

## OVERVIEW of the Daf

### 1) Majority and proximity (cont.)

Abaye suggests a proof to R' Chanina's principle that the principle of majority is stronger than the principle of proximity.

Rava rejects this proof and cites a related Baraisa.

Rava derives three principles from R' Chiya's teaching in the Baraisa.

A contradiction between two statements of Rava is noted.

The Gemara teaches that Rava retracted his earlier refutation of Abaye's proof.

The Gemara cites a dispute between Rav and Shmuel concerning the status of a found barrel of wine and it is suggested that the dispute revolves around the principle of R' Chanina.

This suggestion is rejected.

Two incidents that relate to R' Chanina's ruling are presented.

2) **MISHNAH:** The Mishnah discusses the required distance between a tree and a city and whether a tree that is too close must be cut down.

### 3) The required distance between a tree and a city

Ulla gives a rationale for the need for distance between a tree and a city.

The necessity for the Mishnah's ruling is explained according to R' Elazar and Rabanan who disagree whether one may turn a field into a migrash or a migrash into a field.

A Baraisa is cited that demonstrates the distinction between planting trees and planting grain in a migrash.

### 4) Compensation for cutting down a tree

The Gemara questions why in the case of cutting down a tree near a pit the tree owner is compensated but in the case of a tree planted near a city he is not compensated.

R' Kahana suggests an explanation.

The Gemara questions the premise of the original question and concludes that R' Kahana's explanation was to resolve a different difficulty.

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## REVIEW and Remember

1. Explain the principle of רוב ומצוי.
2. What rationale did Ravina use to permit a barrel of wine found in a vineyard of orlah?
3. Why is it necessary to distance a tree from a city?
4. What happens to a pot if there are two cooks in charge?

## Distinctive INSIGHT

### A tree illegally planted too close to a city

אמר רב כהנא קדירה דבי שותפי לא חמימא ולא קרירא

The Gemara notes two cases of a tree that was illegally planted within a twenty-five amos radius of either a neighboring pit or a city. In both cases the tree must be cut down. However, in the case of the tree next to a pit the owner of the tree is compensated by the pit owner for the loss of his tree. In the case of the city, the tree owner is not compensated. The Gemara asks why there is a difference between the cases. Initially, the Gemara suggests that the owner of the tree actually deserves to be compensated in both cases, however he will only succeed in collecting when dealing with the individual who is owner of the pit. When he goes to the city to collect, no one will accept responsibility to pay him, so he must first cut his tree, and he may never receive the compensation he deserves. The inability to collect from any one member of the city is expressed in terms of a parable: "A pot watched by two cooks never gets too hot or too cold." Each person relies upon the other to do the job, and the task never gets completed.

Rashi explains that if the tree owner would wait to get paid, his tree would remain standing, thus creating an eyesore to the city, ואין זו תפארת ארץ ישראל – and this is not fitting for the glory of the Land of Israel. פני שלמה explains that Rashi holds that in one sense, the halacha not to plant a tree too close to a city should be a universal rule which applies even outside of Eretz Yisroel. However, if the halacha is that the tree owner actually deserves to be compensated for his loss, there is a strong argument that he should not lose due to each city dweller's laziness and lack of willingness to pay what they owe. Rashi therefore detected that there must be an additional factor which requires that the tree be removed even before compensation is made, and that is that the landscape of Eretz Yisroel should not be marred by unsightly trees planted too close to the city. It is for this reason that the tree must be removed, even before its owner is compensated that which he truly deserves.

The conclusion of the Gemara, however, is that the owner of the tree planted illegally near a city does not even deserve to get paid. His tree is a nuisance to many, so he must cut it down, and no compensation is necessary in this case. ■

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# HALACHAH Highlight

## The principles of "majority" and "proximity"

רוב וקרוב הולכין אחר הרוב

When there is a conflict between the principles of "majority" and "proximity," we follow the principle of "majority"

**S**hulchan Aruch<sup>1</sup> rules that there is an obligation to return a lost object found in a Jewish area where most of the people who travel past this spot are Jewish even though the majority of the citizens in the city are gentiles. Similarly, one is not obligated to return a lost object that is found in a gentile area even if the majority of citizens are Jewish. Sema<sup>2</sup> explains that in this case the principle of **רוב וקרוב הולכין אחר הרוב** – when there is a conflict between the principles of "majority" and "proximity," we follow the principle of "majority" – does not apply. The principle is not in force when the object in question is discovered in its location. Only when it's found somewhere else do we invoke the principle that in all likelihood it was lost by someone from the majority of the population. In this case since it was found in a Jewish area we assume that that is its place and the fact that the majority of residents are gentile does not make a difference.

Shulchan Aruch<sup>3</sup> discusses the case of a person who found an overturned utensil and fruit spread out in front of that utensil. His ruling is that we do not assume the fruit and the basket belong to the same person unless the layout indicates as such. No measurement is given to determine the distance at which the fruit is assumed to come from the utensil and when not. After Ketzos Hachoshen suggests some measurements he asks why the principle of **רוב וקרוב הולכין אחר הרוב** does not apply that would indicate that it does not belong to the owner of the

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### 5) Cutting down a tree when there is a doubt whether the tree was planted first

The Gemara questions why in the case of whether the tree or the pit came first the tree does not have to be cut down whereas in the case of the city it must be cut down.

The difference between the two cases is explained.

### 6) MISHNAH: The Mishnah discusses the required distance between a granary and other locations.

### 7) Explaining the Mishnah

The Gemara questions why in one case a distance of twenty-five amos is required but in another case a smaller distance is sufficient.

Abaye suggests an explanation.

R' Yosi bar Chanina explains the meaning of a temporary granary.

R' Ashi offers another explanation for the Mishnah.

Abaye's explanation is successfully challenged.

The Gemara explains how chaff is harmful to different items. ■

utensil. He answers with the same principle mentioned earlier. When fruit is found in close proximity to a utensil that is considered its place and consequently the principle of **רוב – majority** – does not apply. If, on the other hand, the fruit is found at a distance from the utensil it is no longer its place and the principle of "majority" would apply. ■

1. שו"ע חו"מ סי' רנ"ט סעי' ג'.
2. סמ"ע שם סק"ו.
3. שו"ע שם סי' רס"ב סעי' י"ט.
4. קצה"ח שם סק"ב. ■

# STORIES Off the Daf

## "Your eyes are like doves"

"דכל דמדדי והדר חזי ליה לקינה מדדי..."

**O**nce while Rav Chaim Berlin, zt"l, was saying Shir Hashirim, he suddenly burst into tears as he said the verse, "Behold you are beautiful, my love; behold you are beautiful, your eyes are like doves."

After he completed the sefer those who had witnessed his outburst asked him what had made him cry and this elicited a fascinating story from the Rav:

"One time when I was still in Russia, a certain assimilated Jew approached me in secret and revealed that he had just had a

son and he desired a bris milah for him, but he was afraid to do this ceremony in public. He requested that I come surreptitiously to his home and pose as a doctor to do the mitzvah.

"I agreed, and when I came to the house I found not a vestige of Jewishness—even mezuzos were lacking. I was so shocked that I asked him why he was so insistent on giving his son a bris since he obviously felt very distant from the Jewish people. His reply astounded me, 'Well, I know that I was born to Jewish parents and got a bris according to Jewish law. Although I am distant now, the way back is always open to me and if I choose, I can return.

"But if I do not circumcise my son,

this will stigmatize him and prevent him from returning even if he wishes since he will be required to circumcise himself as an adult or remain outside the pale. In order to afford him the ability to return whenever he wants, it is my job to get him a bris.'

"On Bava Basra 24, we find that a fledgling dove never walks out of sight of its nest. This is why I cried when I read the verse that compares us to doves. Just like doves do not wander too far from their nest so they will be able to find their way back, even the most distant Jew does his best to keep the way open for his son to return home!"<sup>1</sup> ■

1. אשר לשלמה, ע"י רט"ז ■