



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 *Mishnah* discusses the case of a garden which is higher than its neighbor. The *Mishnah* records a dispute regarding vegetation that grows from the wall in between them. Rabbi Meir said: They belong to the upper garden; Rabbi Yehudah maintained: To the lower garden. Rabbi Meir said: Should the owner of the upper garden wish to remove his garden [i.e., take away the earth], there would be no vegetables.¹ Rabbi Yehudah said: Should the lower one wish to fill up his garden [with soil], there would be no vegetables.² Then, Rabbi Meir said: Since both can prevent each other [from having vegetables at all], we consider from where the vegetables draw their sustenance.³ Rabbi Shimon said: As far as [the owner of] the upper garden can stretch out his hand and take belongs to him, while the rest belongs to [the owner of] the lower garden.⁴ (118b4)

Rava said: As for the roots, all agree that they belong to the upper owner. They disagree only with respect to its foliage. Rabbi Meir maintains: The foliage are counted with the roots; while Rabbi Yehudah holds that they are not.

Now, they follow their views [expressed elsewhere]. For it has been taught in a Baraisa: That⁵ which sprouts from the trunk or the roots belongs to the landowner; these are the words of Rabbi Meir. Rabbi Yehudah said: [That which grows] out of the trunk belongs to the owner of the tree; out of the roots, to the owner of the land.

And we learned similarly in (a Baraisa) regarding the case of orlah: A shoot which sprouts from the trunk or from the roots is subject to orlah; these are the words of Rabbi Meir. Rabbi Yehudah said: That which grows out of the trunk is not subject to orlah, but out of the roots, is subject.

¹ Since the vegetation would not grow without the land of the higher garden, the vegetation belongs to the owner of the higher garden.

² Rabbi Yehudah says that since the vegetation would not grow without the air space of the lower garden, its owner gets the vegetation.

³ 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.

⁴ 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.

⁵ In a case where one sold a tree that is growing in his field.



INSIGHTS TO THE DAF

Consistent, but not Equivalent

And both are necessary. For if the first were taught, [I would argue,] only there does Rabbi Yehudah rule so, because it is [a question of] civil law. But with respect to orlah, which is a matter of prohibitory law, I might think that he agrees with Rabbi Meir. And if the latter were taught, I might argue, only here does Rabbi Meir rule so, but in the former case he agrees with Rabbi Yehudah. Hence both are necessary. (118b4 – 119a1)

Rabbi Shimon said: As far as [the owner of] the upper garden can stretch out his hand etc. [and take belongs to him, while the rest belongs to the owner of the lower garden].

They said in the academy of Rabbi Yannai: Providing, however, that he does not need to strain himself.

Rav Anan — or according to others, Rabbi Yirmiyah — propounded: What if he can reach its foliage but not the roots, or he can reach the roots but not the foliage? The problem remains unresolved. (119a1 – 119a2)

Ephraim the Scribe, a disciple of Rish Lakish, said in the name of Rish Lakish: The halachah agrees with Rabbi Shimon. When this was told to King Shapur, he observed: We extend our graciousness to Rabbi Shimon. (119a2)

WE SHALL RETURN TO YOU, HABAYIS VEHA'ALIYAH

AND TRACTATE BAVA METZIA IS CONCLUDED

The *Gemora* quotes two cases where Rabbi Meir and Rabbi Yehudah hold positions similar to those in the *Mishnah*. In the *Mishnah*, 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 *Mishnah*, 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 *Mishnah*. In the *Mishnah*, 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 *Mishnah*, 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 *Mishnah* 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 *Mishnah* 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.