



Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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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

Who gets the Vegetation?

Following the earlier *Mishnayos* that discussed neighbors and their division of rights, the last *Mishna* discusses the case of a garden which is higher than its neighbor. The *Mishna* records a dispute regarding vegetation that grows from the wall in between them. Rabbi Meir says that since the vegetation would not grow without the land of the higher garden, its owner gets the vegetation. Rabbi Yehudah says that since the vegetation would not grow without the air space of the lower garden, its owner gets the vegetation. Rabbi Meir states that although each owner is providing an essential element for the vegetation’s growth, we decide in favor of the higher garden, from which the vegetation is nourished. Rabbi Shimon says that whatever vegetation the owner of the higher garden can reach is his, and the rest is given to the owner of the lower garden. Although Rabbi Shimon fundamentally agrees with Rabbi Meir, he says that the owner of the higher garden does not want to be degraded to go through his neighboring garden to pick his vegetation, and therefore will relinquish those he can’t reach to his neighbor.

Rava explains that all agree that the roots of the vegetation are owned by the higher garden’s owner, since they grow in his land. The dispute is regarding

the leaves that are out of the ground. Rabbi Meir says that these are assigned to the roots – their source – and therefore are given to the higher garden’s owner, while Rabbi Yehudah says that they are considered a separate entity, and are given to the lower garden’s owner. (118b - 119a)

Go to the Source

The *Gemora* quotes two other disputes between Rabbi Meir and Rabbi Yehudah, where Rabbi Meir assigns leaves to the roots they came from, while Rabbi Yehudah considers them a separate entity.

1. If someone bought a tree and its fruit from a land owner

If a tree grows from the roots, it belongs to the owner of the land. If a tree grows from the trunk, Rabbi Meir assigns it to the trunk’s source – the land – and says it belongs to the owner of the land, while Rabbi Yehudah considers it an entity separate from the land, similar to fruit, and assigns it to the owner of the tree.

2. If a tree that was planted more than three years ago sprouts a tree



If the new tree grows from the old tree's roots, it is considered a new tree from the ground, and its fruits are prohibited as *orlah* for three years. If a new tree grows from the trunk, Rabbi Meir considers it a growth of the trunk's source, and therefore a new tree, subject to *orlah*, while Rabbi Yehudah considers it only a growth of the tree, and therefore not subject to *orlah*.

The *Gemora* explains that both cases are necessary, since we would have thought that the *orlah* case was more strict, since it involves a prohibition, and not just monetary issues. Therefore, if we only learned one case, we would have thought that Rabbi Yehudah agrees to Rabbi Meir in the *orlah* case, or Rabbi Meir agrees to Rabbi Yehudah in the monetary case. (119a)

Rabbi Shimon's Equitable Ruling

The Academy of Rabbi Yannai says that Rabbi Shimon only assigns the owner of the higher garden vegetation that he can easily reach from his garden, but not ones that he can only reach with difficulty.

The *Gemora* questions how Rabbi Shimon would rule in the case of vegetation for which the owner of the higher garden can reach only the leaves or only the roots. This is left as an unresolved *taiku*.

Efraim Sabba, the student of Rish Lakish, quoted Rish Lakish who ruled like Rabbi Shimon. When they reported this to the Persian king Shapur, he said that he gives his grace to Rabbi Shimon, who said such a good ruling. (119a)

WE SHALL RETURN TO YOU, HABAYIS VEHA'ALIYAH

AND TRACTATE BAVA METZIA IS CONCLUDED

INSIGHTS TO THE DAF

Consistent, but not Equivalent

The *Gemora* quotes two cases where Rabbi Meir and Rabbi Yehudah hold positions similar to those in the *Mishna*. In the *Mishna*, Rabbi Meir assigns the vegetation to the owner of the land from where it sprouted, while Rabbi Yehudah assigns it to the owner of the airspace where it grows. Similarly, in the cases quoted by the *Gemora*, Rabbi Meir assigns a tree that grows from a tree trunk to its ultimate connection to the ground, while Rabbi Yehudah does not.

Tosfos (119a vTanya) explains that these cases are similar to the *Mishna*, but not identical. However, even if Rabbi Yehudah had said that a tree growing from a trunk is considered to grow from the land, this would not contradict his position in the *Mishna*. In the *Mishna*, Rabbi Yehudah ruled that the owner of the airspace is the owner of the vegetation, and in the case of the tree, the airspace is owned by the owner of the land. In addition, the owner of the land only sold a tree, not necessarily any trees that grow from that tree. Similarly, even if Rabbi Meir had said that a tree growing from the trunk is considered part of the tree, this would not contradict his position in the *Mishna*, since buying the tree may confer on the buyer any growth from the tree, similar to new branches that may appear from year to year.



Tosfos explains that the *Gemora* is pointing out the similarity between the *Mishna* and these cases, in that Rabbi Meir consistently rules to the advantage of the landowner, while Rabbi Yehudah rules to his disadvantage.

Orlah

The Rambam (Maaser Shaini 10:19) rules like Rabbi Yehudah in the case of *orlah*, applying *orlah* only to a tree that grows from the roots of the original tree, and not one that grows from its trunk.

The Kesef Mishnah points out a Tosefta that quotes two opinions – an anonymous first opinion, that obligates both types of trees in *orlah*, and Rabbi Yehudah's opinion, that only obligates a tree that grows from the trunk. The Kesef Mishnah says that the Rambam presumably had a different text in the Tosefta, with the first opinion obligating only the tree that grows from the root in *orlah*, and therefore ruled as he did.

The Noda Biyehuda (Mahadura Tinyana, YD 185) explains that the Kesef Mishnah is explaining why the Rambam rules like Rabbi Yehudah. According to our text of the Tosefta – even if we amend Rabbi Yehudah's opinion to match the one quoted here – the first anonymous opinion is Rabbi Meir's. Therefore, we should rule like Rabbi Meir, since he is cited as the anonymous opinion, and is therefore a "stam" – the authoritative statement. Rather, the Tosefta's first opinion is Rabbi Yehudah's and therefore the Rambam followed that *stam* statement.

DAILY MASHAL

Rabbi Shimon

The Ben Yehoyada explains the dispute in the *Mishna* allegorically. The upper garden is a metaphor for the Jewish nation, which involves itself in matters of heaven, which is above, while the lower garden is a metaphor for the rest of the world, which involves itself in matters of the earth. The dispute is which contribution to the products of this world is paramount – the physical or spiritual contribution – and which group has a claim to them. Rabbi Meir says the Jewish nation has the claim, while Rabbi Yehudah says the rest of the world does. Rabbi Shimon, however, says that whatever the Jewish nation receives, it may use, due to its claim, but the rest is rightfully owned by the rest of the world. Shevor the king of Persia felt that Rabbi Shimon was the most equitable, since he legitimated both claims, and therefore praised his ruling.