

OVERVIEW of the Daf

- 1) **Preventing damage to a neighbor's property (cont.)**
An incident related to the prohibition against indirectly causing damage to a neighbor's property is recorded.
- 2) **MISHNAH:** The Mishnah discusses the distance a dove-cote must be from the nearby city or the neighbor's yard.
- 3) **The flight of a dove**
The Mishnah's indication that a dove does not fly more than fifty amos is challenged.
Abaye suggests an explanation.
This explanation is challenged.
R' Yosef and Rava offer different resolutions to this challenge.
Rava's explanation is unsuccessfully challenged.
- 4) **Pleading for a purchaser or an heir**
R' Pappa or R' Zevid infer from the Mishnah that Beis Din will plead on behalf of a purchaser and an heir.
The necessity for the Mishnah to teach these principles is challenged.
The novelty of our Mishnah concerning the principle that we plead on behalf of a purchaser is explained.
- 5) **A chazakah for damage**
The Mishnah's indication that one could establish a chazakah for damage is challenged.
The Gemara answers that the inability to establish a chazakah for damage is limited to cases involving smoke or a bathroom.
- 6) **MISHNAH:** The Mishnah discusses how to determine ownership of a dove whose ownership is unknown.

(Continued on page 2)

REVIEW and Remember

1. Is one permitted to cause indirect damage to another person's property?
.....
2. Explain אין חזקה לנזיקין.
3. Explain the principle רוב וקרוב הולכין אחר הרוב.
4. What got R' Yirmiyah thrown out of the Beis Ha-Midrash?
.....

Distinctive INSIGHT

R' Yirmiya's question is out of bounds

בעי ר' ירמיה רגלו אחת בתוך נ' אמה ורגלו אחת חוץ מחמשים אמה מהו? ועל זה אפקוהו לרבי ירמיה מבי מדרשא

The Mishnah rules that the maximum range of movement of a young dove is up to fifty amos from its dovecote. This was determined by our sages. Therefore, any dove found within a fifty-amos radius of a dovecote must be assumed to belong to the owner of the dovecote, and it should be returned to him. A bird found further than fifty amos from the breeding area should be assumed not to have come from the nearby dovecote, but rather from some passerby, and one who finds it may keep it.

R' Yirmiya posed a question regarding the halacha if we find a bird with one foot within the fifty amos limit, but one foot beyond it. Do we assume that this bird which is straddling the line came from the dovecote, or can we assume that it was dropped from some passer-by? In response to this question, the Gemara reports that R' Yirmiya was ejected from the beis midrash.

Rashi explains that R' Yirmiya was ejected because he was bothering the students with a case that was improbable. Tosafos argues against Rashi and writes that we should not think that R' Yirmiya's question was unreasonable due to his case of finding a bird in this precise position being highly unusual. After all, the Gemara regularly entertains cases which are theoretical and unlikely, because many important points can often be determined from analysis of precisely these borderline cases. Rather, Rabeinu Tam explains that the reason R' Yirmiya's question was out of bounds was that the statement of the sages that a bird does not wander beyond fifty amos was firm and decisive. Therefore, any bird even one step beyond this limit must not have come from the dovecote. This should have been obvious. The question of R' Yirmiya suggests that our sages were imprecise, and that one more step beyond the limit is also within range or at least questionable. Rashba explains that this was a dangerous position, as the premise of R' Yirmiya was seen as challenging the veracity of the authority of our sages and their measurements.

Chasam Sofer suggests that R' Yirmiya certainly honored the authority of the sages, but his inquiry was regarding how measurements are determined in the first place. When a small dove is found straddling the line, we might assume that we measured inaccurately, and that the fifty amos extends a bit, and that the bird belongs to the owner of the dovecote. Or should we reconsider whether this is a flying bird rather than one that was hopping, and that the finder may keep it? The answer was that due to the doubt, it belongs to the dovecote owner. R' Yirmiya was unwilling to accept this response, and he was ejected for not accepting the consensus. ■

HALACHAH Highlight

Taking steps to prevent indirect damage

אתנו אומני ויתבי תותייהו ואתנו עורבי אכלי דמא

Bloodletters came and sat under them [R' Yosef's trees] and crows came to eat the blood

Rivash¹ rules that if rain falls into a person's apartment in such a quantity and with such force that it goes through the floor and enters the apartment below, the upstairs tenant is not responsible to prevent the damage. This is in contrast with the Gemara Bava Metzia (117a) that rules that if the water flows directly from the upstairs apartment to the downstairs apartment the upper resident must take steps to prevent the damage from occurring. The reason for the difference is that in the case in Bava Metzia the upper resident is the one who brings the water into the apartment but in Rivash's case the water is entering the upstairs apartment on its own, so responsibility cannot be placed on the upper resident. This ruling of Rivash is cited by Rema² where he states, "If water falls onto the upstairs apartment and from there falls into the downstairs apartment it is the resident downstairs who is responsible to take action to prevent damage to his property."

A difficulty arises from a seemingly contradictory ruling. Shulchan Aruch³ rules that if Reuven's pit fills with rain water and seeps over the walls damaging Shimon's wine cellar Reuven must take steps to stop this damage from occurring. From the earlier discussion one would assume that Reuven is not responsible since it is rain water that is causing the dam-

(Overview...continued from page 1)

7) Majority and proximity

R' Chanina rules that the principle of majority is stronger than the principle of proximity.

R' Zeira unsuccessfully challenges this principle.

R' Chanina's principle is unsuccessfully challenged from our Mishnah.

R' Yirmiyah asks a related question which caused him to be thrown out of the Beis Midrash.

Another unsuccessful challenge to R' Chanina is presented from the Mishnah. ■

age. Kuntres Mishpat Shlomo⁴ answers that there is a subtle difference between the two cases. In the case of the rain in the apartments the upper resident does not do anything to cause the damage and thus Shimon must take the necessary steps to prevent the damage from occurring. In the case of the overflowing pit Reuven is partially at fault since he dug the pit which is now overflowing onto Shimon's property. This is similar to the case in our Gemara of the bloodletters who by virtue of their presence caused crows to come and damage R' Yosef's dates. Even though they were merely an indirect cause of the damage, nevertheless by creating the circumstance in which the damage may occur it was their responsibility to stop it from continuing. ■

1. שו"ת הריב"ש סי' תקי"ז.

2. רמ"א חו"מ סי' קנ"ה סעי' ד'.

3. שו"ע חו"מ סי' קנ"ה סעי' כ'.

4. משפט שלמה ח"ב דיני שכנים עמ' 7. ■

STORIES Off the Daf

Rav Yirmiyah's ousting

"...אפקוהו לרב ירמיה מבית המדרש..."

The greatness of learning Bava Basra cannot be overstated.

But although maseches Bava Basra is replete with complex and virtually endless sugyos, it is still important not to learn too slowly through each topic. If one does move too slowly, by the time he completes the mesechta, he runs the risk of having forgotten everything he learned at the beginning! Although at first everyone must learn slowly, Rav Chaim Brisker would say that eventually

we must outgrow this and get used to having at least a seder when we learn at a quicker pace—at least forty daf a month. The Brisker Rav, zt"l added that even twenty is enough, בדיעבד. Although these must be learned clearly, this doesn't mean one should linger too long on a daf. Tosafos and the Rosh are sufficient.¹

One time, the Satmar Rav, zt"l, was called in to test some boys on the Gemara in Bava Basra, but when he learned that they had spent the entire zeman learning only a few daf he was appalled and wished to instill in the bochurim the importance of learning bekiyus. The Rav said, "In Bava Basra 23 we find that Rav Yirmiyah was evicted from the beis

medrash and on Daf 165 he was readmitted. So for how long precisely was Rav Yirmiyah outside?

When it was clear that the bochurim were unable to answer this, the Rav quipped, "It depends on how quickly they learned. If they learned forty daf a month, Rav Yirmiyah was out for around four months. If they learned twenty daf a month, he was away for eight.

"But if they learned around a daf a week like certain bochurim today, Rav Yirmiyah was out for over three years!"²

1. תורת חיים, ע' מ"ח

2. כן שמעתי ■