

OVERVIEW of the Daf

1) Distancing a tree from a pit (cont.)

Another incident and follow up discussion that elucidates the position of R' Yosi is presented.

2) **MISHNAH:** The Mishnah discusses further issues related to planting a tree and trees that cause damage to a neighbor's property.

3) Leaving four amos between a tree and the property line

A Baraisa explains why it is necessary to leave empty four amos of space between a tree and the property line.

Shmuel asserts that this ruling is limited to Eretz Yisroel but in Bavel only two amos are necessary.

Proof to Shmuel's position is brought from a Baraisa.

A second version of this discussion is recorded.

An incident is recorded that establishes an exception to the ruling of the Mishnah.

4) Removing a neighbor's roots

An incident is presented that relates to the Mishnah's ruling that one may remove a neighbor's roots that enter into one's property.

R' Yaakov Hadayva inquires whether the tree owner keeps the roots his neighbor cut out or the neighbor who cut them out keeps them.

R' Chisda cites a proof that the roots remain the property of the tree owner.

The Gemara rejects R' Chisda's interpretation of the Mishnah he cited and two alternative explanations are suggested that do not resolve R' Yaakov Hadayva's inquiry.

Ulla rules that the owner of a tree that is within sixteen amos of the property line is a thief and bikkurim are not brought from that tree.

Proof for Ulla's ruling is cited.

This source is refuted and the Gemara begins to cite another Mishnah to prove Ulla's assertion. ■

Today's Daf Digest is dedicated
 In loving memory of the yahrzeit of
 ע"ה הינדא בת מאיר—Mrs. harriet abramchik
 by Helene and Alan Jay Gerber & Family

Distinctive INSIGHT

Circumstances of cutting down fruit trees

ואמר רבי חנינא לא שכיב שכחת ברי אלא דקץ תאנתא בלא זימניה וכו' ■

Rava bar R' Chanan planted palm trees at a distance of four amos from the grapevines of his neighbor, R' Yosef. When birds who flew into his trees then descended into the grapevines and damaged them, R' Yosef told Rava bar R' Chanan to distance his trees farther away. A dispute ensued regarding how to interpret our Mishnah which says that four amos is enough of a buffer when planting trees. Rava held that four amos was enough, while R' Yosef insisted that four amos was only enough between trees and trees or vines and vines, but more space was required between trees and vines. Rava refused to cut his trees in any case, as he mentioned the tragic case of the son of R' Chanina.

R' Chanina made a tragic revelation about his son, named שכחת, who died an untimely death because he chopped down a fig tree that was still productive.

ר"ת שאילת יעב"ץ explains that this son of R' Chanina was a conscientious Torah scholar. It was obvious that he was not in egregious violation of any other Torah commandment. He must have been a very pious young man, and he was on a spiritual level to be held accountable for even a small error. Even in this case, he was not taken from this world for transgressing a Torah-level sin, but, being a righteous person, Hashem exacted His precise judgment כחוט השערה—for a hair's breadth of deviation from what was expected from this man. Apparently, there was a technical halachic dispensation to permit cutting the tree. It might have had a greater value in being chopped down than in its

(Continued on page 2)

REVIEW and Remember

1. Is the wind's assistance in causing damage the responsibility of the "damager"?
2. Why did Rava bar R' Chanan refuse to cut down his palm trees that were damaging R' Yosef's vines?
3. Who owns the roots that a neighbor removes from the tree owner's tree?
4. What is the status of the first fruit that comes from a tree planted within sixteen amos of a neighbor?

HALACHAH Highlight

Maintaining a tree that is damaging a friend's house

לא יטע אדם אילן סמוך לשדה חבירו אלא"כ הרחיק ממנו ד' אמות
 A person may not plant a tree near his friend's field unless he distances it four amos

Rambam¹ rules that if Reuven has a yard with trees and his neighbor Shimon is interested in planting trees he must make sure not to plant his trees within four amos of Reuven's existing trees since that is the area needed for the plow to get through. Rema² adds that if in the location where this question arises it is not common practice for people to plow around their trees it is unnecessary for Shimon to leave a space between his own tree and Reuven's. Rema³ also adds that this ruling applies only when Shimon is interested in planting a sapling near Reuven's tree but it is permitted for Shimon to plant a seed that will grow into a tree without allotting four amos of space between the seed and Reuven's tree.

There were once two neighbors, Reuven and Shimon. Reuven owned a house and immediately adjacent to his house was a garden that was owned by Shimon. Reuven asked Shimon to remove a tree from his garden since the roots were causing damage to his home. Shimon's response was that he and Reuven had purchased their property from a single seller. Therefore, when each one bought his property he was purchasing the existing chazakah that each part of the property had. Therefore, since it was permitted for the previous owner to plant this tree so close to his own house, Shimon should be permitted to perpetuate that chazakah. It was decided that the matter would be settled by Rivash. Rivash⁴ ruled in favor of Shimon, accepting the argument that when the seller sold

(Insight...continued from page 1)

remaining standing, and technically the halacha is that it is permitted to cut down a tree in this case. Another circumstance which allows chopping down a fruit tree is if the place where it is growing is needed for a different purpose, such as for construction. Although this factor varies during a Shemitta year and the ability of the particular tree to produce fruits, nevertheless, when it is not Shemitta it is permitted to cut the tree if its location is needed for other purposes. Therefore, although the halacha was not violated with this tree's being cut down, it was still an act which was not becoming of a pious person. When שכחת cut it down, he faced retribution measure for measure for his indiscretion. Just as he cut a tree before its time, so, too, was he plucked from this world before his time.

Chasam Sofer explains this episode according to the understanding of Ramban and Rashba. Perhaps Rava bar R' Chanan would have cut down the tree as a act of piety to placate R' Yosef, whose interpretation of the Mishnah might have been correct. Yet, he noted from the tragic story of R' Chanina that cutting trees down even under these circumstances is not allowed. ■

the garden to Shimon he included all the rights that he had in the garden, including the right to maintain a tree so close to the house. Furthermore, even if the seller sold the house to Reuven and only afterwards did he sell the garden to Shimon it would be permitted for Shimon to maintain the tree since we do not assume that the seller sold the garden with the expectation that Shimon would have to remove his tree. ■

1. רמב"ם פ"י מהל' שכנים ה"ח.
2. רמ"א חו"מ סי' קנ"ה סעי' כ"ה.
3. רמ"א שם.
4. שו"ת הריב"ש סי' ק"ל. ■

STORIES Off the Daf

An unusual solution

“דדקלא דטעין קבא אסור למיקצציה...”
When the Roshei Yeshiva of Pupa in Hungary wished to expand the yeshiva building, they found themselves in a quandary. On the one hand it was absolutely essential that they expand the building since the old building could hardly hold the students. The trouble was that there was a fruit tree right next to the yeshiva and they did not wish to

cut it down since we find in Bava Basra 26 that it is forbidden to cut down a fruit tree that bears a kav of fruit. But what else could they do? They could not afford to buy a building in a new location, even if there was one available.

Finally they decided to ask Rav Aharon of Belz their question. “After all,” they claimed, “it is for a mitzvah and some authorities permit cutting down a tree for a mitzvah...”

“Chas v'shalom! Of course you may not cut it down,” the Rebbe replied. “It is true that some authorities permit cutting down a fruit tree for mitzvah pur-

poses, but others forbid it even then. Of course it would not be right to forgo expanding the yeshiva when it is so crowded. But I don't see why this tree should upset your expansion plans. All you need to do is leave the tree standing but build around it. That way you have not violated the halacha, yet you will still have all the space you need.”

And that is precisely what the Roshei Yeshiva did—they built around the tree. Many people would remark on the unique Beis Medrash with a tree growing up inside of it!¹ ■

■ חודש בחדשו, מנחם אב תשס"ב, עמ' ב'