



OVERVIEW of the Daf

1) Properties on different levels (cont.)

After the Gemara finishes presenting the argument between the brothers regarding the sinking ground floor apartment, the issue was presented to R' Chama that the resident of the upstairs apartment can prevent the resident of the ground floor apartment from demolishing the house to rebuild the building.

R' Chama adds two qualifications to his ruling.

R' Nachman was quoted regarding the point at which the resident of the ground floor apartment can force the resident of the upstairs apartment to demolish and rebuild.

Rabbah rejected that version of R' Nachman's position and offers an alternative version of his position.

This position is further clarified.

2) Additional rulings of R' Chama

In another incident, there was a dispute between neighbors regarding the construction of a wall blocking a neighbor's window, and R' Chama ruled that the wall must be dismantled.

The novelty of this ruling is explained.

Another incident involving feuding brothers is reported, and R' Chama ruled in that case that the wall may remain in place.

Ravina challenged this ruling and R' Ashi successfully defended the ruling.

Ravina offers another challenge to R' Chama's ruling.

R' Shimi bar Ashi responds to the challenge and a Baraisa is cited that supports his explanation.

The Gemara rejects the proof from the Baraisa.

A ruling of R' Chama is cited that confirms his earlier ruling.

In another incident, orphans claimed that a receipt was forged and they maintained the right to collect money. The incident was brought before R' Chama who ruled that nothing should be done until the orphans become adults.

Ravina ruled that R' Chama's rulings should be followed except for the ruling concerning the receipt.

Mar Zutra the son of R' Mari asserted that the halacha follows R' Chama for that case as well.

3) MISHNAH: The Mishnah begins with a discussion of forcing

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REVIEW and Remember

1. At what point is a collapsing building considered uninhabitable?
2. Why was one brother permitted to build a wall that would prevent light from entering his mansion?
3. Why would a gatehouse be considered a negative thing?
4. What is the source that Torah scholars do need additional protection?

Distinctive INSIGHT

The rights which are part of having a window

ולא חלונות זה על זה

The sages of Nehardea represent a consistent view regarding brothers and the division of an estate they inherit from their father. Rav Chama of Nehardea issued an opinion in a case of two brothers who divided an estate, where one received a building, and the other took a garden. The one who took the garden decided to build a wall along the edge of the garden, which would block the windows of the house which had looked out over the garden until that point. The one who took the house protested, but R' Chama ruled that there is no understood right of the one who took the house to enjoy the view as their father did.

Along these same lines, R' Nachman from Nehardea, in the name of Shmuel, issued a statement that brothers who divide "do not have [a claim regarding] windows" against each other. Rashi explains that this refers to a case where two brothers each received a house from their father. Neither one can prevent the other from building a wall on his portion and blocking the light entering the window of the other. We do not accept a claim that each has a right to air rights and to enjoy a clear view from a particular window and to use the building as the father did.

Or Zarua (ח"ג, פסקי ב"ב סי' י) notes what seems to be a contradiction in the opinion of R' Chama. Here, R' Chama holds that the owner of a house does not have an inherent right to the light entering the windows of his dwelling. Earlier (7a), the Gemara told of someone who was building a wall across from a window, within four amos, which darkened the light entering the window. The occupant of the dwelling complained, and the builder even responded and offered to rectify the situation in different ways. Finally, R' Chama ruled that the occupant was justified in stopping the one who wanted to build the wall. We see that R' Chama holds that having a window allows its owner to stop someone else from building a wall across from it.

Or Zarua answers that according to Rabeinu Tam (7a, תד"ה א"ל) we can say that it is, in fact, prohibited to build a wall which darkens a window (7b). It is permitted, though, to build a wall which merely blocks the view the window owner has to look over his fields and his property, which is the case on 7a and also the topic of R' Nachman in the name of Shmuel.

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 By Rabbi and Mrs. Makhlof Suissa
 In loving memory of their mother
 מרת אסתר גיטל בת ר' יעקב, ע"ה

HALACHAH Highlight

The exemption of Torah scholars from communal taxes related to protection

אמר ריש לקיש רבנן לא צריכי נטירותא

Reish Lakish stated that rabbis do not require protection

Shulchan Aruch¹ codifies this statement of Reish Lakish and writes that communal taxes that are collected for the purpose of providing protection for the citizens are not collected from תלמידי חכמים. The reason תלמידי חכמים do not contribute towards these collections is that the protection that these funds will provide is not needed by the תלמידי חכמים since the Torah that they study protects them from harm. Rema² adds that even when the government expects the תלמידי חכמים to pay the taxes themselves the responsibility still remains on the community to cover their share of the tax. Furthermore, this exemption applies to all תלמידי חכמים regardless of how wealthy or impoverished they may be since the exemption is a function of giving honor to Torah and is not a function of need.

Regarding the definition of the תלמיד חכם that qualifies for this exemption, Shulchan Aruch³ states that the qualification is that Torah study is their occupation (תורתם אומנותם). This does not mean that only those people who learn all day qualify for this exemption. People who engage in business or a craft to earn a living also qualify for this exemption as long as they study whenever the opportunity presents itself and they limit themselves to earning just enough to scrape by and not if they are looking to become wealthy. Furthermore, adds Rema⁴, it is unnecessary for the תלמיד חכם under discussion to hold a formal position as a Rosh Hayeshiva. As long as one is known as a Torah scholar in his generation and has the ability to converse intelligently in the majority of the Talmud and the rulings of the scholars of the earlier generations he qualifies

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residents of a courtyard to build a gatehouse for their courtyard. A similar dispute concerning paying for security for a city is cited. The Mishnah concludes by defining what defines one as a resident of a city.

4) Gatehouse

The Gemara challenges the implication of the Mishnah that a gatehouse is beneficial from an incident involving Eliyahu Hanavi.

Four resolutions to this inquiry are presented.

5) Clarifying the disputes in the Mishnah

A Baraisa is cited that clarifies R' Shimon ben Gamliel's first ruling in the Mishnah.

The dissenting opinion of Tanna Kamma is explained.

A Baraisa clarifies R' Shimon ben Gamliel's second ruling in the Mishnah.

The dissenting opinion of Tanna Kamma is explained.

6) Paying for the city wall

Two versions of a conversation between R' Elazar and R' Yochanan concerning the method of collecting for a city wall are presented.

R' Yehudah Nesiah once obligated the rabbis to pay for the city wall.

Reish Lakish opposed charging the rabbis and cited a verse that indicates that they are exempt from paying for security measures.

R' Yochanan cites an alternative verse. ■

as a תלמיד חכם. Even though for certain halachos we assume that we do not have תלמידי חכמים in our generation, for this halacha anyone who is assumed to be a Torah scholar qualifies for this exemption. ■

1. שו"ע יו"ד סי' רמ"ג סעי' ב'.
2. רמ"א שם.
3. שו"ע שם.
4. רמ"א שם. ■

STORIES Off the Daf

An old debt

"בהא נמי הלכתא כרב חמא..."

Acertain person possessed a document that attested to a loan of one thousand gold coins that his father had made to seven people. But when he presented the document to the heirs of six of the borrowers, they claimed that it was a mistake.

Their argument included a number of facets: Why didn't the heir of the alleged lender request payment from the one surviving signatory, who also happened to be exceedingly wealthy and could afford to pay the entire loan? It was also strange that he had waited thirty years to collect the money even though he had suffered terrible poverty

in the interim and had even lived on tzedakah for a time.

According to the six sets of heirs, it seemed obvious that the document had not been a private debt. Most likely the seven had signed for a debt incurred by the entire community, which was the custom at that time. The debt must have been repaid and the document forgotten. If not, why wait for virtually everyone present at the time of the loan to die, before presenting the document?

When they went to beis din, the dayanim were not at all certain what to do. They figured that the heirs were right based on the Gemara in Bava Basra 7. There we find that if orphans present a loan document and the borrower shows a receipt, the receipt is considered forged since the borrower should have presented it when their father was still alive. The dayanim assumed that this case

was the same. If the loan document was genuine, why hadn't the lender's heir presented it during the borrowers' lifetimes, especially since he had been destitute for so long?

But since they were unsure they consulted with the Rosh, ז"ל. He answered, "Your premise is incorrect, since the Gemara is clearly no proof. We do not absolutely reject this receipt. We merely wait until the orphans grow up since it is possible they will be able to prove that the receipt was forged. And the other claims are no proof, since it is possible that the son only found the document recently."

The Rosh concluded, "But I always investigate old documents very carefully. If it seems clear that the document is not a true debt I give the defendant a letter asking that no בית דין collect on this document." ■

1. שו"ת הרא"ש, כלל סי"ח, סי' כ"ז ■