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Bava Basra Daf 26

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Daf Notes is currently being dedicated to the neshamot of

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

Direct Damage

The *Gemora* relates another story which appears to be an act of direct damage. People from the house of Bar Meryon the son of Ravin would beat flax. The chaff of the flax would fly and damage people.

The people took their claim to Ravina. He clarified Rabbi Yosi’s ruling. Rabbi Yosi admitted that if there is direct damage, the damager is liable, but that is only if the object causing the damage traveled through the force of the damager. In our case, however, the wind propelled the damage.

Mar bar Rav Ashi challenges this ruling. How is this different from the case of winnowing aided by the wind? [*If on Shabbos one winnows by using the wind to separate chaff from wheat one is in violation of Shabbos even though the wind is the agent of the separation.*] Indeed Mereimar is of the opinion that these two cases are identical.

The *Gemora* asks another question on Ravina. How is this case different then the case of a spark which flies from a blacksmith’s hammer in which the damager is liable for damage caused?

The *Gemora* distinguishes that in the case of the spark, the blacksmith desires the spark to fly in order that it shouldn’t damage his own property. In our case, the flax beaters do not want the chaff to fly. (26a)

Mishna

One should not plant a tree next to his friend’s field unless he distances from it four *amos*. The *halachah* is the same for vineyards or for trees. If there is a fence between them, each person may plant up to the fence. If roots extended into his neighbor’s property, his neighbor may remove them till a three *tefachim* depth in order not to obstruct the plow. If his neighbor wishes to dig a hole, a ditch or a cave, he may remove all roots necessary and the roots belong to him. [*The Gemora will discuss who is referred to when it says the roots belong to him.*] (26a)

Distancing by Trees

The *Gemora* clarifies the four *amos* separation requirement is in order to allow for work on the vineyard (*i.e. enough space for the plow*). Shmuel says, this is true only in *Eretz Yisroel*, but in Bavel, two *amos* is enough. The *Gemora* brings a *braisa* to support this distinction. The *braisa* says one is required to distance from his neighbor two *amos*. This is in contradiction to our *Mishna*. The *Gemora* concludes that Shmuel’s distinction is correct.

Rava the son of Rav Chanan had a palm tree next to Rav Yosef’s vineyard. Birds would come from the palm into the vineyard and cause damage. Rav Yosef asked Rava to cut it down. Rava answered that he had distanced himself the required four *amos*. Rav Yosef claimed that the *Mishna* was referring to separating from other trees, but from a vineyard, further separation is required. He was, however, disproved from the *Mishna* which explicitly states that a vineyard has the same *halachah* as trees.

Rav Yosef then made a new distinction. The *Mishna* is referring to distancing trees from trees or vineyards from vineyards, but trees from vineyards require a greater distance.

Rava said that he refuses to cut it because there is a *halachah* that it is prohibited to cut down a palm tree which produces a *kav* of fruit. Rav Chanina said that his son died because he cut down a palm tree which produced fruit. Rava tells Rav Yosef, "If you want, you cut it." (26a)

Removing the Roots

Rav Pappa had a palm tree on the boundary of Rav Huna the son of Rav Yehoshua's property. One day he found Rav Huna digging and uprooting the roots of his tree. When approached, Rav Huna said he was acting in accordance with the *Mishna*. Rav Pappa pointed out that he was digging deeper than three *tefachim*. Rav Huna responded that he wished to dig a pit and therefore the *Mishna* allowed him to uproot as much as necessary.

Rav Pappa tried to bring proofs to stop Rav Huna, but none were accepted until Rav Pappa brought a statement of Rav Yehudah: A boundary strip to which the public have established a right of way must not be damaged by the owner, one cannot ruin. [*If people use a particular land as a walk way (chazakah), that path cannot be ruined even though it is situated on private property.*] After Rav Pappa left, Rav Huna realized that he could have answered the following: Roots can only establish a *chazakah* if they are within sixteen *amos* of the tree, which was not the case in this story. [*Roots only suck nutrients sixteen amos from the tree. A chazakah could be claimed if there was a prior reason for the land owner to get rid of the roots; yet they were allowed to stay. If, however, up until now there was no reason for the land owner to be disturbed by the roots, a chazakah has not been established. Outside of sixteen amos the roots do no damage to the land.*] (26a – 26b)

Who Owns the Wood?

Rav Yaakov from Diva asked Rav Chisda: When the *Mishna* says that the roots belong to him, who is it referring to?

The *Gemora* attempts to bring a proof from *hekdesh* (*property belonging to the Beis HaMikdash*). If the roots of a tree belonging to a private person intrude into land belonging to *hekdesh*, one cannot derive benefit from them. One, however, is not obligated in *me'ilah*. [*If one accidentally derives benefit from hekdesh he is obligated to bring a special sacrifice called me'ilah. The fact that this person is not obligated in me'ilah shows that the prohibition to derive benefit from the roots is only rabbinic and not from the Torah.*] The *Mishna* can be understood if we say the roots are owned by the owner of the tree.

The *Gemora* asks a contradiction from the end of the *Mishna*. If a tree owned by *hekdesh* intrudes into land owned by private owner, the identical *halachah* applies. If we say the owner of the tree owns the roots, *me'ilah* should apply!?

The *Gemora* answers that this *Mishna* is referring to growth that occurred after the tree and the land were sanctified. The *Mishna* is of the opinion that growth that grows after sanctification is not holy and is not relevant to our question.

Ravina gives another answer for the contradiction. The beginning of the *Mishna* which says we go after the tree is speaking about roots that are within sixteen *amos* of the tree. The end of the *Mishna* which says we go after the land is speaking about roots that are more than sixteen *amos* away from the tree. (26b)

Illegal Nutrients

Ulla says that if one plants a tree within sixteen *amos* of the boundary, he is a thief and one cannot bring *bikkurim* from the fruit. [*There is a mitzvah to bring the first fruit (bikkurim) to the Beis Hamikdash. The fruit has to be from*



one's own land. Here when the tree is receiving nutrients from other land one cannot bring bikkurim.]

The *Gemora* asks: What is Ulla's source for this *halachah*? The *Gemora* attempts to bring a source from a *Mishna* in Sheviis. If there are ten saplings in an area of a *beis se'ah*, one is permitted to plow up until Rosh HaShanah of the *Shemittah* year. [The prohibition to work the land starts thirty days prior to the onset of the *Shemittah* year. This is true for land in general. Individual trees, however, are exempt from the prohibition, and one is permitted to plow around those trees until Rosh HaShanah. If one is permitted to plow the entire *beis se'ah*, it must be that the trees receive nutrients from the entire *beis se'ah*.]

How much is a *beis se'ah*? 2,500 *amos*. If we divide this number by the ten trees, we find that each tree derives sustenance from an area of 250 *amos*. This is considerably less than the area which Ulla assumes provides sustenance! [Ulla says that the tree sucks nutrients 16 *amos* on each side. We therefore must draw a 32 by 32 square around the tree. This produces an area much larger than 250 *amos*.] We therefore need to locate an alternative source for Ulla. (26b)

INSIGHTS TO THE DAF

Cutting Down Fruit Trees

Rava bar Rav Chanan refused to cut down his fig trees because Rav Chanina's son died because he cut down a fig tree.

There is a prohibition from the Torah to cut down fruit bearing trees. It is not clear, however, that the prohibition should apply in this case. Tosfos asks a question from a *Gemora* in *Bava Kamma* (92a). The *Gemora* says that one is allowed to cut down a fig tree in order to save vines. Grapes are considered more valuable than figs and therefore it is not considered destructive to cut it down.

Why then did Rava bar Rav Chanan refuse to cut down his fig tree?

Tosfos answers that one is only allowed to cut the fig tree if it is doing serious damage to the vines. In our case, the damage was not so severe so it was not permitted.

The Rosh in *Bava Kamma* permits the cutting of a fruit tree if one needs the space in which the tree is situated.

Based on this, the Taz (*Yoreh Deah*, 116) allowed someone to cut a fruit tree in order to build a house.

The Ya'avetz, however, requires that one have a gentile cut the tree based on a different understanding of our *Gemora*. The Ya'avetz is bothered by the question of Tosfos. If it is permitted to cut the tree, why was Rava bar Rav Chanan afraid of a curse? The Ya'avetz comes to the conclusion that even though it is permitted according to *halachah*, there is still a curse. Therefore one should never cut the tree down by himself, but rather have a gentile do it. Many people conduct themselves according to this opinion even though almost all the Rishonim don't learn this way.

DAILY MASHAL

Torah, Rain and Wheat

Addressing the people, Moshe compares the Torah to rain and dew. Just as rain is needed for life and vital for the world, so is the Torah (see Rashi on the verse and on our gemara, s.v. Ya'arof). The Vilna Gaon adds that rain is a gift from above, falling on a farmer's field but with no promise as to the nature of the results. The farmer determines the produce. If he sows wheat, that's what he'll reap; if thorns, then thorns. The same applies to the Torah: "Righteous people will walk in it and sinners will stumble in it". Those who misuse the Torah grow thorns while those using it for the right aim earn ripe and full produce (*Oros HaGra*, 38).