

# The Rights of Residents Living in Antiquities Sites

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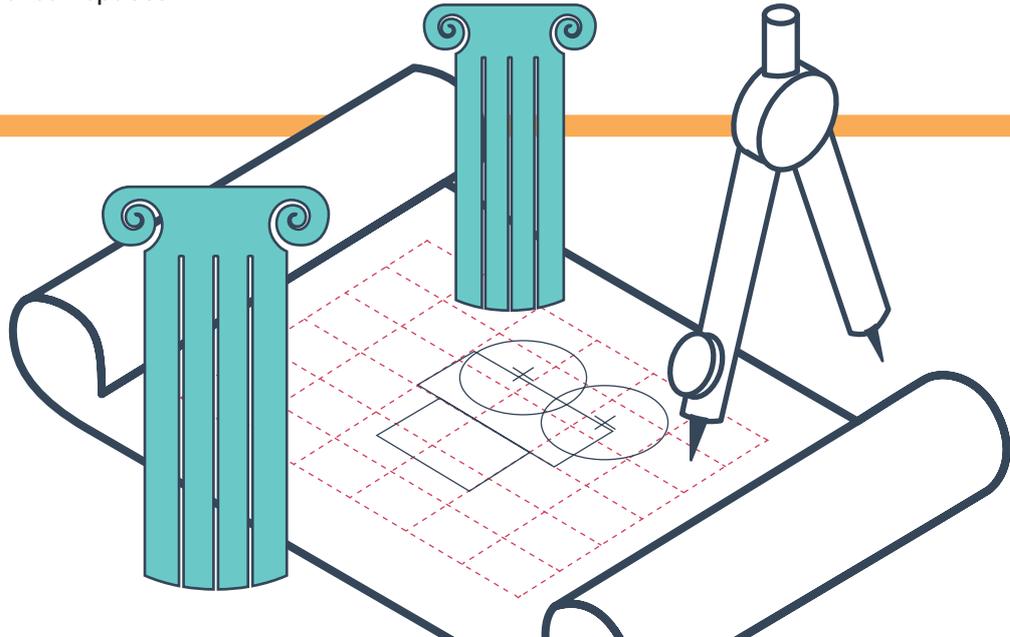
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## Introduction

This "Know your Rights" fact-sheet is intended for planners, developers and landowners who wish to initiate development and construction work in an area that contains antiquities, requiring them therefore to comply with Israeli antiquities laws. The purpose of the fact sheet is to provide information about the rights of individuals and the means at their disposal for dealing with the Israel Antiquities Authority, which is entrusted with protecting the antiquities. The publication is divided into three parts: (1) basic archaeological concepts; (2) questions and answers about conflicts of interest between landowners who wish to develop their land and the Antiquities Authority in East Jerusalem and the Old City; (3) and two case studies from East Jerusalem and the Old City, in which a compromise was reached between the conflicting needs of antiquities preservation and the development of urban spaces.



## Basic Concepts



**1. The Antiquities Law (1978)** – a law that regulates the conduct of archaeological excavations in the State of Israel. In 1978, this law replaced the Mandatory Antiquities Ordinance. It applies to all areas in the State of Israel, including East Jerusalem, which was annexed to the State of Israel in 1967.



**2. The Israel Antiquities Authority (1989)** – The Israel Antiquities Authority (IAA) was established by virtue of the Antiquities Authority Law, enacted in 1989. The IAA replaced the Antiquities Department, which operated as part of the Ministry of Education. The Antiquities Department lacked the tools for dealing with the destruction of antiquities. To this end, the Antiquities Law authorized the IAA to manage, supervise and carry out archaeological excavations in the State of Israel, as well as to issue excavation licenses.



**3. Ancient find** – any mobile or stationary object, structure or part of a structure, or any built environment, constructed before 1700 CE. The responsible minister may declare buildings and items dating after this year as ancient finds.



**4. Archaeological survey** – the most common method of locating antiquities. The archaeological survey identifies archaeological remains located within a given area. For the most part, the finds are potsherds, the tops of walls that protrude above the surface, or other architectural items. In order to conduct an archaeological survey, a license must be obtained from the Israel Antiquities Authority. The survey license does not permit any excavation within the given area.



**5. Preliminary archaeological assessments** – A number of assessments must be carried out as preparation for construction in an area declared an archaeological site. These assessments must be financed by the developer:

**A. Trial trenches** – Digging trial trenches in an area designated for development using a backhoe loader. In the event that no archaeological finds are found during the trial trenches, it is assumed that there is no need for archaeological excavations at the site.

**B. Exposing** – When the development work is carried out in an area where the bedrock is close to the surface, or in the case of rock-cutting into the bedrock, the bedrock should first be exposed in order to discover if there are cave openings.

**C. Overseeing supervised works** – the Antiquities Authority often requires that its inspector oversee development works. If the development exposes or damages archaeological remains, the inspector has the authority to halt them.



**6. Archaeological Excavation** – Intended to expose and document archaeological sites. There are two types of archaeological excavations:

**A. Research Excavation** – a pre-emptive excavation aimed at deepening archaeological knowledge of a particular site or area. For the most part, research excavations are carried out by universities and continue for several years.

**B. Salvage excavation** – an excavation intended to document archaeological remains in danger of destruction due to development and construction plans in the area. The duration of salvage excavations is typically limited, and when they end, development work proceeds at the expense of the archaeological site, which is destroyed. The majority of the archaeological excavations in Israel are salvage excavations.

## Questions and answers about the excavation procedure



### 1. Do archaeological remains discovered in privately-owned land belong to the landowners?

Land ownership does not change if antiquities are discovered, but any archaeological remains are state property (section 2 of the Antiquities Law). After unearthing, the area where the antiquities were discovered becomes state property for the length of time it takes to process them. If the state wishes to permanently retain possession of the area in which the archaeological remains are located, it must initiate expropriation proceedings. At the time of writing, there are no cases where an area was expropriated from a private individual for the purpose of handling, holding, or displaying long-term archaeological remains.



### 2. How is an antiquities site declared?

The Director General of the Israel Antiquities Authority may declare an area with antiquities as an antiquity site (section 28a). The declaration must be published in Reshumot, the official gazette of the State of Israel. In addition, it is mandatory to notify the landowner of this change in status, if his identity and address are known, as well as the District Planning and Building Committee in whose jurisdiction the site is located.



### 3. Is the landowner entitled to build on his/her land after it has been declared an antiquities site?

The owner of the land is entitled to build but must first obtain the approval of the Antiquities Authority. No excavation, construction or alteration of the land in any place declared as an antiquities site is permitted without the approval of the Director General of the Israel Antiquities Authority or a person acting on its behalf (section 29). In order to obtain this approval, a preliminary inspection by the Israel Antiquities Authority is required.



#### 4. What does the preliminary archaeological assessment involve?

A preliminary assessment includes several steps. Usually, the first stage involves the digging of trial trenches that indicates whether the area designated for development contains antiquities. If an antiquities site is found, a salvage excavation is conducted. Usually, following the assessment or the salvage excavation, a building permit can be obtained in accordance with the conditions of the Antiquities Authority. For each of these actions or tests, the developer is required to pay a fee.

After execution of the necessary steps, the Antiquities Authority declares that the process has been completed and waives the state's ownership rights over the antiquities. In cases where antiquities of exceptional importance are discovered, the Israel Antiquities Authority is authorized to prevent further construction at the site in order to preserve the antiquities unearthed.



#### 5. Can a landowner manage an archaeological excavation in an area that s/he owns?

Only the Antiquities Authority or academic bodies are authorized to conduct archaeological excavations, and only the Director General of the IAA can grant excavation licenses, but the developer can bring workers independently to reduce the cost of the excavation.



#### 6. What can a landowner do to obtain information about the anticipated extent of the excavation in the area to be developed?

Each excavation license and excavation permit includes a specification that determines the boundaries of the excavation and an expiry date of the excavation license. An excavation license or permit sometimes also limits the depth of the excavation. Prior to the excavation, the owner of the area is entitled to receive a copy of the excavation license or permit. The director of the excavation must have a copy of this document and keep it in the excavation area.



## 7. What is the cost of the various archaeological tests?

According to the Antiquities Regulations (Fees for the Approval of Actions) (2001), a price list was set enumerating the payment for all types of tests that the Antiquities Authority may require, starting with an examination of plans, ascertaining whether an area designated for construction is located in a declared antiquities site, and ending with the cost of an archaeological excavation. Some of the fees have two price scales: the first tier includes state bodies. The second tier includes private bodies.

The price list is as follows:

Type of Test	State bodies	Private body
Examining plans that require approval	110 ILS	110 ILS
Archaeological supervision up to 4 hours per day	440 ILS	440 ILS
Archaeological supervision that exceeds 4 hours per day	870 ILS	870 ILS
Conducting trial trenches	870 ILS	870 ILS
Use of an IAA mechanical device for the purpose of trial trenches	1240 ILS	1240 ILS
Use of the applicant's mechanical device for digging a trial trench	Exempt	Exempt
Performing a trial excavation (per square meter)	640 ILS	320 ILS
A salvage excavation carried out by the IAA (per square meter)	990 ILS	500 ILS



## 8. How can IAA decisions be challenged?

The Antiquities Law stipulates that the Antiquities Authority must maintain an appeals committee in which all its decisions can be appealed. If the decision of the appeals committee is not compatible with the appellant's views, its decision may be appealed in the Court for Administrative Affairs (sections 35A-36).

## Trade in Antiquities



### 1. If items from a small find (jars, coins, inscriptions, jewelry, figurines, etc.) are found in a private area, can they be traded?

It is forbidden to trade in antiquities without receiving a license from the Minister of Culture or from an authorized party acting on his behalf (Chapter 4 of the Antiquities Law). Any person requesting an antiquities trade license must undertake to act only from the address specified in the license. In addition, s/he must undertake to buy antiques only from licensed merchants.

### 2. Does the law permit the sale and purchase of antiquities from abroad?

Antiquities can be sold abroad only if the merchant receives written approval from the Director General of the Antiquities Authority (section 22 of the Antiquities Law). In addition, it is not permitted to bring antiquities from the West Bank into Israel unless authorized by the Director General of the Israel Antiquities Authority. The authorization must be published in Reshumot, the official gazette of the State of Israel.



# Cases of land expropriation due to the discovery of archaeological finds



## 1. Why can the state confiscate land for the purpose of an archaeological excavation?

According to the Land Law (Acquisition for Public Purposes) and under section 188 of the Planning and Building Law, an archaeological site is recognized as a heritage site. In the eyes of the law, preservation of a heritage site is a public necessity, and therefore expropriation is permitted.



## 2. When has the State expropriated land for purposes of an archaeological excavation?

There are no cases in which private land has been expropriated for the purpose of an archaeological excavation. The expropriation process for such a purpose is complicated, and there are many ways of blocking it. Familiarity with the law is an important tool in defending against the expropriation of land.



## 3. How is the state obligated to announce its intention to expropriate land for the purpose of conducting an archaeological excavation?

Section 5 of the Land Ordinance (Acquisition for Public Purposes) states that when applying to expropriate land for an archaeological excavation, the authorities are required to publish notices in several ways:

- A. Publication in Reshumot, – the official gazette of the State of Israel.
- B. Placing the notice visibly on or near the land designated for expropriation.
- C. Submitting a copy of the notice to any person whose name has been registered as owner of the land or as deriving benefit from it.



#### 4. How can one object to the decision to confiscate land for the purpose of an archaeological excavation?

The Lands Ordinance (Acquisition for Public Purposes) lists a number of options available to a landowner who wishes to oppose the decision to expropriate her/his land for an archaeological excavation:

- A.** Section 5A states that the maximum period during which one is permitted to submit an appeal in court against expropriation for the purpose of an archaeological excavation is two months from the date of publication of the notice.
- B.** Section 8 states that if the landowner refuses to vacate, it is possible to request that the court rule on the matter. However, the state may confiscate the land for public infrastructure or for a security-related project provided that at the end of 60 days from initial publication of the expropriation notice, the landowner or occupier is given 30 days' notice of intention to expropriate the area. If the court finds flaws in the implementation of these provisions, it can issue an order to prevent the expropriation.
- C.** Article 9 states that if the landowner refuses the monetary compensation offered by the state, s/he has the right to apply to the assessor and the appeals committee to receive an additional assessment of the appropriate compensation within 90 days of receiving the notice of expropriation.



## Excavations in the Old City of Jerusalem



### 1. Why does the Old City of Jerusalem require a separate section? Does it also have separate rules governing antiquities?

The law relating to the preservation of antiquities in the Old City of Jerusalem is the Israeli Antiquities Law that applies to all areas within the Green Line. However, due to the fact that the entire area of the Old City is defined as an antiquities site, there are a number of unique limitations that require special focus.



### 2. Why does the Antiquities Law apply to buildings that were established after 1700?

The Antiquities Law states that once a structure is declared an antiquity, all of its parts – even if built as a later addition – will be recognized as antiquities (section 1). Therefore, since all of the Old City is defined as an antiquities site, even buildings erected after 1700 are protected by the Antiquities Law, even though this is the date stipulated in the law's definition of antiquities.



### 3. Why do so many building restrictions apply to landowners and property in the Old City?

The Old City is defined as an antiquities site according to the Antiquities Law, and is declared a World Heritage Site by UNESCO. Therefore, any additions that may harm the unique appearance of the Old City and the relationship between a given structure and other buildings, holy sites, and the walls of the Old City, are prohibited. There is also a prohibition against any change in the facades of the buildings.



#### **4. What does the law require of a person who wishes to dig a cellar in a building that s/he owns?**

If the owners intend to excavate a basement, they will be required to allow preliminary archeological inspections. In many cases, these tests can lead to archaeological salvage excavations. Many residents of the Old City choose to dig underground spaces below buildings they own without the supervision and approval of the Israel Antiquities Authority. This action is illegal and may exact heavy fines.



#### **5. What is the procedure for making an internal change in a structure that does not require building additions?**

Internal renovation including breaking walls, plastering the walls of the house, adding bars, etc., requires consultation with the IAA's Conservation Commissioner, whose role is to guide the building owners regarding permitted changes and acceptable materials. Renovation without IAA approval may result in fines. In addition to the required consultation with the Antiquities Authority, consultation with an independent professional, who can help the owner of the property deal with the antiquities laws and the directives of the Israel Antiquities Authority, is recommended.

## Case Studies

### Beit Hanina and Khirbet 'Adasa

The first case study deals with a plan to establish a new residential neighborhood in the northwestern part of Beit Hanina. This neighborhood will extend over an area of 20 dunams to the south and east, through Bir Nabala to the north, and near the separation barrier and the Khirbet 'Adasa antiquities site to the west. Khirbet 'Adasa is a large archaeological tel, located on a spur about 8 km northwest of the Old City of Jerusalem. At the foot of the southern slope of the site is the "Beit Horon" road from the Roman period, connecting Jaffa to Jerusalem. Since 2005, a number of salvage excavations have been conducted along the perimeter of Khirbet 'Adasa, revealing industrial and agricultural installations such as quarries, agricultural terraces, cisterns, and other installations dating from the Hellenistic to the Ayyubid and Crusader periods.

For the purpose of carrying out the project, the Beit Hanina Community Administration commissioned the architectural firm Ayala Ronel Architects" to plan the residential neighborhood so that the archaeological trail of Khirbet 'Adasa would become integrated as an archaeological park for the residents of the neighborhood. Accordingly, the new neighborhood was designed with the archaeological park serving as an open public area, with observation points and paths connecting the park to the neighborhood.

Due to the fact that this neighborhood is slated for construction in an area declared as an antiquities site, the IAA demanded that archaeological assessments be carried out. They found no antiquities worthy of preservation in the area where construction was planned. As of this writing, the Antiquities Authority has approved the plan and is now awaiting the approval of the planning and building committees.



## The Lower Aqueduct

This aqueduct carries water to Jerusalem from three springs near Solomon's Pools in the Bethlehem area. Many date the construction of the Lower Aqueduct to the Hasmonean period, and identify it as part of the Jerusalem water infrastructure. The aqueduct was in use from the Early Roman period until the beginning of the 20th century. During the Ottoman period, ceramic pipes coated with plaster were installed in different places along the aqueduct.

The length of the aqueduct is 21 km and its route crosses Bethlehem and passes through several neighborhoods in East Jerusalem, including Sur Baher, Um Tuba and Abu Tor. From there, it crosses the Valley of Ben Hinnom and enters the Old City through Mount Zion. Various construction techniques were used along the route, as necessitated by the physical conditions along the way. Beneath Bethlehem and Jabel Mukaber (Armon Hanatziv extension), tunnels were excavated, probably in order to shorten its length. In areas where the aqueduct passed through open land, it was hewn into the bedrock or built at ground level.

Development projects that are carried out along the aqueduct have no choice but deal with the duty to preserve it. For example, during the construction of Highway 398, which runs between the Har Homa settlement and Umm Tuba, it was discovered that the route of the road crossed the route of the lower aqueduct. Therefore, it was decided to change the route of the road, so that it would pass over the aqueduct. Similarly, in the neighborhoods of Sur Baher and Abu Tor in East Jerusalem, construction and restoration plans were approved for residential buildings and development of infrastructures that did not obstruct the route of the aqueduct. In Sur Baher it was decided to document and reconstruct remains of the lower aqueduct that were exposed in the process of laying a telephone line, whose location was changed in order to avoid damaging the aqueduct<sup>1</sup>. Private building plans for residents were approved by the Israel Antiquities Authority after a compromise was reached between the parties and specific changes

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1) Adawi, Z. 2005. "Jerusalem, the Lower Aqueduct." *Hadashot Arkheologiyot: Excavations and Surveys in Israel* 117

were instituted. In some cases, permission was given to cover the aqueduct and build the new structure above it, while in others, the construction plan for the new building was changed in a manner that left the section of the aqueduct exposed.<sup>2</sup>

## The Old City of Jerusalem

Since the entire Old City is declared an antiquities site, any change in the structure – from the expansion of a window or the replacement of a floor, to the excavation of a cellar – requires a permit from the Israel Antiquities Authority. Thus, the Antiquities Authority has considerable power in all matters of planning, construction and development in the Old City. In most cases, the cooperation between the IAA and private landowners has enabled the documentation and preservation of important remains that enrich our knowledge about the many cultures and peoples that have shaped Jerusalem throughout the generations. For example, during salvage excavations conducted in stores in the Muristan in the Christian Quarter<sup>3</sup> and on the Via Dolorosa near the Lions' Gate in the Muslim Quarter,<sup>4</sup> archaeological remains ranging from the Late Roman period to the modern period were exposed. In these cases, the excavations did not prevent the renovation of the shops.

Cooperation with the Israel Antiquities Authority can also prevent the excavation of remains located deeper than the construction permit specifies. For example, in salvage excavations carried out prior to the renovation of a building on al-Dabbagha Street in the Christian Quarter for the purpose of its conversion to a museum, the Israel Antiquities Authority agreed not to dig

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2) According to conversations with residents of East Jerusalem neighborhoods who asked to remain anonymous.

3) 'Adawi, Z. 2009. "Jerusalem, The Muristan in the Old City". *Hadashot Arkheologiyot: Excavations and Surveys in Israel* 121.

4) Sion, O. 2011. "Jerusalem, Via Dolorosa". *Hadashot Arkheologiyot: Excavations and Surveys in Israel* 123.

deeper than planned.<sup>5</sup> On the other hand, when the IAA discovered unauthorized construction work in a building in the Jewish Quarter adjacent to the Burnt House, the owner of the property was required to conduct a full salvage excavation of the basement area.<sup>6</sup>

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5) Lavi, R. 2014. "Jerusalem, Old City, Street of the Tannery". *Hadashot Arkheologiyot: Excavations and Surveys in Israel* 126.

6) Billig, Y. 2011. "Jerusalem, the Jewish Quarter". *Hadashot Arkheologiyot: Excavations and Surveys in Israel* 123.

