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Bava Basra Daf 7

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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

**Torah Protection**

The *Gemora* records an incident: Two brothers lived together in a house that they inherited. One lived in the upper floor, while the other one lived in the lower apartment. The walls of the lower apartment began to sink (*causing the floor of the upper apartment to drop until the brother living in the lower one was forced to bend his head in order to enter his apartment*). The lower one said to the upper one, “Let us go and destroy the house and then rebuild it (*so we can live in it comfortably*).” The brother living in the upper apartment responded, “I am living comfortably upstairs (*and have no compelling reason to demolish the house*).” The lower one replied, “Then let me destroy it and then rebuild it (*with my own money*).” The brother responded, “Meanwhile, I will have nowhere to live.” The lower one replied, “I will rent you a place.” The other rejected this offer as well, and said, “I do not want the bother,” The lower one asked, “But I cannot live in my place!?” The upper one replied, “You can crawl on your stomach to get in, and crawl on your stomach to get out.”

Rav Chama ruled: The brother living upstairs has the right to prevent him from rebuilding (*even though the lower one is paying for everything; this is because the apartment is somewhat habitable*). This, however, is the case only if the beams of the upper apartment did not sink lower than ten *tefachim* from the ground, but if they descended below this, the owner of the lower apartment can say, “Below ten *tefachim* is my property and is not subject to

your use.” [*He therefore would have a right to demolish it and then rebuild it.*]

Furthermore, the brother residing above was within his rights only if they had not made an agreement with each other (*that if the floor ever sinks, we will destroy and rebuild it*), but if they had made such an agreement, they must demolish the house and rebuild it.

The *Gemora* asks: And if they did make such an agreement with each other, how low must the floor sink before the one below can demand that it should be rebuilt?

The Rabbis stated in the presence of Rabbah in the name of Mar Zutra the son of Rav Nachman, who said it in the name of Rav Nachman: The minimum requirement for the lower apartment has been taught in a *Mishna*: Its height must be equal to half of its length and half its width combined.

Rabbah said to them: Have I not told you not to hang empty pitchers on Rav Nachman (*for in a large apartment, that height would be more than adequate*)? Rav Nachman really said: If the lower apartment is fit for human habitation, he cannot destroy the house.

The *Gemora* asks: And how much is this?

Rav Huna the son of Rabbi Yehoshua said: It should be big enough for one to bring in a bundle of long reeds from Mechuza and turn around with them. (6b – 7a)

A certain man began to build a wall facing his neighbor's windows. The latter said to him, "You are darkening my house." Said the first, "Let me close up your windows here and I will make you others above the level of my wall." He replied, "You will damage my wall by doing that." He said, "Let me then take down your wall as far as the place of the windows and then rebuild it, fixing windows in the part above my wall." He responded, "A wall of which the lower part is old and the upper part new will not be firm." He said, "Then let me take it all down and build it up from the ground and put windows in it." He replied, "A single new wall in a house, the rest of which is old, would not be firm." He then said, "Let me take down the whole house and put windows in the new building." He replied, "Meanwhile I have no place to live." The other said, "I will rent a place for you." "I don't want to bother you," said the first.

Rav Chama said [on hearing of the case]: He had a legal right to stop him (from blocking his light).

The Gemora asks: Is this case not the same as the other? Why, then, this repetition?

The Gemora answers: It is to tell us [that the owner of the house may exercise his veto] even though he only uses it for storing straw and wood.

Two brothers divided [a house which they inherited], the one taking as part of his share a mansion and the other the front garden. The one who obtained the garden went and built a wall in front of the opening of the mansion. Said the other, "You are taking away my light." "I am building on my own ground," he replied.

Rav Chama said: He was quite within his legal rights in saying so.

Ravina asked Rav Ashi: How does this case differ from what was taught: If two brothers divide an inheritance, one taking a vineyard and the other a field of grain [adjacent], the owner of the vineyard can claim four cubits in the field of grain, since it was understood that on that condition they divided?

He replied: There [the reason is] that they assessed their portion one against the other (they struck a balance with one another).

Ravina asked: What then do we suppose here? That they did not compensate one another? Are we dealing with fools, of whom one takes a mansion and the other a garden, and yet no question of compensation is raised?

Rav Ashi replied: Granted that compensation was allowed for the bricks, beams, and planks, no allowance was made for the air space.

Ravina asked: But cannot he say, "At first you let me have a mansion as my share, now you are only letting me have a dark room"?

Rav Shimi bar Ashi said: He let him have something which happened to be called so. Has it not been taught: If a man says, "I sell you a beis kor of ground, even if it subsequently proven to be only a lesech (one half of a kor)," the sale is valid, since he sold him only something designated a beis kor, provided always that the land in question is commonly called a beis kor. [If a man says], "I sell you an orchard, even though there are no pomegranates in it," the sale is valid, since he only sold him something designated so, provided the place is commonly called an orchard. [If a man says], "I sell you a vineyard, even if there are no vines in it," the sale is valid, since he only sold him something designated so, provided always that the place is commonly called a vineyard.?



The Gemora counters: Are the cases parallel? There the vendor can say to the purchaser, "I sold you [something called by] a certain name"; here the one who obtains the mansion can say, "I only took this as my share on condition that I should be able to live in it as our father lived."

Mar Yanuka and Mar Kashisha the sons of Rav Chisda said to Rav Ashi: The Nehardeans in this are applying their own principle; for Rav Nacahman said in the name of Shmuel: If brothers divide [property which they have inherited], neither has the right of way against the other, nor the right of 'windows' against the other, nor the right of 'ladders' against the other, nor the right of a water channel against the other; and be zealous in these rulings, because they are firmly established. Rava, however, said that each has these rights against the other.

There was a promissory note [inherited] by orphans [from their father] against which a receipt was produced [by the borrower]. Rav Chama said: We neither enforce payment on the strength of the note, nor do we tear it up. 'We neither enforce payment', because a receipt is produced against it, 'nor do we tear it up,' because it is possible that when the orphans grow up they will bring evidence invalidating the receipt.

Rav Acha the son of Rava said to Ravina: What is the accepted ruling in such a case?

He replied: In all [the above-mentioned cases] the law follows Rav Chama, except only in the matter of the receipt, the reason being that we do not presume the witnesses [who have signed the receipt] to have been guilty of a falsehood.

Mar Zutra the son of Rav Mari, however, said that in this also the law follows Rav Chama, since if the receipt were genuine, the defendant ought to have produced it in the

lifetime of the father, and since he did not do so, the inference is that it was forged. (7a – 7b)

He [a resident of a courtyard] may be compelled [by the rest] to [contribute to] the building of a gatehouse and a door for the courtyard. Rabban Shimon ben Gamliel, however, says that not all courtyards require a gatehouse.

He [a resident of a city] may be compelled to contribute to the building of a wall, folding doors and a crossbar. Rabban Shimon ben Gamliel says that not all towns require a wall.

How long must a man reside in a city to be counted as one of the citizens of the city? Twelve months. If, however, he buys a house there, he is at once reckoned as one of its citizens.

The Mishna had stated: to the building of a gatehouse. This would seem to show that a gatehouse is an improvement; yet how can this be, seeing that there was a certain pious man with whom Eliyahu used to converse until he made a gatehouse, after which he did not converse with him anymore?

The Gemora answers: There is no contradiction; in the one case we suppose the gatehouse to be inside [the courtyard] (and the cries of the paupers could not be heard by the residents of the courtyard), in the other outside.

Or if you like I can say that in both cases we suppose the gatehouse to be outside, and still there is no difficulty, because in the one case there is a door and in the other there is no door.

Or again we may suppose that in both cases there is a door, and still there is no difficulty, because in the one case there is a latch and the other there is no latch.

Or again I may say that in both cases there is a latch and still there is no difficulty, because in the one case the latch is inside and in the other outside.

The Mishna had stated: he may be compelled to contribute to the cost of a gatehouse and a door.

It has been taught in a braisa: Rabban Shimon ben Gamliel says: Not all courtyards require a gatehouse; a courtyard which abuts on the public thoroughfare requires a gatehouse, but one which does not abut on the public thoroughfare does not require such a gatehouse. The Rabbis, however, hold that [it does, because] sometimes in a crowd people force their way in.

The Mishna had stated: he may be compelled to contribute to the building of a wall etc.

It was taught in a braisa: Rabban Shimon ben Gamliel says that not all cities require a wall; a town adjoining the border requires a wall, but a town which does not adjoin the border does not require a wall.

The Gemora asks: And the Rabbis?

The Gemora answers: [They hold that it does, because] it may happen to be attacked by a roving band.

Rabbi Elozar inquired of Rabbi Yochanan: Is the collection [for the wall] levied as a poll tax or according to means (i.e., the wealth of each household)? He replied: It is levied according to means; and do you, Elozar my son, fix this ruling firmly in your mind.

According to another version, Rabbi Elozar asked Rabbi Yochanan whether the collection was levied in proportion to the proximity of the resident's house to the wall or to his means. He replied: In proportion to the proximity of

his house to the wall; and do you, Elozar my son, fix this ruling firmly in your mind.

Rabbi Yehudah the Nasi levied the collection for the wall on the Rabbis. Said Rish Lakish: The Rabbis do not require the protection [of a wall], as it is written: If I should count them, they are more in number than the sand. Who are these that are counted? Shall I say the righteous, and that they are more in number than the sand? Seeing that of the whole of Israel it is written that they shall be like the sand on the sea shore, how can the righteous alone be more than the sand? What the verse means, however, is I shall count the deeds of the righteous and they will be more in number than the sand. If then the sand which is the lesser quantity protects [the land] against the sea, how much more must the deeds of the righteous, which are a larger quantity, protect them?

When Rish Lakish came before Rabbi Yochanan, Rabbi Yochanan asked him why he did not prove this point from the verse in Shir Hashirim that states *ani choma v'shadai kamigdalos* – I [the Jewish nation] am a wall, and my breasts [the Sages, who feed the nation Torah] are like towers.

The Gemora explains that Rish Lakish reads this verse differently, with the wall symbolizing the Jewish nation, and the towers symbolizing the synagogues and study houses. (7b – 8a)

#### INSIGHTS TO THE DAF

##### ***Tax Exemptions for Torah Scholars***

The Gemora presents the tax exemptions accorded to Torah scholars. The Rishonim discuss the parameters of these tax exemptions.

##### ***Who is Exempt?***

The Rosh says that only one who for whom *toraso umnaso* – his Torah learning is his profession, is exempt. The Rosh



explains that even if one learns much Torah and is proficient in Torah, if he spends most of his time working, and less of his time learning, he is not exempt. However, even if one works, if he works only as much as is necessary to support himself and his family, and constantly returns to his Torah study when he is not working, he is exempt.

The Rosh further clarifies (Responsa 15:8) that this exemption applies equally to a Torah scholar who is wealthy, since the exemption is a function of the Torah study, not poverty.

Finally, the Rosh states that if one who studies Torah is not diligent in his performance of *mitzvos*, he is not considered a Torah scholar who is exempt from tax.

The Rama (YD 243:2) quotes the Terumas Hadeshen (342), who further requires that the Torah scholar be well versed in all the standard Torah sources.

The Shach (HM 163:14) quotes Sefer Chasidim that limits the exemption to one who studies at all times, to the exclusion of any work, but says we do not rule like this.

#### ***From what are they Exempt?***

The Ramban and Ran state that Torah scholars are only exempt from communal taxes, since they can claim that only the other members of the community are responsible for the existence of these taxes and their payment (*as Rebbe stated regarding the tax levied on Teveria*). However, if the tax is imposed on each person individually, even Torah scholars must pay.

The Rosh and Rambam (Talmud Torah 6:10), however, disputes this position, and state that Torah scholars are exempt from all types of tax, whether imposed communally or individually. The Rosh points out that Rav Nachman makes a categorical statement that obligating a Torah scholar in a tax is a violation of all sections of Torah, and the *Gemora* applies this to *karga*, which was a poll tax

assessed on each individual. These indicate that even individual taxes levied on Torah scholars are the responsibility of the community, and not the Torah scholars.

The Shulchan Aruch (YD 243:2) rules like the Rosh and Rambam. See Tzitz Eliezer 2:25 and Yabia Omer HM 7:10 for a detailed discussion of these parameters, and their applicability in contemporary society.

#### **DAILY MASHAL**

##### ***Like the Stars***

The *Gemora* explained that the verse that states that *matzdikei harabim* – those that bring merit to the community are like the stars, is referring to those who educate children in Torah.

The Ben Yehoyada points out that the appropriateness of the metaphor. Although stars appear to us much smaller than the sun, they are actually much larger and more powerful. Similarly, although those who teach seemingly trivial subjects, such as the basics of reading and writing, appear to not be as lofty as those who study and teach Torah at a much more advanced level, they are actually more exalted than others, since they teach Torah to children who are pure and untainted by sin.