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DAF Notes
Insights into the Daily Daf
Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Bava Basra Daf 6

Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o"h

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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

Chazakah vs. Migu

They (*people of the Yeshiva*) inquired: If a lender (*or anyone owed money*) claimed money from a borrower, and the borrower claims he paid the money within the time allotted, what is the law? Do we say that a *migu* (*believe me that I paid within the time, as I could have said I paid on time and been believed*) can be used even when it conflicts with a *chazakah* (*status, in this case that a person does not pay within the allotted time*), or not?

The *Gemora* attempts to answer the question from our *Mishna* (*5a*). The *Mishna* states: We presume that he gave it, until proof is brought that he did not. What is the case of the *Mishna*? If it is that the person claimed the money after the money was due, and the neighbor claimed he paid it on time, it is obvious he is believed! The case therefore must be where the neighbor claims he paid within the amount of time allotted. This proves that even when there is a *chazakah*, we say a *migu*.

The *Gemora* answers: In this case, when each row of bricks has to be built, it is considered its time (*and therefore he actually means that he paid after it was due, but before the wall was finished*).

The *Gemora* attempts to answer the question from our *Mishna* (*5a*). The *Mishna* states: If one neighbor made the wall higher than four cubits, he cannot demand that the other neighbor join in the added expense. If the other neighbor put another wall next to it…we presume that he did not contribute until proof is brought that he did. What is the case of the *Mishna*? If it is that the neighbor who built higher than four cubits claimed money after the building of the wall, and the neighbor said he paid when the money was due, why don't we believe him? It must be that he said he paid before the money was due, and we do not believe his *migu* (*that he could have claimed he paid on time*) because of the *chazakah* that a person does not pay before the allotted time is up.

The *Gemora* answers: This case is different, as he thinks that the Rabbis might not make him pay at all. [*People are not aware that their putting up a wall that they will use with the neighbor's wall makes them liable to share in their neighbor's added expense of putting up his wall.*]

Rav Acha the son of Rava said to Rav Ashi that proof can be brought from the following *braisa*. The *braisa* states: Someone claims a *maneh* from another person, and he agrees that he owes it. The next day he asks for the money again. If the person says that he already paid, he is believed. If he says he does not have anything of his in his hands, he is not believed. It must be that the case where he says he gave it is that he gave it on time, and the second case is that he paid within the time allotted. We say he is liable in the second case. This

L'zecher Nishmas HaRav Raphael Dov ben HaRav Yosef Yechezkel Marcus O"H

shows that when there is a *chazakah*, we do not say a *migu*!

The *Gemora* answers: No. The case where the person says that he does not have anything of his in his hands is when he is claiming that he never borrowed money from him. This is as the master stated: If anyone says that they did not borrow, it is equivalent to saying they did not pay back. [*If it can be proven that they borrowed, it is clear they did not pay back.*] (5b – 6a)

Established Rights

The *Mishna* says that if the other neighbor put up a wall near it, he must pay for the extra height of the other wall.

Rav Huna says: If the other neighbor built his wall opposite half of the first wall (*indicating he is currently only planning on using half of his neighbor's wall*), he only has to pay for his share of the section he is going to use. Rav Nachman says: He must pay half of the entire extra expense of making the wall taller than four cubits (*as he will eventually use the entire extension*).

Rav Huna admits in a case where his house ends in a corner opposite the wall that he does not have to pay for the rest of the wall. [*In a case where it is clearly very probable that he will not extend his house along the rest of the wall, Rav Huna agrees he does not have to share in the added expense for that part of the wall.*]

Rav Nachman admits that if the other neighbor has a strong support beam or niches for small beams along the entire wall (*where it was raised*), he must share in the cost of the entire wall. [*This shows he clearly plans to extend along the entire wall.*]

Rav Huna says: If one of the neighbors leaves space in his wall for the other to put down beams, it does not mean that the other joined him in paying for the wall. Even if he placed casings by these windows (*to protect them*), he can claim that he knew that eventually his neighbor would want to build, and he did not want to have his wall damaged by boring holes in his wall.

Rav Nachman says: If he had established a right of being able to put light things on his friend's wall, he does not have the status that he is allowed to put heavy things there. However, if he had established a right of being able to put heavy things on his friend's wall, he also is allowed to put light things there. Rav Yosef says: If he had established a right of being able to put light things on his friend's wall, he also is allowed to put heavy things there.

[*This Gemora discusses a claim that a person bought or received the rights from his friend to put things on his wall, and if it is clear that he did so and his friend did not protest, Beis Din will allow him to continue to have this right. Our Gemora discusses what chazakah we know he has, and what this means as far as other usages go.*]

Other says: Rav Nachman says that if he has established the right to put light or heavy things down, it gives him the right to put the other type down as well.

Rav Nachman says: If he had established the right of being allowed to have the rain drop off his roof and go into his friend's yard, he also has the right to put a gutter on his roof, and have the water flow onto one location in his friend's yard. If he had established the right that he could put a gutter in, he does not have the right that the rain can drip freely onto his entire yard. Rav Yosef says: If he had established the right that he

could put a gutter in, he does have the rights that the rain can drip freely onto his entire yard.

Others say: Rav Nachman says that an established right for either of these things means he has the right to do the other thing as well. However, this does not give him the ability to let the rainwater drip from a roof covered with willows, for this would cause the rain to come down heavily over a large area. Rav Yosef says: He can even do this. Rav Yosef ruled this way in an actual case.

Rav Nachman says in the name of Rabbah bar Avuha: If someone rents an apartment to his friend in a big castle, the renter can use the nooks in his wall outside the house, as well as the wall itself, including a stretch of four cubits outside the walls of his house. He can also use the top of the walls in a place where this is the custom. However, he cannot use the walls in the front yard of the castle. Rav Nachman says: He can even use the walls in the front yard, but he cannot use the walls in the back yard. Rava says: He can even use the walls in the back yard.

Ravina says: The beams of a hut used to provide shade do not give a person an established right of being allowed to have them lean on his friend's wall for support, unless they have been there for thirty days. If the hut is for a *sukkah* used during Sukkos, it does not give a person the established right of being allowed to have them lean on his friend's wall (*when his friend did not protest*), unless they have been there for longer than seven days. [*They used to put up their sukkah once, and leave it (besides moving the s'chach every year) for many years, as opposed to structures for shade that they used to put up and take down often.*] If he connected them to the wall with cement, he can claim this established right immediately (*if it is clear the owner of the wall did not protest*).

Abaye says: If there were two houses on opposite sides of the public domain (*and they each used their rooftop as their yard*), each one should make his fence on the roof (*four amos - to prevent visual trespass*) starting from the opposite side and make it go across a little more than half of his side. [*If one starts from the north and goes three quarters to the south, and other does the same, they will not be able to see into each other's yard.*]

The *Gemora* asks: Why did Abaye say his case regarding the public domain? The same law would apply if they were across the street in a private domain!?

The *Gemora* answers: He needed to say a case regarding the public domain. One would think that a person could claim that the neighbor opposite him has to make a wall anyway, as people from the street can see into his yard. Abaye teaches that the other neighbor can answer that this is not a good claim. While the people in the public domain can see him during the day, only his neighbor opposite him can see him at night. Alternatively, he can claim that while the people in the public domain see him when he is standing on his roof, his neighbor can see him when he is both sitting and standing. The public can only see him if they look closely, while he can see him without any effort.

Mar (*Abaye*) said: If there were two houses on opposite sides of the public domain, each one should make his wall starting from the opposite side and make it go across a little more than half of his side.

The *Gemora* asks: This is obvious!?

The *Gemora* answers: The case is where one of them already did this. One might think that the neighbor

across the street can claim, "Why don't you finish your wall (*of which I will pay half, and that way neither of us will be able to look into each other's property*)?" Abaye teaches that the other neighbor can retort, "Why don't you want the wall on your property? It is because it (*the weight of the wall*) ruins the foundations. I also don't want an entire wall putting pressure on my foundation."

Rav Nachman says in the name of Shmuel: If a roof is near his friend's yard, he must put up a fence four cubits tall. However, this is not required between roofs. Rav Nachman himself says: Four cubits are not required, but ten *tefachim* are required.

The *Gemora* asks: What is the case being discussed? If it is to prevent the damage resulting from lack of privacy, a wall of four cubits is needed. If it is to clearly mark the border to show that if one crosses the border he is coming to steal, pegs alone marking the border should suffice! If it is in order that goats and sheep should not get through, it is enough to make a low wall opposite their heads!?

The *Gemora* answers: It is in order to ensure one will clearly be coming to steal if he crosses the border. However, if there are pegs he can give a good excuse. [*Rashi says he can say something fell into the neighbor's yard, and he was merely getting it.*] However, if it is ten *tefachim*, he cannot make up such an excuse (*as going over such a wall is already like breaking in*).

The *Gemora* asks a question on this from a *braisa*. The *braisa* states: If his yard was higher than his friend's roof, we do not require him (*to make a wall*). What does this mean? It must mean no wall has to be made at all (*unlike Rav Nachman*)!?

The *Gemora* answers: No. It means that a wall of four cubits does not have to be made, but a wall of ten *tefachim* does have to be made.

It was taught: If one yard was higher than the adjoining yard, Rav Huna says that the owner of the lower courtyard builds the wall until the floor of the higher yard, at which point they split the expenses of the rest of the wall. Rav Chisda says: The owner of the top yard must split the expense of the lower part of the wall as well. [*The width of the wall is split between them. This is why the wall is not started from the domain of the top yard* (*as he does not want to give up the entire width of the wall, only half*).]

The *braisa* supports Rav Chisda. The *braisa* states: If there were two yards one on top of the other, the owner of the higher courtyard should not say that he will only share in building from his floor up, but rather, he must also share in the expense of building from the lower yard. If his yard was higher than his friend's roof, there is no need to build a fence. (6a – 6b)

INSIGHTS TO THE DAF

Chazakah on a Sukkah

The *Gemora* says that generally, if a person builds a hut which infringes on his friend's property, there is a grace period of thirty days in which the owner graciously permits the hut owner to use the area and doesn't have to protest. But, after that grace period has passed, if the owner doesn't protest, the hut owner will have an established right to be able to claim that he purchased the rights of use. But, if the hut is built for a *sukkah* on *Sukkos*, then immediately after the seven days of s *Sukkos* passes, the lack of the owners protest enables

the builder to claim that he purchased the right to leave it there permanently. [*This is according to Rashi, but the Hagahos Ashri cites other opinions that it is seven days in addition to the thirty days.*]

Tosfos points out that in truth, the builder doesn't have a *chazakah* after seven days; he only has a *chazakah* after eight days since on the eighth day, which is *Shemini Atzeres*, it wasn't possible to remove the *sukkah*.

The Ya'avetz asks: What compelled Tosfos to say that he will not have a *chazakah* until the eighth day is over. Perhaps we assume that the owner would have allowed him to use the space for the *mitzvah*, but as soon as the *mitzvah* ends, the owner is expected to protest. The fact that the owner fails to protest would not enable the builder to claim that he has acquired permanent rights to this area!?

It would seem that Tosfos holds that although the owner can protest the *sukkah* immediately after the seven days pass, even before the eighth day ends, he is not expected to do so. Why? It is because he is well aware that his protest is futile. The owner can claim that for the duration of *Sukkos*, he allowed the hut owner to fulfill his *mitzvah*. On the eighth day he also did not protest because he knew that his protest would be in vain, since the hut owner could not remove the *sukkah* until after *Sukkos*. Therefore, Tosfos holds that the owner has the right to protest through eight days.

From this we can learn that even after one has been *machzik* for enough time to create a *chazakah*, it is effective only if by the owner protesting he could have forced the hut owner to leave. But in a situation, where the owner could not have forced the hut owner to leave, such as when the *chazakah* concludes on a *Shabbos* or *Yom Tov*, the owner is not expected to protest and is given an extra day to voice his protest.

DAILY MASHAL

The Tree That Wasn't

HaGaon Rav Aharon Kotler zt"l, Rosh Yeshivah of Lakewood, was known to be extremely heedful to guard the truth. Once he was shown an advertisement with a sketch of the Yeshivah including the surrounding trees. He counted the trees, though, and found that three had been drawn instead of the actual two and not wanting to lend a hand to the misrepresentation, banned the picture. "It's a falsification," he said, "and the Torah is a Torah of truth and any method to maintain it must rely on the strict truth."