

# Parsha Encounters

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Parshas Shelach - Rabbi Avrohom Shultz

## Not for the Faint of Heart

In this Parsha we read about the sin of the spies and the tragic fallout that resulted in the *B'chiya L'Doros*, the weeping for all generations. After receiving the frightening report of the *Meraglim*, it seems from the pesukim that the people lacked confidence in their own ability to defeat the mightier nations. They panicked and said, "Why did Hashem take us out to destroy us? We would have been better off had we died in the Midbar." Interestingly, later in the Parsha the Torah attributes the sin of the *Meraglim* to their spurning the land offered by Hashem, and not to their lack of courage (see 14:31). A pasuk in Tehillim 106 also mentions the failing of Bnei Yisroel in this regard. "*Vayim'asu B'Eretz Chemda* - and they despised the desirable land." Yet, this characterization of the sin is not evident from the account of the *Meraglim* given in the Torah. Another important point that needs clarification is why didn't Moshe attempt to pray to Hashem to rescind the decree and allow klal yisrael to enter Eretz Yisroel?

Reb Yerucham from Mir mentions the Gemora in B'rachos (6a) – "*Shalosh Matanos Tovos Nasan Hakadosh Baruch Hu L'Yisrael V'Chulan Lo Nasnu Ela Al Y'Dei Yisurin*- Three great gifts were given by the Holy One Blessed Be He and were given only through hardship." The first is Torah, the second is Eretz Yisrael, and the third is Olam Haba. Each of these gifts is only obtained through adversity and struggle, and without mesiras nefesh, self sacrifice, these gifts cannot be realized. We know this from another Gemora that writes about Torah – "*Ein Divrei Torah Miskaymin Ela B'mi Shemaimis Atzmo Aleha*- The Torah will only endure in the person who gives his life for it."

The Gemora in Sanhedrin writes that someone who has the opportunity to be involved in learning Torah but chooses to pass it up has violated the pasuk in this parsha, "*Ki D'var Hashem Bizah*- for he scorned the word of Hashem." The Chazon Ish, in his letters, explains this puzzling statement. It would seem that failing to learn is simply being passive by neglecting to fulfill an obligation. How does this involve heresy? He explains that "any increase in Torah elevates the recipient from the level of beastly man to the level of intellectual man, from the level of *chomer* to humankind, and from humankind to angel. Someone who has acquiesced to the thought that he can live the life of a simpleton and enjoy the leisurely life of fantasy has brought heretical thinking into play in his mind."

If someone is capable of learning Torah but chooses not to, although the actual *aveira* may involve only a slight inaction, its magnitude reaches to the core of the *neshama*. How base is one who is content to remain mired in a cheap life! This person has debased the *D'var Hashem* by trading an exalted life of *Kirvas Hashem* for an empty existence. Therefore, foregoing

Torah study involves more than just losing out on a mitzvah, it is exchanging a spiritual world for a world void of spirituality.

We find a similar concept when Eisav sells his *b'chora* to Yaakov. The Torah writes, "and Eisav said, 'look I am going to die, so what use to me is the *b'chora*?' " After the sale, the pasuk states: "Yaakov gave Eisav the bread and lentil stew, and he ate and drank, got up and left, thus Eisav spurned the birth-right." Although he exclaimed, "I am going to die if I do not satisfy myself immediately from my exhaustion," implying that he sold the *bechora* only because he was starving, the Torah tells us that the underlying feeling Eisav had was contempt for the Avoda of Hashem. Someone who is not willing to sacrifice for his ideals will ultimately trade the world of *nitzchiyus* for this temporal world.

With this introduction we can better understand the sin of the *Meraglim*. Reb Yerucham explains that capturing and settling Eretz Yisrael involves a *mitzvas aseh*, a positive commandment. Eretz Yisrael is a fundamental part of Torah and the foundation of the entire Torah. The Gemorah says that anyone who lives outside of Eretz Yisrael is like living without Hashem, and without Hashem he has nothing. The purpose of Eretz Yisrael is to enable us to reach absolute perfection and to reject it, Heaven forbid, is a terrible sin. It's the equivalent of saying, "I am a Jew without Torah and without Olam Haba." Certainly such a person is missing everything. When B'nei Yisrael said, "Why did Hashem bring us to this land to fall by the sword, etc." the Torah reveals to us that in actuality their underlying reservation was due to their rejection of the desirable land. One who truly treasures the land will not be intimidated by the difficulties involved in settling it. This also explains why Moshe did not daven for klal yisrael to be allowed to enter Eretz Yisrael. Without mesiras nefesh and the courage to persevere against all odds it would be impossible for them to survive in the land and there was no purpose in their being allowed to enter.

The pasuk "*V'hischazaktem U'lekachtem Mipri Ha'aretz* – And you should strengthen yourselves and take from the fruit of the land" is rendered by *Targum Yonasson* to mean "make a *kinyan chazaka* – an act of acquisition - on the land." Generally *kinyan chazaka* entails doing some act to the land that demonstrates ownership. Here, however, the Torah reveals that the *chazaka* must be done within **yourself**. Being strong and resolute is the necessary *kinyan* to acquire Eretz Yisrael. May we merit to achieve this.

Rabbi Shultz is a Rebbi at Arie Crown and learns daily at the Kollel.



# Halacha Encounters

## Trespassing in Halacha

### Using Another Person's Property as a Shortcut

Rabbi Moshe Rosenstein

**V**ery often in a city like Chicago, we are able to save ourselves time and extra walking by using alleyways to get to where we need to. At times, it can be very helpful to make one's walk even shorter by "cutting through" someone else's property along the side of their house to access the alleyway from the street. We will examine whether or not this is permissible, and if so what *halachic* issues may arise from doing so.

### The Halachic Background

One of the most basic and fundamental property rights a land owner/renter has is that of privacy. The *halacha* recognizes that a person has a right to feel secure that no one else can see<sup>1</sup> what he is doing while he is in his own property. This is referred to in *halacha* as "*hezek re'iah*" (lit. damage of seeing)<sup>2</sup>. It is therefore prohibited to look into another person's home or property without their permission<sup>3</sup>. In addition, one may not do any construction on their home or open new windows overlooking another person's property if this will afford them a new or better view of their neighbor's property<sup>4</sup>. Therefore, there is no question that if by walking through another person's property one will have access to a vantage point that will now enable him to see what was not visible from the street, the property owner has a right to forbid such access to his property<sup>5</sup>. In addition, one can assume that the owner of the property would in fact object to this activity and one is therefore not allowed to walk through without explicit permission<sup>6</sup>.

### If No *Hezek Re'iah* Will Occur

There are two basic scenarios in which there would be no issue of *hezek re'iah* while cutting through another's property.

- If the property or windows in question are already completely visible from a public place (i.e. an alleyway), then there is no issue<sup>7</sup>. The entire property in question is considered to be exposed and visible irrespective of the person walking through.
- If the property is not used for any private activities (an open field or lot<sup>8</sup>). Obviously, no "damage" will occur, as there is nothing private to see there.

There is, however, another issue that must be addressed with regards to trespassing.

<sup>1</sup> With respect to privacy from others hearing what is being done or said in one's own property, the *poskim* say that there is no such inherent right. Therefore one may not demand of a neighbor to either construct or remove any part of his building that he feels may enable his neighbor to better hear the goings on in his home. See *Cv'hdushei R' Akiva Eiger* on *Choshen Mishpat* 154, 3 that "*hezek sh'miah lav sh'mei hezek.*" **Eavesdropping**, however, is forbidden in *halacha*. See *Tshuvos ViHanhagos* (Rav Moshe Shternbuch *shlit"i*) vol. 3, 388 and *Mishpetei HaTorah* vol. 1, 92 that this may even fall under the *Cherem diRabbeinu Gershom* regarding reading someone else's mail.

<sup>2</sup> *Bava Basra* and *Ch. M.* 154, 3.

<sup>3</sup> *Ibid.* See *SM"A* s.k. 14 that one must be careful not even to stand outside someone else's house and *appear* to be looking into their windows.

<sup>4</sup> *Ch. M.* 153, 1-4 and 154 for many cases and details of this *halacha*.

<sup>5</sup> *Bach* 153 and *SM"A* s.k. 30.

<sup>6</sup> *Cf.* 154, 3.

<sup>7</sup> 154, 3 and 153, 5.

<sup>8</sup> *Bach* *ibid.*

### Denying Access Without a Justifiable Reason

There is a concept in *halacha* referred to as "*kofin al midas S'dom.*" We can force someone to *not* act in the way of the people of *S'dom* who, for no good reason at all, would prevent others from using their property<sup>9</sup>. What this means on a practical level is the following. Even though technically speaking, one would have a legal right to prevent others from using his property simply because it belongs to him and he does not have to let others use it, we in effect force him not to be stingy in this way.

One thing is clear, however. In the *halachos* of property rights, there is a concept of a "*chazokah.*" If a person does something that the *halacha* recognizes as disturbing to his neighbor, and that neighbor does not object or ask him to stop, in many instances the right to protest in the future is lost. Therefore, if the activity of the "intruder" could gain him a *chazokah* on the property, for this reason alone, the owner has a right to deny him access<sup>10</sup>. This is not considered *midas S'dom*, as he is protecting his rights to his property from a possible *chazokah*.

There is a dispute amongst the *poskim* as to whether a person can actually obtain a *chazokah* on using someone else's property as a shortcut<sup>11</sup>. Therefore, it would seem that the owner's right to deny the trespasser access to his shortcut would be dependent on this *machlokes*.

### What is the Practical Halacha?

There is no question that it is best to ask the owner's permission and have explicit permission granted to use his property as a shortcut. If this is not an option, two prerequisites **must** be met.

There must be no question of *hezek re'iah* and

There must be no actual damage done to the property by walking through. This includes walking on a lawn or plants that are growing.

Even if there is no "damage" being done, still one should not use this shortcut on a constant, ongoing basis without permission. As far as the property owner is concerned, assuming there is no loss or "damage" being sustained by the use of his property, he may be obligated to allow the use of his property as a shortcut on a non-regular or ongoing basis.<sup>12</sup>

***As always, there are very often details and mitigating factors that can affect the final halachic ruling in situations such as these. Should such a situation arise, a shailoh should be asked to a competent Rav or Posek.***

<sup>9</sup> *Bava Basra* 12b. See *Rabbeinu Gershom* who explains that this refers to the *midah* of *S'dom* mentioned in *Pirkei Avos* 5, 13 of "*Sheli sheli, vishel'cha shel'cha.*" See *Rashi* and *Rabbeinu Yanah* in their *peirush* on *Avos* who refer us to *Yechezkiel* 16, 49.

<sup>10</sup> 153, 1-3 and 13.

<sup>11</sup> The main *machlokes haposkim* is between the *Kitzos HaChoshen* (140, s.k. 3, 7 and 8) who holds that one can have a *chazokah* for *d'risas regel* and the *Nesivos* (140 s.k. 19 and 153 s.k. 12) who holds that in the absence of a recognizable permanent action, there is no such thing as a *chazokah* on an action that is repeated many times over.

<sup>12</sup> *Pischei Choshen* vol. 5 15, note 53.