

OVERVIEW of the Daf

1) Acquiring the property of a deceased convert (cont.)

R' Yirmiyah Bira'ah in the name of R' Yehudah rules that throwing a turnip onto the property of a convert does not establish a chazakah even if it eventually takes root.

2) Establishing a chazakah

Shmuel discusses the parameters of establishing a chazakah on a tree by removing some of the branches.

Shmuel discusses the parameters of establishing a chazakah by sweeping debris from a piece of property.

Shmuel discusses the parameters of establishing a chazakah by removing impediments from a piece of property.

Shmuel discusses the parameters of establishing a chazakah by making an opening for water to enter a piece of property.

An incident related to one of the rulings is presented.

Rav rules that one could acquire the property of a deceased convert by drawing a picture on the property and the Gemara relates that that was how Rav acquired the property next to his yeshiva.

R' Huna in the name of Rav rules that the insertion of a shovel into a field surrounded by boundary markers is an act of acquisition of the entire field whereas Shmuel maintains that he only acquires the place of the insertion.

R' Pappa explains how one acquires a field that is not surrounded by boundary markers.

3) The property of an idolater

R' Yehudah in the name of Shmuel rules that land an idolater sells to a Jew is considered ownerless and anyone who comes and makes a chazakah on the land acquires ownership of the land.

Abaye questions whether this is Shmuel's position.

R' Yosef cites an incident that indicates that R' Yehudah accurately transmitted Shmuel's position.

Abaye rejects this proof.

In another incident R' Huna purchased land from an idolater and when another person made a chazakah on the land R' Nachman ruled in the other person's favor.

R' Huna challenged this ruling. ■

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 in memory of
 מרת ליבא בת ר' ישעי'

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Distinctive INSIGHT

The law of the land – דינא דמלכותא דינא

דינא דמלכותא דינא

The Rishonim explain the concept of דינא דמלכותא דינא from varying approaches, and they clarify the guidelines regarding when we say that the law of the king is halachically binding.

Rashbam (ד"ה והאמר) explains that we must conduct ourselves according to the laws of the land because all of the citizens of the country willingly accept upon themselves to follow the local laws and rules. Chasam Sofer notes that according to this approach, this rule would also extend to civil laws and regulations enacted by a Jewish king where the Jewish citizens accept him as their ruler. This also concurs with Rambam's ruling in Hilchos Gezeila 5:11.

ר"ן (to Nedarim 28a) writes that the rationale behind this concept is that if we do not follow the rules of the king, he has the ability to expel us from his country. The halacha therefore requires that we not endanger the hospitality of the host government by violating its rules. ר"ן explains that according to this approach, this rule only applies to the Jews who live in a gentile country, where the land belongs to the king and he has the legal ability to force us to leave. However, this rule does not apply regarding a Jewish king in Eretz Yisroel, because every Jew has a part in the land. The king does not own the land and therefore cannot take it away even from those who do not follow his rules.

Rabeinu Yona understands the rule of דינא דמלכותא דינא only in the context of being obliged to follow the rules of the king regarding rewarding land to one who is in possession of a property. The king has the power to suspend a person's ownership of his property, so the king can also declare who is the legal owner of a piece of land. This, however, would not be the case if the king would choose to grant the land to someone who is not in possession of the land. דבר אברהם notes that in Gittin (36b) the Gemara identifies the verse in Ezra (10:8) as the source for this halacha, and Rabeinu Yona understood that the verse describes not only the legal authority of a Jewish court of law, but also of a judge who represents the royal authority.

Rashi (Gittin 9b) explains that documents which are produced by a gentile court are valid because gentiles are commanded to set up court systems for themselves. אבן האזל explains that Rashi holds that דינא דמלכותא דינא is based upon the king's Torah authority to judge his people in a correct manner.

Rashba and Ritva explain that a king has full control of his subjects, including the Jewish inhabitants of his land. He can draft them into his army and sell them as slaves. Using this power, he also can demand that everyone follows his laws. ■

HALACHAH Highlight

Planting trees nearby a Beis Haknesses

דרב לא קני לגנתא דבי רב אלא בצורתא

Rav did not acquire the garden of his yeshiva [that belonged to a deceased convert] other than by drawing a picture on it

Rambam¹ rules that one who plants a tree, whether fruit bearing or not, near the altar or anywhere in the azarah violates a Biblical prohibition, even if the intent is merely to add beauty to that location. The rationale behind the prohibition is that idolaters had the practice of planting trees near their altars as a means of drawing large crowds of people. R' Akiva Eiger² cites sources who maintain that Rabbinically, it is prohibited to plant a tree near a Beis Haknesses. Other authorities³ disagree and permit planting trees near a Beis Haknesses. They argue that if planting trees near a Beis Haknesses was prohibited as an extension of the prohibition to plant trees in the Beis Hamikdash, it would also be prohibited to build the shul from wood or provide wooden benches or tables since that was also prohibited in the Beis Hamikdash. Rav Yonason Shteif⁴ wrote that even planting flowers nearby a Beis Haknesses is prohibited but adds that if the flowers were planted by a neighbor in his yard they may be retained. Similarly, Rav Tzvi Pesach Frank⁵ permits trees to be planted near a Beis Haknesses if they are part of a row of trees intended to beautify the street.

There is another dispute⁶ whether according to those who prohibit planting trees near a Beis Haknesses there is an obligation to remove trees that were planted in violation of this halacha. Maharsham⁷ cites our Gemara as proof that trees

REVIEW and Remember

1. How do we know whether someone sweeping debris had in mind to acquire the land?
2. How did Rav acquire the property adjacent to his Beis HaMidrash?
3. In what way is the property of an idolater like the desert?
4. What was unique about the shepherd's village?

that were planted near a Beis Haknesses by a neighbor may be retained. The Gemara relates that Rav acquired the garden – גינה = that was adjacent to his Beis Hamidrash that was owned by a convert who died without heirs. Since the term גינה generally refers to an orchard of trees it seems that it was permitted to allow trees to remain in place even though they are near a Beis Haknesses. He then rejects this proof since it is possible that the term גינה refers to a flower bed. Seemingly, according to Rav Yonason Shteif the proof still stands since he maintains that even a flower bed is included in the prohibition of planting trees near a Beis Haknesses. ■

1. רמב"ם פ"ו מהל' עבודה זרה ה"ט.
2. הגהות רעק"א לאו"ח סי' קי"ג.
3. ע"י שו"ת בנין ציון סי' ט' ושו"ת משיב דבר ח"ב סי' יד.
4. שו"ת מהר"י שטייף סי' צ"ה.
5. שו"ת הר צבי או"ח סי' ע"ד.
6. שו"ת צור יעקב סי' קי"ט דמחמיר אפילו בדיעבד אולם שו"ת בנין ציון הנ"ל מיקל בעצים שנטעו מקודם.
7. שו"ת מהרש"ם ח"ד סי' קכ"ז. ■

STORIES Off the Daf

The law of the land

" דינא דמלכותא דינא... "

Today's daf discusses דינא דמלכותא דינא.

A certain hapless Jew owed a huge debt and was unable to pay. His creditors waited a short while but when they finally realized that no money was forthcoming despite his frantic promises, they took him to the civil courts. The judges ruled that his house be put up for auction.

A fellow Jew bid somewhat under

half the going value of the house, which was enough to cover his fellow Jew's debts. To this man's delight, his bid was the highest and he procured the house for a song.

Shortly after this, the fortunes of the Jewish merchant who had lost his house took a turn for the better, and he was able to afford to buy back his old house. However, the new owner was uninterested in selling for any price. To his surprise the previous owner demanded that he sell the house back at the price at which he had purchased it. Not surprisingly, he gave a very indignant reply. "How can you ask me to return the house for the same price? Haven't you

ever heard that דינא דמלכותא דינא? I would not even sell it back for the full value!"

When this question came before the author of Shut Rav Anzil, zt"l, he ruled that the original owner was in the right. "Although the halacha is דינא דמלכותא דינא, this does not override an actual ruling of a beis din. Just as in a ruling of beis din, if a property was foreclosed on for less than half the value, the sale is meaningless, so too in our case. Since the land was sold for less than half its worth, the buyer must return the property for the price he paid and not a penny more!"¹ ■

שו"ת ר' עניזל, סי' די, ד"ה פתח דברינו ■