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Bava Basra Daf 23

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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

Mishna

One must distance a dovecote at least fifty amos away from a city (to ensure the doves don't eat other people's grain). He also should not make a dovecote in his own property unless there are fifty amos of his own property in all directions. Rabbi Yehudah says that he should have an area of four kor (one kor in each direction), the flight distance of a dove. And if he bought it, even if it is only a quarter of a kor, it retains its chazakah (as long as the previous owner had a chazakah for this dovecote). (23a)

Dovecotes

The Gemora asks: Is fifty amos sufficient? But we learned in a Mishna: One may not set nets for catching doves unless they are thirty ris (four mil, which is 8,000 amos) distant from an inhabited place (for then, we are confident that they do not belong to the townspeople)!

Abaye answers that doves fly much further than fifty amos, but when they are feeding, they fill themselves up with the food they find in fifty amos distance. [Therefore, a dovecote only need be fifty amos away from fields, since the doves will be full before reaching the fields, but traps must be further from the city, since doves will venture up to thirty ris away from their habitat, and get caught in the traps.]

The Gemora then challenges the thirty ris (as being too small) from a braisa that states that in a settled area, one may not set traps even one hundred mil away.

Rav Yosef explains that the braisa is referring to a settlement of vineyards, through which the doves continue traveling, even beyond thirty ris from an area of dove habitat. Therefore, anywhere in that area, doves will be found, and no traps can be set.

Rava explains that the braisa is referring to a settlement of dovecotes, through which doves will continue traveling, even beyond thirty ris from their original habitat.

Even though the dovecotes themselves should extend the border for thirty ris, the braisa's extension applies even when these closer dovecotes do not incur the distancing of traps. The Gemora lists three such type of dovecotes:

- Owned by non Jews
- Owned by no one
- Owned by the trapper

In these cases, the dovecotes themselves would not prohibit the trap from being set, but it extends the range of other doves, and therefore the no trap range. (23a)

Chazakah without a Claim

The Mishna had stated: Rabbi Yehudah says that he should have an area of four kor (one kor in each direction), the flight distance of a dove. And if he bought it, even if it is only a quarter of a kor, it retains its chazakah



(as long as the previous owner had a chazakah for this dovecote).

Rav Pappa, or some say Rav Zevid, says: This Mishna proves that we claim on behalf of a buyer or an inheritor. [We are referring to a case where the first purchaser had a chazakah of having this dovecote for three years. However, we are uncertain if he bought this right in the proper manner. Beis Din pleads on behalf of a heir and on behalf of a purchaser (for there is no way for us to know if the original owners had purchased that right) since there is a strong presumption that the first purchaser bought it in the proper manner. It emerges that the first person needs a chazakah with a claim; the second person only needs a chazakah.]

The Gemora asks: We have learned this halachah with respect to an inheritor from another Mishna: He who claims that a property is his through inheritance (with a chazakah) has no need to plead (that his father purchased the property).?

The Gemora answers: Rav Zevid's statement was necessary with respect to the purchaser.

The Gemora asks: But in regard to the purchaser, we have also learned in another Mishna that if a man buys a courtyard in which there are ledges and balconies projecting over the public domain, he keeps the chazakah (that the seller had) over them (even without a definite claim that the seller had purchased this right from the public).?

The Gemora answers: Both rulings are necessary. For if it would have been taught only regarding the case of the public domain, I would have thought that the reason we allowed the right to stand is because we can assume that the courtyard had been originally recessed from the main thoroughfare in order to allow room for the projection, or that the public waived their rights to him (for he could not

have done this illegally), however, this reason would not apply here (by the dovecote, for perhaps the neighbors were not able to protest against the previous owner). And if it would have only been taught here, I would have said that the reason is because, having only an individual to deal with, the owner obtained his consent, or that the neighbor waived his right to him, but in the case of the public, who is there to consent, and who would have been entitled to provide him with that right? Therefore, both Mishnayos are required.

The Mishna had stated: the dovecote retains its chazakah.

The Gemora asks that Rav Nachman said in the name of Rabbah bar Avuha that there is no chazakah with respect of damages (so how do we allow this chazakah to function when it will be damaging to the neighbors)?

Rav Mari answers that Rav Nachman was specifically referring to smoke. Rav Zevid answers that he was referring to an outhouse. [These are extremely harmful to the neighbors.] (23a)

Mishna

A young dove which is found within fifty amos belongs to the owner of the dovecote; beyond fifty amos - it belongs to its finder.

If it was found between two dovecotes, the halachah is as follows: If it was closer to one - it belongs to its owner; if it was closer to the other, it is his. If it was precisely in between both dovecotes, the two divide it. (23b)

Rov and Karov

Rabbi Chanina maintains that when the principles of rov, the majority, and karov, close in proximity, conflict with each other, then we follow the principle of majority. And



although both principles are of scriptural origin, the principle of majority is superior.

Rabbi Zeira asks: It is written: And it shall come to pass that the city nearest to the slain man ... (shall bring a heifer). Now, is this not so even though there are other towns in the vicinity which has a larger population? [This would prove that we follow the principle of karov even when it conflicts with rov!?]

The Gemora answers: The Torah's law only applies in a case where there are no larger towns.

The Gemora asks: But if 'majority' is the decisive factor, why not follow the 'majority of the world'?

The Gemora answers: The Torah is dealing with a town which is surrounded by mountains (and people from elsewhere do not frequent).

The Gemora asks from our Mishna: A young dove which is found within fifty amos belongs to the owner of the dovecote. Seemingly this is so even if there is a dovecote which is larger than this one (but further away)!? [This would prove that we follow the principle of karov even when it conflicts with rov!?]

The Gemora answers: The Mishna's law only applies in a case where there are no larger dovecotes in the area.

The Gemora asks: If so, let us consider the last clause: If it is beyond fifty amos - it belongs to its finder. Now if there are no larger dovecotes in the area, it definitely came from this one!?

The Gemora answers that our Mishna (in the first clause) is dealing with a bird which can only hop. This follows Mar Ukva, who laid down that a bird which can only hop does not go further than fifty amos.

Rabbi Yirmiyah inquired: If one foot is within fifty amos and the other beyond, how do we rule?

The Gemora notes: It was for this that they ejected Rabbi Yirmiyah out of the Beis Medrash.

The Gemora asks on Rabbi Chanina from the next ruling of our Mishna: If it was found between two dovecotes, the halachah is as follows: If it was closer to one - it belongs to its owner; if it was closer to the other, it is his. Seemingly, this is the law even though one dovecote is larger than the other? [This would prove that we follow the principle of karov even when it conflicts with rov!?]

The Gemora answers: We are dealing here with the case where both are equal in size.

The Gemora asks: But let us say that it comes from the 'majority of the world'?

The Gemora answers: We are dealing here with a case where the road where the bird was found (between the two dovecotes) was between vineyards. We are not concerned that it came from elsewhere, for a hopping bird (one that cannot fly) will not be able to come here, for this bird will only hop if it sees its nest by turning around. And since the vineyards block its sight, it will not continue to hop. (23b – 24a)

INSIGHTS TO THE DAF "Closer" and "Majority"

Rabbi Chanina maintains that when the principles of rov, the majority, and karov, close in proximity, conflict with each other, then we follow the principle of majority. And although both principles are of scriptural origin, the principle of majority is superior.

Reb Shmuel Rozovsky is uncertain as to why we would follow that which is "closer." Is it because that this is a

method which clarifies the doubt, for it is more probable that it came from the “closer”? Or perhaps, the probability of coming from the “closer” is just as likely as if it was coming from the “further,” except that there is a halachah that we follow that which is “closer.”

This can be proven from that which Rabbi Chanina said that when there is a conflict between the “majority” and that which is “closer,” we follow the “closer.” If “majority” and “closer” are both logics that clarify to us that which was uncertain, Rabbi Chanina’s halachah would be understandable, for he would be informing us that the clarifier from the fact that it is closer is superior then the clarifier emerging from the majority.

However, the Tosfos HaRosh in Bava Metzia (66b) writes that when we follow a majority that is before us (such as a piece of meat, where we are uncertain if it came from one of the nine stores selling kosher meat, or the one store selling non-kosher meat), that is not because the majority verifies for us that the meat in question came from the kosher shop; rather, it is the Torah’s law that we follow the majority. Accordingly, if we would say that the logic of following the “closer” is on account of clarification, it would certainly be stronger than a mere “majority.” This proves that following the “closer” is also a Torah law and not based on logic.

If so, the question begs to be asked: How does Rabbi Chanina know that we follow the “closer” and not the “majority”? If they are both halachos without any logic, why is one superior than the other?

He answers that even though they are both halachos and not verifiers, they are distinct from each other. When we follow the majority, the majority resolves the uncertainty. Although the doubt rests before us, the majority is a decider. However, when we follow the “closer,” it doesn’t resolve the uncertainty at all; it merely tells us that we should not search any longer for where this doubtful item

comes from - since we can attribute it to that which is closer. However, when that which is closer conflicts with a majority, it is impossible to assert that the object did not come from that which is further (for the majority tells us that it did); it therefore reverts back to an ordinary case of uncertainty, where we would rule according to the majority.

DAILY MASHAL
Heavenly Academy

Rabbi Yirmiyah inquired: If one foot is within fifty amos and the other beyond, how do we rule?

The Gemora notes: It was for this that they ejected Rabbi Yirmiyah out of the Beis Medrash.

Rabbi Chaim Vital writes in Sha’ar Hagilgulim that his Rebbe, the Arizal, told him about Rabbi Yirmiyah, who was constantly asking questions. Since his intention was to increase the studying of Torah and to glorify it, and yet, they embarrassed him and sent him out of the study hall, his reward is of a great magnitude. All inquiries that are posed in the Heavenly Academy are asked by Rabbi Yirmiyah. And he was chosen, said the Arizal, to be the one to stand guard at the entrance of the Heavenly Academy.