

## OVERVIEW of the Daf

### 1) Brothers certifying a document

There was an incident in which a witness on a document died and Ravina thought, based on our Mishnah, that the brother of the surviving witness could confirm the signature of the second witness.

R' Ashi rejected this suggestion and disqualified the brother of the remaining witness from testifying.

2) **MISHNAH:** The Mishnah presents a list of activities that do not establish a chazakah and other activities that do establish a chazakah.

### 3) Clarifying the Mishnah

The Gemara searches for an explanation of the distinction between those activities that establish a chazakah and those that don't.

Ulla suggests that only those activities that would constitute an act of acquisition of the property of a deceased convert are activities that establish a chazakah.

R' Sheishes successfully challenges this explanation.

R' Nachman in the name of Rabba bar Avuha offers an alternative explanation to the Mishnah.

This explanation is challenged from another Mishnah.

Three resolutions to this challenge are presented.

### 4) Teachings of R' Yochanan in the name of R' Bna'ah

R' Yochanan in the name of R' Bna'ah teaches that residents cannot prevent one another from washing clothes in the shared courtyard since it is not proper for women to wash clothing in public.

A related teaching from R' Chiya bar Abba is presented and explained.

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## REVIEW and Remember

1. Why is the case of certifying a document different than the case of the Mishnah where three brothers could combine to testify about someone establishing a chazakah?
2. What activities establish a chazakah on a friend's property?
3. Explain אפילו ויתור אסור במודר הנאה.
4. What is the proper way for a Torah scholar to set up his table?

## Distinctive INSIGHT

### Sharing a yard is not too hard

אמר רבי יוחנן משום רבי בנאה בכל שותפין מעכבין זה את זה חוץ מן הכביסה

The Gemara provides examples of activities which can or cannot be done in a jointly-owned yard. The rule is that each partner can insist that the other abstain from actions which interfere with the other's full usage of the common area. For example, if Reuven, one of the partners, wishes to use the yard regularly in a manner which prevents Shimon, the other partner, from using the yard normally, Shimon can insist that Reuven not use the yard in that intrusive manner. The only exception to this rule which Rebbe Yochanan mentions is when Reuven wishes to do his laundry in the yard. Here, due to a rabbinic enactment, Shimon cannot prevent Reuven from this utility. It is understood that people do not wish to be subjected to the indignity of having to do their laundry at the river. Going to the river to do one's laundry entails being barefoot in a relatively public area, and possibly exposing one's lower legs, which infringes upon tzni'us. Therefore, it is permitted for each partner to insist that he be able to do laundry in the jointly-owned yard.

Rashbam explains that any permanent and set routine which one partner wishes to establish in the yard may be vetoed by the other partner. Rambam (Shecheinim 5:3) writes that each partner may prevent the other from setting up a position to have his animal stand, or to set up a mill or to raise chickens. Also included is any activity which is not normally done in a yard. **יד רמה** and **מרדכי** write that a partner may only object to actions which, if not protested, would constitute a chazakah, such as those listed in the Mishnah (57a).

In any case, **יד רמה** points out, based upon the Yerushalmi, that neither of the partners may protest activities which the other wishes to do within the immediate four amos of the yard adjacent to the doorway of the other's house. This area directly services the house itself, and each has exclusive rights to use the area around his doorway as he sees fit. If, however, the yard is on a slope, one partner may prevent the other from doing laundry even in the area around his doorway if the water which is spilled there directly flows beyond that area to the rest of the yard. ■

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 ר' יהושע שכנא בן ר' יהודה לייב ע"ה

# HALACHAH Highlight

## Partners in a field who took a vow prohibiting benefit from each other

השותפין שנדרו הנאה זה מזה אסורין ליכנס לחצר

Partners who took vows prohibiting benefit from one another may not enter their jointly-owned courtyard

If partners in a piece of land took vows prohibiting the other partner from benefitting from their property the vow takes effect and each partner is prohibited from entering into the property until it can be divided and each partner takes exclusive ownership of half of the field<sup>1</sup>. The reason<sup>2</sup> the principle of ברירה does not permit each partner to enter the field under the presumption that the part of the field he is presently on is his own is that the principle of ברירה cannot be invoked when the circumstance can be rectified using another means. This ruling applies only when the field is large enough that it could be divided and each partner will be granted four amos of land. In the event that the land is too small for one of the partners to be able to force a division the vows that they took do not take effect and each partner remains permitted to enter into the field<sup>3</sup>.

A difficulty with this explanation is that when it comes to Biblical laws we assume that the principle of ברירה is not invoked. Why then in this case is this principle invoked? Shach<sup>4</sup> suggests that the term ברירה in this context should not be understood in the conventional manner. When two partners

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R' Yochanan discusses the proper way a Torah scholar should wear his clothes and set up his table.

The Gemara challenges one of the ways a table is to be set up.

Three resolutions to this challenge are presented. ■

purchase land that is too small to be divided it is understood as though each partner stipulated that whenever the other partner wants to use the land he has the right to do so. As each partner walks through the field it is perceived as though he is walking on land that is exclusively his own. Accordingly, neither partner has the right to prohibit the other partner from using the land since their original agreement permits each one to make full use of the land and one cannot prohibit someone from using his own property. Radvaz<sup>5</sup> suggests that the case of partners is unique. Although generally regarding Biblical matters we do not invoke the principle of ברירה when it comes to partners who take vows against one another since the vow is to be understood based on the way people speak, it is assumed that people would not take a vow that would damage their own interest. Therefore when each partner took his vow he intended to allow the other partner use of the field using the principle of ברירה since otherwise it would be against his own interest. ■

<sup>1</sup> שו"ע יו"ד סי' רכ"ו סעי' א'.

<sup>2</sup> ש"ך שם סק"ב.

<sup>3</sup> שו"ע שם.

<sup>4</sup> ש"ך שם סק"ד.

<sup>5</sup> תשובת רדב"ז חלק ח' סימן קמ"ב ■

# STORIES Off the Daf

## Another way

"אי דאיכא דרכא אחרינא רשע הוא..."

One of the most vocal proponents of the need for "shemiras einayim" in recent times was Rav Eliyahu Lopian, zt"l. Once, a certain young man wished to travel a long distance from the yeshiva for a wedding. Since he was learning in Kfar Chassidim, he required permission to travel from the mashgiach, the venerable Rav Eliyahu Lopian. But when he requested permission, he was surprised that Rav Lopian did not look on this favorably.

"Aren't you afraid that you will see what is unseemly and spiritually damag-

ing?" he asked.

"Not really," the young man replied. "I have never found that seeing such things have any real effect on me."

The mashgiach then made what seemed to be a very strange request. "May I have your mother's name please?"

The bochur was flummoxed, "But why?"

The mashgiach responded, "I am eighty years old and I tell you truly that even walking a little bit in the street affects me adversely, and you, a young man in the prime of life, feel nothing? Obviously you are sick, so I need your mother's name to daven for your complete recovery!"

On another occasion, when Rav Lopian was still living in Yerushalayim, a group arrived exactly on time for a va'ad

and joyously shared with the mashgiach that they had cut through the Machaneh Yehudah market in order to make it on time.

To their dismay, the mashgiach was not pleased with this discovery, since it is virtually impossible to avoid seeing the unseemly in such a crowded area. "How could you have possibly cut through the shuk?" he thundered. "The Rashbam says clearly in Bava Basra 57 that if there is another way, one who takes the shorter path paved with pritzus is wicked even if he closes his eyes and sees nothing since he should have distanced himself from potential sin, not drawn it nearer to him. The Gemara tells us in Chulin 44 that we must distance ourselves from what is unseemly!"<sup>1</sup> ■

1. בפקודין אשיחה, ח"ב, ע' תכ"ט ■