



OVERVIEW of the Daf

1) River banks (cont.)

The Gemara concludes the second event related to river banks.

2) Communal obligations

R' Yehudah mentions two obligations from which Torah scholars are exempt.

The ruling concerning digging a well is qualified.

R' Yehudah lays out the parameters for who is responsible to clear out a river.

A Baraisa is cited that supports this ruling.

3) Property

Shmuel discusses the parameters of taking possession of land on the banks of a river.

Different opinions are presented concerning someone who takes possession of property between two brothers or partners.

4) Adjacent property owner – בר מצרא

Ravina and the Nehardeans disagree whether a potential buyer must formally acquire the rights to purchase a property from the adjacent property owner.

The Gemara rules that it is necessary to make a formal acquisition of that right and an application of this ruling is presented.

The Gemara discusses whether the law of בר מצרא applies when there is a major discrepancy between the value and the purchase price of the land.

Additional rulings related to the applicability of the law of בר מצרא are presented.

5) Selling property

The Gemara presents parameters for determining, when given a choice, to whom a piece of property should be sold.

(Continued on page 2)

Distinctive INSIGHT

The underpinnings of דינא דבר מצרא

ואי משום דינא דבר מצרא לא מסלקינן ליה

In his comments to Hilchos She'chainim of Rambam (14:5), Magid Mishnah explains the concept of דינא דבר מצרא—the right of first refusal of a neighbor to purchase a field which is for sale. He notes that the Torah provides guidelines for a person to perfect his character and his conduct, all in fulfillment of the Torah's directive “to be holy” (Vayikra 19:2). As Ramban explains in his Commentary on the Torah (ibid.), the Torah commands that we sanctify ourselves by abstaining even from things that are technically permitted, in order that we not be preoccupied with trying to indulge in physical pursuits. The Torah also commands us to “Do that which is correct and good in the eyes of God” (Devarim 6:18), which teaches us that the Torah expects that we conduct ourselves in a manner whereby other people see us as being pleasant and proper. Now, the Torah cannot specify every action which leads to this outcome, because this guideline regulates every time and every place where a person interacts with others. Our sages, however, have provided several standards of conduct along these lines. Some of these they established as law, while others are recommended whenever they are possible (לכתחילה), while others are labeled as pious behavior.

The statement of Rav Yehuda in the name of Rav in our Gemara is that if someone grabs control of a field which is ownerless (הפקר), this acquisition is valid even if the field is situated between two brothers or between two partners. Although it is obvious that the brothers or partners have a strong interest to take that field for themselves, the third party who took it acted impudently, but we do not remove it from him. The rule of דינא דבר מצרא does not apply to a field which is ownerless in this case. The brothers or partners had made no effort to acquire the field until this point, so we dismiss any claim they might now have. Rav Nachman, however, contends that the brothers or partners may assert their claim even now, and they may take the field from the third party based upon the rule of דינא דבר מצרא.

Shulchan Aruch (C.M. 175:56) rules according to R' Yehuda in the name of Rav, that we do not use the rule of דינא דבר מצרא when obtaining a field which is ownerless. Sm”a explains that this rule may yet be applicable if the neighbor is willing to pay for the field, and the one who acquired it might be obligated to sell it to the neighbor. Sm”a himself is ambivalent about this point, because once the third party acquired the field legally, he might be able to keep it, and not be required to accept payment from the neighbor. Prisha, however, rules that the neighbor may offer to pay for the field, and the land must be surrendered to him. ■

REVIEW and Remember

1. Why is taking property on a river bank considered חוצפה?

2. What is the law of בר מצרא?

3. Why does the law of בר מצרא not apply to one who sells all of his property?

4. Who is a higher priority; a neighbor or a relative?

This week's Daf Digest is dedicated
 By Mr. & Mrs. Dennis Ruben in memory of their parents
 ר' אברהם וואלף בן ר' בערל ז"ל
 ר' חיים שלום בן ר' בנדיט מאיר ז"ל

HALACHAH Highlight

Exempting public servants from communal taxes

אבל לאוכלוזה לא דרבנן לאו בני מיפק באוכלוזה נינהו

But [the rabbis] do not need to join the battalions since the rabbis are not amongst those who go out in battalions

Rivash¹ writes that a chazzan is not exempt from the different types of taxes as are Torah scholars. The reason is that Chazal only exempted from taxes those who have mastered Torah as an expression of honor to the Torah they represent and since the chazzan does not represent Torah in that way he is obligated to pay taxes the same as the rest of the citizens. Rashbash² seems to disagree with this rationale and exempts those who teach young children from taxes. The explanation he offers is that since the community is obligated to provide Torah teachers for children it is reasonable that included in their payment package is exemption from the communal taxes. Even if this stipulation was not explicitly made it is reasonable that it is still in force since without this stipulation there is no way someone would accept upon himself such a small salary. Since Rashbash did not mention that the exemption was related to honor for Torah scholars it seems that those who work for the community are exempt from taxes and thus even the chazzan should be exempt. Tashbatz³ writes explicitly that both Torah teachers of children as well as the chazzan of the community are exempt from taxes even though they would not necessarily qualify for this exemption as Torah scholars. Since the community is obligated to provide teachers and a

Upon inquiry the Gemara rules that one should sell property to a neighbor before a relative.

6) Adjacent property owner – בר מצרא (cont.)

The Gemara continues to discuss when the law of בר מצרא does and does not apply.

There is a discussion concerning property which two people share, regarding whether one person can prevent the other from selling his portion to a third party.

Additional rulings regarding the application of the בר מצרא halachos are recorded. ■

chazzan for its citizens it is reasonable to assume that they are included in the exemption from taxes enacted by Chazal.

Rema⁴ mentions that there are places that exempt the chazzan from paying communal taxes and he writes that it is a proper custom and one that should be followed but according to the letter of the law the chazzan is not exempt. The rationale for the exemption, explains Gra⁵ is that the Beis Haknesses is similar to the Beis Hamikdash and all those who serve in the Beis Haknesses should be exempted from taxes as were the kohanim in the Beis Hamikdash. Sema⁶ adds that all those people who work for the community (עוסקים בצרכי ציבור) should be exempt from communal taxes. ■

1. שו"ת הריב"ש סי' תע"ה.
2. שו"ת הרשב"ש סי' תי"ב.
3. שו"ת התשב"ץ ח"ג סי' קנ"ג.
4. רמ"א חו"מ סי' קס"ג סעי' ה'.
5. ביאור הגר"א שם ס"ק פ"ה.
6. סמ"ע שם ס"ק ל"ד. ■

STORIES Off the Daf

The gift of Shabbos

"מתנה לית בה דינא דבר מצרא..."

One time, when Rav Menachem Mendel Moses was in Petach Tikvah, he entered a beis midrash in which Rav Shlomo Miller, was giving a shiur.

After the shiur, Rav Moses approached Rav Miller and introduced himself. He had heard that the older man had been with the Imrei Chaim of Vizhnitz, zt"l, and hoped to hear something inspiring from him. After the two exchanged a greeting, Rav Miller said, "Reb Menachem Mendel! Please listen to this story regarding a special experience I had with the Damesek Eliezer of Vizhnitz, zt"l, at one of the tishchin I attended with your father."

This was exactly what Rav Moses had

been hoping to hear, so he listened carefully.

"I learned in Yeshivas Chevron and was part of a large group of bochurim who would go with your father to the Rebbe's tishchin in Beit Hakerem. One experience in particular was so powerful that it made an indelible impression upon me to this day. We went to the tisch on Shabbos Chazon and after Kol Mekadesh, the Damesek Eliezer began to dance to the well-known niggun for אתה תקום תרחם ציון. I was taken aback and immediately wondered to myself, 'How can one possibly dance on Shabbos Chazon?'"

The moment I finished this thought the Damesek Eliezer himself handed me a cup of wine and said, 'We find in Bava Metzia 108 that the halachos of "bar matzra"—the advantages afforded a neighbor to be the first to purchase property—do not apply to a gift.

'But there is another way to explain this Gemara. Bar Matzra can refer to bein hameitzarim, the times when we are in such difficult straits. Nevertheless, this does not apply to Shabbos which the Gemara in Shabbos 10 calls a gift.

'This is alluded to in the words of the zemer Kol Mekadesh which we just sang. The song goes: אוהבי ה' המחכים בבנין אריאל. Surely this stanza, which is discussing people waiting for the rebuilding of the Beis HaMikdash, is also referring to this time when we are all waiting the most. Yet in the very next line the song continues: שישו ושמחו כמקבלי מתן נחליאל - rejoice and be happy like one who received the gift of Nachliel. Even during this time we will be happy on Shabbos, since it is a gift to which our mourning does not apply.'¹ ■

1. בטאון ויזניץ, מנחם אב, תשס"ד, ע' 20