarity? Looking for Happiness?

Watch Talking to God

the spiritual comedic film about what to do when you don't know what to do.





or scan here to watch:



To watch go to:
www.talkingtogodmovie.com

"Funny, poignant, heartwarming and with a message."
— Jerusalem Post

Having a dispute?



For a Din Torah in English or Hebrew contact:

Eretz Hemdah–Gazit Rabbinical Court

077-215-8-215 • Fax: (02) 537-9626
beitdin@eretzhemdah.org