



OVERVIEW of the Daf

1) Repaying a loan early (cont.)

Three attempts are made to solve the Gemara's inquiry about whether a borrower who claims that he repaid the loan early is believed if the lender did not seek repayment until after the loan was due.

The question is left unresolved.

2) Contributing towards the additional height of a wall

R' Huna and R' Nachman disagree whether one who builds a parallel wall that is half the length of the dividing wall is obligated to pay for half of the entire length of the wall or only for half of the part that is equal in length to the new wall.

The Gemara presents a case where R' Huna agrees with R' Nachman and a case where R' Nachman agrees with R' Huna.

R' Huna explains that the presence of slots for windows towards the neighbor's side of the wall does not constitute grounds for a chazakah.

3) Rights to use a neighbor's property

R' Nachman and R' Yosef disagree about the chazakah that is established when someone leans beams on his neighbor's wall.

A second version of R' Nachman's position is recorded.

R' Nachman and R' Yosef disagree about the chazakah established to drain water from one's roof onto his friend's field.

A second version of this discussion is presented.

Three opinions are presented regarding the rights of a tenant in a large building.

Ravina presents the guidelines of establishing a chazakah to lean a beam on a neighbor's wall.

4) Rooftops

Abaye rules that when two houses are on opposite sides of a public domain each person must build a wall four amos tall along half of his roof.

Two reasons are given why Abaye specified four amos.

The novelty of Abaye's ruling is explained.

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REVIEW and Remember

1. When is one obligated to pay for a wall that is construction out of stone?
2. What is the difference between שפכי and נטפי?
3. How does one establish a chazakah for supporting a beam on a neighbor's wall immediately?
4. What is the function of a ten tefach partition?

Distinctive INSIGHT

The context of the case of the leaning beam

אמר רבינא האי כשורא דמטללתא עד תלתין יומין לא הוי חזקה,
 בתר תלתין יומין הוי חזקה

In this scenario, Rashi explains that one neighbor leaned or supported a beam of a hut against the wall of his friend, and he claims that he paid for the right to use the wall in this manner. The owner of the wall denies that he gave permission for his wall to be used, and he explains that the reason he did not protest at first was that he believed that the beam would only be there for a short time, so he did not care to react. Ravina states that for the first thirty days, the utility of a beam of a hut is not assumed to be authorized. If thirty days had passed, and the wall's owner remained silent, his tolerance is seen as a sign that he, in fact, formally granted permission for the wall to be used, and the hut owner may continue utilizing the wall.

Rashi explains that this is one of a series of claims made by one neighbor against the other regarding usage of certain privileges. In Tosafos, Rabeinu Tam explains that Ravina's statement is referring to the wall of our Mishnah (5a). A wall was rebuilt jointly to the height of four amos, and one partner built the wall higher than four amos at his own expense. Later, the one who did not originally contribute to the extended height claims that he subsequently paid for his part, and that he now owns half of the entire wall. Ravina teaches that if this second partner later leans a beam of a hut against the extended height, this in and of itself is no indication that he indeed paid for the added height above four amos. If the beam has been there for thirty days or more, this is an indication that he paid, because the one who built it at his own expense would not tolerate usage of his property for a lengthy time, unless he had been paid. The explanation of Rabeinu Tam is very reasonable in terms of why this halacha is presented in the context of our Mishnah, whereas according to Rashi, this discussion would have been more appropriate to be found in the third perek, חזקת הבתים, where property rights are discussed.

Rosh agrees with the explanation of Rabeinu Tam in regard to this case of leaning a beam and also in regard to the earlier case of Rav Huna (6a) of בי כוי, where a slot was built to accommodate placement of a beam. In these two cases, the context is that of our Mishnah where one neighbor built the height above four amos, and the other later claims that he subsequently paid. However, Rosh learns that all the other discussions in this section are in reference to paid usage of neighborly privileges. The reason these discussions are presented here rather than in חזקת הבתים is that they are all rulings of Rav Nachman, who appeared in the first case with Rav Huna. ■

HALACHAH Highlight

Establishing a chazakah to use a neighbor's property

אמר ר' נחמן אחזיק להורדי וכו'

R' Nachman said that one who establishes a chazakah to lean narrow rafters etc.

There is a disagreement amongst the Rishonim about the nature of חזקת תשמישין – establishing a chazakah for the use of a neighbor's property. According to some Rishonim¹, this type of chazakah does not require continued use of the neighbor's property for three consecutive years, as a chazakah on land requires. On the other hand, the one attempting to establish the chazakah must claim that either he purchased this right of use or that the right was given to him by the owner. In this regard, it is similar to the chazakah that is made on land. There are other Poskim² who maintain that this position is true only regarding minor use of a neighbor's property, for example, the right to rest small rafters on a neighbor's wall, but when it comes to more major uses, for example, the right to drain water into the neighbor's yard and other significant uses for which people would commonly write a contract, a three year chazakah would be required. The rationale is that those uses that impede the owner from fully using his own property require absolute confirmation that this right was transferred, and three years is necessary to establish that confirmation³.

According to some opinions⁴, this type of chazakah only requires use of the neighbor's property for thirty days rather than three years. Others maintain⁵ an even more lenient position and write that it depends on the type of use in question. If it is the type of use that is constant – the chazakah is established immediately, but if the use is not constant – thirty days of use is required

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R' Nachman in the name of Shmuel ruled that one must build a fence four amos tall if he can see into his neighbor's courtyard, but there is no need for a wall between rooftops.

R' Nachman asserts that a wall four amos is not needed between roofs, but a partition ten tefachim is necessary.

The function of a ten tefach partition is explained.

R' Nachman's ruling is unsuccessfully challenged.

5) Properties on different levels

R' Huna and R' Chisda disagree whether the owner of an upper courtyard must help the owner of the lower courtyard construct his wall.

A Baraisa supports R' Chisda's position that the upper resident must assist in the construction of the lower part of the wall.

The Gemara recounts a dispute between brothers regarding the halacha when the ground floor apartment begins to sink into the ground. ■

to establish a chazakah.

Some opinions⁶ hold that the one who establishes a chazakah to use his friend's property does not have to claim that he bought or received that right as a gift from the owner (אין צריך טענה). The rationale behind this position is that the chazakah does not relate to the ownership of the land, rather the chazakah relates to the use of the land, and as long as the owner was מוחל or was silent and did not protest the use of his field, it is considered as though he transferred that right. ■

1. ע' רש"י ד"ה אחזיק להורדי.
2. ע' רבינו יונה לסוגיין.
3. ע"ע רש"י לקמן ז. ד"ה בדנפשאי.
4. ע' שטמ"ק נ"ט. בשם הראב"ד.
5. רמ"ה פ"א נ"ט.
6. ע' רשב"א כ"ח: ■

STORIES Off the Daf

Unwelcome competition

אחזיק להורדי אחזיק לכשורי

Two partners would conduct their business from their jointly-owned home. One of the main ways they made their money was to lend money to local non-Jews with interest from their home office. Since they could always use some extra money, they decided to rent out a room on the ground floor of their home to a third party for a year's time.

After they did so they noticed a very strange thing. Before the renter had moved in, hardly a day passed without a non-Jew visiting to borrow money. For a

few weeks afterward, however, not a single "client" ascended to their quarters on the second floor of the house. The partners soon figured out that their tenant was stealing their business and offering loans to the local non-Jews.

The partner wished to either give the tenant a place upstairs with them or evict him, but the tenant protested. "I rented a room on the ground floor and you knew that I do business in my rooms. Until the lease is up, I clearly have the right to stay."

The three went to the Maharach Ohr Zarua, ז"ל, for adjudication, and he replied that it depends on the exact circumstances in their home. "You cannot evict him from his room since once one has rented out an apartment even a sale of the apartment cannot take effect until the

tenant's lease is up. Since you never stipulated that any particular business is excluded from his right to the premises, we are in the situation as Rabbeinu Shimshon learns from Rav Nachman's statement in Bava Basra 6: there are no half-measures when it comes to acquisitions. Therefore, he may do whatever business comes his way the entire year.

"However, you do have a bit of a say over his business. If your tenant conducts his business in a common room, you can stop him since he does not have a chazakah to use the common room without the consent of his partners. We learn this from Rav Yochanan's statement regarding a courtyard in פרק חזקת הבתים¹. ■

1. שו"ת מהר"ח אור זרוע, ס' קע"ב ■