

OVERVIEW of the Daf

1) Reducing the size of a window (cont.)

Another point in the Mishnah cited to refute Shmuel is clarified.

A Baraisa is cited and the Gemara cites different phrases from the Baraisa to challenge Shmuel's ruling.

2) Partitions of salt and fat

Rav rules that partitions may not be made from salt or fat.

Shmuel rules that a partition may be made from salt.

R' Pappa asserts that there is no dispute and Rav and Shmuel refer to different varieties of salt.

Another way to explain their rulings that would not constitute a dispute is presented.

3) Millstones and ovens

One explanation is offered to explain why it is necessary to distance a millstone from a neighbor's wall.

This explanation is successfully challenged and another explanation is offered.

Abaye draws an inference from the Mishnah concerning the standard size of an oven.

4) MISHNAH: The Mishnah begins with the guidelines for putting an oven into an apartment. There is a dispute whether someone who followed code is liable in the event that damage nonetheless occurred. Other activities that may or may not be permitted are discussed.

5) Ovens

A Baraisa is cited that has different guidelines concerning the thickness of the plaster necessary for an oven.

Abaye resolves the contradiction.

6) A cattle barn

A Baraisa teaches that if the cattle barn preceded the store, it is permitted to maintain the barn.

Abaye asks a series of related questions that remain unresolved.

R' Huna the son of R' Yehoshua also asks a question that remains unresolved.

7) A bakery or wine shop

A Baraisa explains why it is permitted to open a bakery or wine shop under a storeroom of wine but not a cattle barn.

R' Yosef comments that in his time even the smoke of a candle is harmful to the wine.

R' Sheishes adds that a cattle barn is also damaging to asparta.

8) MISHNAH: The Mishnah discusses whether one resident of a courtyard may protest another resident from opening up a store in their courtyard.

9) Clarifying the Mishnah

The Gemara questions why in the first case of the Mishnah other residents can protest whereas in the latter part of the Mishnah they may not.

Abaye offers an explanation.

Rava rejects this explanation. ■

Distinctive INSIGHT

Safety precautions for the flames and heat of ovens and stoves

היה מעמידו בעלייה צריך שיהא תחתיו מעזיבה שלשה טפחים, ובכירה טפח

The Mishnah lists the safety restrictions necessary when installing an oven (תנור) or stove (כירה) in a dwelling. An oven must have a clearance of four amos above it, and if it is built on an upper level of a building, it must have a base of three tefachim below it to insulate its heat from the floor. A stove must have a minimum of a tefach below it to protect the floor below it from its heat, which is less than that of an oven.

Rashba asks why the Mishnah does not list the limit for the distance necessary for clearance above a stove, as it did for the area above an oven. He answers that it was not necessary for the Mishnah to list a minimum height that must be maintained in order to install a stove, as most dwellings are already built with their ceilings higher than the limit necessary to protect against the flame of the stove reaching it. Rashba also suggests that the height needed may be derived from using the proportion found in terms of the insulation which must be installed below the oven and stove. Just like the base below a stove is one third that of the base needed to be placed below an oven (one tefach as opposed to three), so too should the area above a stove be one third of that necessary above an oven (one and one-third amos, versus four amos).

A third approach suggested by Rashba is that an oven, which has its opening on top, must have a minimum distance above it for safety. However, a stove has its opening on the side, and on top there are only a few small holes, which do not allow the flames to jump. Therefore, on top of a stove all that it needed is a tefach, the same amount of space needed below the stove. The only precaution to be taken is due to the heat, and not due to the flames. Therefore, the amount of room below and above is the same—one tefach.

Rashba concludes that our ovens, which have their opening on the side, are not required to have a full four amos height above them for clearance. The Mishnah's rule for an oven was designed to protect against the rising flames from the opening which their ovens had on the top of the appliance. The only risk which our ovens pose is the heat which they generate, as the flames do not jump high out of the top. The distance necessary to guard against the heat is three tefachim above, the same as needed to insulate below the oven. Ritva explains that if the opening of a stove is on top, the cleared distance required above to guard against its heat would be one and one-third tefach, as mentioned earlier regarding how to calculate the safety precautions needed for a stove. ■

HALACHAH Highlight

Protesting against loud noises in the courtyard

אינו יכול למחות בידו ולומר לו איני יכול לישן לא מקול הפטיש וכו'
 And he can protest against him and claim that he cannot sleep from the sound of the hammer etc.

Rivash¹ asserts that the Mishnah's statement that a neighbor cannot protest against a fellow courtyard resident who chooses to manufacture utensils in his yard is limited to where the protester is healthy. Since he is healthy the manufacturing sounds will not harm him but if the protester is ill he has the right to protest since it is a reasonable claim that the loud noises are damaging. This implies that for healthy people loud noises are merely a disturbance but do not constitute something harmful. Regarding sick people, on the other hand, loud noises are considered damaging, thus they can protest a neighbor who is hurting them by making noise. Nesivos Hamishpat² asserts that even if a person was healthy and became ill he has the right to protest the loud noise. The resident who is creating the noise cannot claim that he has established a right to make the noise (חוקה). In this regard the case is similar to the case of smoke where halacha states that a חוקה cannot be established for something that causes damage.

Chazon Ish³ challenges the rationale of Rivash. If a sick person has the right to protest against the noise because it is harmful to him it should never be permitted for someone to manufacture utensils in his home since illness is common and we should be concerned about the damage the sound will cause

REVIEW and Remember

1. What is אפרותא?

2. According to Chazal, what is the status of a child of an eight-month pregnancy?

3. Why is a partition made of salt not considered a valid partition?

4. How does Abaye resolve the contradiction between the first part of the Mishnah and the second part of the Mishnah?

to those who become ill. Therefore, he suggests that Rivash would agree that if one of the residents of the courtyard became ill after the other resident began manufacturing, his protest would not be heeded. Accordingly, the underlying factor is to determine which came first, the manufacturing or the illness. This is consistent with the general approach to issues related to damage between neighbors. The one who was there first can do what he pleases and the subsequent resident must distance himself from the potential damage. He also adds that a neighbor may only protest those activities that are unusual in a house, e.g. manufacturing noises, but a neighbor cannot protest regular household noises, e.g. talking. ■

1. שו"ת ריב"ש סי' קצ"ו.
2. נתיבות המשפט סי' קנ"ו חידושים סק"ז.
3. חזו"א סי' י"ג אות י"א. ■

STORIES Off the Daf

Cruelty to Animals

"דאיכה צער בעלי חיים..."

Today's daf mentions צער בעלי חיים.

Rav Yitzchak Zilberstein, shlit"a, once gave a very inspiring talk on this topic. "The verse in Nitzavim adjures us to cleave to Hashem—ולדבקה בו—Chazal explain that although one cannot literally cleave to Hashem, we can emulate His attributes. Just as He is merciful and gracious, so should we emulate His ways. It is very simple to determine whether a person truly emulates Hashem: just observe his actions. How does he treat animals, for example?

"This topic in general is a very im-

portant one. Very often, one finds that when children go to the zoo, they delight in pestering the animals. They throw objects into the cages, and sometimes even throw stones at the hapless creatures to see how they will react. Of course such actions scare the animals and cause them pain. Strangely, their parents often do not rebuke them for violating the prohibition of צער בעלי חיים, and we can only conclude that this sin is not known to many.

"The Sefer Chasidim point out that a person will be brought to judgment for any needless pain he caused to animals. Even overloading an animal and striking it when it cannot walk on account of being overburdened will be cause for judgment. In addition, those who pull the ears of cats to hear their cries of pain are sinners.

"The verse states, 'וביום ההוא נאום ה'

— This is the promise of Hashem: On that day, anyone who strikes a horse will be struck with confusion, and who rides it will be struck with madness.¹ Our sages teach on this verse that Hashem will collect payment from riders of horses who kicked their horses needlessly.

"Instead, we should use the time at the zoo to point out to our children the wonders of creation. Each animal or bird is designed exactly as he should be in order to survive in his environment. Some have scales, others fly while others have a protective house on their backs. There is no end to the lessons and wonder one can extract from focusing on the animals in the right way with the proper guidance."² ■

¹ זכריה י"ב ד'

² עלינו לשבח, ח"ו, ע' שכ"ד-שכ"ה ■