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Bava Metzia Daf 101

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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

Uprooted Olive Trees

The *Mishna* had stated: A river swept away a person’s olives trees and deposited them (*together with their roots*) in someone else’s field. The owner of the trees says, “My olive tree grew this,” while the owner of the land says, “My land grew this.” They should split the olives.

Ulla said in the name of Rish Lakish: This was stated only if they were uprooted together with their clods of earth (*which would be sufficient to sustain the trees; for then it is regarded as an old tree and they would be permitted to eat; the first three years of a tree’s growth, the fruits are forbidden to be eaten; they are called “orlah”*), and only after three years of having been swept away. However, within the first three years, it all belongs to the owner of the olive trees. This is because the owner of the trees can say to the landowner, “Had you planted them immediately after the flood, could you have eaten from them within three years?”

The *Gemora* asks: But why can’t the landowner respond by saying, “Had I planted them, I would be entitled to eat all the fruit after three years (*when the orlah prohibition has lapsed*); whereas now, you should share them with me”?

Rather, when Ravin came to Bavel, he said in the name of Rish Lakish: This was stated only if they were uprooted together with their clods of earth, and only within the first three years. However, after three years, it all belongs to

the landowner. This is because the landowner can say to him, “Had I planted them myself, would I not have been entitled to eat all the fruit after three years?”

The *Gemora* asks: But why can’t the owner of the trees reply by saying, “Had you planted them immediately after the flood, you could not have eaten from them within three years (*on account of the orlah prohibition*). Now, you are sharing half with me (*so at least, let me share with you afterwards*)!?”

The *Gemora* answers: It is because the landowner can retort, “Had I planted my own trees, they would have been small, and I could have sown beets and vegetables under them (*for there is no shadow under small trees; by allowing the olive trees to remain, he may eat half the fruits*).

A *Tanna* taught: If he said, “I wish to take back my olive trees,” we do not listen to him.

The *Gemora* asks: Why is that?

Rabbi Yochanan said: It is because of the significance of settling *Eretz Yisroel*.

Rabbi Yirmiyah said: For such an answer, a great man is necessary (*for we would not have said like this using our own logic*). (101a)

First Ma’aser, then Pay

The *Gemora* cites a *Mishna*: Rabbi Yehudah said: If one leases an ancestral field from a gentile, he must tithe all the crops and then give the gentile his share. [*If he would first give the gentile his share, he would be taking ma'aser on less produce, which would result in a net gain for him.*]

Now, the Rabbinical scholars understood Rabbi Yehudah as follows: An ancestral field meant a field in *Eretz Yisroel*. The reason it is called that way is because it is a field that was given to Avraham, Yitzchak and Yaakov. And Rabbi Yehudah holds: An idolater cannot own property in *Eretz Yisroel* so fully as to exempt it from the obligation of separating *ma'aser* (*the land retains its sanctity and the buyer is required to separate ma'aser from it*). He also holds that a sharecropper is regarded as a tenant-farmer (*one who owns the entire produce, but agrees to pay the owner a certain amount, regardless of the field's yield*) in the following respect: Just as a tenant-farmer, whether the field produces or not, must tithe from all the crops and pay him, because it is as if he is repaying a debt (*for the produce is completely his*); so also, a sharecropper is as though he were repaying a debt, and he therefore must first tithe the crops and then pay the owner.

Rav Kahana asked Rav Pappi, and others say that it was to Rav Zevid: But what of the following *braisa* that was taught: Rabbi Yehudah said: If one leases (*to a sharecropper*) an ancestral field from a gentile oppressor (*someone who obtained it illegally*), he must tithe the crops first and then pay the oppressor. According to our understanding (*that Rabbi Yehudah holds that an idolater cannot own property in Eretz Yisroel so fully as to exempt it from the obligation of separating ma'aser*), why does the *braisa* particularly mention that it was from an oppressor? The *halachah* (*that he takes ma'aser and then pays*) should be the same even if he is not an oppressor!?

Rather, in truth, an idolater can own property in *Eretz Yisroel* so fully as to exempt it from the obligation of separating *ma'aser*. And he holds that a sharecropper is

not regarded as a tenant-farmer, and 'an ancestral field' is meant quite literally (*and the gentile obtained it illegally*). And the sharecropper (*the son*) the Rabbis penalized, because since it is more precious to him than to others, he would go and lease it (*even though he would be obligated to take the ma'aser and then pay the gentile*); whereas others would not accept it on such terms.

The *Gemora* asks: But why did the Rabbis penalize him?

Rabbi Yochanan said: It was in order that it might come absolutely into his possession (*for he would not want to continue doing this on such disadvantageous terms; eventually, he will try to obtain money to buy it from the gentile*).

Rabbi Yirmiyah said: For such an answer, a great man is necessary (*for we would not have said like this using our own logic*). (101a)

Improving without Permission

It has been stated: If one enters his fellow's field and plants trees without permission, Rav said: An assessment is made, and he is at a disadvantage (*he is paid for the cost of planting or for the improvements, whichever is less*). Shmuel said: We estimate what one would pay to have such a field planted with trees.

Rav Pappa said: There is no disagreement. Shmuel refers to a field suitable for planting (*trees, and not for grain*). Rav was referring to a field unsuitable for planting (*trees; therefore, the planter has the lower hand*).

The *Gemora* shows that Rav's ruling was not explicitly stated, but rather, it was inferred from a general ruling.

It was stated: If one enters his fellow's ruins and rebuilds them without permission, and then says to him, "I want my wood and stones back," Rav Nachman said: We listen to him. Rav Sheishes said: We do not listen to him.

The *Gemora* asks on Rav Nachman from a *braisa*: Rabban Shimon ben Gamliel said: Beis Shammai holds: We listen to him. Beis Hillel maintains: We do not listen to him. Shall we then say that Rav Nachman ruled in accordance with Beis Shammai!?

The *Gemora* answers: He is in accordance with the following *Tanna*. For it has been taught in a *braisa*: We listen to him; these are the words of Rabbi Shimon ben Elozar. Rabban Shimon ben Gamliel said: Beis Shammai holds: We listen to him. Beis Hillel maintains: We do not listen to him.

The *Gemora* asks: What is the final ruling on the matter?

Rabbi Yaakov said in the name of Rabbi Yochanan: With respect to a house, we listen to him (*and we allow him to remove the improvements he made*). With respect to a field, we do not listen to him.

The *Gemora* offers two reasons why we don't allow him to remove the improvements by a field.

1. It is because of the significance of settling *Eretz Yisroel*.
2. It is because of the weakening of the land (*caused by the trees; if they are uprooted, the land will not be suitable for growth*).

The *Gemora* notes that a practical difference between them would be if this occurred outside of *Eretz Yisroel*. (101a - 101b)

Mishna

If one rents his house to his fellow during the rainy season (*the winter*), he cannot evict him from the Sukkos festival until Pesach. If he rents it to him during the summer season, he cannot evict him without thirty days notice. [*The Gemora will ask on this explanation, and offer a new one.*] If he rents to him in a city (*where the market is, and everyone wants to live there; this causes a housing shortage*), whether during the summer, whether during the rainy season, (*he must give him*) twelve months (*notice before evicting him*). And concerning shops, whether in towns, whether in cities, twelve months. Rabban Shimon ben Gamliel said: A shop of bakers or of dyers - three years (*notice must be given; they generally extend credit to their customers for a long term; they therefore need more time to collect their debts*). (101b)

Eviction

The *Gemora* asks: [*At this point, the Gemora thinks that the Mishna is referring to a case where they specified that it is being rented for the winter or the summer season.*] Why is it different in the winter? Is it because when one rents a house in the winter, it is for the entire winter? Then does not the same apply to summer, for when one rents a house in the summer, it is for the entire summer?

The *Gemora* answers: [*Now the Gemora understands the Mishna to be referring to a case where no time was specified, and therefore, the halachah is that he may be evicted after thirty days, for a regular rental is at least for thirty days.*] As for winter, the reason is because houses are not available for renting. [*Therefore, if the thirty days conclude during the winter, he must wait until after Pesach to evict him.*]

The *Gemora* asks: But then, let us consider the latter part of the *Mishna*: If he rents to him in a city (*where the market is, and everyone wants to live there; this causes a housing shortage*), whether during the summer, whether

during the rainy season, (*he must give him*) twelve months (*notice before evicting him*). Seemingly, if this period expires during the winter, he can evict him. But why should this be, seeing that no house is available for renting?

Rav Yehudah answers: The *Mishna* is referring to the notice that must be given prior to eviction, and this is what the *Mishna* is saying: If one rents his house to his fellow for an unspecified period, he cannot evict during the winter, which is from the Sukkos festival until Pesach, unless he gave him notice thirty days before Sukkos.

The *Gemora* cites a supporting *braisa*: When they said “thirty days” or “twelve months,” it was only in reference to the notification (*of eviction*). And just as the landlord must inform the tenant that he will not be renewing the lease, so must the tenant give notice to the landlord that he will not be renewing his lease. For the landlord can say to him (*if he wasn’t served notice*), “Had you notified me, I would have taken the trouble to find another tenant for it.”

Rav Assi said: If the lease entered one day into the winter, he cannot evict him from the Sukkos festival until Pesach.

The *Gemora* asks: But we learned in the *Mishna* “thirty days” (*and Rav Assi seemed to say that one day before Sukkos is sufficient*)?

The *Gemora* answers: He means that if even one of those thirty days fell during the winter, he cannot evict him from the Sukkos festival until Pesach.

Rav Huna said: Yet if he wishes to increase the rent, he can do so.

Rav Nachman asked: This is like holding him by his private parts to force him to give up his cloak!?

The *Gemora* answers: He is referring to a case where all house rentals became more expensive.

Now, it is obvious that if the landlord’s own house collapsed, and no notice to evict had been given, he can say to him, “You are no better than I.” [*The tenant may be evicted at the end of his lease, because there are no houses available for the landlord to rent either, for he did not know that his house would fall in.*]

If he sold, rented, or gave it as a gift it to a third party, the tenant can say to the new owner, “You are no better than the man from whom you derive your rights (*and just like he couldn’t evict me, you can’t either*).”

If he appointed it as a home for his son after marriage, we consider the matter: If it were possible for the landlord to have notified him that it would be needed for his son, then he should have done so (*and he cannot evict him*). But if not, he can say to him, “You are no better than I” (*and he can evict him when his lease is over*).

A man once bought a boatload of wine. Having nowhere to store it, he asked a certain woman, “Do you have a place for renting?” She replied, “No.” So he went and married her, whereupon she rented him a place for storage. He then went home, wrote for her a divorce document and sent it to her. So she went, hired porters from the wine itself, and had it put out in the road outside. Rav Huna, son of Rabbi Yehoshua said: As he has done, so it shall be done to him; his dealing shall return upon his own head. Not only if it is not a courtyard that stands to be rented; but even if it is a courtyard that is for renting, she can say to him, “To anybody else I am willing to rent it, but not to you, because you appear to me like a lion waiting in ambush.” (101b)

INSIGHTS TO THE DAF

Swept Away Olive Trees



The *Mishna* had stated: A river swept away a person's olives trees and deposited them (*together with their roots*) in someone else's field. The owner of the trees says, "My olive tree grew this," while the owner of the land says, "My land grew this." They should split the olives.

The *Maggid Mishnah* writes that that if the olive trees were not uprooted together with their clods of earth, the trees would be regarded as a lost article that is permitted to all. This would be similar to the *Gemora* above (22a), which states: If a river washed away someone's beams, timber, or stones, and has deposited them in someone else's field, they belong to the field owner because the owner has given up hope. Accordingly, in our case, the trees would belong to the landowner, and he would not be required to pay the original owner of the trees at all. However, if they were uprooted together with their clods of earth, since the trees are growing as a result of his land, it emerges that the tree owner is also contributing towards the growth of the olives; they therefore would divide it.

Alternatively, it can be said that if the trees were uprooted together with their clods of earth, the river cannot sweep them a great distance away from their point of origin, and therefore, the owner does not despair about getting them back.

Settling in Eretz Yisroel Nowadays

The *Mishna* had stated: A river swept away a person's olives trees and deposited them (*together with their roots*) in someone else's field. The owner of the trees says, "My olive tree grew this," while the owner of the land says, "My land grew this." They should split the olives.

A *Tanna* taught: If he said, "I wish to take back my olive trees," we do not listen to him.

The *Gemora* asks: Why is that?

Rabbi Yochanan said: It is because of the significance of settling *Eretz Yisroel*.

Rabbi Yirmiyah said: For such an answer, a great man is necessary (*for we would not have said like this using our own logic*).

The Ramban says that this *mitzvah* is a Biblical commandment. The Rambam omits this *mitzvah* in his *Sefer Hamitzvos*. There are those that explain that the Rambam holds that it's only a Rabbinical *mitzvah*. Other say that the Rambam holds it is not a *mitzvah* at all; the only reason why a man can force his family members to move to *Eretz Yisroel* is because this way, they will be able to fulfill the *mitzvos* which are dependent upon the Land of Israel.

The Ritva writes that the applications of the *Mishna* apply to nowadays also. Proof to this is from the fact that Rebbe incorporated these *halachos* into the *Mishna* even though he was living in the times after the destruction of the *Beis Hamikdash*.

Tosfos (*Kesuvos* 110) cites Rabbeinu Chaim Kohen that there is no *mitzvah* nowadays because there are many *mitzvos* there which entail many punishments, and it will be impossible for one to be careful regarding all of them. This can be simply understood to mean that although there might be a *mitzvah* to live in *Eretz Yisroel*, it is simply not worth it, for one will lose out by transgressing many *aveiros* there. Reb Avi Lebovitz (*and afterwards I found this logic in the Beis Halevi*) explains a little differently: Rabbeinu Chaim is actually describing the *mitzvah* of living in *Eretz Yisroel* to be for the purpose of fulfilling the *mitzvos* that apply there. If one were to live in *Eretz Yisroel* without properly performing the *mitzvos*, they are



not only losing out on these additional *mitzvos*; they are also not fulfilling the *mitzvah* of living in *Eretz Yisroel*.

QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF

to refresh your memory

Q: When would Sumchos agree that we do not say that money which rests in doubt is divided without an oath?

A: When one of them is Biblically mandated to take an oath.

Q: What type of grapes is there a Tannaic dispute if they are regarded as land or not?

A: Grapes that are ready to be harvested.

Q: If someone claims that his fellow owes him \$100.00 worth of wheat and the other person admits owing \$50.00 worth of barley, is he required to take an oath?

A: It is a *machlokes Tannaim* if this is regarded as a "partial admission."

DAILY MASHAL

The Sochatchover Rebbe Honors His Father

The popular saying is that when the Torah declares "Any person (*ish ish*) who curses his father...", it refers even to one who regards himself as an important personality (the double *ish*). Such a person must be all the more heedful to honor his parents. An appropriate story involves the Sochatchover Rebbe, the Avnei Nezer, zt"l:

As a child, the Rebbe learnt with his father, Rav Ze'ev Nachum of Biala zt"l, author of *Agudas Ezov*. Rav Ze'ev Nachum asked him a question which he thought to be very difficult but his son immediately solved it, as if there was no question in the first place. The father rejected his

answer, though, correcting him and giving him a light slap on his cheek. "Don't get used to thinking so fast", he advised, "without deeper examination."

His son became one of his generation's leading scholars and once, while visiting his aged father, Rav Ze'ev Nachum reminded his son of the above incident. The Bialer Rav told him that he had later reviewed the sugya with all the commentaries and realized that his son's original answer was right but didn't want to inform him, thinking it was better to keep him from excessive pride. "Still", he said, "you didn't deserve the slap. Please forgive me."

"I knew all along", replied the Sochatchover, "but didn't talk back so as not to dishonor you."