

OVERVIEW of the Daf

1) Disagreements about payment of rent (cont.)

R' Yochanan demonstrates that a tenant is believed with an oath when he claims to have paid rent.

Rava in the name of R' Nachman rules that a landlord is believed to state how many years of the lease have elapsed.

This ruling is unsuccessfully challenged.

2) Long term borrowing

R' Nachman presents language that allows an item to be borrowed forever.

Rav Meri the son of Shmuel's daughter puts a qualification on this ruling.

Rav Meri the son of R' Ashi rules that when the borrowed item breaks, the broken pieces must be returned to the owner.

Rava discusses another phrase that determines the extent of the loan. R' Pappa discusses a similar case.

3) MISHNAH: The Mishnah discusses the responsibility of a landlord if a rented house collapses.

4) Clarifying the Mishnah

The Gemara searches for the exact circumstances of the Mishnah's case. Reish Lakish offers one explanation.

This explanation is rejected and Ravin presents another version of Reish Lakish's explanation.

This explanation is unsuccessfully challenged.

הדרן עלך השואל

5) MISHNAH: The Mishnah presents general terms of a lease agreement.

6) Clarifying the Mishnah

A Baraisa elaborates on the Mishnah's ruling that uprooting or cutting crops is subject to common custom.

Three points contained in the Baraisa are explained.

The Gemara explains the novelty of the Mishnah's ruling about plowing a field.

A Baraisa is cited that identifies the case that is added when the Mishnah stated, "Everything follows local custom."

Two points in the Baraisa are explained.

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REVIEW and Remember

1. What is the meaning of borrowing something בִּטְבוּבוּ?
2. Under what conditions is a landlord obligated to provide a replacement house for one that collapsed?
3. What is included by the word **הכל** from the phrase **הכל כמנהג המדינה**?
4. Who is responsible for the security of a field?

Distinctive INSIGHT

Providing security and protection for a field

אמר רב יוסף בוכרא וטפתא וארכבתא וקני דחזרא דבעל הבית וחזרא גופיה דאריסא

The Mishnah at the beginning of the perek delineates general guidelines regarding how an owner of a field and a sharecropper divide the various agricultural assets of a field. In the Gemara, R' Yosef adds some details regarding some customs and practices which were observed in Bavel. As Rashi explains, the owner of the field had to supply the dirt needed to create a mound around the perimeter of the field for protection. In fact, this mound was formed with three layers of dirt, placed one upon the other once a previous placement of dirt was settled. The first layer was called **בוכרא**, and the second and third were called **טפתא** and **ארכבתא** respectively. Furthermore, an arrangement of sticks was then inserted around the perimeter of the field to serve as a frame for a fence. All these expenses are to be absorbed by the field's owner. The thorns which are placed on these sticks must be supplied by the sharecropper. The rule is that the basic securing of the field must be done by the field's owner, while the added level of protection is to be provided by the sharecropper.

The Rishonim discuss whether this rule of R' Yosef applies in regard to a sharecropper who pays a percentage of what is produced (**קבלן**) or if it also applies in a case of a **חוכר**—a worker whose arrangement is to pay a fixed amount per year. Rambam (שכירות ח:ב) writes that this arrangement applies equally to both a **קבלן** as well as a **חוכר**. However, Tur (320) cites opinions that hold that only a sharecropper can demand that the field's owner furnish the basic protection of the field, while a **חוכר** would have to provide all aspects of security for the field, both basic as well as enhanced measures of protection. Beis Yosef explains that the reason for this is that a **חוכר** accepts responsibility to pay a fixed fee whether the produce will grow that year or not. This indicates that the owner of the field is removed from the physical maintenance of the field, and he has delegated all aspects of the field to the worker.

Aruch HaShulchan (320:4) explains the view of Rambam. When an owner arranges to have his house occupied by a tenant for a flat fee per year, the owner is still responsible to provide a house that is livable. So, too, when a land owner hires out his field for a flat fee, it is still reasonable that we should expect that the owner be responsible to provide a field that has at least basic protection. The opinion cited in Tur would then hold that a house is different than a field. A house that is not livable is not adequate for its need, while a field is still functional even without standard fencing around its perimeter. ■

Today's Daf Digest is dedicated
 By Dr. and Mrs. Jeremy Simon in memory of their father
 ר' חיים ראובן שלמה בן שבח אליעזר ע"ה

HALACHAH Highlight

Is the presence of dangerous neighbors grounds to break a lease?

המקבל שדה מחבירו והיא בית השלחין וכו' יבש המעין וכו' איננו מנכה לו מן הכור

One who leases a field from a friend and it is an irrigated field... if the stream dries up... he may not deduct from his rent

There was once a man who rented an apartment that was located above a store that was rented by Jews. Some time in the middle of the lease some gentile gangsters threw the Jewish tenant out of the store, without permission of the owner and moved their own merchandise into the store. The tenant living upstairs called the owner of the building and wanted to back out of the remainder of the lease. He was fearful of his new neighbor and did not want to put himself or his family into any type of risk. The owner claimed that since there was a lease the tenant must honor the lease. Furthermore, since there are many nearby stores that are rented to gentiles the tenant should have realized that there was a possibility that he would have a gentile neighbor during the course of his lease and therefore may not use that as an excuse to break a lease. The tenant argued back that he was aware that there may be gentile store-owners who would rent space nearby but he did not expect that one would occupy the store beneath his apartment since at the time he entered the lease there was a Jewish tenant in that store.

Teshuvos Mishpat Tzedek¹ initially ruled against the tenant and offered the following explanation. Although it is true that living with gentile gangsters in the store below makes it more difficult to live in the upstairs apartment, nevertheless, we see from our Gemara that a contract must be honored even when more effort is

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7) Rulings of R' Yosef

R' Yosef states that the custom in Bavel is that straw is not given to the sharecropper.

The ramification of this statement is explained.

R' Yosef presents guidelines for who has the responsibility for the protection of the field.

R' Yosef presents the guidelines for the responsibility to provide the means to water a field.

8) Clarifying the Mishnah

The two statements concerning reeds in the Mishnah are explained.

9) **MISHNAH:** The Mishnah discusses when a lessee is authorized to deduct from his rent because a stream running through dried up or a tree was cut down.

10) Clarifying the Mishnah

The Gemara seeks clarification of the case of the Mishnah.

R' Pappa explains that the Mishnah refers to where a small river dried up and the landowner can say to the farmer that you should carry the necessary water to the field by hand. ■

involved than initially expected. Upon further consideration, however, he decided that the threat to the tenant's safety and wellbeing is genuine and the house is unlivable. Thus the circumstance should be treated similar to a case where the rented building collapsed which terminates the lease from that point forward. Accordingly, he instructed the tenant to pay for the time that he was in the apartment and released him from honoring and even paying for the remainder of the lease. ■

1. שו"ת משפט צדק (מלמד) ח"ב סי' ל"א. ■

STORIES Off the Daf

Expenses included?

"הוי ליה לפרושי..."

A certain person required a messenger to take important documents from one country to another. They agreed that he would deliver the papers for ten gold pieces. As he was leaving, the messenger told a couple of witnesses that although he was doing this job for a relatively expensive price, he expected to collect travelling expenses as well.

When the messenger returned and it was time to collect his hire, the messenger demanded extra for travelling expenses. Understandably, this upset the man who had hired him. "But surely even you admit that your price is quite high enough, so why should I pay you any extra for travelling ex-

penses?"

The messenger answered, "It is true that the price we agreed upon is very expensive, but I explicitly told witnesses that my fee does not include travelling expenses. The time for discussing this was before I went. Now it is too late, so please pay me and be more careful next time."

When this case was placed before the Terumas Hadeshen, zt"l, for adjudication, he ruled that the messenger did not deserve extra for travelling expenses. "It is clear in our case that the exorbitant fee was to include any possible travelling expenses, since if not why didn't the man who hired him offer seven gold pieces which is the going rate? It is not as though he would have lacked messengers. The amount he paid makes everything clear, even though some merchants pay travelling expenses separately."¹

But the Ketzos Hachoshen, zt"l, did not

understand this psak. "This seems very difficult since Bava Metzia 103 appears to be in direct contradiction to it. There we find that we do not say that a person who owned a field with fruit trees on it granted his sharecropper more produce than usual to offset the fact that he wants to take all the fruit of the trees for himself, since the owner should have explained himself. Presumably, the same is true here. As long as he failed to explain himself, giving a higher price proves nothing!"²

Rav Nosson Gestetener, shlit"a, answered this claim very neatly. "The Terumas Hadeshen writes clearly that the courier admitted that his price was exorbitant and that there was no reason to pay him more. Presumably the sharecropper claims that he is better paid to work harder and with more care..."³ ■

1. תרומת הדשן, ח"א, סי' שכ"ג

2. קצות החושן, סי' של"א, סי"ק א'

3. שו"ת להורות נתן, ח"ו, חו"מ, סי' ק"ל ■