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DAF Notes
Insights into the Daily Daf
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Bava Metzia Daf 108

Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o"h

Tzvi Gershon ben Yoel (Harvey Felsen) o"h

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

Trees by a Bank of a River

Rabbah the son of Rav Nachman was travelling in a boat, when he saw a forest on the riverbank. He said, "To whom does this belong?" They told him, "It belongs to Rabbah the son of Rav Huna." [*Rabbah the son of Rav Huna had no requirement to cut them down, for the governor, who lived on both sides of him, didn't cut his trees down, so there was no use, like we learned above.*] He thereupon quoted the verse: *Indeed, the hand of the princes and rulers has been first in this trespass*. [*Since he was a Sage, he should have had his trees chopped down, according to the Rabbinic law.*] He told them, "Cut down the trees," and they did. When Rabbah son of Rav Huna came and found them cut down, he exclaimed, "Whoever cut it down - may his branches (*children*) be cut down!" It was related that during the whole lifetime of Rabbah son of Rav Huna, none of Rabbah son of Rav Nachman's children remained alive. (108a)

Living by a River

Rav Yehudah said: All must contribute to the building of the gates in the wall (*to defend against an invading army*), even orphans; but the Rabbis are not required to. Why is that? The Rabbis do not need physical protection (*since they are protected through their Torah learning*). But for the digging of wells (*for drinking purposes*), even the Rabbis are liable. However, that is only if the people do not go out in groups (*to actually dig them*); if however, they do, the Rabbis are not obligated to join them because it is not befitting their dignity.

Rav Yehudah said: When the river needs clearing out (*of the obstacles*), those dwelling downriver must aid the upriver inhabitants (*for it is beneficial for them*), but those dwelling upriver are not required to aid those that are upriver (*for once the water passes their fields, they have no use for the water*). And it is the reverse with respect to cleaning the ditches from the rain water. [*Where the rainfall has to be cleared away because it muddies the roads, those living upriver must aid the downriver folks, because if the water is not cleared away, it will back up to where the upriver people reside and ruin their roads. But those living below have no reason to clear away the obstructions upriver, for if it remains clogged up, it is advantageous for them, for it will not ruin their roads.*]

The *Gemora* cites a supporting *braisa*.

Shmuel said: He who takes possession of land that is on the banks of a river is an impudent person, but cannot be legally removed. [*Under Persian law, one who paid the tax on a plot of land was entitled to it. A large clear space on the riverbank was left open for the purpose of loading and unloading. Therefore, if one paid the land tax and seized it, he could not legally be removed; nevertheless, since this would cause considerable public inconvenience, he was considered an impudent man*.] But nowadays that the Persian authorities write (*for those people seizing field along a riverbank*), "Possess it as far as the depth of water reaching up to the horse's neck," he is removed. [*The legal owners fence off their fields at some distance from the water's edge, and therefore, no person can seize the land within this area.*] (108a)

Bar Metzra

Rav Yehudah said in the name of Rav: If one takes possession of a property lying between two fields belonging to brothers or partners, he is an impudent man, yet he cannot be removed.

Rav Nachman said: He can even be removed. If (*in a case where there were no brothers or partners*) it is only on account of the right of pre-emption (*where the neighbor claims that he wanted to purchase the adjoining property, rather that purchase one far away from him - it is also called "bar metzra" - the right of the adjoining property holder*), he cannot be evicted.

The Nehardeans said: He is removed even on the account of the right of pre-emption, for it is written: *And you shall do that which is right and good in the eyes of Hashem*.

The *Gemora* inquires: What if one (who wished to purchase the adjoining field) came and asked the neighbor (who has the "bar metzra" right), "Can I go and buy it?" and he replied, "Yes; Go and buy it"? Is a formal acquisition (*a kinyan*) from him necessary, or not? [*A practical difference would be in a case when no kinyan was performed and the neighbor wishes to renege and use his right to buy the field.*]

Ravina ruled: No formal acquisition is necessary. The Nehardeans maintained that a *kinyan* is necessary.

The *Gemora* rules: A *kinyan* is needed.

The *Gemora* notes: Now that you say that a *kinyan* is necessary, if he did not acquire it of him (*and he purchased the field*), all increases or decreases in the property's value are regarded as taking place in the neighbor's possession. [*The law of "bar metzra" states that someone else has no right to purchase that property; if he does, it is as if he is buying it for the neighbor who enjoys the "bar metzra" right. The neighbor with this right can go and pay "the purchaser" and take the land. If the price increased, he is not required to pay that amount, and if the price decreased, he still must pay the full amount that it was bought for, since the drop in value occurred while in his possession.*]

The *Gemora* issues a related ruling: If "the purchaser" bought it for a hundred *zuz*, whereas it is actually worth two hundred, (*when we are determining how much the neighbor who enjoys the "bar metzra" right must pay "the purchaser" if he wants the field*) we see: If the original seller would have sold it to any one at this reduced amount, he (*the adjoining neighbor*) pays him (*the purchaser*) a hundred *zuz* and takes it. But, if not (*and it was only a special favor to that particular purchaser*), he must pay him two hundred *zuz*, and only then may he take it.

The *Gemora* discusses the reverse case: But if he bought it for two hundred, and its value was actually only one hundred, they thought to say that he (*the adjoining neighbor*) is entitled to say to "the purchaser," "You were sent for my benefit, not for my detriment." [*The neighbor can thus render the sale null and void. The purchaser will return the land and receive a refund, and the neighbor can go and buy the land.*]

Mar Kashisha, the son of Rav Chisda, said to Rav Ashi: The Nehardeans said in the name of Rav Nachman: The rules for "price cheating" do not apply to real estate (*and the sale stands, unless he wants to pay the higher price*).

The *Gemora* issues another related ruling: If the seller sells a portion of his land, which is in the middle of his properties, we see: If that piece of land is either superior or inferior than the rest of the property (*and is therefore a parcel of land that he is likely to sell by itself, for it differs from the properties surrounding it*), the sale is valid (*for there is other land in between this one and the adjoining neighbor's property, and he has no right to be entitled to this particular parcel of land*). However, if they are all the same, the purchaser is evidently employing a ruse (*in initially buying this field, with the intention of buying the remainder of the property*).

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

The *Gemora* issues another related ruling: A gift is not subject to the law of pre-emption. [*The adjoining neighbor has no claim over the land, for he is only entitled to be the first purchaser.*]

Ameimar said: But if he the donor wrote for him a guarantee on the land (*that if a creditor seized the property, he will compensate him*), it is subject to the "*bar metzra*" laws (*for it is then regarded as a sale; people do not usually write guarantees on gifts*).

When one sells *all* of his property to one person, the law of pre-emption does not apply (*for the seller is not expected to lose on the deal*). Similarly, if this field is sold to its original owner, it is not subject to the law of pre-emption.

If one purchases from an idolater, or if he sells to an idolater, there is no law of pre-emption. If one purchases from an idolater, he may keep it, because he can say to the adjoining neighbor, "I have driven away a lion from your boundaries." If he sells it to an idolater, the sale is valid, for the idolater is certainly not subject to the laws derived from the verse: *And you shall do that which is right and good*. Nevertheless, the seller is placed under a ban, until he accepts responsibility to pay for any damage that might ensue because of the idolater.

A property which is pledged as a security to a lender (*and is then sold to the lender*) is not subject to the law of pre-emption. For Rav Ashi said: The elders of the town of Machasya told me, "What is the meaning of "*mashkanta*" (*a pledge*)? It is one that dwells with him." What is the practical difference based upon this? It is with respect to the laws of pre-emption.

When one sells a property that is far away from him in order to buy one that is close, or he is selling an inferior property to repurchase a superior one, the law of pre-emption does not apply. When he sells a property in order to obtain the funds to pay the head-tax, or to provide food for his wife and daughters, or for funeral expenses, the law of pre-emption does not apply. [*All these are cases where the seller has an urgent need to sell, and he does not have time to determine if his adjoining neighbor wishes to buy it.*] For the Nehardeans said: For taxes, support and burial, we sell the property of orphans without an announcement.

A sale to a woman, orphans, or a partner is not subject to the law of pre-emption. [*It is difficult for a woman or an orphan to purchase land; when they find one, we do not wish to take it away from them by allowing the neighbor to have the first right of purchase. The last case is as follows: Two people are partners in a field, and they have a neighbor. One partner can sell his portion to the other, and the neighbor cannot claim a "bar metzra" right.*]

[*The following are cases that do not involve an adjoining neighbor (according to Rashi).*] If he has a field that he can sell to neighbors in his city or neighbors of a different field that he owns, the former take precedence. If he has a field that he can sell to neighbors or to a Torah scholar, the Torah scholar takes precedence. If he has a field that he can sell to a relative or to a Torah scholar, the Torah scholar takes precedence.

They inquired: What is the *halacha* where one is a neighbor and the other a relative? Come and hear from the following verse [Mishlei 27:10]: *Better is a neighbor that is near than a brother far away*.

If one (*the adjoining neighbor or the outsider*) offers good coins (*that are accepted in many places*), and the other offers coins of a greater weight, the law of pre-emption does not apply (*for the seller can say that he wants these type of coins*).

If his (*the adjoining neighbor*) coins are tied up, and those of the purchaser are loose, there is no law of pre-emption (*for the seller can plead, "I am afraid to open the package, for the neighbor may claim that it contained more; and I do not want to wait for him to come and count it*).

If the adjoining neighbor says, "I will go and trouble myself to bring money (*to purchase the land*), we do not wait for him. If, however, he says, "I will go and bring money," we consider the following: If he is a man of means, who can go and bring the money fast, we wait for him; if not, we do not wait for him.

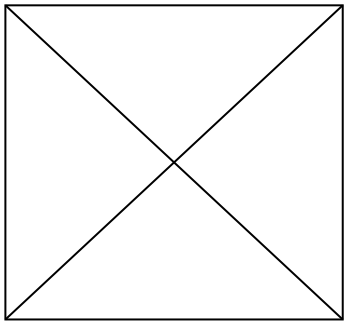
If the land belongs to one and the house upon it belongs to another, the landowner can restrain the owner of the house (*from selling the house to another*), but the owner of the house cannot restrain the landowner (*from selling the land to another*).

If the land belongs to one and the palm trees upon it belong to another, the landowner can restrain the owner of the trees (*from selling the trees to another*), but the owner of the trees cannot restrain the landowner (*from selling the land to another*).

If an outsider wishes to purchase the land for building a house, and the adjoining neighbor wants the land for planting, settlement of the land is more important, and there is no law of pre-emption.

If a rocky ridge or a hedge of young palm trees lay between the fields, we consider the following: If the adjoining neighbor can enter the other field even with a single furrow, it is subject to the law of pre-emption (*for the "bar metzra" law is based upon the fact that he can work on two fields together*). However, if he cannot, it is not subject to the law of pre-emption.

If one of four neighbors (*on each side of a field*) preceded the others, his sale is valid. If, however, they all come together, the field is divided diagonally.



(108a - 108b)

INSIGHTS TO THE DAF

Price Fraud by Land

The *Gemora* rules: If an outsider (*who was not the adjoining neighbor*) bought the land for two hundred, and its value was actually only one hundred, they thought to say that he (*the adjoining neighbor*) is entitled to say to "the purchaser," "You were sent for my benefit, not for my detriment." [*The neighbor can thus render the sale null and void. The purchaser will return the land and receive a refund, and the neighbor can go and buy the land.*]

Mar Kashisha, the son of Rav Chisda, said to Rav Ashi: The Nehardeans said in the name of Rav Nachman: The rules for "price cheating" do not apply to real estate (*and the sale stands, unless he wants to pay the higher price*).

The Ri"f rules (*and this seems to be Rash"i's opinion as well*) that the principle that there is no "price fraud" by land is only if the discrepancy was exactly a sixth; however, if the discrepancy was for more than a sixth, the deal is void. [*This would seem to be problematic from our Gemora.*]

Rabbeinu Tam holds that there are no rules of "price fraud" by land as long as the discrepancy is not by more than half of its value; however, if the discrepancy was for more than half of the land's value, the deal is void.

The Baal Hameor writes that if the discrepancy is for exactly half of its value, there is no rule of "price fraud"; however, if

the discrepancy was for more than half of the land's value, the deal is void.

The Rambam, however, rules that there are no *halachos* of "price fraud" by land at all, and the transaction is never voided. This is because there is no limit to the price of land.

The Rosh writes that it is evident from our *Gemora* that there is no price fraud by land even if the discrepancy is for double its value, for it was worth a hundred and he sold it for two hundred.

Bar Metzra

Our *sugya* treats the definitions and *halachos* of a *bar metzra*, an adjacent neighbor whose field borders yours. If you offer land for sale, you must prefer selling it to a *bar metzra* if he wants it. If two or more adjacent neighbors simultaneously compete for the premises, you must sell a same-sized portion to each (see bottom of 108b). If an owner ignores a *bar metzra* and sells his property to one who is not an adjacent neighbor, the *bar metzra* may even evict the new owner, compensating him for the price at which he bought the property, and assume its possession. The following case, judged by the *Chasam Sofer*, allows us to understand the basic source of this halachah.

Son-in-law vs. Neighbor for Liquidated Apartment

A rich man became bankrupt and the *beis din* ordered him to relinquish his home to the creditors. Fortunately, one creditor was his beloved son-in-law and the house was transferred to his possession. The latter allowed his father-in-law to continue living there for free, but just as the older man started to feel more at ease, his adjacent neighbor complained to the *beis din* that he had been mistreated. After all, he was a *bar metzra*, and the *beis din*, as receivers of the property, should have offered to sell it to him first. However, the *Chasam Sofer* (Responsa, *C.M.* 11) refuted his claim, stressing that *Chazal* learnt the halachah of adjacent neighbors from the commandment in Devarim 6:18: *do what is upright and good*. The owner of a field next to one offered for sale profits from buying it by enlarging his property and should be preferred but not if he thus harms the seller. If, in this case, the *beis din* sells the home to the neighbor, he would evict the owner, who would become homeless. The house should remain the son-in-laws's for the previous owner's sake, who is being allowed to live there, as the neighbor is also commanded to "do what is upright and good"! (See *Chasam Sofer*, ibid, who cites more reasons as to why the principle of adjacent neighbors does not apply to such cases).

Buying Seats in a Shul

Buying a seat in a synagogue can become an ordeal to make people swallow their pride. The *poskim* mention several interesting cases and a long-discussed difference of opinions as to whether the concept of adjacent neighbors pertains to such seats. Should a person occupying a seat next to one being sold be preferred to buy it? Some Rishonim (see *Beis Yosef C.M*. 175:85) say the rule of *bar metzra* applies.

Raavad writes that the idea is inconceivable regarding synagogue seats as the original principle applies if, by buying adjacent property, a neighbor expands his use to the added area. An apartment owner, for example, may expand his premises to include a newly bought apartment next-door. A congregant, though, doesn't need and even cannot sit on two places and therefore does not have to be preferred (see *Beis Yosef*, ibid, who uses this explanation and *Sema'*, ibid, *S.K.* 99). However, all agree that if a bench is too short for a certain number of congregants, they may buy a place next to them to expand their use and ensure their comfort.