

Seder Nezikin | Bava Batra 35-41

Parashat Terumah | 30 Shvat– 6 Adar (Feb. 26-Mar. 4)

Daf 35: שְׂדֵה אֶחָד לְשְׁנֵי אַנְשִׁים – One Field For Two People

Reuven claimed Yoel gave him one of his fields as a gift. However, Shimon also made the same claim. Each one brought a document on which it was written that Yoel gave him the field as a gift. What should be done?

In a case like this, the *Beit Din* first checks the date written on the documents. If, on Reuven's document it is written that he received the field on the 1st of *Elul* and Shimon's document states he received the gift on 2nd of *Elul* – then it is clear that Reuven's document is the valid document. Reuven had already been gifted the field and, therefore, Yoel had no right to change his mind.

What is done if both documents were written on the same exact date? Rav says that, in such a case, there is no decision to be made. It is impossible to know to whom the property belongs, and the *Beit Din* must give both claimants half the field each. Shmuel disagrees and contends that the judges should decide, at their discretion, who will receive the field.

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Daf 36: הָעִזִּים שֶׁגָּרְמוּ נֹזֶק – The Goats Who Caused Damage

A man once spread peeled barley in his field to dry out. Suddenly, a pack of goats came into the field and ate up all the barley. The owner of the barley lured the goats away and refused to return them to their owner, on the claim that the goat owner is obligated to repay him for the damage the goats caused. The goat owner objected and counter-claimed: If you prove that my goats caused damage to you then I am responsible and prepared to pay you, but you must bring proof of that fact.



In a *Din Torah* that took place in front of the father of Shmuel the Amora, it was determined that the owner of the barley was permitted to retain the goats and does not need to bring proof that they caused damage to his property. Why did he rule this way?

On Daf 32, we learned the principle of “*Migo*.” If a litigant could have made a certain

claim and would have been believed, then he is similarly believed if he makes an alternative claim. Such is the case here. If the field owner wanted to lie, he could have said: ‘These goats that are currently in my possession are mine’ and he would have been believed. Because he admits the goats are not his, and that he retained them as payment for damages, he is believed.



FROM THE TALMUD
SEDER NEZIKIN
MASECHET BAVA BATRA
daf 36

מִן הַתְּלִמּוּד:

סדר נזיקין, מסכת בבא בתרא, דף ל"ו:

”לימא ניר איכא בינייהו -

דרבי ישמעאל סבר ניר לא הוי חזקה,

ורבי עקיבא סבר ניר הוי חזקה.”

Translation

לימא ... *Layma*..... Should it be said

איכא בינייהו ... *Eeka Bay'nai'hu* ... There is a
difference between them

Explanation

The Talmud asks if there is a *machloket*, dispute between Rabbi Ishmael and Rabbi Akiva regarding “*nir*” = plowing a field—meaning, if someone plowed a field, does that constitute a *chazakah* that proves ownership?

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📌 Daf 37: כְּלַאי הַקֶּרֶם – Hybrid Mixtures in the Vineyard



The Torah states in *Sefer Dvarim*: “Do not plant *kilyaim*, hybrid mixtures, in your vineyard.” A vineyard is a place where grapes are planted and the Torah prohibits planting other seeds, (e.g., wheat, barley, and the like,) among the grapes. It also says in the Torah, if one has already planted a vineyard (with *kilyaim*), everything that grows in that field, both now and in the future, both the seeds and grapes — are prohibited from being eaten or providing benefit.

What distance/perimeter must be left aside between a field of seeds and grape vines? One who has a single grape vine, or even just a few individual vines, must leave a distance of six *tefachim* (about 24 inches) between the grape vines and the seeds. However, someone who has a vineyard cannot sow anything else within 4 *amot* (7 ft.) of the vines.

What constitutes a vineyard? A field that contains at least two rows of vines, with at least 4 *amot* between them. This distance is necessary to allow a cow and plow to pass between the vines.



📌 Daf 38: מִשְׁכַּנְתָּא דְסוּרָא – The Sura Pledge

A *mashkon*, pledge, is an object given by a borrower to a lender to help guarantee the eventual repayment of a debt. If the borrower does not repay the debt, the lender may keep the item given as collateral. It is also possible to pledge property as a *mashkon*. On this daf, we learn that when pledging one’s land as a *mashkon*, one must be careful regarding the prohibition on paying interest.

How so? The lender will certainly not allow *mashkon* real estate to lie fallow. He will sow and use the land. After some time, when the borrower repays the debt and the lender returns the property, the lender will receive back more than the amount lent. The lender issued a loan of \$1,000 and received \$1,000 in return, and in addition to having gained use of the field (the field use is considered interest, as it is prohibited for a lender to receive more than he gave.)

To solve this problem, the *Chachamim* instituted a type of *mashkon karkaot*, property pledge, in the city of Sura, without the prohibition of interest: The lender would take the property as a *mashkon*, work the land, and assume the profits. However, each year, the lender would deduct an agreed upon sum from the debt, so that after a few years, the entire debt would be erased — after which, the lender would return the field to the borrower. In the Talmud, this type of *mashkon* is called the “*Mashkanta D’Sura*” — pledge of the city of Sura.

📍 | On The Map Rosh HaNikra

Rosh Hanikra is an amazing geological formation on the northwestern tip of Israel, bordering Lebanon. Cavernous tunnels, formed by the sea hitting the soft rock, resulted in spectacular 200-meter long grottoes, natural caves.

The first biblical reference to *Rosh Hanikra* is in *Sefer Yehoshua* (Joshua 13:6) and called ‘*Misraphot Mayim*’, which was the border of the Israelite tribe at the time.

Rosh Hanikra has long been an important spot on the map of Eretz Yisrael. This northern border crossing has been a passage point for trade and armies between Israel, Egypt, Syria, Lebanon and Africa, while Israel and Lebanon reached an armistice agreement at *Rosh Hanikra* in 1949.

Today, the border crossing is relatively quiet, while tourists flock to enjoy the beautiful views and fresh air.



Nature reserve Rosh Hanikra near Israel's border, with Lebanon Photo Source: Wikipedia

**Daf 39: לשון הרע ודכילות –
Guarding One's Tongue, Slander and Gossip**

The practice of guarding one's tongue requires paying attention to several details. On this *daf* we will learn about two of them:

a) Issur Rechilus, a prohibition against gossip. Gossip is unnecessary talk that could cause disputes, controversy, anger or grief to others. Even if the words said are technically correct, it is regarded nonetheless as *rechilus*.

b) Lashon Hara, a statement that denigrates another person that could cause the person insult, grief of damage. “*Mah she'sa'nu alecha, al ta'a'seh l'chavercha*,” what is hateful to you, do not do to your fellow. Just as we would not want words said about us that are hurtful, or to be spoken about in unnecessary and damaging ways, we do not speak this way about others.

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**Daf 40: פתרון להתמודד עם נוכל –
Attempts to Deal with a Swindler**

A man lent money to a friend. The borrower gave the lender his grove as a *mashkon*. The lender would eat from the grove's fruit for a few years and the debt thereby would be erased. The lender worked the field for three years, and when the time frame of the *mashkon* had passed, the borrower approached the lender and asked him to return the grove. The arrogant lender responded to the borrower: I want you to sell the grove to me. If you do not agree, I will tell the *Beit Din* that you sold it to me. Since I have been sitting on this land for three years, I already have a “*chazakah*,” a presumption of ownership.

Is there any possible remedy for the unfortunate borrower? The Talmud says that indeed there is. The borrower can deliver a “*moda'ah*” – going before witnesses and saying to them: “I do not want to sell my field to the lender. But he threatened me. Therefore, I am publicly informing you that the upcoming sale is null and void.”

Now, the borrower will go to the scoundrel lender, and say to him: “I will sell the field to you.” The two execute the sale. Afterward, if the lender goes to the *Beit Din*, the borrower can void the sale, since he delivered a “*moda'ah*.” The lender could no longer plausibly claim that he has a *chazakah*, since if the field had been his for three years why would he have tried to buy it again.

**This Week
in Jewish History**

The *yahrzeit* of Israeli Prime Minister Menachem Begin (1913-1992) is on the 4th of Adar. Begin was born in Poland to a Zionist family. As a teenager, he joined Betar, the Zionist Revisionists' youth movement, and became the head of the organization by age of 25.

Although Begin had intended on moving to Eretz Yisrael, during World War II he was arrested and sentenced to a Siberian labor camp for being a Zionist. After being released in 1941, he made his way to Eretz Yisrael where he quickly became the commander of the Irgun, a pre-state Zionist organization that advocated the use of military force to end the British Mandate. Begin was elected Prime Minister in 1977 and soon after taking office, he negotiated peace with Egyptian President Anwar Sadat, who was the first Arab leader to visit Israel and speak at the Knesset. Begin and Sadat shared the Nobel Peace Prize in 1978. In 1981, Prime Minister Begin ordered the Israeli Air Force to bomb the nuclear reactor in Iraq, an act that successfully blocked Baghdad's push to acquire nuclear weapons.

Following his wife's death in 1982, Begin resigned as Prime Minister and lived the rest of his life outside of the public eye.



Israeli Prime Minister Menachem Begin.
(Wikipedia)



Daf 41: – הַגֵּדֵר שֶׁנִּבְנְתָה בְּמָקוֹם הַלֵּא נִכּוֹן – The Fence Built In The Wrong Location

The river once rose over its banks and vigorous water currents swept away the fence that separated between the field of Rav Anan and that of his neighbor. After the torrential rain passed, Rav Anan and his neighbor built a new fence together.



Several days passed and the neighbor sued Rav Anan in Rav Nachman's court. He claimed that, by accident, the new fence was erected inside his property. He wanted the court to please tell Rav Anan to return the fence to its previous location. But Rav Anan claimed to Rav Nachman: Indeed, that same neighbor built the

new fence together with me. Surely he agreed to give up the land he lost and give it to me as a gift.

However, Rav Nachman told Rav Anan that he was incorrect, since that neighbor made a mistake when he acted. The neighbor had thought the new fence was placed in the right location and had no intention of giving up on any of that land.

Dvar Torah for the Shabbat Table

In parashat Terumah, HaShem commanded Moshe to take donations from B'nai Yisrael in order to build the Mikdash. "And make a Mikdash, sanctuary for me and I will dwell amongst them." Chazal suggest that the verse should have been more coherently written – "and I will dwell in it," meaning, in the Mikdash. If so, why is it written – "v'shachanti betocham," and I will dwell amongst them, in the plural?

Rabbi Menachem Mendle of Kotzk answers that this pasuk teaches us that beyond the command to construct a physical Mikdash, every person is obligated to build a Mikdash in their own heart. If a person does not have holiness in their own heart, there is no value to building God's Mikdash. Therefore, "v'shachanti betocham" means, and I will dwell in the hearts of all the people.



חוכמת החכמים |

שְׁמַעוֹן הַצֵּדִיק הָיָה מְשִׁירֵי כְּנֶסֶת הַגְּדוּלָּה. הוּא הָיָה
אוֹמֵר, עַל שְׁלֹשָׁה דְּבָרִים הָעוֹלָם עוֹמֵד, עַל הַתּוֹרָה
וְעַל הָעֲבוּדָה וְעַל גְּמִילוּת חֲסָדִים: (אבות א, ב.)

שְׁמַעוֹן הַצֵּדִיק הָיָה כֹּהֵן גָּדוֹל בְּזִמְנֵי בֵּית הַמִּקְדָּשׁ הַשֵּׁנִי. הוּא
הָיָה הַכֹּהֵן הַגָּדוֹל הַאֲחֵרוֹן לְאַנְשֵׁי הַכְּנֶסֶת הַגְּדוּלָּה (וְעַד שֶׁל
120 תְּלִמְיָדֵי חֲכָמִים שֶׁהִנְהִיגוּ אֶת עַם יִשְׂרָאֵל). שְׁמַעוֹן הַצֵּדִיק
הָיָה רְגִיל לֹאֹמֵר שֶׁהָעוֹלָם הַזֶּה מִתְקַיֵּם בְּזִכּוֹת שְׁלֹשָׁה דְּבָרִים.

One of the last survivors of מְשִׁירֵי
Who led שֶׁהִנְהִיגוּ
Committee ועַד
Exist/to exist מִתְקַיֵּם/לְהִתְקַיֵּם



QUESTIONS OF THE WEEK

All answers can be found in this Daf Yomi booklet

1. What is the *machloket*, dispute, between Rav and Shmuel in the case where two people received the same field as a gift?
2. Why is the owner of the field damaged by goats able to keep those goats with him?



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