

OVERVIEW of the Daf

1) A tree that is washed into a neighbor's field

Reish Lakish qualifies the ruling in the Mishnah concerning ownership of the olives from a tree that was swept away into a neighbor's yard.

The Gemara rejects this qualification and Ravin presents an alternative version of Reish Lakish's qualification.

This qualification is unsuccessfully challenged.

A Baraisa teaches that the owner of the tree cannot demand the return of his trees from his neighbor's field.

R' Yochanan explains the rationale behind this ruling to the satisfaction of R' Yirmiyah.

A Mishnah is cited, related to leasing an ancestral field from a gentile, which is eventually explained by R' Yochanan to the satisfaction of R' Yirmiyah.

2) Planting a tree in a friend's field without permission

Rav and Shmuel offer different rulings concerning the amount one stands to collect when he plants a tree in his friend's field without permission.

R' Pappa asserts that there is no disagreement and they refer to different cases.

The background for Rav's ruling is explained.

3) Rebuilding a friend's ruin

R' Nachman and R' Sheishes disagree whether one who rebuilt a friend's ruin can take back his stones and beams.

R' Nachman's position that he may take back his stones and beams is unsuccessfully challenged.

R' Yaakov in the name of R' Yochanan rules that in a house he may take back his stones and beams but in a field he may not.

Two reasons are given to explain why in a field he may not take back his materials.

The practical difference between these explanations is identified.

4) **MISHNAH:** The Mishnah discusses how much notice a tenant must be given to vacate a rental house.

5) Winter time

The Gemara searches for an explanation for the difference between the winter and the summer until it accepts R' Yehudah's explanation.

A Baraisa is cited that supports this explanation.

R' Assi elaborates on the restriction against evicting someone during the winter months.

6) Increasing rent

R' Huna rules that a landlord may increase a tenant's rent at the termination of his lease.

R' Nachman unsuccessfully challenges this ruling.

7) Evicting a tenant

The Gemara presents circumstances when a tenant could be evicted without notice and when it is not allowed and then presents a scenario where the halacha is not so clear.

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Distinctive INSIGHT

When the term of the rental ends

אמר רב יהודה להודיע קתני, והכי קאמר, המשכיר בית לחבירו סתם אין יכול להוציאו בימות הגשמים מחג ועד הפסח אלא אם כן הודיעו שלשים יום מעיקרא

The halacha in the Mishnah is that a tenant who is renting a house cannot be asked to leave during the rainy season (winter), until the entire season is over. During the summer, the tenant can be asked to leave with thirty days' notice. In a large city, the tenant cannot be expected to vacate the property, regardless of the season, until twelve months have elapsed.

Rashi explains that the Gemara initially understood that the Mishnah is telling us that if a house is rented out for the entire winter, this is defined as being from Sukkos until after Pesach. Accordingly, the Gemara's question is that if the winter is defined as being from Sukkos until after Pesach, then the summer season should then be defined as being from Pesach until after Sukkos. Why, then, if the agreement was to rent the house for the summer, is the owner able to dismiss the tenant after thirty days?

According to Rashi's approach, it is understood that throughout whatever the term of the rental may be, the owner may not demand that the renter vacate the property. Even if the house of the owner collapses and he himself has nowhere to live, he still may not demand that the renter leave the rented property.

The Gemara concludes that the case of the Mishnah is not where the rental was specified to be for an entire season, but rather where the rental term ended in the middle of a season. **מהר"ם** notes that the text in the Gemara according to Rashi does not say that the rental time was unspecified (**סתם**), but just that it was not for an entire season. The halacha is that if the term ended at any point during the winter, the owner cannot

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REVIEW and Remember

1. What is the reason the owner of a tree cannot take back his tree that was swept away into a neighbor's yard?
2. How much can one collect for planting a tree in a neighbor's field without permission?
3. How much notice must a tenant be given before he is to be evicted?
4. What work on rental property is the obligation of the tenant?

HALACHAH Highlight

Who is obligated to erect a fence on the roof of rented property? לעשות לו מעקה

To make for it a fence

Sefer Yeraim¹ writes that one who rents a house is Biblically exempt from putting up a fence on the roof of the rented house. The indication of our Gemara that the tenant is obligated to erect the fence is only a Rabbinic obligation. Since the tenant is the one who is dwelling in the house, Chazal imposed the obligation on him out of fear that if the responsibility was left in the hands of the owner, who is not living on the property, he may be lazy and an accident may חיי occur before the fence is erected. He cites the Sifrei² as proof to this position. Sifrei develops an exposition to obligate one who inherits or purchases property to construct a fence. The absence of a tenant from this exposition indicates that Biblically a tenant is exempt from constructing the fence.

Sefer Peas Hashulchan³ also writes that Biblically it is the responsibility of the home owner to construct the fence on his roof because the house is his and Chazal merely placed an additional obligation on the tenant. Minchas Chinuch⁴ expresses uncertainty regarding the exact nature of this Rabbinic obligation. There are two ways to understand this enactment. On the one hand, one can assume that the Rabbinic obligation placed on the tenant applies only when the owner does not wish to construct the fence himself. If, however, the owner is interested in putting up the fence himself he carries the primary obligation to put up the fence since his obligation is Biblical. Another way of looking at the en-

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evict the tenant until the end of the entire winter, as houses are hard to find at that time of year, unless the owner had given notice to his tenant at least thirty days before the winter began (which is 15 Elul, thirty days before Sukkos). For a lease which ends during the summer, it was not necessary to have given notice to the tenant thirty days before the season, but it is necessary to give thirty days' notice before he is asked to vacate.

In a large city (כרך), it is necessary to serve notice twelve months before expecting a tenant to leave.

Most Rishonim learn that the case is where the rental was unspecified, and the renter was living in the dwelling month by month, and paying rent for each month. Here, when the owner wants to end the rental, he may do so only at the end of the winter, or with thirty days' notice during the summer. Accordingly, if the rental was specified to end on a particular date, the tenant may be asked to leave, even in the middle of the winter. ■

actment is to assume that the Rabbinic enactment displaced the Biblical obligation and the only person who has an obligation to erect a fence on rented property is the tenant. He does not come to a definitive conclusion on the matter but writes that it seems to him that the first approach is more logical. Since the house belongs to the owner and the Biblical command was directed to him why would Chazal come along and completely negate that mitzvah? ■

1. ספר יראים סיי רל"ד.
2. ספרי תצא אות י"ט.
3. ספר פאת השלחן סיי ב' ס"ק כ"ז.
4. מנחת חינוך מצוה תקמ"ו תקמ"ז אות א'.

STORIES Off the Daf

Settling the land

שוב ארץ ישראל

On today's daf we find the mitzvah of settling Eretz Yisrael.

A certain man truly loved Eretz Yisrael. Although he lived in chutz la'aretz and could not yet immigrate and actually live in the land, he purchased a property by proxy. The land contained an old ruin which he could either make into a habitable house, or remove and plant a large orchard.

This man wondered what he should do. Should he plant an orchard? After all, eventually this would support the poor of Eretz Yisrael, surely a very worthy endeavor. Yet perhaps it would be better to build up the ruin and make it habitable so that

it would be usable for a residence even though he himself most likely would not be able to come in the foreseeable future.

When he put this question to the Ben Ish Chai, zt"l, he replied, "The answer to your question is found in a clear Tosefta at the end of the fifth chapter of Arachin. There we find that a person should not destroy his house in order to plant an orchard. In addition, he must not plant on his churvah, all in order that Eretz Yisrael should not be destroyed even if it is more profitable to plant than to build. Rambam rules according to this Tosefta, so it is presumably the halachah.

"It is clear that you should not turn the churvah into an orchard, despite the potential benefit to talmidei chachamim who could manage its produce. In order to ensure that Eretz Yisrael is built up, you are better off building a home!"¹ ■

1. שו"ת תורה לשמה, סי' שפ"ז

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A related incident is presented and analyzed.

8) R' Shimon ben Gamliel's position

A Baraisa elaborates on R' Shimon ben Gamliel's position in the Mishnah.

9) MISHNAH: The Mishnah discusses different obligations and rights of landlords and tenants.

10) Landlord/tenant obligations

A Baraisa elaborates on the different obligations of landlords and tenants.

11) Mezuzah

R' Sheishes was asked whether it is the landlord's or the tenant's responsibility to affix a mezuzah.

The Gemara notes that it is obviously the tenant's responsibility and the relevant question was who is responsible to carve a hole in the stone to place the mezuzah.

R' Sheishes demonstrates that it is the tenant's responsibility. ■