

OVERVIEW of the Daf

1) Digging a pit (cont.)

Numerous unsuccessful challenges to Rava's position are presented.

2) Who has the responsibility to prevent damage?

As part of the Gemara's analysis of Rava's position the Gemara analyzes the dispute between Rabanan and R' Yosi.

It is suggested that both Rabanan and R' Yosi agree that it is the damager's responsibility to prevent damage.

The Gemara proves that R' Yosi's position is that it is the one who would be damaged who is responsible to take steps to prevent damage from occurring.

The point of dispute between Rabanan and R' Yosi is explained. ■

HALACHAH Highlight

Who has the responsibility to prevent damage from occurring?

ואת החרדל מן הדבורים

And mustard from bees

The Gemara quotes the Mishnah (25a) that teaches that it is necessary for a person to distance his mustard from his neighbor's bees. Rashi¹ explains that the concern is that the bees will eat the mustard, which will leave a sharp taste in their mouth. To alleviate the discomfort the bees will return to the hive and consume the honey. Since the mustard plants cause a loss to the beekeeper, it is necessary for the mustard plant owner to assure that the bees do not reach his plants. This ruling seems to contradict a Gemara in Bava Kama (47b). The Gemara there discusses the case of an ox that ate fruit that belongs to his owner's neighbor and became ill. The owner of the fruit is not liable to pay for the damages to the animal since he can respond to the claim against him that the animal should not have been eating his fruit. In our case, as well, the gardener should be allowed to plant his mus-

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 The family of
 Mrs. Esther Wolper
 מרת אסתר בת ר' ישעי' משולם זיסל ע"ה

Distinctive INSIGHT

Opening a bakery in one's house

תא שמע לא יפתח אדם חנות של נחתומין ושל צבעין תחת אוצרו של חבירו ולא רפת בקר

If a pit already exists on the other side of the property line, one may only dig a new pit and excavate on his own property if he maintains a three tefach distance from the pre-existing pit. Earlier on 17b, the Gemara presented an inquiry regarding what the halacha would be if one neighbor would decide to dig a pit in his property where there is no pre-existing pit in the neighbor's yard. Abaye says that this first pit may be dug at the border, and if the other neighbor later decides to dig a pit in his yard as well, that second pit would have to be placed six tefachim from the first one. This distance accommodates a three tefach clearance around the wall of each pit. Rava holds that the first pit must be dug at a distance of three tefachim from the border. Even though there is no pre-existing pit on the other side of the property line, we still require the first pit to be built considering the neighbor's possible future plans to dig his own pit.

In explaining Rava, Tosafos (ד"ה מרחיקין) explains that digging a pit at the border directly weakens the ground around it, and the neighbor will therefore not be able to use his own land later to dig a pit. The initial excavation at the property line is prohibited because it is direct damage to the neighbor's property.

Rabeinu Yona adds that we prevent the first neighbor from digging a pit so close because it is seen as damage to the pit which may later be dug.

The Gemara brings many sources to try to show which of the approaches, that of Abaye or that of Rava, is correct. One source is the Mishnah (20b) which teaches that one may not open a bakery or dyer's facility on the main floor of a building if the building houses a storehouse of grain, oil or wine. It is understood that the smoke from an oven will rise and damage the commodities stored upstairs. Tosafos explains that the heat from the constant fire below will damage the contents of the storage facility. The Gemara determines that the restriction not to open a bakery is in place only when a warehouse is already in place, but if the upstairs is currently empty, one may open a bakery or dyeing compound on the main floor. This is a question against Rava who says that a potential damage must be distanced even initially, even before the harm is direct. The

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tard where he chooses and if the beekeeper allows his bees to eat the mustard and then eat the honey, it is his own fault.

One explanation² is that there is a difference between liability and the necessity to take precautions to prevent damage from occurring. Regarding liability, since the owner of the fruit did not do anything to damage his neighbor's ox he cannot be held liable for the damages. However, regarding the obligation to take steps to prevent damages it is necessary for one to take precautionary measures even if it is not his fault. Another distinction between the two cases relates to whether the animal under discussion can be properly guarded. An ox is a type of animal that could be properly guarded, therefore the owner of the fruit can claim to the animal owner that he should have watched his animal better so that it should not eat someone else's fruit and become ill. Bees, on the other hand, can not be properly guarded and therefore one can not say to the bee owner that he should have taken steps to prevent his bees from eating the mustard and thus the mustard owner must take the necessary precautionary measures to prevent the damage from occurring. ■

1. רש"י ד"ה ואת החרדל.

2. עפ"י אילת השחר המובא ביוסף דעת. ■

(Insight...continued from page 1)

Gemara answers that Rava agrees that a bakery, dying facility or even a barn are common utilities one houses in his own dwelling, so these cannot be restricted as long as they do not represent direct damage to others.

Rashi and Rashba limit this dispensation to functions which are commonly found in one's house. Ritva expands this allowance to wherever there is a clear benefit and advantage to having something in one's own house. ■

REVIEW and Remember

1. Why is it necessary to leave four amos of space between one's tree and one's neighbor's field?

2. Why is it necessary to distance mustard from bees?

3. What does the Gemara initially think is the point of dispute between Rabanan and R' Yosi?

4. According to the Gemara's conclusion, what is the point of dispute between Rabanan and R' Yosi?

STORIES Off the Daf

Misplaced priorities

"ת"ש מרחיקן את הזרעים..."

Today's daf discusses avoiding causing harm to one's neighbor. This is one of the main lessons taught by Rav Yisrael Salanter, zt"l: to determine if our actions are causing damage to others, and to refrain from them.

Rav Yisrael would remonstrate against causing harm even when preparing for something as important as selichos. "When a person wakes up at chatzos or early in the morning to say selichos, he often feels great zeal. But if he is not careful, he rushes to get dressed and wakes his wife and family—and possibly even his neighbors—at this early hour. Sometimes his carelessness

awakens children or sick people and caused them exceptional emotional and physical pain. (Rav Yisrael held that גזל שינה is a Torah prohibition. Although some question this, the Shut Keren L'Dovid points out that he certainly violates the Torah prohibition against causing another pain.¹) Many people feel a need for a hot drink, and wake their household help to prepare it. If the housekeeper is an orphan or widow as is most often the case, this is an even more serious transgression. At this point one notices that he is a bit late and rushes to shul, quickly spilling whatever is leftover from his drink in the street—thereby creating a bor b'reshus harabim!"

He would continue, "When the person finally gets to shul he may find that his shtender is not in its place and start to scream at the blameless sha-

mash of the shul—after all, he is tired! In this manner, he has of course violated the prohibitions forbidding lashon hara and publicly embarrassing a fellow Jew. When he finally finds that someone else was using his shtender, he screams at him in public, not realizing that this person is a talmid chacham who has been learning all night. Of course this compounds the above prohibitions since now he has publicly shamed a talmid chacham.

"After the selichos, not only is this person blind to his sins—he is even pleased with himself for his fervor during the service! Little does he know: he has lost his reward due to his spiritual failures."² ■

1. שו"ת קרן לדוד, או"ח, סי' י"ח

2. תנועות המוסר, ח"א, ע' 326-327 ■