

Today’s Daf Digest is dedicated
In loving memory of **שרגא פייוו דוד בן קמואל**
The Abramowitz family

OVERVIEW of the Daf

1) Paying for benefit (cont.)

R’ Huna’s statement regarding the issue of paying for the benefit one had from another’s property is presented and analyzed.

Another statement in the name of Rav or R’ Huna is presented.

Two reasons are given to explain why it is unnecessary for one who squats in another’s house to pay rent for the time he was there.

The practical difference between the two reasons is identified.

A related incident is recorded and explained.

2) Paying for food an animal ate from the side of the street

Rav and Shmuel disagree whether one is liable when his animal, standing in the middle of the street, turns its head and eats from the side of the street.

Shmuel’s position is clarified.

A second version of this discussion is presented.

Rav’s position is unsuccessfully challenged.

According to another version the dispute revolves around the question of whether one must pay for the food one’s animal ate from a domain that one set aside for use of the public domain.

It is suggested that the dispute relates to the issue of one who digs a cur on his domain.

This suggestion is rejected.

It is suggested that the question of liability when an animal turns its head and eats from the side of the street is a dispute between Tannaim.

This suggestion is rejected.

Another reason to reject this explanation is recorded.

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REVIEW and Remember

1. What are the two reasons is it beneficial to have someone dwell in an otherwise empty home?
2. Why did R’ Nachman take away someone’s mansion?
3. What does the phrase **בשדה אחר** exclude?
4. Which direction do chickens normally jump: up or down?

Distinctive INSIGHT

Losses and benefits when a dwelling is occupied

אין צריך להעלות לו שכר שנאמר ושאייה

In its concluding remarks of the discussion regarding the case where a person who was looking to rent a room found an abandoned dwelling and lived there. Rav Sechora said, in the name of Rav Huna, citing Rav, that the occupant does not have to pay any rental fee to the owner. Not only has the resident not caused any damage to the owner (the apartment was not up for rent), but also he has even saved him from suffering the damage of the demon mentioned in the verse in Yeshayahu (24:12): “**שאייה** strikes against [an empty] gate”. Rav Yosef also notes that the reason the occupant is exempt in a case where he caused no damage for the owner is only due to the fact that an occupied dwelling is maintained by those who live there. Had it remained empty, certain common repairs would not have been monitored and fixed.

The statement of Rav Sechora and that of Rav Yosef suggest that the only reason the occupant is exempt from paying rent to the owner, even though he caused him no loss, is that his residing in the dwelling contributed a positive effect, i.e. ensuring that the demon be kept out of the apartment, or that it remain inhabited and maintained. Without these additional factors of providing a positive element for the owner, it seems that the occupant would have been obligated to pay. Rashba, however, notes that the proofs presented (**מקיף**, **נוטל אבן**) all seem to indicate that the occupant would simply be exempt because “he did not cause any loss to the owner,” and there is no hint that the exemption is due to any benefit he provides.

Rashba explains that in fact, the halacha is that once the occupant does not cause any loss to the owner of the dwelling, this in and of itself is the reason for the exemption. However, the fact is also that when someone lives in an apartment or house, there is invariably some loss that occurs. There is wear and tear, and there is daily usage of the facilities which results in financial loss. It is in reference to these intangible losses that Rav Sechora and Rav Yosef note that these losses are more than accounted for by the benefit the resident provides with the apartment’s being occupied. In case we might have thought that this reverts to being a case of causing damage, we are hereby informed that these minimal losses are not to be considered, specifically due to the benefit the occupant provides. ■

HALACHAH Highlight

Affixing a mezuzah to an empty home

הדר בחצר חבירו שלא מדעתו... שנאמר ושאייה יוכת שער

One who lives in his friend's courtyard without permission... as it says, (Yeshayahu 24:12) "And through desolation the gate is broken."

Sefer Kav Hayashar¹ writes that there is a tradition from Rabbeinu Yehudah Hachassid that one should not move into a house that was unoccupied for seven years. Some later authorities suggest that our Gemara is a source for this tradition. Our Gemara relates that a demon called שאיה moves into a house that is unoccupied. Sefer Shemiras Hanefesh² qualifies this tradition and writes that this restriction applies only if the house was unoccupied and did not have a mezuzah on the doorway, but if there was a mezuzah on the doorway there is no need for concern. The rationale behind this qualification is that the mezuzah protects the house and prevents the demons from taking residence in the house. He notes, however, that it is improper for a person to affix the mezuzah specifically for the purpose of providing protection, as mentioned in Kesef Mishnah³.

Teshuvos Divrei Yatziv⁴ relates that he is often asked when the obligation to affix a mezuzah to a new house begins; from the time the family moves into the house or even before they bring utensils into the house. After he cites the opinions of many Rishonim who discuss when the obligation to affix a mezuzah begins he cites our Gemara's discussion about the demon that moves into an unoccupied home. Accordingly, since it would be dangerous to leave a new home unoccupied because of the fear of demons entering the home one should be careful to affix a mezuzah as soon as the construction of the home is completed, even if

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3) MISHNAH: The Mishnah discusses unusual cases of שן and רגל.

4) Jumping dogs and goats

The Gemara infers from the Mishnah's case of a dog jumping that in a circumstance that begins with negligence and ends with an אונס, one is not obligated to pay.

A Baraisa is cited that supports this ruling.

The Gemara explains how the opinion that maintains that in a circumstance that begins with negligence and ends with an אונס, one is obligated to pay, explains the Mishnah and Baraisa.

R' Zevid notes a circumstance in which one is liable even if the animal fell.

The Gemara further clarifies the circumstances of this ruling.

A Baraisa is cited that discusses halachos related to a dog or goat that jumps. ■

it is before the family moves into the home. Based on this concern, he offers a novel explanation of the commentary of Yonasan ben Uziel. On the verse (Devarim 20:5) that discusses a person who built a home but did not inaugurate it, Yonasan ben Uziel writes that the verse refers to one who built a house and did not yet affix a mezuzah. It seems, explains Divrei Yatziv, that the pasuk refers to someone who has not yet affixed a mezuzah because he hasn't moved into the home. Nevertheless, since he did not affix a mezuzah the demons have the opportunity to move into the home and this puts the homeowner's life at risk since Satan has the ability to make accusations during times of danger and that is the reason he should not go out to war. ■

1. ספר קב וישר פכ"ד
2. ספר שמירת הנפש עמ' קנ"ה
3. כסף משנה הל' תפילין פ"ה ה"ד
4. שו"ת דברי יציב יו"ד סי' קפ"ח אות ז' ■

STORIES Off the Daf

Avoiding conflict

זיל פייסנהו ליתמי

A certain wealthy man saw that his life was slowly fading. He felt very upset since he had been so busy accumulating money that he hadn't really focused on spirituality, and now it seemed that it would soon be too late. He did some very penetrating thinking and came up with a brilliant idea. He would leave his large house for use by the poor. Imagine the merit he could accumulate by having the poor live in his house rent-free for what he hoped would be many years to come.

He drew up the necessary documents

but did not discuss this with his wife or family.

After he had made these arrangements, he felt like a burden had been lifted from him and was very relieved. His illness was debilitating however, and eventually he left the world.

When his family heard about his great act of philanthropy they were furious. "What about us? How could he give away such an expensive property?"

They decided to go to a non-Jewish court to demand justice. The community's gabbai tzeddakah who had been entrusted with the management of the house asked the Maharam Schick, zt"l, if he was permitted to pay the family off to avoid a fight.

The Maharam Schick responded, "On

Bava Kama 21 we find that when a man built a house on a dumpsite owned by orphans, Rav Nachman ruled that he owed them rent for all the time he had been on their land and insisted that he appease the orphans. The Terumas Hadeshen learns from the Rosh that although the man was actually obligated to pay full rent, he need only appease them, since the beis din is empowered to release funds owed to orphans to avoid feuds and fighting¹ and the Shulchan Aruch rules this way as well.²

"The same holds true in our case. You can definitely pay them something to appease them. But," he concluded, "They really have no right to protest the will, and this is out-and-out theft!"³ ■

1. פסקים וכתבים קס"ב
2. חושן משפט סימן י"ב סעיף ג'
3. שו"ת מהר"ם שיק יו"ד סימן רל"ה