

one may plant a tree where it is liable to damage the pit of a neighbor:^[10]

Abaye's view:

אָבַי אָמַר – Abaye says: סוּמָךְ – Even in land in which it is the practice to dig pits, one may place a pit near one's boundary. אַפִּילוּ לְרִבְנָן דְּאָמְרֵי – And this is so even according to the Sages who say: מִרְחִיקִין אֶת הָאֵילָן מִן הַבּוֹר עֶשְׂרִים וְחָמֵשׁ אַמּוֹת – ONE MUST DISTANCE A TREE TWENTY-FIVE AMOS FROM THE PIT of a neighbor. The difference between the two cases is as follows: הָתֵם הוּא דִּבְעֵידְנָא דְקָא נִטַּע אֵיתָא לְבוֹר – It is in that case that the Sages require the owner of the tree to distance it, for when he plants the tree, the neighbor's pit is already in existence. אָבֵל הָבָא בְּעֵידְנָא דְקָא חָפַר לִיתָא לְבוֹר – But in the present case, when [the owner of the pit] digs his pit, there is no pit in the neighboring property that is liable to be damaged.^[11]

Rava's view:

וְרָבָא אָמַר – Rava says: אֵינוֹ סוּמָךְ – In land in which it is the practice to dig pits, one may not place a pit near one's boundary. וְאַפִּילוּ לְרַבִּי יוֹסֵי דְאָמַר – And this is so even according to R' Yose, who says: זֶה חוֹפֵר בְּתוֹךְ שְׁלוֹ – Just as THIS [NEIGHBOR] MAY DIG a pit IN HIS [PROPERTY], וְזֶה נוֹטֵעַ בְּתוֹךְ שְׁלוֹ – THE OTHER ONE MAY PLANT a tree IN HIS [PROPERTY]. (I.e. there is no prohibition against planting a tree even where it is liable to damage the pit of one's neighbor.)^[12] הֵנִי מִילֵּי הָתֵם – For that ruling of R' Yose applies only in that case, דִּבְעֵידְנָא דְקָא נִטַּע – where at the time he plants the tree, לִיתְגַּהוּ לְשִׁרְשֵׁי דְמִזְקֵי לָהּ – its roots, which will eventually damage the pit, are not yet in existence. אָבֵל הָבָא – But in the present case, אָמַר – [the neighbor] can say to [the one who wishes to dig a pit]: כָּל מָרָא וּמָרָא דְקָא מַחְיִית – “Every time you strike the earth with your spade,^[13] קָא מַרְפִּית לָהּ לְאַרְעָא – you weaken my land!”^{[14][15]}

The Gemara attempts to prove which opinion is correct:

הֵנָּה – We learned in our Mishnah: לֹא יַחְפּוֹר אָדָם בּוֹר – A PERSON MAY NOT DIG A PIT סְמוּךְ לְבוֹרוֹ שֶׁל חֲבֵירוֹ – NEAR THE PIT

OF HIS NEIGHBOR, unless he distances it at least three *tefachim* from the wall of his neighbor's pit. The Mishnah implies that the neighbor's pit is already in existence. This gives rise to the following inference: טַעֲמָא דְאִיבָא בּוֹר – The reason distancing is required is that there is a pit on the neighbor's side of the boundary; הָא לִיבָא בּוֹר סוּמָךְ – but if there is no pit in harm's way, one may place a pit near the boundary! בְּשִׁלְמָא לְהָרָה לִישְׁנָא – Now, [this] is in order according to that version (i.e. the second version) of the dispute between Abaye and Rava which stated: בְּשִׁדְהָ שְׂאִינָה עֲשׂוּיָה לְבוֹרוֹת – “Regarding land in which it is not the practice to dig pits, in the opinion of all, one may place a pit near the boundary.” מִתְּנִיתִין בְּשִׁדְהָ שְׂאִינָה עֲשׂוּיָה לְבוֹרוֹת – For, according to that version, the Mishnah can be explained as referring to land in which it is not the practice to dig pits. With regard to such land, even Rava agrees that one may dig a pit near the boundary. אֲלֵא – However, according to the other version (i.e. the first version) of the dispute, which stated: בְּשִׁדְהָ שְׂאִינָה – “Regarding land in which it is not the practice to dig pits, they disagree as to whether one may dig a pit near the boundary,” בְּשִׁלְמָא לְאַבְיִי נִיחָא – [the law] inferred from our Mishnah is in order only according to Abaye, who permits the digging of a pit under such circumstances.^[16] אֲלֵא – But according to Rava, who forbids the digging of a pit even under such circumstances, קִשְׁיָא – the Mishnah poses a difficulty. – ? –

The Gemara presents Rava's defense:

אָמַר לָךְ רָבָא – Rava will say to you: הָא אֵיתָמַר עָלָהּ – But it was stated in reference to [this Mishnah]: אָמַר אַבְיִי וְאֵיתִימָא – Abaye – or, as some say, Rav Yehudah – said: רַב יְהוּדָה – Abaye – or, as some say, Rav Yehudah – said: מִכּוֹתֵל בּוֹרוֹ שְׁנִינִי – When the Mishnah says “from his neighbor's wall,” it means “from the wall of his pit.” In fact, the Mishnah reflects Rava's view, for its use of the word “wall” indicates that the first neighbor to dig a pit near the boundary is also required to leave a gap (known as the pit's “wall”) between his pit and the boundary.^[17]

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10. This dispute is recorded in the Mishnah, 25b. The Sages rule that a tree must be distanced at least twenty-five *amos* from a neighbor's pit lest its roots damage the pit. R' Yose, however, permits one to plant a tree anywhere in one's property, even though it will eventually damage the neighbor's pit.

The view of the Sages is apparently incompatible with the view of Abaye as it is defined by the *second* version of the dispute between Abaye and Rava. The Sages forbid the performance of an action that is likely to cause damage to a neighbor's property even though the damage is not immediate. Abaye, on the other hand, permits even an action that is likely to cause damage (e.g. digging a pit near property in which it is the practice to dig pits) on the grounds that the damage is not immediate. The Gemara proceeds to reconcile these two views.

There is no contradiction, however, between the *first* version of Abaye's opinion and that of the Sages. Since, according to the first version, Abaye concedes that it is forbidden to dig a pit near property in which it is the practice to dig pits, evidently, Abaye agrees with the Sages' view that an action which is likely to cause damage in the future is forbidden even though the damage is not immediate. According to this version, the reason Abaye permits the digging of a pit near a field in which it is *not* the practice to dig pits is that, in such a case, damage is unlikely ever to occur (*Rashba*).

11. [Abaye argues that the Sages restrict the placement of a hazard only in a case where the object liable to be damaged is already in harm's way. Therefore, they would permit the digging of a pit near the boundary between two properties – provided there is no pit yet on the other side – even in land in which it is the practice to dig pits.]

12. R' Yose is of the opinion that one is not required to distance harmful agents from the property of a neighbor. In his view, it is up to the

threatened party to take his property out of harm's way (see Chapter Introduction).

13. Literally: each and every spade that you strike.

14. The very action of digging loosens the surrounding soil. The neighbor's land is thereby damaged insofar as it is rendered unfit for the digging of pits (see *Rabbeinu Yonah* רַבֵּי יוֹנָה, *Rashba* רַבֵּי שֵׁשֶׁבֶרֶט, cf. *Meiri*). This is an activity that causes direct damage, which even R' Yose concedes is forbidden (see Chapter Introduction).

15. An apparent difficulty: The views of Rava and R' Yose seem to be contradictory according to either version of the dispute between Abaye and Rava. So why did the Gemara discuss this problem only in the context of the second version?

The answer is that the Gemara was concerned primarily with the difference between the views of the Sages (the majority opinion) and Abaye, which, as explained above, is a problem only according to the second version (see note 10). Once the Gemara discusses the difference between Abaye and the Sages, it deals with the difference between Rava and R' Yose as well.

Alternatively: The Gemara did not resolve the difference between R' Yose and the first version of Rava's view because it is impossible to do so. The reconciliation of the views of Rava and R' Yose is based on the reasoning that the very act of digging renders the neighbor's field unfit for the digging of pits (see note 14). But this reasoning is of no consequence with regard to the first version of Rava's view, according to which Rava's restriction applies even to land in which it is not the practice to dig pits anyway (*Rashba*).

16. [Abaye can explain the Mishnah as referring to land in which it is not the practice to dig pits.]

17. See notes 4 and 6.

The Gemara cites an alternative version of the proof inferred from our Mishnah:

איבא דאמרי – There are those who report the following version: The Mishnah taught that distancing is required from a neighbor's pit – ואיתמר עלה – and it was stated in reference to [this ruling]: אמר אביי ואיתימא רב יהודה – Abaye – or, as some say, Rav Yehudah – said: מבוהל בורו שנינו – When the Mishnah says “from his neighbor's wall,” it means “from the wall of his pit.” Thus, the Mishnah implies that the first neighbor to dig a pit near the boundary is also required to leave a “wall” between his pit and the boundary. בשלמא להך לישנא – Now, [this] is in order according to that version (i.e. the first version) of the dispute between Abaye and Rava which stated: בשדה העשויה לבורות – “Regarding land in which it is the practice to dig pits, in the opinion of all, one may not place a pit near the boundary.” מתניתין – For, according to that version, our Mishnah can be explained as referring to land in which it is the practice to dig pits. With regard to such land, even Abaye concedes that one may not dig a pit near the boundary even before there is a pit on the other side. אלא להך לישנא דאמר – However, according to the other version (i.e. the second version) of the dispute, which stated: בשדה העשויה לבורות – “They disagree regarding land in which it is the practice to dig pits,” [the law] inferred from our Mishnah is in order according to Rava, who rules that in such circumstances one may not dig a pit near the boundary.^[18] אלא לאבוי – But according to Abaye, who permits the digging of a pit even under such circumstances, קשיא – the Mishnah poses a difficulty.^[19] – ? –

The Gemara presents Abaye's defense: מתניתין שקבאו לחפור בבת – Abaye will say to you: אמר לך אבוי – Our Mishnah speaks of an instance where [both neighbors] came to dig pits simultaneously. In such a case, even Abaye holds that each neighbor is required to distance his pit from the boundary.^[20]

The Gemara attempts to refute Abaye's position from a Baraisa:

קלע – Come, learn the following proof from a Baraisa: הבה בידים – In a field whose SOIL is so soft THAT it COMES away IN one's HANDS,^[21] זה חופר בורו מכאן – THIS [NEIGHBOR] MAY DIG

HIS PIT ON THIS SIDE of the boundary וזה חופר בורו מכאן – AND THE OTHER [NEIGHBOR] MAY DIG HIS PIT ON THE OTHER SIDE only on condition that זה מרחיק שלשה טפחים וסר בסיד – THIS ONE DISTANCES his pit THREE TEFACHIM from the boundary AND APPLIES LIME to its walls,^[22] וזה מרחיק שלשה טפחים וסר בסיד – AND THE OTHER ONE also DISTANCES his pit THREE TEFACHIM from the boundary AND APPLIES LIME to its walls.

This Baraisa indicates that both the first neighbor to dig a pit near the boundary and the second one to do so are required to distance their pits three tefachim from the boundary. This refutes Abaye's view that the first one to dig a pit near the boundary is not required to distance it.^[23] – ? –

The Gemara rejects the proof: בא בידים^[24] שאני – [Soil] which is so soft that it comes away in one's hands is different from regular soil. Regarding soft soil, Abaye concedes that it is forbidden to dig a pit near the boundary even before there is a pit on the other side. His permit applies only to a field of regular soil.^[25]

This answer is so obvious that the Gemara is prompted to ask: מאי קארי – And the one who involved himself with this Baraisa, i.e., who asked the question in the first place, why did he involve it in the discussion? The very fact that the Baraisa specifies soft soil surely indicates that the restriction it sets forth (viz. even the first pit must be distanced) applies only to soft soil!^[26] – ? –

The Gemara answers that the questioner understood the Baraisa's law as applying to both types of soil, and it specified soft soil for the following reason:

בא בידים איצטריקא ליה – It was necessary for [the Tanna] to mention [soil] that comes away in one's hands, טללא דעתך – for otherwise it might have entered your mind to say – ביון דבא בידים – that since [such soil] comes away in one's hands, ליכעי נמי רוחא טפי – a gap greater than three tefachim is required between each pit and the boundary. קא משמע לן – [The Tanna] therefore informs us, by mentioning soft soil, that a distance of three tefachim is sufficient even in a field of soft soil.

The Gemara presents a series of challenges to Rava's view from our Mishnah:

תא שמע – Come, learn the following proof from our Mishnah: מרחיקין את הגפת ואת הנבל ואת – ONE MUST DISTANCE OLIVE REFUSE, MANURE,

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18. [Rava can explain our Mishnah as referring to land in which it is the practice to dig pits.]

19. As the Gemara above imputed to Abaye, the use of the word “wall” in the Mishnah indicates that the distance between the neighbor's pit and the boundary is not some arbitrary amount, but an amount required by law (see note 6). If so, the Gemara asks, the Mishnah clearly indicates that Rava's view is correct – for, in Abaye's view, there is no requirement for the first pit to be distanced from the boundary!

20. Abaye's rationale for allowing one to dig a pit near the boundary is based on the consideration that the potential object of the damage (the neighbor's pit) is not yet in existence (see note 11). When both pits are dug simultaneously, however, each neighbor must take the other's pit into account, and so must distance his pit three tefachim from the boundary.

21. I.e. the soil can be dug using one's bare hands, without any tools (Rabbeinu Gershom).

22. See Mishnah 17a note 4.

23. This difficulty cannot be resolved by stating that the Baraisa refers to land in which it is the practice to dig pits, because it is not the practice to dig pits in soft soil. Furthermore, according to the second version of the dispute between Abaye and Rava, Abaye permits the placement of a pit even near a field in which it is the practice to dig pits.

24. [Many Rishonim follow a different version of the text. See Tosafos, Ramban, Rashba et al.]

25. With regard to regular soil, the digging of a pit near the boundary damages the neighboring field only insofar as it is rendered unfit for the digging of pits. Thus, for practical purposes, the neighbor suffers no harm until he decides to dig a pit. Since, on a practical level, the damage is not immediate, Abaye permits the digging of a pit under such circumstances. With regard to soft soil, however, even the practical damage is immediate, for the land itself caves in when a pit is dug nearby (Ran).

26. [If the restriction applies even to regular soil, the Baraisa should have stated this, since it would be the more novel ruling.] Did the questioner not know that the law pertaining to soft soil might be more stringent?! (Rabbeinu Gershom).

AND flint - וְאֵת הַסֵּלִים LIME - וְאֵת הַסִּיד SALT - הַמִּלָּח STONES, מִבּוֹתְלוֹ שֶׁל חֲבִירוֹ שְׁלֹשָׁה טֵפָחִים - at least THREE *TEFACHIM* FROM THE brick WALL OF ONE'S NEIGHBOR, אוֹ כֵּד בָּסִיד - OR ONE MUST APPLY LIME to the wall. The Mishnah implies that the neighbor's wall is already in existence. This gives rise to the following inference: טַעְמָא דַּאיבָא בּוֹתֵל - The reason that such precautions are required is that there is a wall already standing; but where there is no wall, סוּמֵךְ - one may place these harmful materials near the boundary. This refutes Rava's position that one may not place a hazard near neighboring property even before the object liable to be damaged is in harm's way.^[1] - ? -

The Gemara defends Rava's view:

כי - The inference from our Mishnah is not compelling. לֵיבָא בּוֹתֵל נִמְי לֹא סְמִיךְ - One could argue that even where there is no wall, one may not place these materials near the boundary. וְאֵלָּא מַאי קָא מְשַׁמֵּעַ לָן - And what then does [the Tanna] mean to inform us by specifying a case in which there is a wall?^[2] הָא קָא מְשַׁמֵּעַ לָן - He informs us of the following: דְּהֵינִי קָשׁוּ לְבוֹתֵל - These materials are harmful to a wall.^[3]

The Gemara challenges Rava from the next clause of our Mishnah:

Come, learn the following proof from our Mishnah: SEEDS, the use of A PLOW, AND URINE MUST BE DISTANCED מִן הַבּוֹתֵל שְׁלֹשָׁה טֵפָחִים - at least THREE *TEFACHIM* FROM THE WALL of one's neighbor. The Mishnah implies that the neighbor's wall is already in existence. This gives rise to the following inference: טַעְמָא דַּאיבָא בּוֹתֵל - The reason distancing is required is that there is a wall already standing, but where there is no wall, סְמִיךְ - one may place these hazards near the boundary. - ? -

The Gemara defends Rava's view:

כי לֵיבָא בּוֹתֵל נִמְי לֹא - This inference is not compelling. לֵיבָא בּוֹתֵל נִמְי לֹא סְמִיךְ - One could argue that even where there is no wall, one may not place these hazards near the boundary. וְאֵלָּא - And what then does [the Tanna] mean to inform us by specifying a case in which there is a wall? הָא קָא - He informs us of the following: דְּמִתּוֹנָתָא קָשָׁה -

Moisture^[4] is harmful to a wall.^[5]

Again, the Gemara challenges Rava from our Mishnah:

Come, learn the following proof from our Mishnah: AND A MILL must be distanced at least THREE *tefachim* from a neighbor's wall, as measured FROM THE LOWER MILLSTONE, שְׁהֵן אַרְבָּעָה מִן הָרֶכֶב - WHICH IS equivalent to FOUR *tefachim* from the wall as measured FROM THE UPPER MILLSTONE. The Mishnah implies that the neighbor's wall is already in existence. This gives rise to the following inference: טַעְמָא דַּאיבָא בּוֹתֵל - The reason distancing is required is that there is a wall already standing; but where there is no wall, סְמִיךְ - one may place this hazard near the boundary. - ? -

The Gemara defends Rava's view:

כי לֵיבָא בּוֹתֵל נִמְי לֹא סְמִיךְ - This inference is not compelling. לֵיבָא בּוֹתֵל נִמְי לֹא סְמִיךְ - One could argue that even where there is no wall, one may not place a mill near the boundary. וְאֵלָּא מַאי קָא מְשַׁמֵּעַ לָן - And what then does [the Tanna] mean to inform us by specifying a case in which there is a wall? הָא קָא מְשַׁמֵּעַ לָן - He informs us of the following: דְּטִירָוִיָא קָשָׁה לְבוֹתֵל - Vibrations are harmful to a wall.^[6]

The Gemara challenges Rava from our Mishnah's final ruling:

Come, learn the following proof from our Mishnah: AN OVEN must be distanced at least THREE *tefachim* from a neighbor's wall, as measured FROM THE lower rim of THE oven's BASE, שְׁהֵן אַרְבָּעָה מִן הַשֻּׁפָּה - WHICH IS equivalent to FOUR *tefachim* from the wall as measured FROM THE upper RIM of the base. The Mishnah implies that the wall is already in existence. This gives rise to the following inference: טַעְמָא דַּאיבָא בּוֹתֵל - The reason distancing is required is that there is a wall already standing; but where there is no wall, סְמִיךְ - one may place this hazard near the boundary.

The Gemara defends Rava's view:

כי לֵיבָא בּוֹתֵל נִמְי לֹא סְמִיךְ - This inference is not compelling. לֵיבָא בּוֹתֵל נִמְי לֹא סְמִיךְ - One could argue that even where there is no wall, one may not place an oven near the boundary. וְאֵלָּא מַאי קָא מְשַׁמֵּעַ לָן - And what then does [the Tanna] mean to inform us by specifying a case in which there is a wall? הָא קָא מְשַׁמֵּעַ לָן - He

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1. The Gemara's question requires explanation. Surely Rava concedes that it is permissible to place materials such as olive refuse etc. near the boundary when there is no wall there, for, as soon as the neighbor expresses a desire to build a wall, they can be removed!

Tosafos give two answers: (1) These substances harm the ground, rendering it unfit to support a wall. Hence, even if they are removed before the wall is built, the wall will be damaged. (2) Once these substances are in place it is difficult to remove them. Therefore, the neighbor can protest their placement near the boundary on the grounds that when he wants to build a wall they might not be removed in time.

A further difficulty: As stated above, Rava's restriction is based on the argument: "Every time you strike the earth with your spade, you weaken my land," which means that the damage is classified as *his arrows*, *his arrows*, even before a pit is present on the other side of the boundary. But regarding olive refuse etc. - even if we assume that the damage it causes to a wall is classified as "*his arrows*" (see 22b note 25), how can it be considered "*his arrows*" even before a wall is present? So on what basis does the Gemara assume that Rava's rule applies to cases such as olive refuse etc.?

The answer is that the Gemara adduced the aforementioned argument ("Every time etc.") only for the sake of aligning Rava's position with that of R' Yose. As far as the view of the Sages (R' Yose's

disputants) is concerned, Rava's rule applies even where this argument is not applicable. The Gemara's question here assumes the view of the Sages (*Tosafos*; cf. *Ramban*).

2. The Tanna did not need to mention a wall. He could simply have said: "One may not place olive refuse etc. near the boundary."

3. [I.e. the Mishnah teaches that the reason why these materials must be distanced from the boundary is that they are harmful to a wall.]

An apparent difficulty: Since Rava forbids the placement of these substances near the property of a neighbor, regardless of whether or not a wall is there, what practical difference does it make that these substances are harmful to a wall?

The practical consequence is that in a case where it is unlikely that a wall will be built, one is allowed to place these substances near the boundary (*Ritva*, *Meiri*; see *Nachalas Moshe* who explains why this is true even according to the first version of Rava's view).

4. Plowing is forbidden because seeds are planted in the plow furrows, and seeds are harmful to a wall in that the water used in their irrigation is liable to cause it damage (see *Rabbeinu Gershom*). Thus, each of the hazards listed in this clause - urine, plow, seeds - causes damage, either directly or indirectly, through moisture. (This follows the initial assumption of the passage below, 19a-b, not its conclusion.)

5. See note 3.

6. See note 3. (See also 20b note 13.)

informs us of the following: **וְהַבֵּלָא קָשָׁה לְבוֹתָל** – Heat is harmful to a wall.^[7]

The Gemara attempts to refute Rava's view from the next Mishnah:

תָּא שְׁמַע – Come, learn the following proof from a Mishnah:^[8] **אִם יָפְתָּח אָדָם חֲנוּת שֶׁל נִחְתוּמִין וְשֶׁל צִבְעִין – A PERSON MAY NOT OPEN A BAKERY OR A DYE SHOP** **תַּחַת אוֹצְרוֹ שֶׁל חֲבִירוֹ – UNDER THE STOREROOM^[9] OF HIS FELLOW,** **וְלֹא רִפְתּוֹ בֵּקֶר – NOR** may he open **A CATTLE BARN** under a storeroom. The Mishnah implies that the storeroom is already in existence. This gives rise to the following inference: **טַעְמָא דְּאִיבָא אוֹצֵר – The reason** for these restrictions is **that there is a storeroom** in the upper story; **הָא – but** where there is **no storeroom** in the upper story, **לִיבָא אוֹצֵר – one may open^[10]** any of these establishments in the lower story. – ? –

The Gemara answers that this case is an exception:

דִּירָה שְׂאֵנִי – A person's residence is different. A bakery, dye shop and cattle barn are industries that typically are operated in a person's own home. Rava concedes that restrictions are not placed on what a person does in his home except in a case where vulnerable property is already in harm's way.

The Gemara cites support for this distinction:

דְּתַנִּי עֲלָה – One can also infer this from the following: **אֶבְרַסָּא – A Barisa was taught in reference to [this Mishnah]** which states: **אִם הָיְתָה רִפְתּוֹ בֵּקֶר קוֹדֶמֶת לְאוֹצֵר מוֹתֵר – IF** the establishment of **THE CATTLE BARN^[11]** **PRECEDED** that of the storeroom, **יָדוּם לְמַעַבְדָּא – IT IS PERMITTED** to maintain the cattle barn. Since this qualification was taught *only* in reference to a cattle barn etc., evidently, it applies only in these cases and not in the other cases listed in our Mishnah. The reason for this exception must be, as explained above, that a person's residence is treated differently.

The Gemara makes another attempt to refute Rava's view:

תָּא שְׁמַע – Come, learn the following proof from a Mishnah:^[12] **אִם יִשֵּׁעַ אָדָם אֵילָן סְמוּךְ לְשָׂדֶה – A PERSON MAY NOT PLANT A TREE** or a vine **נֶאֱרָב בְּחֵיק מִמֶּנּוּ אַרְבַּע – NEAR THE FIELD** of his neighbor **אֲלֵא אִם בֵּן הָרְחִיק מִמֶּנּוּ אַרְבַּע – UNLESS HE DISTANCES** it **אַמּוֹת – FOUR AMOS** from [his neighbor's field]. **וְתַנִּי עֲלָה – And a Baraisa was taught in reference to [this Mishnah]:** **אַרְבַּע אַמּוֹת שְׂאֵמְרוֹ – THE FOUR AMOS** that [the sages] said must be maintained between a tree or vine and a neighboring field **בְּדִי עֲבוּדַת הַכֶּרֶם – are required** so that one will have **ENOUGH** room **לְעִבְדַּת הַכֶּרֶם – FOR THE CULTIVATION OF THE VINEYARD** (or the orchard) without encroaching on the neighbor-

ing property.^[13] The Gemara makes the following inference from this Baraisa: **טַעְמָא דְּמִשְׁנָה בְּדִי עֲבוּדַת הַכֶּרֶם – The reason** the tree must be distanced **is that sufficient** space is required **for the cultivation of the vineyard.** **הָא לֹא מִשְׁנָה בְּדִי עֲבוּדַת הַכֶּרֶם – But were it not for** the necessity of allowing **sufficient** space **for the cultivation of the vineyard,** **קָמִיר – one may place** a tree near the boundary, **וְאִם עַל גִּבְ דְּאִיבָא שְׂרָשֵׁין דְּקָא מִזְקִי – even though there are roots** to the tree **that will** eventually grow and **cause damage!**^[14] This refutes Rava's position that a hazard may not be placed near neighboring property even before the potential object of the damage is in harm's way. – ? –

The Gemara answers:

דִּמְפָּסִיק – What are we dealing with here? **הָא בְּמֵאִי עֲסָקִין – The Mishnah** refers to a case **where** a subterranean barrier of **rock separates** the two fields. The tree's roots cannot penetrate this rocky barrier and therefore cannot cause damage in the neighboring field.^[15]

The Gemara proves that the Mishnah refers to such a case:

וְיָדוּם נָמִי דְּקָמִי – One can also infer this from the continuation of that Mishnah: **הָיְתָה גִּבְרָה בֵּינֵיהֶם – If THERE WAS A FENCE BETWEEN [THE TWO FIELDS],** which prevents the entry of a plow into the neighboring field, **וְהָא סוּמָךְ לְגִבְרָה מִבָּאן – THIS [NEIGHBOR] MAY PLACE** a tree **NEAR THE FENCE [ON HIS SIDE]** **וְהָא סוּמָךְ – AND THE OTHER [NEIGHBOR] MAY PLACE** a tree **NEAR THE FENCE [ON HIS SIDE].**^[16] Now this would not be permitted if there were not some form of impenetrable barrier (e.g. a section of rock) beneath the surface, for otherwise the roots would go under the fence and cause damage in the neighboring field.^[17]

The Gemara asks:

אִי הָא – If this is so, that the Mishnah speaks of a case where a subterranean barrier of rock separates the two fields, **אִיבָא טִיפָא – consider the latter clause** of that Mishnah: **הָא שְׂרָשֵׁין יוֹצְאִין – If one planted a tree and ITS ROOTS EXTENDED** INTO the property **OF HIS NEIGHBOR,** **מִצְמִיק לְהֵן שְׁלֵשָׁה טַפָּחִים – [THE NEIGHBOR] MAY [CUT THEM OFF] TO A DEPTH OF THREE TEFACHIM,**^[18] **בְּדִי שְׁלֵא יַעֲבֹב הַמַּחְרִישָׁה – SO THAT THEY DO NOT IMPEDE** the progress of his **PLOW.** **וְאִי דִּמְפָּסִיק צוֹנָמָא – Now if** the Mishnah speaks of a case **where** a subterranean barrier of **rock separates** the fields, **מֵאִי בְּעוֹ הָהֶם – what are [the roots] doing there?** How could they have penetrated the rocky barrier?

The Gemara answers:

הָא בְּמֵאִי קָמִיר – This is what [the latter clause of the Mishnah] means: **וְאִי לֹא צוֹנָמָא – But if there is no barrier of**

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7. See *Ritva*, and note 3.

8. Below, 20b.

9. The storeroom referred to here is an upper chamber in which grain, wine or oil is stored. The smoke produced by the constantly burning ovens of a bakery or dye shop (for boiling the dyes) is injurious to such items. Likewise, the odor emanating from a cattle barn is harmful to them (*Rashi*; see *Rashash*).

10. Literally: do.

11. The same applies to a bakery and dye shop (*Tosafos*).

12. Below, 26a.

13. Space is required between a tree (or vine) and neighboring property so that when the owner plows around his tree, or takes a wagon to collect its fruit, he will not enter his neighbor's field (*Rashi*).

14. By impeding the neighbor's plow or making it difficult for him to dig a pit (*Rashi*; see *Ramban* דִּיקָא רִמְיָן רִיקָא). [To avoid this, the tree should be distanced 25 *amos* from the boundary (see Mishnah 25b).]

15. [Thus, were it not for the requirement that space must be allowed for "the cultivation of the vineyard," even Rava would concede that it is

permitted to plant near the boundary.]

16. Furthermore, in a case where grain or greens are planted in one field and there is a vineyard in the other, the presence of the fence alleviates the prohibition of *בְּלֵאֵי הַכֶּרֶם*, *mixture of the vineyard*. The Torah prohibits the planting of grain or greens within four *amos* of a vineyard. But if a fence interposes, it is permitted to plant vines next to one side of the fence and grain or greens next to the other side. (The Gemara, *Eruvin* 11a, teaches that even a fence consisting merely of two vertical poles with a horizontal branch above them extending from one to the other [יצירת הפתח, *the form of a doorway*] suffices for this purpose) (*Rashi*).

17. This clause of the Mishnah indicates that where a fence interposes, one is permitted to plant a tree even after his neighbor has already done so. Hence, even according to Abaye, the Mishnah must speak of a case where there is a rocky barrier beneath the surface, for otherwise it would be forbidden to plant a second tree near the boundary lest it damage the one that is already in place (*Ran*; see *Ramban*, *Rashba*, *Maharsha*; cf. *Maharam*).

18. He may cut off those roots that extend into his property where they are within three *tefachim* of the surface (*Rashi*).

rock separating the two fields,^[19] והיו שרשי יוצאין לתוך של – and its roots (i.e. the roots of a tree one had planted near the boundary)^[20] extend into the property of his neighbor, מצמיק שלשה טפחים – [the neighbor] may cut [them off] to a depth of three *tefachim*, כדי שלא יעכב המרחישה – so that they do not impede the progress of his plow.

The Gemara poses another challenge to Rava's view: Come, learn the following proof from a Mishnah:^[21] מרחיקין את האילן מן הבור עשרים וחמש אמה – ONE MUST DISTANCE A TREE TWENTY-FIVE AMOS FROM THE PIT of a neighbor. The Mishnah implies that the pit is already in existence. This gives rise to the following inference: טעמא דאיכא בור – The reason the tree must be distanced is that there is a pit on the other side of the boundary; הא ליכא בור – but where there is no pit on the other side of the boundary, סמיך – one may place a tree near the boundary. This refutes Rava's position that a hazard must be distanced from neighboring property even before the object liable to be damaged is in harm's way. – ? –

The Gemara defends Rava's view: לא – This inference is not compelling. כי ליכא בור נמי – One could argue that even where there is no pit on the other side of the boundary, לא סמיך – one may not place a tree near the boundary. והא קא משמע לן – And this is what the Mishnah informs us by specifying a case in which there is a pit on the other side: דעד עשרים וחמש אמה אולי שרשים ומזקי לבור – The roots of a tree can extend up to twenty-five amos and damage a pit.^[22]

The Gemara counters: But if this is so, that it is forbidden to plant a tree near the boundary even before a pit has been dug on the other side, אימא סיפא – consider the latter clause of that Mishnah: אין קדם – BUT IF THE planting of the TREE PRECEDED the digging of the pit, לא קוץ – [THE OWNER OF THE TREE] DOES NOT have to CUT down THE TREE.^[23] ואי דלא סמיך – Now if it is true that one may not place a tree near the boundary even before there is a pit on the other side, היכי משבחת לה – how can [such a situation] arise that a tree is planted near the boundary between two fields? And if the tree was planted illegally, its owner should be required to cut it down.^[24] – ? –

The Gemara answers that even if the law is that it is forbidden to plant a tree near the boundary, the Mishnah does not require the tree's removal because it refers to the following exceptional case:

It is as Rav Pappa said in explanation of another Mishnah: בלוקח – “The Mishnah refers to a buyer.”^[25] Here too, the same explanation is applicable. בלוקח – The Mishnah refers to a buyer; i.e. it refers to the following scenario: The owner of the tree planted it well within the boundaries of his property, but later he sold a portion of his property to another, who proceeded to dig a pit near the tree. In such a case, the tree was planted legally, and therefore its owner is not required to remove it.

The Gemara attempts to refute Rava's ruling from another Mishnah:

Come, learn the following proof from a Mishnah:^[26] מרחיקין את המשרה מן הירק ואת הכרישין מן ואת החרדל – LEEKS FROM THE ONIONS of his neighbor^[28] AND MUSTARD plants FROM THE BEES of his neighbor.^[29] The Mishnah implies that the vegetables^[30] are already in place. This gives rise to the following inference: טעמא – The reason one is required to distance a flax pool is that there are vegetables in harm's way; הא ליכא ירק – but where there are no vegetables in harm's way, סמיך – one may place a flax pool near the boundary. This refutes Rava's contention that a hazard must be distanced from neighboring property even before the object liable to be damaged is in harm's way. – ? –

The Gemara defends Rava's view: לא – This inference is not compelling. כי ליכא ירק נמי – One could argue that even where there are no vegetables in harm's way, לא סמיך – one may not place a flax pool near the boundary. והא קא משמע לן – And this is what the Mishnah informs us by specifying a case in which the vegetables are already in place: דהני קשו אהרדי – These (flax pool, leeks, mustard plants) are harmful to these (vegetables, onions and bees' honey respectively).^[31]

The Gemara counters: But if this is so, that it is forbidden to place a hazard near the boundary even before the object liable to be damaged is in harm's way, אימא סיפא – consider the latter clause of that Mishnah: רבי יוסי מתיר בחרדל – R' YOSE PERMITS placing a hazard close to neighboring property IN THE CASE OF MUSTARD plants. And the following Baraisa was taught in explanation of R' Yose's ruling: מפני שיכול לומר לו – R' Yose permits the planting of mustard plants near neighboring property BECAUSE HE [the

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19. I.e. although the first clauses of the Mishnah speak of a case where a rocky barrier interposes between the fields, the latter clause speaks of a case where there is no such barrier.

20. This tree was planted illegally [for no subterranean barrier separates the two fields] (*Rashi*).

[A different Mishnah (25b) rules that one who plants a tree illegally can be forced to cut it down. The commentaries discuss why the present Mishnah does not mention this law – see *Tosafos*, *Rashba* et al.]

21. Below, 25b.

22. See note 3.

23. This is in contrast to the reverse case, where the tree was planted after the pit was dug. In such a case, the owner of the tree is indeed required to remove it (Mishnah 25b; see note 36 there).

24. Since the tree was planted illegally (according to Rava), the same law should apply as in the case where the tree was planted after the pit was dug, viz. the owner of the tree must cut it down [see previous note] (*Rashi*). The Mishnah, however, states that if the tree was there before the pit, it need not be removed.

25. Rav Pappa's comment, which is discussed in the Gemara below (18b),

was made in reference to the Mishnah on 25a.

26. Below, 25a.

27. Before flax stems can be processed into linen thread, they must be retted (soaked) to break down their woody tissue and dissolve the substance binding their fibers together. The stems of flax plants would be soaked in a pool or pond for several days. The substances absorbed by the water during this process are toxic to growing plants, and they pass into the ground around the pool and damage the surrounding vegetation (see *Rambam*, *Hil. Shecheinim* 10:5). One must therefore distance these pools from the areas in which a neighbor grows vegetables.

28. Leeks diminish the sharpness of onions growing nearby (*Rambam Commentary to the Mishnah*).

29. The bees feed on the mustard plants, which leave a sharp taste in their mouths. The bees then consume the honey in their hives to relieve their discomfort (*Rashi*).

30. [The Gemara below mentions only the first case of the Mishnah (flax pool – vegetables), but the same applies to the second (leeks – onions) and third (mustard plants – bees) as well.]

31. Literally: these are harmful to each other. See note 3.

owner of the mustard plants] CAN SAY TO HIM [the owner of the bees]: עַד שֶׁאֵתָּה אוֹמֵר לִי הִרְחַק חֲרָדְלֶךָ מִן דְּבוֹרָאֵי – “BEFORE YOU TELL ME, ‘DISTANCE YOUR MUSTARD PLANTS FROM MY BEES,’

הִרְחַק דְּבוֹרְךָ מִן חֲרָדְלָאֵי – I can tell you, ‘DISTANCE YOUR BEES FROM MY MUSTARD plants,’ שְׂבָאוֹת וְאוֹכְלוֹת לְגִלּוּגֵי חֲרָדְלָאֵי – FOR THEY COME AND EAT THE FLOWERS OF MY MUSTARD plants!³²

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32. That is to say: What is the basis for your claim that my mustard plants should be removed? The basis is that they are considered hazardous. But your bees are also hazardous (*Rashi*). Therefore, I have no greater obligation to remove my plants than you do to remove your bees. Just as you are not required to remove your bees, I am not required to distance my plants (see *Ran* to 18a ד"ה אי הכי).

With regard to two pits, however, although they are mutually injurious (see *Mishnah* 17a), even R' Yose concedes that once a pit has been dug near the boundary between two properties, it is forbidden to dig a pit on the other side. The distinction between these two cases is as follows:

A pit that has already been dug is not harmful. It is only the *digging* of a pit that causes damage. Therefore, one who digs a pit after one has been dug in neighboring property cannot claim that his obligation to prevent damage is no greater than his neighbor's; for, at this point, only he is causing damage while his neighbor is not. This is in contrast to the

case of the bees and mustard plants, where each hazard continuously harms the other, and therefore the owner of the second hazard to be placed near the boundary can claim: “Your hazard is causing damage *now* and yet you do not have to remove it, so neither do I have to remove mine!” (*Ran* *ibid.* ד"ה וא"ת). [This approach is not viable according to *Tosafos*' position that a pit is prohibited because its water causes damage (see *Mishnah* 17a note 3). See *Tosafos* to 18b ד"ה ואי for a resolution to this difficulty that conforms with their approach.]

As mentioned above (17b note 14), R' Yose allows a person to do whatever he pleases within his own property provided his actions do not *directly* damage the property of another [גִּירֵי דִּירֵיהּ, *his arrows*]. The damage caused by bees and mustard plants to each other do not fall into this category. Hence, it is problematic that R' Yose adduced a different argument (“Before you tell me etc.”) to support his permit in this case. This problem is dealt with in the course of the Gemara's discussion below (see 18b note 13).

The Gemara shows how this refutes Rava's view:
 ואי דלא קמיר – Now if the law is, as Rava says, that one may not place a hazard near his neighbor's property even before the item liable to be damaged is in harm's way, היכי משכחת לה – how can [such a situation] arise? Since, according to R' Yose, both bees and mustard plants are classified as hazards, how could either have been placed near the boundary in the first place?^[1]

The Gemara offers a solution:
 Rav Pappa said: בלוקח – The Mishnah refers to a buyer; i.e. it refers to the following scenario: The owner of the hazard (flax pool, leeks, mustard plants) installed it well within the boundaries of his property, but later he sold a section of his property to another, who proceeded to install a vulnerable item (vegetables, onions, beehive) within range of the hazard. This is a situation in which a hazard can be found near the boundary between properties, even according to Rava.

The Gemara objects to this solution:
 But if the Mishnah refers to a buyer (i.e. the preceding scenario), מאי טעמא דרבנן – what is the rationale of the Rabbis? When the owner installed the hazardous agent, he did so legally. So why do the Rabbis require him to remove it? Furthermore, מאי טעמא דרבי יוסי – what is the rationale of R' Yose, who permits the hazard to be left near the boundary only in the case of the bees and the mustard plants? אפילו משקה וירקא נמי – Even regarding the case of a flax pool and vegetables,^[2] R' Yose should rule that the hazard may be left near the boundary, since it was placed there legally. – ? –

The Gemara answers the first objection:
 The Rabbis are of the opinion that על המזיק להרחיק את עצמו – it is the responsibility of the owner of a hazard to distance it^[4] from the property liable to be damaged, even in a situation where it was installed legally.^[5]

However, Ravina's approach does not solve the problem with R' Yose's opinion. In fact, it intensifies this problem:
 דרבי יוסי סבר על – By specifying the Rabbis, Rava implies that R' Yose is of the opinion that it is the responsibility of the threatened party to distance his

property^[6] from the hazard. – אי על הניזק – But if R' Yose is of the opinion that the responsibility for preventing damage rests upon the threatened party, אפילו משקה וירקא נמי – he should dispute the Rabbis' ruling in the case of a flax pool and vegetables as well!^[7] Why does he argue only with regard to the case of bees and mustard plants?

The Gemara explains R' Yose's opinion:
 Rather, the truth is that רבי יוסי נמי על – R' Yose too is of the opinion that the responsibility for preventing damage rests upon the hazard's owner. והכי קאמר להו רבי יוסי לרבנן – And this is what R' Yose is saying to the Rabbis: תינה משקה וירקא – "Your view is in order with regard to the case of a flax pool and vegetables, דהני מזקי הני – for these (flax pools) damage these (vegetables), והני לא מזקי הני – while these (vegetables) do not damage these (flax pools). Since the damage is only one way and the law is that it is the responsibility of the hazard's owner to prevent damage, I concur with your ruling that the hazard (the flax pool) must be removed. אלא חרדל ודבורים – But with regard to the case of mustard plants and bees, תרויהו מזקי אהדרי – where each one damages the other, I disagree with your ruling that the mustard plants must be removed!"^[8]

The Gemara now gives the Rabbis' response to R' Yose's argument:

And the Rabbis hold that דבורים לחרדל לא מזקי – And the Rabbis hold that bees do not damage mustard plants. אי בבינתא – As far as the mustard seeds are concerned, לא משכחא – And as far as the leaves are concerned, even if the bees eat them the damage is not significant, הדר פארי – for they grow back.

The Gemara asserted that R' Yose agrees with the Rabbis' basic position that the responsibility to prevent damage rests upon the owner of the hazard. This assertion is now refuted:

But does R' Yose hold that it is the responsibility of the owner of a hazard to distance it from vulnerable property? – ויהנן – But we have

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1. And if the owner of one of the hazards installed it near the boundary illegally, why does R' Yose say that his neighbor can only argue: "Before you tell me etc." (i.e. since I cannot force you to move your hazard, you cannot force me to move mine)? R' Yose should have ruled that the neighbor can have the hazard removed! (See *Ran, Maharam*).

According to Abaye, however, this is not a difficulty, for even if both bees and mustard plants are hazards, one may be placed near the boundary before the other is present on the other side. Thus, the Mishnah speaks of a case where one neighbor placed one of these hazards near the boundary and then the other neighbor wished to put the other hazard on the opposite side.

[Tosafos stated above that the Gemara's challenges to Rava reflect the view of the Sages, not that of R' Yose (see 18a note 1). However, the Gemara's present challenge is clearly based on the view of R' Yose! *Rashba* answers this problem.]

2. And the Mishnah's second case involving leeks and onions as well. [For the sake of brevity, the Gemara mentions only the first case.]

3. [There is an alternative version of the text which reads: אלא אמר רבינא, Rather, Ravina said. The word אלא, rather, signifies that the Gemara retracts its previous answer that the Mishnah refers to a buyer. *Rabbeinu Chananel, Rabbeinu Tam* (cited by *Tosafos* וסבר) and other Rishonim follow this version, which necessitates a completely different explanation of the following passage of Gemara. Our elucidation, however, reflects the commentary of *Rashi* according to which

the Gemara does not retract its previous answer (see *Rashi* על ר"ה (המזיק).]

4. Literally: it is [incumbent] upon the one who damages to distance himself.

5. An apparent difficulty: This contradicts the ruling of the Mishnah (25b) that if someone planted a tree before a pit was dug in neighboring property, he is not required to remove the tree.

The answer is that the Rabbis made an exception in the case of a tree since its removal involves a substantial monetary loss (*Tosafos* ר"ה לא). Alternatively: The Rabbis did not mandate the removal of the tree, because trees are essential for the habitation of the world (*Ramban, Ran, from Yerushalmi* 2:10).

6. Literally: it is [incumbent] upon the one who is damaged to distance himself. I.e. if the owner of the vulnerable property does not want it to be damaged, it is up to him to move it out of harm's way.

7. [Previously, R' Yose's acquiescence in the first two cases of the Mishnah was considered difficult for only one reason: viz. the hazard was placed legally. Now it is difficult for an additional reason: viz. R' Yose holds that it is up to the threatened party to prevent damage from occurring.]

8. See 18a, first paragraph of note 32.

9. The seed of the mustard plant is enclosed in a sheath (*Rashi* to 19a ר"ה לא; see *Rashba* here).

learned in a Mishnah:^[10] אָף עַל – R' YOSE SAYS: אָף עַל – R' Yose says to the Rabbis: "In my opinion, responsibility for preventing damage rests upon the hazard's owner). לְדִידִי – R' Yose says to the Rabbis: "In my opinion, responsibility for preventing damage rests upon the hazard's owner, but upon the threatened party.^[11] – ? –

The Gemara therefore changes its explanation of R' Yose's view:

אֶלָּא לְעוֹלָם – Rather, the truth is that רַבִּי יוֹסֵי עַל הַנִּזְקָה סְבִיבָא – R' Yose is of the opinion that the responsibility for preventing damage rests upon the threatened party. Hence, in fact, R' Yose holds that it is permitted to place a flax pool near the vegetables of a neighbor. The reason he disputes the Rabbis' position only in the case of the mustard plants and bees is as follows: וְלִדְבָרֵיהֶם דְּרַבְּנָן קָאָמַר לְהוּ – [R' Yose] is replying to the Rabbis in accordance with the Rabbis' own view (viz. the

responsibility for preventing damage rests upon the hazard's owner). לְדִידִי – R' Yose says to the Rabbis: "In my opinion, responsibility for preventing damage rests upon the hazard's owner, but upon the threatened party.^[11] – ? –

The Gemara gives the Rabbis' response:

דְּבִוּרִים לְחַרְדֵּל לֹא מִזְקֵי לֵיהּ – And the Rabbis hold that bees do not damage mustard plants. אֵי בְּבִינְתָא – As far as the mustard seeds are concerned,

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10. Below, 25b. The first part of this Mishnah records the view of the Rabbis that a tree must be distanced at least twenty-five *amos* from a neighbor's pit (lest its roots damage the pit), and if the tree was planted after the pit had been dug it must be cut down. The Gemara here cites the second part of the Mishnah, in which R' Yose's dissenting view is recorded.

11. As mentioned several times above, R' Yose holds that it is not the hazard owner's responsibility to prevent damage from occurring except where the damage is direct [גִּירֵי דִידֵיהּ, *his arrows*]. The Gemara, therefore, can draw a parallel between the case of planting a tree near

a pit and the three cases of the Mishnah under discussion insofar as none of them fall into the category of גִּירֵי דִידֵיהּ, *his arrows*.

12. [Since the damage is one-sided, and we are assuming that it is the hazard owner's responsibility to prevent damage from occurring, you (the Rabbis) are right in saying that the flax pool must be distanced.]

13. [The problem raised above (18a end of note 32) is resolved with the present approach that the opinion of R' Yose, as it is recorded in the Mishnah, assumes the view of the Sages.]

לה – לא משפחת לה – [the bees] cannot find them. – אי בטרפא – And as far as the leaves are concerned, even if the bees eat them the damage is not significant, הדר פארי – for they grow back.^[1]

The Mishnah said:

וולא נברכת הבוכסין וכו' – NOR A LAUNDERER'S POOL etc. A person may not dig a launderer's pool within three *tefachim* of the wall of his neighbor's pit.

The Gemara qualifies this ruling:

אמר רב נחמן אמר רבה בר אביו – Rav Nachman said in the name of Rabbah bar Avuha: לא שנו אלא מן המחמצן – They did not teach that a distance of three *tefachim* is sufficient except from a soaking pool, אבל מן הנדנין ארבע אמות – but from a scrubbing pool a distance of four *amos* is required.^[2]

The Gemara adduces support for Rav Nachman's ruling by contrasting our Mishnah with a Baraisa:

תניא נמי הכי – This was also taught in the following Baraisa: נברכת הבוכסין ארבע אמות – A LAUNDERER'S POOL must be distanced at least FOUR AMOS from the wall of a neighbor's pit. והא אנו תנן – But we have learned in our Mishnah that the required distance is only three *tefachim*?! אלא לאו שמע מינה – Surely, one can learn from this that, as Rav Nachman stated, our Mishnah refers only to a soaking pool. The Baraisa, which requires a distance of four *amos*, refers to a scrubbing pool.

An alternative version of the previous discussion:

ואיבא דרמי להו מירמי – According to others, at first a contradiction was noted between the Mishnah and the Baraisa as follows: תנן – We learned in our Mishnah נברכת הבוכסין שלשה טפחים – that A LAUNDERER'S POOL must be distanced THREE TEFACHIM from the wall of a neighbor's pit. והתניא ארבע אמות – But in a Baraisa it was taught that FOUR AMOS are required!

– And in response to this problem, Rav Nachman said in the name of Rabbah bar Avuha: לא – Here [our Mishnah] the reference is to distancing measured from a soaking pool; כאן מן הנדנין – whereas here [the Baraisa] the reference is to distancing measured from a scrubbing pool.

The Gemara quotes a Baraisa that explicitly supports Rav Nachman's contention that the distance of three *tefachim* applies only to a soaking pool:

רב חייה בר אבא רבי אבהו רבי אבהו – Rav Chiya the son of Rav Avya taught a Baraisa that states this qualification explicitly: אלא אם כן הרחיק משפת מחמצן ולכותל שלשה טפחים – One may not dig [a launderer's pool] near the pit of a neighbor UNLESS ONE DISTANCES THE EDGE OF THE SOAKING POOL THREE TEFACHIM FROM THE WALL of the pit.

The Mishnah stated:

– A person may not dig a pit etc. unless he distances it three *tefachim* from the wall of his neighbor's pit AND APPLIES LIME to its walls.

The Gemara inquires as to the correct text of our Mishnah:

– They asked: – Do we learn “AND HE APPLIES LIME,” או דילמא או קד בסיד תנן – or do we learn “OR HE APPLIES LIME”? Is the application of lime required in addition to distancing the pit, or is it an alternative option?^[3]

The Gemara attempts to decide this question:

– It is obvious that we learn “AND HE APPLIES LIME,” דאי טלקא דעתך דאו קד בסיד תנן – for if you should think that we learn “or he applies lime,” אם כן – if so, they [the first two clauses of the Mishnah] should be combined and taught together, for the text in the second clause is certainly “or he applies lime.”^[4] From the

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1. In conclusion:

A. The dispute between the Sages and R' Yose:

The Sages hold that it is the responsibility of the hazard's owner to prevent damage from occurring. Hence, in their view, in all the three cases of this Mishnah, the owner of the hazard (flax pool, leeks, mustard plants) is required to distance it from the threatened object (vegetables, onions and beehives respectively). According to R' Yose there is no obligation to distance any of the hazards mentioned in this Mishnah. His reasoning is that it is up to the threatened party to move his property out of harm's way. (In the case of the mustard plants and bees, R' Yose maintains that there is an additional basis for leniency: viz. bees and mustard plants are mutually injurious.)

[R' Yose agrees, however, that it is forbidden to cause *direct* damage, e.g. to dig a pit where it is liable to damage the pit of a neighbor.]

B. The dispute between Abaye and Rava:

Abaye and Rava disagree, regarding certain situations in which it is forbidden to place a hazard near the property of a neighbor (e.g. flax pool and vegetables, according to the Rabbis; two pits, according to both R' Yose and the Rabbis), as to whether the restriction applies even before the object liable to be damaged is present. Abaye rules that this is permitted while Rava rules that it is forbidden.

[According to the *first* version of the dispute between Abaye and Rava, Abaye's permit is limited to cases where it is unlikely that the object liable to be damaged will be installed on the other side of the boundary. According to the *second* version, Rava's restriction is limited to cases where it is likely that the object liable to be damaged will be installed.]

C. R' Yose's view according to Rava:

There are three instances of damage:

(1) Where the damage is not direct even to a vulnerable object already in place (e.g. planting a tree in proximity to a pit; installing a flax pool in proximity to vegetation): In such a case, R' Yose does not require distancing. Therefore, Rava's restriction certainly does not apply as far as R' Yose's view is concerned.

(2) Where the damage is direct to a vulnerable object that is in place, but does not otherwise damage the adjacent property (according to most

views, an example of this is the introduction of olive refuse, which is damaging to a wall): Regarding such a case, even according to Rava, R' Yose requires distancing only *after* the vulnerable object is present (*Tosafos* et al; cf. *Meiri*, who holds that the installation of such a hazard, even before the vulnerable property is in place, is classified as “*his arrous*” according to Rava).

(3) Where the damage affects the adjacent property even in the absence of the vulnerable object (e.g. digging a pit, which weakens the surrounding ground rendering it unfit for the future introduction of pits): In such a case Rava's restriction certainly applies even with regard to R' Yose's view.

[It should be noted that, according to *Tosafos* (et al.), the Gemara concludes that Rava's restriction applies *only* in the case of digging a pit. This is based on their alternative version of the text to 18b – see *ibid.* note 3, *Tosafos* *ibid.* ר"ה וסבר.]

D. A hazard that was installed legally:

There is a dispute between Rishonim as to whether a hazard's owner is required to remove the hazard once vulnerable property is in harm's way even if the hazard was installed legally (e.g. the case of a buyer – see 18a and 18b). According to *Rashi's* understanding of the Gemara 18b, the hazard must be removed even in such circumstances (with the exception of a tree – see 18b note 5); whereas according to *Tosafos* et al., there is no such requirement.

2. Launderers used two pools: one in which the clothing is left to soak in cleaning agents for a day or two, and one in which the clothing is then scrubbed. A scrubbing pool must be kept at a greater distance than a soaking pool from a neighbor's pit, because water from a scrubbing pool splashes to considerable distances (*Rashi*).

3. See note 4 to Mishnah 17a.

4. In the second clause of our Mishnah, which begins “Olive refuse, manure, etc.,” the ruling is that one must *either* distance the harmful substance or coat the wall with lime (see there, note 8). If the ruling of our clause, which begins “One may not dig a pit etc.,” is the same, the Mishnah would have combined them into one clause, thereby obviating the need to repeat the same ruling (*Rashi*).

fact that the Mishnah separates these two clauses, it is evident that the first clause reads "and he applies lime."

The Gemara rejects this proof by proposing that even if the ruling in both clauses is identical, they would be separated, for the following reason:

Perhaps they are separated **because one type of damage** (i.e. that discussed in the first clause) **is dissimilar to the other type of damage** (i.e. that of the second clause): **The former clause** deals with **moisture damage**,^[5] while **the latter clause** deals with **heat damage**.^[6]

The Gemara makes another attempt to resolve its question:

רבי יהודה – Come, learn from the following Baraisa: **אומר** – R' YEHUDAH SAYS: **סלע הבא בידים** – If the SOIL between neighboring properties is so soft THAT it COMES away IN one's HANDS,^[7] the law is that **זה חופר בורו מכאן** – ONE neighbor MAY DIG HIS PIT ON ONE SIDE **ונה חופר בורו מכאן** – AND THE OTHER neighbor MAY DIG HIS PIT ON THE OTHER SIDE provided that **זה מרחיק שלושה טפחים וסד בסיד** – THIS ONE DISTANCES his pit THREE TEFACHIM from the boundary AND APPLIES LIME to its walls **ונה זה מרחיק שלושה טפחים וסד בסיד** – AND THE OTHER ONE also DISTANCES his pit THREE TEFACHIM from the boundary AND APPLIES LIME to its walls. From the fact that the Baraisa specifies soft as opposed to regular soil, the Gemara deduces: **טעמא דבא בידים** – The reason the Baraisa requires both preventive measures (distancing and lime) is that it refers to [soil] that comes away in one's hands; **הא לא בא בידים לא** – but in the case of [soil] that does not come away in one's hands, it is not necessary to effect both measures. This proves that the first clause of our Mishnah, which refers to regular soil, mentions the application of lime as an alternative option.

The Gemara rejects this proof as well:

It is possible that this law – namely, **one must apply lime** in addition to distancing the pit – **applies even** in the case of [soil] that does not come away in one's hands. **Yet it was necessary** for the Baraisa to specify [soil] that does come away in one's hands, for had it not done so **בא בידים** – Yet it was necessary for the Baraisa to specify [soil] that does come away in one's hands, for had it not done so **סלקא דעתך אמינא כיין דבא** – I might have thought that since [the soil] comes away in one's hands, **ליכעי רוחא טפי** – a gap larger than three tefachim is required. **[The Baraisa] therefore informs us** that a gap of three tefachim suffices even with regard to soil that comes away in one's hands.

The Gemara quotes the next section of the Mishnah:

OLIVE REFUSE, MANURE, SALT AND flint STONES, etc. [must be kept at a distance of at least three tefachim from the brick wall of one's neighbor].

The Mishnah lists these materials together because they are all damaging to a wall in that they generate heat.^[9] The Gemara notes discrepancies between this list of materials and a list found elsewhere whose criterion is also the capacity of materials to generate heat:

במה טומנין – We learned elsewhere in a Mishnah:^[10] **WITH WHAT materials MAY ONE WRAP** hot foods before the Sabbath, **ובמה אין טומנין** – AND WITH WHAT materials MAY ONE NOT WRAP hot foods before the Sabbath? **לא בנבל ולא במלח ולא בסיד ולא בחול** – ONE MAY NOT WRAP WITH OLIVE REFUSE, MANURE, SALT, LIME, OR SAND, **בין יבשין** – WHETHER THEY ARE WET OR DRY. **בין יבשין** – What is the explanation for the difference between our Mishnah here, which mentions flint stones but not sand, **ומאי שנא הנה דקתני חול ולא קתני סלעים** – and the Mishnah there, which mentions sand but not flint stones?

Rav Yosef addresses the exclusion of flint stones from the Mishnah about wrapping foods:

לפי שאין דרכן של בני אדם להטמין – Rav Yosef said: **אמר רב יוסף** – Rav Yosef said: **בסלעים** – Flint stones are not mentioned in that Mishnah because it is not the general practice to wrap food with flint stones.^[11]

Abaye does not accept this answer:

וכי דרכן של בני אדם – Abaye said to [Rav Yosef]: **אמר ליה אבוי** – Is it the general practice to wrap food with wool shearings or strips^[12] of purple wool?! **ותניא** – Yet, as it was taught in the following Baraisa, these materials are mentioned in that very context: **טומנין בגיזי צמר** – Before the Sabbath ONE MAY WRAP food WITH WOOL SHEARINGS, COMBED WOOL,^[13] STRIPS OF PURPLE WOOL, OR TUFTS of wool,^[14] **ואין מטלטלין אותן** – BUT THEY MAY NOT BE MOVED on the Sabbath.^[15] Given that these rarely used materials are mentioned, why are flint stones not mentioned as well?

Having shown that Rav Yosef's answer is inadequate, Abaye advances his own:

יגיד עליו ריעו – The Tanna applies the principle of "one sheds light on the other."^[16]

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5. Actually, the prohibition against digging a pit, trench, or vault applies even to one that does not contain water, in which case the damage is caused not by moisture but by the loosening of the earth. Nevertheless, the Mishnah mentions them in an independent clause together with a water channel and launderer's pool (which do contain water), since even if they were to contain water a distance of three tefachim is sufficient. This is the basis for the Gemara's characterization of the damage referred to in this clause as that of moisture (*Ran* to 17a; cf. *Ritva* *ibid.*, *Shitah Mekubetzes* [in the name of *Raavad*] and *Pnei Shlomo* here).

Of course, according to those commentators who maintain that the first clause applies only to excavations that do contain water, the Gemara's characterization is understood literally (see 17a note 3).

6. The substances listed in the second clause of the Mishnah – olive refuse, manure, etc. – cause damage by generating heat (see 17a note 7).

7. I.e. it can be dug out using bare hands, without any tools (*Rabbeinu Gershom* to 17b).

8. The words **ונאח הסיד**, and lime, are inserted by *Bach*, in accordance with the Mishnah's text.

9. See 17a note 7.

10. *Shabbos* 47b. This Mishnah deals with the Rabbinic ban against

wrapping foods before the Sabbath with materials that increase the heat of the food. The Gemara (*ibid.*) explains that this is prohibited so that people will not use glowing coals for this purpose [which could lead to the Biblical violation of stoking coals on the Sabbath] (*Rashi*).

11. For the heat escapes through the gaps between the stones (*Tosafos*).

12. Wool which is dyed purple and then formed into strips through combing (*Rashi*).

13. Wool that has been combed and disentangled (*Rashi*).

14. That are produced by combing worn-out woolen garments (*Rashi*).

15. Since these materials are designated for the manufacture of fabric [which is prohibited on the Sabbath, they are *muktzeh* and may not be moved on the Sabbath] (*Rashi*). *muktzeh*, מוקצה, is the term used for a class of objects which in the normal course of events do not stand to be used on the Sabbath or Yom Tov. The Rabbis prohibited the moving of such objects on the Sabbath or Yom Tov. There are several different categories of *muktzeh*. (The Gemara, *Shabbos* 49a, explains how insulation that is *muktzeh* is removed from its position around a pot on the Sabbath.)

16. Literally: his friend tells about him. This phrase is borrowed from *Job* 36:33.

The Tanna did not complete each list because he relied on us inferring the omitted items from the other list. **תָּנָא הָכָא סָלְעִים** – Here, in our Mishnah, the Tanna mentions only flint stones, but the same ruling applies to sand; **תָּנָא הָתָם חוֹל** – and there, in the Mishnah about wrapping food, the Tanna mentions only sand but the same ruling applies to flint stones.

Rava objects to this explanation:

אָמַר לִיה רָבָא – Rava said to [Abaye]: **אִי נִגִיד עָלָיו רִיעוּ** – If the Tanna is relying on the principle of “one sheds light on the other,” **לִיתְּנִיהוּ לְבוֹלְהוּ בְּהָדָא** – he would have mentioned all [the materials] in one of the two Mishnahs, **וְלִיתְּנִי הָדָא מְנִייהוּ** – and mentioned only one of them in the other Mishnah, **וְהוּא הָדִין לֵאדָרָךְ** – and it would be known through the principle of “one sheds light on the other” that the same ruling applies to all the other materials.

Having rejected Abaye's answer, Rava presents his own:

הָתָם הֵינּוּ טַעְמָא דְּלֹא קָתְנִי – Rather, Rava said, **אֶלָּא אָמַר רָבָא** – The reason the Tanna does not mention flint stones there, in the Mishnah about wrapping food, is **מִשּׁוּם** – **דְּמִשְׁתַּכִּי לֵה לְקַרְדָּה** – that they break^[17] the pot and therefore are never used for insulation. **הָכָא הֵינּוּ טַעְמָא דְּלֹא קָתְנִי חוֹל** – The reason the Tanna does not mention sand here, in our Mishnah, is **מִשּׁוּם דְּמַחְמִימֵי חֵיִים** – that [sand] heats only items that are warm to begin with; **וּמְקַרְרֵי קָרִיר** – items that are cold it leaves cold.^[18] Hence, sand has no damaging effect on a cold wall.^[19]

The Gemara asks:

וְהָא תָּנִי רַבִּי אוֹשְׁיָא חוֹל – But R' Oshaya taught a Baraisa that includes sand among the substances that require distancing from a wall.^[20] This contradicts Rava's assertion that sand is not damaging to a wall. – ? –

The Gemara answers:

הָתָם בְּמִתּוּנָא – There, in R' Oshaya's Baraisa, the reference is to wet [sand]. The Baraisa includes sand among those items that cause damage through moisture, not among those that damage through heat.^[21]

The Gemara asks:

תָּנָא דִּידִין נָמִי לִיתְּנִי – Then our Tanna too should have mentioned sand among those items that damage through moisture, **וְלֹקְמִיָּה בְּמִתּוּנָא** – and it would be understood that the reference is to wet [sand]. – ? –

The Gemara answers:

הָא תָּנָא לִיה אֶמַת הַמַּיִם – Since [our Tanna] has already taught the requirement to distance items that damage through moisture by mentioning an irrigation channel, there is no need for him to mention (wet) sand as well.^[22]

The Gemara objects to this answer:

בִּלְתִּי נִבְרַכְתָּ – But did [the Tanna] not teach the requirement to distance an irrigation channel, **וְקָתְנִי נִבְרַכְתָּ** – and yet in addition he mentioned a launderer's pool, even though it too causes damage through moisture? By the same token, he could have mentioned (wet) sand as well. – ? –

The Gemara answers:

הָנִהוּ צְרִיכִי – Both of these items [irrigation channel and launderer's pool] must be mentioned. One cannot be inferred from the other. **דָּאִי תָּנָא אֶמַת הַמַּיִם מִשּׁוּם דְּקִבְיָא** – For if [the Tanna] had mentioned only an irrigation channel, one might have thought that only an irrigation channel need be distanced from a neighbor's pit, because [its usage] is permanent, **אָבֵל** – but a launderer's pool, the usage of which is not permanent (for the launderer might take up a different occupation), need not be distanced. **וְאִי תָּנָא נִבְרַכְתָּ** – And if [the Tanna] would have mentioned only a launderer's pool, one might have thought that only a launderer's pool need be distanced because [its water] is stagnant, and thus it can cause severe water damage, **אָבֵל אֶמַת** – but an irrigation channel, which contains running water, need not be distanced. **צְרִיכָא** – Hence, it is necessary for the Tanna to mention both an irrigation channel and a launderer's pool.^[23] Wet sand, however, is not included in the Mishnah, for its law can be inferred from those cases.

The Gemara discusses the next clause of our Mishnah:

מִרְחִיקִין אֶת הַזֵּרְעִים וְאֶת הַמַּחְרִישָׁה וְכוּ – SEEDS AND the use of A PLOW MUST BE DISTANCED at least three *tefachim* from the wall of one's neighbor.

The Gemara asks:

וְזֵרְעִים – Why does the Mishnah mention that seeds must be distanced three *tefachim* from a neighbor's wall? **תִּיפּוּק לִיה מִשּׁוּם** – This emerges anyway from the restriction against a plow, for seeds are planted in plow furrows!

The Gemara answers:

בְּמִפּוֹלֵת יָד – The reference in our Mishnah is to seeds sown with

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17. In this context, *מִשְׁתַּכִּי* means break. Elsewhere, however, it is translated as rust or corrode (*Rashi*).

Alternatively: In order to make the meaning of this word consistent with its meaning elsewhere, *Rabbeinu Tam* translates *מִשְׁתַּכִּי* here as spoil. The heat from the flint stones spoils the food (*Tosafos*).

18. Literally: what is cold it makes cold.

19. An apparent difficulty: In the Gemara above, Abaye challenged Rav Yosef's approach by pointing out that although the Mishnah in tractate *Shabbos* does not mention flint stones, it does mention other infrequently used items such as wool shearings and strips of dyed wool. Why is this discrepancy a problem if we follow Rav Yosef's approach but not if we follow Rava's approach?

The answer is that according to Rav Yosef's approach, although flint stones are inefficient insulating material (see note 11), they are sometimes used for this purpose. Hence, it is truly a difficulty that the Mishnah fails to mention flint stones but does mention wool shearings etc., which are used with similar infrequency. According to Rava's approach, however, stones are never used to insulate food, because they can cause damage. That is why flint stones are not mentioned in that Mishnah (*Tosafos*).

20. In his corpus of Baraisos to *Bava Basra*, R' Oshaya included a Baraisa that lists the same substances as our Mishnah, with the addition

of sand (*Rashi*).

21. The Gemara stated above that the items listed in the first clause of our Mishnah (pit, trench, etc.) cause damage through moisture and the items listed in the second clause (olive refuse, manure, etc.) cause damage through heat (see notes 5 and 6).

22. [The obligation to distance sand from a neighbor's wall can be inferred from that which the Mishnah does mention.]

23. An apparent difficulty: The Gemara has explained why it was necessary for the Mishnah to mention both an irrigation channel and a launderer's pool. But what is the reason for the Mishnah's inclusion of a pit, ditch and vault?

According to those commentators who maintain that a pit must be distanced three *tefachim* even if it does not contain water (see 17a note 3), the Mishnah mentions a pit to teach this very point (*Rashba* to 17a, *Ritva* here). See *Tosafos* and *Rashba* to 17a for an explanation why a pit is included according to the opinion that the Mishnah refers exclusively to a pit that contains water.

Once a pit is mentioned, the Tanna includes a ditch and vault too, because the phrase, *בּוֹר שִׁיחַ וּמִקְדָּר*, pit, ditch and vault, is a composite expression that is commonly found throughout the Mishnah [see, for example, Mishnah *Bava Kamma* 50b, *Taanis* 18b] (*Tosafos*, *Ramban*, *Rashba* and *Ran* to 17a).

a casting of the hand into shallow holes dug with a trowel, not into plow furrows.

The Gemara asks the reverse question :

מחרישה – Why does the Mishnah mention that a plow must be distanced three *tefachim* from a neighbor's wall? ותופוק ליה – משום זרעים – This emerges anyway from the restriction against seeds, for plow furrows are made for the planting of seeds.^[24] – ? –

The Gemara answers:

בחורש לאילנות – The Mishnah refers to one who plows for the benefit of trees,^[25] not to plant seeds.

The Gemara again questions the need for the Mishnah to mention seeds:

ותופוק ליה משום מין – The Mishnah's mention of a restriction against seeds is unnecessary, for it emerges anyway from the

prohibition against putting water near a neighbor's wall.^[26] Since seeds cannot grow without water, they would not be planted where one cannot irrigate them. – ? –

The Gemara answers:

תנא בארץ ישראל קאי – The Tanna's point of reference is Eretz Yisrael, where irrigation is unnecessary, דכתיב: „למטר השמים" – as it is written:^[27] *It drinks the water of the rain of heaven.*

Having shown that the reason for the restriction against sowing seeds near the wall of a neighbor is *not* that water damage might ensue as a result, the Gemara now assumes that the reason seeds must be distanced from a wall is that their roots will spread sideways and loosen the earth beneath the wall. The Gemara therefore asks:

למימרא דזרעים – Are we to say that seeds

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24. Since seeds cannot be planted within three *tefachim* of the wall, one would not plow there.

25. He plows the ground around a tree to enhance its growth (see *Rashi*).

[In fact, a tree must also be distanced from a neighbor's wall (see Mishnah 25b). However, we refer here to a tree that was planted with

permission. Although one is not obligated to remove such a tree, one may not plow the ground for its benefit (*Rashba*; see *Rashi*).]

26. As the Gemara stated above (18a), the reason for the Mishnah's restriction against urine is that moisture is harmful to a wall (see *Rashi*; see also 18a note 4).

27. Deuteronomy 11:11.

— וְהָאֵלֶּיךָ — spread their roots sideways?! — **But we have learned in a Mishnah:**^[1] — הַמְּבַרֵּךְ אֶת הַגֶּפֶן בְּאֶרֶץ — Concerning ONE WHO BENT a branch of A VINE and inserted it INTO THE GROUND,^[2] the following law applies: אִם אֵין עַל גְּבֵה עֵפֶר — IF the soil ABOVE IT [the buried part of the branch] IS NOT THREE *TEFACHIM* deep, — לֹא יִבְיֵא זֶרַע עָלֶיהָ — HE MAY NOT PLANT^[3] A SEED ON top of IT. Since there is a gap of less than three *tefachim* between the seed and the branch, the seed's roots might derive nourishment directly from the branch.^[4] — וְהָיָה עָלֶיהָ — And the following Baraisa was taught in reference to [this ruling]: — אָבֵל זֹרַע אֶת הַצִּדִּין אֵילָךְ וְאֵילָךְ — BUT HE MAY PLANT A SEED ON EITHER SIDE of the buried part of the branch.^[5] The reason for this permit is that seeds do not take root sideways, only downwards. Therefore, the reason for our Mishnah's ruling (viz. seeds must be distanced from a neighbor's wall) cannot be, as previously assumed, that the seed's roots will spread sideways and damage the wall's foundation. — ? —

Its previous approach having been rejected, the Gemara offers a different explanation for the Mishnah's restriction against seeds: — אָמַר רַבִּי חָגָא בְּשֵׁם רַבִּי יוֹסִי — R' Chaga said in the name of R' Yose: — מִפְּנֵי שֶׁמְחַלְדִּין אֶת הַקֶּרֶקַע וּמַעֲלִין עָקֶר תִּיחֹה — One may not plant seeds near a wall because [their roots] will break up the ground directly beneath the seeds, causing soft soil to rise to the surface. This in turn causes a weakening of the soil upon which the wall stands.

The Mishnah said:

— וְאֵת מִי רִגְלִים מִן הַבּוֹתֵל שְׁלֹשָׁה טְפָחִים וְכו' — URINE must be distanced THREE *TEFACHIM* FROM A WALL etc.

The Gemara quotes an Amoraic ruling that is apparently contradicted by our Mishnah:

— אָמַר רַבָּה בַּר בַּר חַנָּה — Rabbah bar bar Chanah said: מוֹתֵר — A person is permitted to urinate at the side of his fellow's wall, דְּכַתִּיב — for it is written: — וְהִכַּרְתִּי לְאַחָאֵב מִשְׁתִּין בְּקִיר וְעֲצוֹר וְעוֹזֵב בִּישְׂרָאֵל — I will cut off from the house of Achav every one that urinates

against a wall (i.e. every male), the wealth stored in the houses, and the livestock left out in the fields in Israel.^[6] — וְהָאֵלֶּיךָ — But we have learned in our Mishnah: — וְאֵת מִי רִגְלִים מִן הַבּוֹתֵל — URINE must be distanced THREE *TEFACHIM* FROM THE WALL of a neighbor. — ? —

The Gemara answers:

— הֵתָם בְּשׂוֹפְכִין — There, in our Mishnah, the reference is to [urine] poured from a chamber pot, not to the act of urination.^[7]

The Gemara raises another challenge to the view of Rabbah bar bar Chanah:

— לֹא יִשְׁפּוֹךְ — Come, learn from the following Baraisa: — אָדָם מִים בְּצֶד בּוֹתֵלוֹ שֶׁל חֲבִירוֹ — A PERSON MAY NOT POUR WATER AT THE SIDE OF HIS FELLOW'S WALL — אֲלֵא אִם בֵּן הֶרְחִיק מִמֶּנּוּ שְׁלֹשָׁה טְפָחִים — UNLESS HE DISTANCES himself at least THREE *TEFACHIM* FROM [THE WALL]. This contradicts Rabbah bar bar Chanah's teaching that one is permitted to urinate against a wall. — ? —

The Gemara answers:

— הֵתָם נְמִי בְּשׂוֹפְכִין — There, too, the reference is to [water] poured from a pot.^[8]

The Gemara refutes the teaching of Rabbah bar bar Chanah:

— לֹא יִשְׁתִּין — Come, learn from the following Baraisa: — אָדָם מִים בְּצֶד בּוֹתֵלוֹ שֶׁל חֲבִירוֹ — A PERSON MAY NOT URINATE AT THE SIDE OF HIS FELLOW'S WALL — אֲלֵא אִם בֵּן הֶרְחִיק מִמֶּנּוּ שְׁלֹשָׁה טְפָחִים — UNLESS HE DISTANCES himself THREE *TEFACHIM* FROM [THE WALL]. — בְּמָה דְּבָרִים אֲמֹרִים — IN WHAT circumstances DOES THIS RULING APPLY? — בְּבוֹתֵל לְבִינִים — It applies IN the case of A WALL made OF clay BRICKS, which can be dissolved by urine. — אָבֵל בְּבוֹתֵל אֲבָנִים — BUT IN the case of A WALL made OF STONE, — בְּכָדִי שְׁלֹא יוֹיֵק — he need distance himself only SO FAR AS is required NOT TO DAMAGE the wall. — וְכֵמָה — AND HOW [FAR] is that? — טֶפַח — A *TEFACH*.^[9] — וְשֶׁל צִוּנָמָא — In the case OF a stone wall built on ROCKY GROUND, — מוֹתֵר — IT IS PERMISSIBLE to urinate right next to it.^[10] — הִיבְהֵא דְּרַבָּה בַּר — Surely this is a refutation of the ruling of Rabbah bar bar Chanah, who permitted urinating against any type of

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1. *Kilayim* 7:1.

2. See diagram.

3. Literally: bring.

4. This comes under the Torah's prohibition against *הִרְבָּה*, grafting [one species with another] (*Tosafos*, *Rashba* et al.).

5. However, this is permitted only if he does not plant the seed close to the

vine where it breaches the surface. For there is a Biblical prohibition [בְּלֵאֵי הַקֶּרֶם, mixtures of the vineyard] against planting grain or greens near vines (*Deuteronomy* 22:9). With regard to a vineyard (a minimum of five vines planted in a particular configuration — see 14a note 15), this means that one may not plant grain or greens within four *amos* of the vineyard. But in our case, which involves a solitary vine, it is not considered a forbidden "mixture" unless the grain or green is planted so close to the visible part of the vine that it derives nourishment from the same earth. [The exact distance is a matter of Tannaic dispute: According to the Sages, grain and greens must be distanced six *tefachim* from a solitary vine. In R' Akiva's view, a distance of three *tefachim* is sufficient — *Kilayim* 6:1] (see *Rashi* here and to *Shabbos* 85a). See diagram.

6. *I Kings* 21:21 (our translation follows that reported by *Radak* in the

name of his father, and *Metzudos*).

Since the verse uses the expression "one that urinates against the wall" as a description of males, we may infer that men commonly conduct themselves in this manner (*Rashi*). Hence, it is evident that such behavior is permitted.

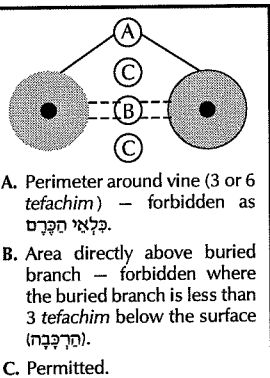
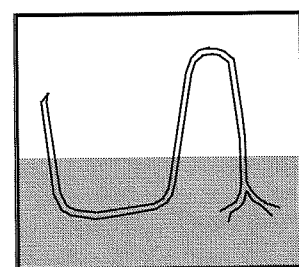
7. When urine is poured from a pot, it is deposited at a greater rate than by one who is urinating (*R' Yosef ibn Migash*, cited by *Shitah Mekubetztes*; see *Meiri*).

8. [Since the Baraisa stated "a person may not pour" (as opposed to "one may not urinate"), the Gemara's answer is obvious. For this reason, *Maharal* states that this passage should be deleted (see *Dik-dukei Sofrim*), and therefore it appears in parentheses in our editions of the Gemara. *Bach* alleviates the problem by citing a version of the Baraisa which reads, לֹא יִטִּיל אָדָם וְכו', A person may not deposit etc., which could refer either to urinating or to the emptying of a pot.]

9. One may not urinate within a *tefach* of a stone wall, lest the urine soften the ground adjacent to the base of the wall (*Rashi*). [The wall itself, however, since it is made of stone, is impervious to damage; therefore, one is not required to distance oneself more than a *tefach* from such a wall.]

From *Rashi* to the Mishnah (17a הַבּוֹתֵל מִן הַכּוֹתֵל), it seems that all the substances listed in the Mishnah need be distanced only from a wall of clay bricks, not from a stone wall. However, other commentators maintain that with regard to all the substances (except urine), the three-*tefach* limit applies even to a stone wall (see *R' Yonah*, *Rashba* et al.; see also *Choshen Mishpat* 155:9).

10. Since the wall is of stone and is built on rocky ground, urine cannot cause it any damage (see *Rashi* and preceding note).



wall?^[11] תיובתא – Indeed, it is a refutation of his view.

The Gemara, however, asks:

וְהָא רַבָּה בַּר בַּר חָנָה קָאָמַר – But Rabbah bar bar Chanah cited a verse in support of his view. How is this verse to be explained?

The Gemara answers:

הָתָם הֵכִי קָאָמַר – There, in the verse, this is what is meant: אֶפִּילוּ מִיָּד דְּרַבְיָה לְאִישׁוֹתוֹ בְּקִיר – “Even something whose practice it is to urinate against a wall, לֹא שְׂבִיקָנָא לֵיהּ – I will not leave him [Achav].” וּמָאי נִיהוּ – And what is this? בְּלָכָא – A dog. The verse does not refer to a person, but to a dog.

The Gemara shifts to a different topic, which is tangentially related to our Mishnah.^[12] The law of *tumah ohel* (roof *tumah*), states that a human corpse transmits *tumah* to people, utensils and foodstuffs that are under the same roof as it. But if a wall separates the corpse from the utensils etc., *tumah* is not transmitted to them unless there is an opening of at least one *tefach* by one *tefach*^[13] in the wall. If the size of the opening is reduced to less than one *tefach* by one *tefach* by an object that has been abandoned there, the opening does not allow the passage of *tumah*.^[14] The Gemara discusses whether an object that is in the opening but has not been abandoned there likewise obstructs the spread of *tumah*:

אָמַר רַבִּי טוּבִי בַר כִּסְנָא אָמַר שְׁמוּאֵל – R' Tuvi bar Kisna said in the name of Shmuel: רְקִיק אֵינוֹ מְמַעַט בְּחִלּוֹן – A wafer that is in an opening does not reduce the size of the opening,^[15] for it will probably be removed to be eaten. Since it is not abandoned in the opening, it does not diminish the size of the opening.

The Gemara asks:

מָאי אִירִיָּא רְקִיק – Why did Shmuel specifically discuss a wafer, which is thin? אֶפִּילוּ עֵבָה נָמִי – According to his reasoning, even a thick [cake] does not reduce the size of an opening. – ? –

The Gemara answers:

לֹא מִיבַעְיָא קָאָמַר – [Shmuel] formulates his statement according to the principle that there is no need to state the more obvious case. לֹא מִיבַעְיָא עֵבָה – There is no need to discuss a thick [cake]. בֵּינָן דְּאִירִיָּא לֵיהּ לֹא מְבַטֵּל לֵיהּ – Since [such a cake] is fit for one to eat, one certainly does not abandon^[16] it in the opening. אָבָל רְקִיק דְּמִמָּאִיס – In the case of a soft thin wafer, however, which becomes moldy and repulsive by absorbing moisture from the wall, אֵימָא בְּטוּלִי מְבַטֵּל לֵיהּ – I might have said that one surely abandons it there. קָא מְשַׁמַּע לָן – [Shmuel] therefore informs us that even a wafer is not abandoned, and thus does not reduce the dimensions of the opening.

The Gemara raises another difficulty with Shmuel's statement: וְהִיפּוּק לֵיהּ דְּהִנּוּ לֵיהּ דְּכָר שְׁהוּא מְקַבֵּל טוּמָא – But let [Shmuel's ruling] emerge from the fact that [a wafer] is susceptible to *tumah* contamination, וְכָל דְּכָר שְׁהוּא מְקַבֵּל טוּמָא אֵינוֹ חוֹצֵץ – and it is a well-known rule that any object susceptible to *tumah* contamination cannot obstruct the passage of *tumah*.^[17] Therefore, even if the wafer were to be abandoned in the opening, it would not reduce the dimensions of the opening. – ? –

The Gemara answers:

שְׁנִילֵשׁ בְּמֵי פִירוֹת – Shmuel refers to a wafer made from a dough that was kneaded with fruit juice, instead of water. Such a wafer is not susceptible to *tumah* contamination.^[18]

The Gemara challenges Shmuel's view that an object does not reduce the size of an opening unless it is abandoned there:

מִיתִיבִי – They challenged Shmuel's ruling from the following Mishnah:^[19] קִיפָה מְלֵאָה תִבָּן – Regarding a box full of straw המונחים – OR a keg full of dried figs – וְחֵבִית מְלֵאָה גְרוּגֵרוֹת – THAT IS LYING IN AN OPENING between a room in which a corpse lies and an adjacent room under the same roof, רִואִין – WE CONSIDER the following: כָּל שְׂאִילוֹ יִנָּטֵל – In EVERY case WHERE, IF [THE BOX OR BARREL] WERE TO BE REMOVED, יִבְחֹלֵן – THE STRAW OR DRIED FIGS WOULD BE ABLE TO STAY in the opening BY THEMSELVES, חוֹצֵצִין – THEY [the straw or figs] OBSTRUCT the passage of *tumah* by reducing the size of the opening.^[20] וְאִם לֹא – BUT IF the straw or figs would NOT be able to stay in the opening without the support of their containers, אֵין חוֹצֵצִין – THEY DO NOT OBSTRUCT the passage of *tumah*.^[21]

The Gemara shows how this Mishnah contradicts Shmuel's ruling:

וְהָא תִבָּן חָזִי לְבִהֵמָתוֹ – But straw is fit as fodder for one's animal and therefore it will probably be removed from the opening for this purpose. Yet, although the straw is not abandoned, the Mishnah rules that it reduces the size of the opening. This belies Shmuel's ruling that an item does not reduce the size of an opening unless it is abandoned there. – ? –

The Gemara answers:

בְּסִרְיָא – The Mishnah is dealing with rotted [straw], which is unfit for fodder.

The Gemara asks further:

חָזִי לְטִינָא – But even [rotted straw] is fit for the reinforcement of clay, which is used to make bricks. It is likely to be removed from the opening for this purpose, and yet, contrary to Shmuel's ruling, it reduces the size of the opening. – ? –

The Gemara answers:

דְּאִית בֵּיהּ קוֹצֵי – The Mishnah refers to [straw] that contains

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11. The teaching of Rabbah bar bar Chanah cannot be explained as referring specifically to a stone wall built on rock, for his statement was made without any qualification. Furthermore, he adduced a Scriptural source [that makes no qualification] as proof (*Tosafos*).

12. *Tosafos* (see below, 20a notes 7 and 17).

13. These dimensions apply only to an opening that is used [to pass things from one room to the other]. Different rules apply to other types of opening, such as one whose purpose it is to provide light (*Tosafos*).

14. Since the object is permanently abandoned there, it is considered part of the wall (*Rashi*). Thus, the size of the opening is reduced.

15. חִלּוֹן is usually translated as window. See, however, note 13.

16. Literally: nullify. [Since he does not intend to abandon the cake, it does not lose its independent identity and does not merge with the wall – see note 14.]

17. See *Ohalos* 8:3.

18. From *Leviticus* 11:34,38 it is derived that foodstuffs cannot become *tamei* unless they had first come into contact – after they have been detached from the ground or tree where they grew – with one of the following seven liquids: wine, blood, oil, milk, dew, honey and water. Fruit juices (other than wine and olive oil) are not classified as liquids in this regard (see *Machshirin* 6:4).

19. *Ohalos* 6:2.

20. The figs had not come into contact with one of the seven liquids (*Rashi*; see note 18).

21. The keg and the box, since they are utensils, are susceptible to *tumah* contamination. Hence, when considering whether their contents obstruct the passage of *tumah*, the keg and box themselves are disregarded (*Rashi*; see 20a note 3; cf. *Tosafos*). [If, without their supporting containers, the figs and straw would fall, they certainly

thorns. Such straw is not used in the manufacture of bricks.^[22]

The Gemara persists in its questioning:

חזי להסקה – But [straw] is fit for use as fuel for a fire. It is likely to be removed for this purpose. – ? –

The Gemara answers:

במתונה – The Mishnah refers to damp straw, which is not useful as fuel.

The Gemara asks:

חזי להסק גדול – But even [damp straw] is fit for a large fire. – ? –

The Gemara answers:

הסק גדול לא שכיח – A large fire is not common. Therefore, it is unlikely that the straw will be removed for making a large fire.

Having failed to refute Shmuel's statement with the Mishnah's ruling concerning straw, the Gemara turns to the Mishnah's example of dried figs:

גרונרות הא חזו ליה – But dried figs are fit for one to eat. They are likely to be removed to be eaten, and yet, while they are in the opening, they reduce its size. – ? –

The Gemara answers:

אמר שמואל – Shmuel said: בשקהריו – The Mishnah deals with [figs] that are infested with worms. Such figs serve no purpose and are abandoned. וכן תני רבה בר אבונה – And so taught Rabbah bar Avuha in a Baraisa that elaborates on this Mishnah: בשקהריו – The reference is to [figs] that are infested with worms.

The Gemara raises a difficulty with the implication of the Mishnah that the keg itself does not obstruct the passage of *tumah*.^[23]

האי חבית היכי דמקא – What are the circumstances of this keg? אי דפוקא לבר – If its opening is facing outward, i.e. away from the room in which the corpse lies,

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cannot be viewed as part of the wall.]

22. The practice was to stamp on the clay with bare feet (*Rashi*). Hence,

straw that contained thorns was unsuitable for this purpose.

23. See note 21; see also 20a, note 2.

היא גופה תיחיוץ – [the keg] itself should obstruct the passage of *tumah*, דהא כלי חרש אינו משמא מגבו – for an earthenware vessel (such as a keg) cannot contract *tumah* through its exterior, only through its opening.^[1] Since its opening is not facing the corpse, the keg cannot contract *tumah* from it. Therefore, the keg itself, contents notwithstanding, should reduce the size of the opening and thereby prevent the passage of *tumah* from one room to another.^[2] – ? –

The Gemara gives two answers:

אלא דפומא לגאו – Rather, the Mishnah refers to a keg whose opening faces inward, towards the corpse. In such a case, the keg is subject to *tumah* contamination from the corpse, and therefore does not block the passage of *tumah*. ואי בעית אימא – Or, if you prefer, say לעולם דפומא לכר – that in fact, the opening of the keg is facing outward, away from the corpse. Yet it does not block the passage of *tumah*, והא במאי עסקינן – for what type of keg are we dealing with here? בחבית של – The Mishnah deals with a metal keg, which is susceptible to *tumah* contamination through both its exterior and its interior.^[3]

The Gemara challenges Shmuel's ruling from a Baraisa that discusses the capacity of various items to block the transmission of *tumah* through an opening between one room and another:

They challenged Shmuel's ruling from the following Baraisa: עשבין שתלשן והניחן בחלון – GRASS THAT WAS PLUCKED AND PLACED IN AN OPENING^[4] או שעלו מאליהן בחלונות – OR [GRASS] THAT GREW BY ITSELF IN AN OPENING; ומטלונות שאין – OR [GRASS] THAT GREW BY ITSELF IN AN OPENING; ובהן שלש על שלש – SCRAPS OF FABRIC THAT DO NOT MEASURE THREE BY THREE fingerbreadths; והאבר והבשר המדולדל – A partially severed LIMB OR piece of FLESH DANGLING FROM A FARM ANIMAL OR A WILD BEAST; ועוף ששכן – A BIRD RESTING IN AN OPENING; ועובר בוכבים שישב – A BIRD RESTING IN AN OPENING; וכן שומנה המונח – AN IDOLATER SITTING IN AN OPENING;

– A BABY born OF AN EIGHT-month pregnancy LYING IN AN OPENING; והמלח – SALT; ובלי חרס – AN EARTHENWARE VESSEL; וספר תורה – A TORAH SCROLL: כולם ממעטין בחלון – ALL OF THESE REDUCE the size of THE OPENING so that *tumah* cannot pass through it.^[5] אבל השלג והקדר והגלד והקבור והמים – BUT SNOW, HAIL, FROST, ICE AND WATER: כולם אינן ממעטין בחלון – ALL OF THESE DO NOT REDUCE the size of AN OPENING.^[6]

The Gemara contends that each of the items listed by the Baraisa as reducing the size of an opening is likely to be removed. Thus, starting with the first item, the Gemara poses a series of challenges to Shmuel, who maintains that an item does not reduce the size of an opening unless it is abandoned there: והא עשבין חיו לבהמות – But GRASS is fit for use as fodder for one's animal. It is likely to be removed for that purpose, and yet it reduces the size of the opening. – ? –

The Gemara answers:

האפריהא – The Baraisa is dealing with *afrazta* – a poisonous type of grass, which cannot be used as fodder.

The Gemara proceeds to the next case:

בין דקשו – OR [GRASS] THAT GREW BY ITSELF. או שעלו מאליהן – Since [grass] planted near a wall is harmful to a wall,^[7] it will be removed. – ? –

The Gemara presents two answers to this question:

האמר רבה – Rabbah said: בכותל חורבה – The Baraisa refers to the wall of a ruined building, in which case damage to the wall is of no concern. רב פפא אמר – Rav Pappa says: אפילו – The Baraisa refers even to the wall of a building used as a residence. בבאין חוץ לשלשה לחלון – However, the case is of [grass] that comes from beyond three *tefachim* from the wall and extends to the opening in the wall. Since the grass was planted more than three *tefachim* away, it does not cause damage to the wall.^[8]

NOTES

1. Generally, the means by which vessels become *tamei* is that *tumah* is conveyed to their exterior or interior. Vessels of earthenware are unique in that they contract *tumah* only through the entry of *tumah* into their interior (see *Leviticus* 11:33).

2. [The Mishnah, however, states that the question of whether or not *tumah* passes through the opening depends on whether the figs can stay there without the support of their containers. It implies thereby that it is only the figs, not the keg itself, that obstruct the passage of *tumah*.]

An apparent difficulty: Why does the Gemara assume that the keg should reduce the size of the opening? Since the keg is useful, surely it is not abandoned permanently in the opening.

The answer is that from the Baraisa's use of the word *חוצצין* (lit. interpose) it seems that the reference is to a case where the keg fills the entire opening. An earthenware vessel that fills the entire opening blocks the passage of *tumah*, even if it is not abandoned there permanently (*Tosafos*; see *Maharsha*).

3. [See note 1.] The Gemara could equally well have answered that the reference is to a vessel of wood. It mentions a metal vessel merely because such vessels were more common than those of wood (*Ritva*).

[*Rashi's* comment above (see 19b note 21), that the vessels mentioned in the Mishnah are susceptible to *tumah* contamination, assumes the answers given here.]

4. See 19b note 15.

5. As mentioned above, only an item that is immune to *tumah* contamination can block the passage of *tumah*. In the light of the basic rule that nothing except people, utensils and foodstuffs can contract *tumah*, it can be shown that each of the items listed here are immune to *tumah* contamination:

(1) Grass does not belong to any of the three categories that contract *tumah*: viz. a person, utensil or food.

(2) Scraps of fabric: A piece of fabric that measures less than three by three fingerbreadths is not considered a "utensil" (i.e. a useful item).

(3) Partially severed limb or piece of flesh: These have the status of

food because they will eventually wither and fall off; however, as we learned above, food is not susceptible to *tumah* contamination unless it first came into contact with one of the seven liquids (Mishnah *Chullin* 127a; see 19a note 18).

(4) Bird: Only people contract *tumah*, not other living creatures.

(5) An idolater is not susceptible to *tumah* contamination, as derived from Scripture (see *Nazir* 61b).

(6) A baby born of an eight-month pregnancy is not considered viable. Hence, it is not classified as a person with regard to contracting *tumah* (see *Shabbos* 135a). [We do not assume that a baby is born of an eight-month pregnancy unless it shows physical symptoms of not having been completely formed. Otherwise, we assume that it is a baby of a seven-month pregnancy and its birth was delayed (*Tosafos* to *Shabbos* 135a).]

(7) Salt, on its own, is not considered a food (*Rashi*; see *Tosafos* to *Niddah* 50a כל ר"ה ב).

(8) An earthenware vessel: The Baraisa refers to an earthenware vessel whose opening faces away from the corpse and as such cannot be affected by the *tumah* of the corpse (see note 1).

(9) A Torah scroll is not considered a utensil (*Ramah*; cf. *Mishnah Acharonah* to *Keilim* 28:4).

6. Snow, hail, frost and ice do not reduce the opening's size for they eventually dissolve [and drip away]. This is true even of water held in a vessel, for the presence of the vessel is disregarded (see 19b note 21) and if the vessel were to be removed, the water would not remain in the opening (*Rashi*). [The vessel itself does not block the passage of *tumah* because it is susceptible to *tumah* contamination, e.g. it is earthenware with its opening towards the corpse, or it is metal.]

7. As evidenced by our Mishnah, which taught that seeds may not be planted within three *tefachim* of a neighbor's wall. This connection to our Mishnah explains why this passage about the laws of *tumah* is recorded here (*Tosafos* to 19b אמר ר"ה).

8. See previous note.

The Gemara proceeds to the next case:

מטלונות – SCRAPs OF FABRIC that do not measure three by three fingerbreadths. חזו ליה לקרעה דלבושא – But they are fit for one to use as a patch over a tear in a garment! They are likely to be removed from the opening for this purpose. – ? –

The Gemara answers:

בסמיכתא – The Baraisa refers to thick [fabric], which is unsuitable for patching clothing.

The Gemara persists:

חזו לאומנא – But even such [scraps] are fit for use by a bloodletter to clean the wound. – ? –

The Gemara answers:

בריסקא – The Baraisa refers to scraps of sackcloth, which are coarse and would irritate the wound.

The Gemara counters:

שאין בהן שלש – If the Baraisa refers to sackcloth, why does it say, “THAT DO NOT MEASURE THREE BY THREE fingerbreadths”? שאין בהן ארבעה על ארבעה מיבעי ליה – It should be, “that do not measure four by four tefachim,” for in regard to sackcloth that is the minimum size that can contract tumah.^[9] – ? –

The Gemara answers:

בעין ריסקא – The Baraisa refers to fabric that is like sackcloth only insofar as it is coarse. In other respects it has the properties of regular cloth, whose minimum size in regard to tumah contamination is three by three fingerbreadths.

The Gemara discusses the next case:

והאבר והבשר המדולדלין בבמה ובהמה – A partially severed LIMB OR piece of FLESH DANGLING FROM A FARM ANIMAL OR WILD BEAST. ערקא ואולא – But [the animal] will run away. – ? –

The Gemara answers:

בקשורה – The Baraisa refers to [an animal] that is tied up and cannot move away.

The Gemara asks:

שחית לה – But [its owner] will take the animal and slaughter it for food. – ? –

The Gemara answers:

בטמאה – The Baraisa refers to a non-kosher [animal].

Still, the Gemara persists:

מזבין לה לגברי – He will sell it to a gentile for food. – ? –

The Gemara answers:

בחושה – The Baraisa refers to a gaunt [animal], which is not worth slaughtering for food.

The Gemara asks further:

פסיק שדי לה ללכלבים – But he will cut off the partially severed limb and throw it to the dogs.^[10] – ? –

The Gemara answers:

בין דאיכא צער בעלי חיים – Since, were he to remove the limb, there would be pain caused to a living creature, לא עביר – he would not do it.^[11]

The Gemara proceeds to the next case:

פרח ואיל – A BIRD RESTING IN AN OPENING. ועוף ששכן בחלון

But it will fly away. – ? –

The Gemara answers:

בקשור – The Baraisa refers to [a bird] that is tied up.

The Gemara asks:

שחית ליה – But [the owner] will take the bird and slaughter it for food. – ? –

The Gemara answers:

בטמא – The Baraisa refers to a non-kosher [bird].

The Gemara persists:

מזבין ליה לגברי – He will sell it to a gentile for food. – ? –

The Gemara answers:

בקלניסא – The Baraisa refers to a klanisa (a very thin bird, unsuitable for food).

The Gemara asks further:

יהיב ליה לינוקא – But he will give it as a plaything to a child. – ? –

The Gemara answers:

במסרט – The Baraisa refers to [a bird] that scratches and as such is unsuitable for a plaything.

The Gemara counters:

קלניסא לא מסרטא – But a klanisa does not scratch. – ? –

The Gemara answers:

בעין קלניסא – The Baraisa refers to a bird that is like a klanisa in that it is thin and unsuitable for food, but it is unlike a klanisa in that it scratches. There is no reason for such a bird to be removed from the opening.

The Gemara discusses the next case:

ועובר בוכבים שושב בחלון – OR A GENTILE SITTING IN THE OPENING. קאי ואזיל – But he will get up and go away. – ? –

The Gemara answers:

בקבוצה – The Baraisa refers to [a person] who is tied up and cannot move away.

The Gemara asks:

אתי חבריה שרי ליה – But his fellow will come and untie him. – ? –

The Gemara answers:

במצורע – The Baraisa refers to someone afflicted with tzaraas.^[12] No one will approach him for fear of contracting the disease.

The Gemara persists:

אתי מצורע חבריה שרי ליה – A fellow victim of tzaraas will come and untie him. – ? –

The Gemara modifies its explanation:

אלא בחבוישי מלכות – Rather, we are dealing with someone who is tied up because he is a prisoner of the king. No one will dare untie him.

The Gemara proceeds to the next case:

ובן שמונה המונה בחלון – A BABY born OF an EIGHT-month pregnancy LYING IN AN OPENING. אתיא אמה דרזא ליה – But its mother will come and carry it away. – ? –

The Gemara answers:

בשבת – The Baraisa refers to the law as it applies on the

NOTES

9. The Mishnah (*Keilim* 27:2) teaches that the question of whether a piece of material is susceptible to tumah contamination depends on its type and size. In the case of regular cloth, a scrap three by three fingerbreadths or larger is considered of sufficient significance to contract tumah. With regard to sackcloth, the minimum size is four by four tefachim.

As mentioned above, an item susceptible to tumah contamination cannot obstruct the passage of tumah. That is why the Baraisa quoted here specifies scraps smaller than three by three fingerbreadths, for scraps of regular cloth larger than this can contract tumah. However,

now that it has been established that the Baraisa refers to sackcloth, the size should be four by four tefachim.

10. [For the limb is useless to the animal anyway.]

11. The law of צער בעלי חיים, *tzaar baalei chaim*, states that one may not cause unnecessary pain to a living creature (see *Bava Metzia* 32a-b).

The option of killing the animal to throw all of it to the dogs is not considered, for that was not the general practice (*Rashba*).

12. *tzaraas*, is the malady described in *Leviticus* 13 (see 9b note 10).

Sabbath. Since the baby will certainly not live,^[13] it is subject to the Sabbath prohibition of *muktzeh* and as such may not be moved.^[14] **בְּנֵי שְׁמֹנֶה** – As it was taught in a Baraisa: **הָרִי הוּא בָּאֵבֶן וְאִסּוּר לְטַלְטֵלוֹ בְּשַׁבָּת** – A BABY born OF an EIGHT-month pregnancy IS treated LIKE A STONE; i.e. it is *muktzeh* and may not be moved on the Sabbath. **אָבֵל אִמּוֹ שׁוֹחָה עָלָיו** – HOWEVER, ITS MOTHER MAY BEND OVER IT AND without moving it NURSE IT **מִפְּנֵי הַסָּכָנָה** – DUE TO THE DANGER posed to her by the excessive amount of milk she is carrying.^[15]

The Gemara proceeds to the next case:

מֶלַח – SALT. **חֻזָּא לִיה** – But [salt] is fit for one to use as seasoning in one's food. It is likely to be removed from the opening for this purpose. – ? –

The Gemara answers:

בְּמִרְיָתָא – The Baraisa refers to bitter [salt], which is unsuitable for seasoning.

The Gemara persists:

חֻזָּא לְעוֹרוֹת – But even [bitter salt] is fit for tanning hides.^[16] – ? –

The Gemara answers:

דְּאִית בְּה קוֹצִי – The Baraisa refers to [salt] in which there are thorns. Such salt is unsuitable for use in the tanning process, because it scratches the hands.

The Gemara asks:

בֵּינָן דְּקָשִׁיא לְבוֹחֶל שְׁקֵלָא – Since [salt] is injurious to a wall,^[17] he will remove it for the sake of the wall's protection. – ? –

The Gemara answers:

דִּיתְבָּא אַחֲסָפָא – The Baraisa refers to [salt] that rests on a shard of earthenware, and thus is not in contact with the wall.

The Gemara counters:

חֲסָפָא גּוֹפָא תִּיחֻוֹץ – Then let the shard itself obstruct the passage of *tumah*! Why does the Baraisa mention the salt? Even without the salt, the size of the opening is diminished by the shard. – ? –

NOTES

13. See note 5, paragraph (6).

14. מוקצה, *muktzeh*, is the term used for a class of objects which in the normal course of events do not stand to be used on the Sabbath or Yom Tov. The Rabbis prohibited the moving of such objects on the Sabbath or Yom Tov.

The reference here is to a baby already in the throes of death that will die before the Sabbath ends and will be buried where it is. [Therefore, it will not be removed from the opening, even after the Sabbath] (*Tosafos*; cf. *Ritva*).

15. It is unclear why the Baraisa uses the term סכנה, *danger*. Even the mere discomfort of the pressure in the mother's breasts should be sufficient grounds for allowing her to nurse the baby (*Tosafos* to *Shabbos* 135a).

16. As part of the tanning process, salt was rubbed into hides to soften them.

17. Our Mishnah (17a) teaches that salt must be distanced from a neighbor's wall (*Rashi*).

The Gemara answers:

דלית בה שיעורא – [The shard] is not of sufficient size to be considered significant. Therefore, legally, it is regarded as if it was not there, and the diminution of the opening is accomplished only by the salt. That a piece of earthenware is not considered significant unless it is of a certain size can be proven ברתנן – as we learned in the following Mishnah:^[1] חרס – The minimum quantity of EARTHENWARE for which one is liable if one transferred it from one domain to another on the Sabbath כדי ליתן – is a shard large ENOUGH TO PLACE BETWEEN ONE window SLAT AND ANOTHER.^[2]

The Gemara discusses the next case:

כלי חרס – AN EARTHENWARE VESSEL. חזי ליה – But it is fit for one to use to hold food! It is likely to be removed for this purpose. – ? –

The Gemara answers:

דמיטנא – The Baraisa refers to a vessel that is soiled. Such a vessel is unfit to contain food.

The Gemara persists:

חזי לאומנא – But it is fit for use by a bloodletter to catch the blood that emerges from the wound.^[3] – ? –

The Gemara answers:

דמנקב – The Baraisa refers to a vessel that is perforated. Such a vessel cannot hold blood.

The Gemara discusses the final case of the Baraisa:

ספר תורה – A TORAH SCROLL. חזי למקרא – But it is fit for reading! It is likely to be removed for this purpose. – ? –

The Gemara answers:

בבלוי – The Baraisa refers to a worn-out [Torah scroll], which cannot be used for reading.

The Gemara counters:

והא בעי גניזה – But it must be taken and put into safekeeping.^[4] – ? –

The Gemara answers:

שם תהא גניזתה – Its safekeeping will be there, in the opening.^[5]

Having discussed the case of salt merging with an already

formed wall, the Gemara discusses the legal status of a wall made entirely out of salt.^[6]

בבל עושין מחיצה חוץ ממלח ורכב – Rav said: A legally valid partition may be made out of anything except salt and fat, for a wall comprised of these substances will not endure.^[8] ושמאל אמר – And Shmuel said: אפילו מלח – A partition may be made even out of salt.

The statements of Rav and Shmuel are explained:

אמר רב פפא – Rav Pappa said – ולא פליגי – [Rav and Shmuel] do not disagree with each other. הא במלח סדומית – This ruling (Shmuel's ruling that a salt wall is valid) applies to Sodomite salt, which is thick and hard; הא במלח איסטרקנית – whereas the other ruling (Rav's ruling that a salt wall is not valid) applies to Istrokian salt,^[9] which is loose.

The Gemara provides an alternative way to reconcile the rulings of Rav and Shmuel:

עושה אדם – And now that Rabbah has said ויהשתא דאמר רבה – that if a person makes two piles of salt, one at each side of the entrance to a mavoi,^[10] ומניח עליהם קורה – and places a crossbeam over them, carrying is permitted in the mavoi on the Sabbath – שהמלח מעמדת את הקורה – for the salt supports the crossbeam, והקורה מעמדת את המלח – and the weight of the crossbeam keeps the salt in place – אפילו מלח איסטרקנית – the statements of Rav and Shmuel may both be explained as referring even to Istrokian salt. ולא – Yet they do not disagree, הא דאבא קורה – for this ruling (Shmuel's ruling that a salt wall is valid) applies to a wall of salt with a crossbeam over it that holds it in place, הא – whereas the other ruling (Rav's ruling that a salt wall is not valid) applies to a wall of salt without a crossbeam over it.

The Gemara quotes the next section of the Mishnah:

מרחיקין את הריחים שלשה מן השקב – A MILL MUST BE DISTANCED at least THREE tefachim from a neighbor's wall, as measured FROM THE LOWER MILLSTONE, ששן ארבעה מן הרקב וכו' – WHICH IS equivalent to FOUR tefachim from the wall as measured FROM THE UPPER MILLSTONE.

NOTES

1. Shabbos 82a. On the Sabbath, it is forbidden to transport an item from a *reshus harabim* (lit. public domain) to a *reshus hayachid* (lit. private domain) and vice versa, or four *amos* in a *reshus harabim*. As far as Scriptural law is concerned, one has not violated this prohibition unless the transferred item is one that people consider worth keeping.

2. This refers to a row of vertical slats in a window. These slats were positioned sufficiently apart from each other to allow light to enter. Two thick pieces of earthenware were plastered between adjacent slats [in order to prevent them from shifting], one at the top of the window and one at the bottom (*Rashi*).

3. [Since the blood is discarded, the state of the vessel in which it is collected is immaterial.]

4. An unusable Torah scroll must be put away in a safe place, where it will not be tampered with.

5. [Since it can remain there undisturbed, there is no need to remove it for storage elsewhere.]

6. The following passage applies both to the laws of *tumah* and to the laws of the Sabbath (*Rabbeinu Gershom*). [The definition of a wall is relevant to the laws of *tumah* in that only a halachically recognized wall blocks the passage of *tumas ohel* (roof *tumah*). It is relevant to the laws of the Sabbath in that a *reshus hayachid* (see note 1) is defined as an area enclosed by walls.]

7. [The word אמר, and he said, is in parentheses, for *Mesoras HaShas* emends the text to read אמר, he said. The *vav* prefix, which usually means "and," is inappropriate, for the following passage is a new discussion.]

8. Salt crumbles. Fat melts when it becomes warm (*Rashi*). [From

Rashi (cf. *Rabbeinu Gershom*) it seems that the removal of the material that composes the wall is not at issue here. Since the owner used this material to build a wall, evidently it was not his intent to remove it for some other use.]

An apparent difficulty: Why is it that an entire wall made of salt is not recognized legally, but (as taught by the Baraisa above, 20a) a small amount of salt that is in an opening merges with the wall and reduces the size of the opening?

Since salt separates into individual grains over the course of time, a wall formed from salt cannot be considered a single solid entity. Therefore, such a wall is not halachically recognized. Regarding a solid wall with an opening, however, it is sufficient that the opening is diminished to the point where it no longer qualifies as a legal opening. To accomplish this, the diminishing agent must have permanency, but it is not necessary that its parts adhere to each other (*Tosefos Rid*; see *Meiri*; cf. *Rash* to *Ohalos* 13:5).

9. I.e. standard salt (see *Rashash* to *Beitzah* 39a).

10. The layout of residential areas in Mishnaic times was commonly one in which several houses would open into a courtyard (*chatzeir*) and several courtyards would, in turn, lead into an alley through which people would pass to get to the street (*reshus harabim*). Such an alley is known as a *mavoi*, קבוי.

Typically, a *mavoi* does not have the status of a *reshus harabim* (see note 1), and therefore, Biblically speaking, it is permissible to carry in a *mavoi*. The Rabbis, however, legislated that carrying in a *mavoi* is prohibited unless a crossbeam (*korah*) is placed across its entrance, or a vertical pole (*lechi*) is put at the side of the entrance. Here, Rabbah rules that a crossbeam supported by two pillars of salt is acceptable for this purpose.

21. Smoke is not harmful to wine, but cattle odor is (*Rashi*).

Gemara The Gemara notes a contradiction between our Mishnah and a Baraisa:

But it has been taught in a Baraisa: בְּתוֹר אֲרָבָה – REGARDING AN OVEN placed in an upper story, a layer of plaster FOUR *tefachim* thick is required beneath it; וּבְכִירָה – AND REGARDING A STOVE, a layer of THREE *tefachim* is required. This contradicts our Mishnah, which requires a layer of only three *tefachim* beneath an oven, and one *tefach* beneath a stove. – ? –

The Gemara resolves the contradiction:

Abaye said: אָמַר אַבְי – That Baraisa was taught in reference to [the ovens and stoves] of bakers, which are constantly lit, and thus require greater preventive measures. דְּתוֹר דִּין בִּי כִירָה דְּנִתְּמוּן – As our type of oven (the type referred to by our Mishnah) is equivalent to the stove of a baker; both require a three-*tefach* layer beneath them.

The Mishnah stated:

אֶחָד יִפְתָּח חֲנוּת וְכו' – ONE MAY NOT OPEN A [BAKERY] etc. [or a cattle barn under someone else's storeroom].

The Gemara cites a related Baraisa:

A Tanna taught the following Baraisa: תָּנָא – A Tanna taught the following Baraisa: קִדְמָת לְאוּצָר מוֹתָר – IF the establishment of THE CATTLE BARN^[22] PRECEDED that of THE STOREROOM, IT IS PERMITTED to maintain the cattle barn.

In the light of the Baraisa's ruling, the Gemara seeks to define what constitutes the establishment of a storeroom:

Abaye asked the following series of questions: בְּעֵי אַבְי – Abaye asked the following series of questions: כִּיבֵד וְרִיבֵץ לְאוּצָר מֵהוּ – If he [the owner of the upper story] swept his roof and sprinkled water to settle the dust in preparation for its use as a storage place, but before he stored anything there, a cattle barn was established below, what is [the law]? Is this considered the establishment of a storage place and therefore the cattle barn is illegal? Or is this not considered the establishment of a storage place, and therefore the cattle barn is permitted because it came first?

רִיבָה בְּחִלּוֹנוֹת מֵהוּ – Similarly, if he increased the number of windows in the upper story (which shows that he intends to use it as a storeroom),^[23] but before he stored anything in it, a cattle barn was established below, what is [the law]? Is the cattle barn or the storeroom considered to have come first?

אֶבְסָרָה תַּחַת הָאוּצָר מֵהוּ – If there is a pavilion beneath the storeroom, what is [the law]?^[24]

בָּנָה עֲלֵיָה עַל גַּבִּי בֵּיתוֹ מֵהוּ – Similarly, if he built an upper room

on top of his house^[25] (as people do for the purposes of storage), but before he stored anything in it, a cattle barn was established below, what is [the law]? Is the cattle barn or the storeroom considered to have come first?^[26]

The Gemara concludes:

תִּיקוּ – Let [these questions] stand unresolved.

Rav Huna raises a similar question:

רַב הוּנָא בְרִיה דְּרַב יְהוֹשֻעַ – Rav Huna son of Rav Yehoshua asked: תִּמְרֵי וְרִמּוֹנֵי מָאי – If he began by storing only dates and pomegranates in the upper story, what is the law? The prohibition against opening a cattle barn under a storeroom was legislated specifically with regard to a storeroom of wine, grain or oil.^[27] However, if the owner began by storing dates or pomegranates, perhaps it is forbidden to open a cattle barn below, because, having shown that he is using the room for storage, the owner might yet store wine, grain or oil in it.

The Gemara concludes:

תִּיקוּ – Let [the question] stand unresolved.

The Gemara quotes the final section of the Mishnah:

בְּאֵמַת בֵּינֵי הַתִּירוֹ וְכו' – IN TRUTH, IN THE CASE OF a storeroom that contains WINE, ONE IS PERMITTED etc. [to open a bakery or dye shop beneath it].

The Gemara quotes an explanatory Baraisa:

A Tanna taught in a Baraisa: בֵּינֵי הַתִּירוֹ מִפְּנֵי שְׂמִשְׁבִּיחוֹ – A Tanna taught in a Baraisa: IN THE CASE OF a storeroom of WINE, THE SAGES PERMITTED to open a bakery or dye shop beneath it, FOR [THE SMOKE] from the bakery or dye shop IMPROVES [THE WINE]. וְלֹא רָפָת בָּקָר – BUT they did NOT permit one to open A CATTLE BARN beneath a storeroom of wine FOR IT IMPARTS A FOUL ODOR TO [THE WINE].

The Gemara qualifies the Mishnah's permit to open a bakery or dye shop beneath a storeroom of wine.

Rav Yosef said: הָאֵי דִּין – As far as our [wine] is concerned, אֶפִּילוּ קוֹטְרָא דְּשִׁתָּא נִמִּי קָשְׂיָא לֵיהּ – even the smoke of a candle is harmful to it. Therefore, this permit does not apply nowadays.

A ruling related to that of the Mishnah:

Rav Sheishess said: אָמַר רַב שֵׁישֶׁשׁ – And *aspasta*^[28] is as injurious as a cattle barn. The Mishnah's restriction against the placement of a cattle barn applies to the storage of *aspasta* as well.

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22. The same applies to a bakery and dye shop as well (*Tosafos* to 18a (ד"ה ואם).

23. The extra windows increase the air circulation, which prevents the grain from rotting (*Rashi*).

24. *Bach* deletes this sentence. It does not appear in the versions of the text followed by most commentators, including *Rashi*. It does appear, however, in the text followed by *Ramah*, who explains it as follows:

If a pavilion interposes between the storeroom and the bottom story, is it permitted to use the bottom story as a cattle barn or not? Do we say that since air circulates all around the storeroom its contents are not liable to be damaged by the cattle barn, or perhaps we say that its contents are liable to be damaged nevertheless? [According to this explanation, the present inquiry is not relevant to the question of what constitutes the establishment of a storeroom. Assuming that the contents of a storehouse with a pavilion beneath it are not liable to be damaged, it is permitted to open a cattle barn in the bottom story even after the storeroom has definitely been established.]

25. [The owner of the upper story] built a room on top of his roof to serve as a storage place (*Rashi*, see *Rashba*). [It is evident that according to *Rashi* a bakery etc. is harmful to a storehouse even if a story interposes between them (*Rashba*, *Ritva*).]

26. Even if the addition of windows does not constitute the establishment of a storeroom, perhaps the building of an upper extension does (*Rashi*; cf. *Rabbeinu Gershom*).

27. Only a room in which wine, grain or oil is stored is legally recognized as a "storeroom" (*Nimukei Yosef*; see *Rashi*).

Alternatively: Only wine, grain and oil are harmed by a cattle barn, as opposed to other produce, such as dates and pomegranates, which are not (*Rabbeinu Gershom*, *Rashba* et al.).

28. *Aspasta*, is a particular type of plant. Even in the early stages of its growth, it is fit for use as fodder (see *Rashi* here, *Rashi* to 28b אֶסְפָּסְתָא ד"ה and *Rashi* to *Kiddushin* 62b בִּשְׁחַת ר"ה אלא בשחת [Cut *aspasta* is moist and warm, and it exudes a foul odor that can damage the contents of a storeroom above it.]

Mishnah In Mishnaic times, houses were grouped around courtyards. The following Mishnah discusses the rights of a courtyard resident to restrict commercial activities within his courtyard.

– ויכול למחות בידו ולומר לו – one of the other residents can block him by claiming, – איני יכול לישן מקול הנכנסין ומקול היוצאין – “I cannot sleep due to the noise of [your customers] who go in and out of the courtyard.” – אכל עושה כלים יוצא ומוכר בתוך השוק – But [a courtyard resident] may manufacture utensils in his home and go out and sell them in the marketplace, – ויכול לישן לא מקול הפטיש – “I cannot sleep due to the noise of the hammer,” – ולא מקול הריחים – or “I cannot sleep due to the noise of the mill,”²⁹ – ולא מקול התינוקות – or “I cannot sleep due to the noise of the children.”

Gemara The Gemara assumes that the children mentioned at the end of the Mishnah are customers who enter the courtyard to purchase items there. This gives rise to the following problem:

– מאי שנא רישא ומאי שנא סיפא – What is the explanation for the difference between the first clause of the Mishnah, which states that one can protest the entry of customers into a courtyard, and the last clause, which states that one cannot?

Abaye offers an explanation:

– סיפא אתאן להצר אחרת – Abaye said: The latter clause refers to one who protests the presence of customers in

another courtyard. One cannot block the entry of customers into a neighboring courtyard; he has this right only with regard to his own courtyard.

Rava objects to this explanation:

– אי הכי – If this is what the Mishnah means, – ליתני חצר אחרת מוקר – let it state explicitly: “It is permitted to open a store in another courtyard [i.e. one cannot block a business in a courtyard other than one’s own].” – ? –

Rava offers his own interpretation:

– אלא אמר רבא – Rather, Rava said,

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29. [The Gemara discusses what is meant by “the noise of the children.”]

The Mishnah’s distinction requires explanation. Why is it that “the noise of those who go in and out [of the courtyard]” is grounds for blocking a business, while “the noise of the hammer etc.” is not?

The explanation is possibly that one cannot protest “the noise of the hammer etc.” because it is made by a member of the courtyard. This is in contrast to “the noise of those going in and out [of the courtyard],” which is made by people who do not reside in the courtyard (based on

Rashi to 21a סיפא ר”ה, see Tos. Yom Tov; cf. Meiri, S’ma Choshen Mishpat 156:10).

An alternative approach: Noise, from any source, is insufficient grounds for preventing a courtyard resident from engaging in a business. The Mishnah’s statement that one may claim, “I cannot sleep due to the noise of those who go in and out [of the courtyard],” is not to be taken literally as a reference to noise, but as a reference to the inconvenience of people crowding the courtyard (Ramban, Rashba, Ran, Nimukei Yosef).

סיפא אתאן לתינוקות של בית רבן – **The latter clause refers to one who seeks to prevent school children who live elsewhere from entering his courtyard to study Torah.** ומתקנת יהושע בן גמלא – **And the Mishnah's ruling applies after Yehoshua ben Gamla's^[1] ordinance, which mandated the installation of teachers in every town. After the enactment of that decree, a courtyard resident could not protest the teaching of children in his courtyard.^[2]**

The Gemara traces the development of our educational system, culminating with Yehoshua ben Gamla's ordinance:

For Rav Yehudah said in the name of Rav: **ברם זכור אותו האיש לטוב ויהושע בן גמלא שמו** – **Indeed, that man is to be remembered – namely, Yehoshua ben Gamla – in a favorable way, האיש הנשכח תורה מן ישראל** – **for were it not for him, the Torah would have been forgotten by Israel.** **שבתחלה מי שיש לו אב מלמדו תורה** – **Originally, if a [child] had a father, [the father] would teach him Torah,** **מי ששאו לו אב לא היה למד תורה** – **but one who did not have a father would not learn Torah.** **מאי דרש** – **Which verse did they expound as a source for this?** **„ולמדתם אתכם”** – **And you shall teach them [the words of Torah] to your children.^[3]** Since the word *אתכם*, *them*, is written without a *vav*, the verse can be read:

„ולמדתם אתם” – **and you yourselves shall teach [Torah to] your children;** i.e. the father himself must teach his child.

Since many children were not receiving an education, the Sages established a school system:

„התקינו שיהו מושיבין מלמדי תינוקות בירושלים” – **[The Sages] enacted that teachers of children should be installed in Jerusalem, so that any youth could go there and be taught Torah.** **מאי דרש** – **Which verse did they expound as a source for this arrangement?** **„כי מציון תצא תורה”** – **For Torah shall go forth from Zion and the word of God from Jerusalem.^[4]**

But this measure did not solve the problem:

„ועדיין מי שיש לו אב היה מעלו ומלמדו” – **Even so, if [a child] had a father, [the father] would take him up to Jerusalem and have him taught there.** **מי ששאו לו אב לא היה עולה ולמד”** – **Whoever did not have a father would not go up to Jerusalem and study.**

Therefore, the school system was expanded:

„התקינו שיהו מושיבין בכל פלך ופלך” – **[The Sages] enacted that [local authorities] should install teachers in every province,^[5]**

and they should bring in [youths] of ages sixteen or seventeen who lacked an education to be taught by these teachers.

Even this measure, however, was not entirely effective:

„ומי שהיה רבו בועס עליו” – **[Any student] whose teacher became angry with him – מבעיט בו ויצא – would rebel against [the teacher] and leave.^[6]** The matter was not resolved satisfactorily **„עד שבא יהושע בן גמלא והתקין”** – **until Yehoshua ben Gamla came and enacted שיהו מושיבין מלמדי תינוקות** – **that [local authorities] should install teachers of children בכל מדינה** – **in every district and town, ומביטין** – **and they should bring in [children] of ages six or seven to be taught by these teachers.^[7]** With this ordinance, Yehoshua ben Gamla ensured that the Torah would not be forgotten by Israel.

Further teachings by Rav on the subject of education:

„אמר ליה רב לרב שמואל בר שילא” – **Rav said to Rav Shmuel bar Shilas:^[8]** **„עד שית לא תקביל”** – **Until he reaches the age of six, do not accept a child as a student.** **„מבאן ואילך קביל”** – **From that age and up accept him,** **„ואספי ליה בתורא”** – **and stuff him with Torah knowledge even against his will, just as an ox is harnessed by force to its yoke.^[9]**

„ואמר ליה רב לרב שמואל בר שילא” – **And Rav said to Rav Shmuel bar Shilas:** **„כי מחית לינוקא”** – **When you hit a child for disciplinary purposes,** **„לא תימחי אלא בערקתא דמסנא”** – **hit him with only a shoelace, i.e. hit him in such a way that he will not be injured.^[10]** **„דקארי קארי”** – **If he studies, he studies.** **„ליהוי צוותא לחבריה”** – **let him remain in the company of his friends^[11]** and eventually he will pay attention to the lesson.

The Gemara returns to the point made above by Rava, that a courtyard resident cannot block the teaching of children in his courtyard:

„מיתיבי” – **They challenged Rava's teaching from the following Baraisa:** **„אחד מבני חצר”** – **If a courtyard resident שביקש לעשות רופא אומן ונגרדי ומלמד תינוקות** – **wants to become a MOHEL, A BLOODLETTER, A WEAVER, OR A TEACHER OF CHILDREN,** **„בני חצר מעכבין עליו”** – **the other courtyard residents CAN PREVENT HIM from doing so, on the grounds that they are**

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1. Yehoshua ben Gamla was one of the high priests that served in the Second Temple (*Rashi*; cf. *Tosefos Yeshanim* to *Yevamos* 61a; see *Tosafos* here).

2. An apparent difficulty: Yehoshua ben Gamla ordained that a teacher should be installed in every town. He did not decree the installation of a teacher in every courtyard. So why does a courtyard resident not have the right to demand that the teacher be shifted from the courtyard to a synagogue or study hall in the same town, which is indeed better suited for the purpose?

The answer is that if a teacher would have to travel from his courtyard, he might be deterred from the teaching profession. Hence, in order to ensure the availability of teachers for the implementation of Yehoshua ben Gamla's ordinance, the law is that a teacher is not required to leave his courtyard (*Nimukei Yosef*).

3. *Deuteronomy* 11:19.

4. *Isaiah* 2:3. The environment of Jerusalem was particularly conducive to Torah study. When a person beheld the tremendous sanctity [of the Temple in Jerusalem] and the Kohanim engaged in the Divine service, he was inspired to direct his heart to the awe of God and the study of Torah (*Tosafos*).

5. A *פלך*, *province*, consists of many *מדינות*, [administrative] districts (*Rashi*).

6. A youth of this age is not submissive to his teacher. If the teacher is angry with him, he will leave (*Maharam*).

7. The exact age – six or seven – depended on the health of the child (*Tosafos* ב"ב כ"ו). [The Mishnah in *Pirkei Avos* (5:25), which teaches that five is the age at which a child begins to study Scripture, means that a father introduces his son to Scripture at that age. A child does not begin intensive studies until he is at least six years old (*Tosefos HaRosh*, cited by *Shitah Mekubetztes*; *Ritva*; cf. *Tosafos*).

When there was only one school in each province, children below the age of sixteen did not attend because it was often dangerous for them to travel to the nearest school. The establishment of schools in every town and district made it possible for even young children to attend (*Ritva*, *Maharsha*).

8. A [noted] teacher (*Rashi*; see above, 8b).

9. *Rashi*. Alternatively: Stuff him with Torah just as one stuffs an ox with food even against its will in order to fatten it (*Rabbeinu Gershom*; *Rashi* to *Kesubos* 50a).

10. Do not eject him from the class, or punish him excessively (*Rashi*).

11. Literally: let him be company for his friends.

We have interpreted the Gemara according to *Rashi's* understanding. *Maharsha*, however, explains the Gemara in its literal sense: The inattentive student should remain in class and provide company for his fellow students. Otherwise, the other students might be tempted to follow his example and idle away their time outside the class.

disturbed by the noise of the extra traffic in the courtyard.^[12] From this Baraisa we see that even the teaching of children can be precluded. — ? —

The Gemara deflects the challenge:

בתינוקות — **With what are we dealing here?** — **הָאֵם בְּמַאי עֲסָקִין** — **We are dealing with the teaching of the children of idolaters.** The teaching of idolaters' children was not addressed by Yehoshua ben Gamla's decree; hence, it can be protested.^[13]

The Gemara makes another attempt to refute Rava's opinion: **תָּא שָׁמַע — Come, learn** the following proof from a Baraisa: **שְׁנֵים שְׂוִיָּשְׁבִין בְּחֶצֶר — If two people are living in a courtyard,** **וְכֶיֶשׁ אֶחָד מֵהֶן לַעֲשׂוֹת רוּפָא וְאוֹמֵן וְגֵרֵדִי וּמַלְמִיד תִּינוּקוֹת — AND ONE OF THEM WANTS TO BECOME A MOHEL, A BLOODLETTER, A WEAVER, OR A TEACHER OF CHILDREN,** **הַבֵּירוֹ מַעֲבֵב עָלָיו — THE OTHER CAN PREVENT HIM** from doing so on the grounds that he is disturbed by the noise of the extra traffic. This ruling contradicts Rava's view that the teaching of children cannot be blocked. — ? —

The Gemara deflects the challenge:

הָאֵם נָמִי בְּתִינוּקוֹת דְּעֶבְדֵי בּוֹכְבִים — **Here too,** as in the previously quoted Baraisa, the reference is to the teaching of the children of idolaters.

The Gemara makes a third attempt to refute Rava's opinion: **תָּא שָׁמַע — Come, learn** a proof from the following Baraisa: **שֵׁשׁ לוֹ בֵּית בְּחֶצֶר הַשּׁוֹתֵפִין — ONE WHO OWNS A HOUSE IN A JOINTLY OWNED COURTYARD** **הָרִי זֶה לֹא יִשְׁכְּרֵנוּ לֹא לְרוּפָא וְלֹא לְאוֹמֵן וְלֹא לְגֵרֵדִי — MAY NOT RENT IT TO A MOHEL, A BLOODLETTER, A WEAVER, A JEWISH TEACHER, OR A NON-JEWISH TEACHER!** This Baraisa indicates that the use of a courtyard even for the education of Jewish children can be prevented. — ? —

The Gemara deflects the challenge:

בְּסוֹפֵר מֵתָא — **What are we dealing with here?** — **הָאֵם בְּמַאי עֲסָקִין** — **We are dealing with the head teacher of the town,** i.e. the individual who oversees the education of all the children of the town.^[14] His work engenders an excessive amount of noise, and

may therefore be blocked, even according to Rava.

The Gemara returns to its discussion of Yehoshua ben Gamla's ordinance, which mandated the establishment of local schools:

מִתְקַנֵּת יְהוֹשֻעַ בֶּן גַּמְלָא וְאֵלָךְ — Rava said: **From the time Yehoshua ben Gamla's ordinance was enacted and on,** **לֹא מִמְּטִינִן יְנוּקָא מִמִּתָּא לְמִתָּא — one may not take a child from his town to attend classes in another town** on a daily basis, lest the child come to danger while on the road. Rather, the residents of the child's hometown are required to hire a teacher.^[15] **אֲכַל מִבֵּי הַבֵּית — However, one may take a child from the vicinity of one synagogue to the vicinity of another synagogue,** within the same town.^[16] **וְאִי מִפְּסֶק נְהָרָא לֹא מִמְּטִינִן — But if a river separates these two districts,** a child should not be taken from one to the other.^[17] **וְאִי אֵיכָא תִּינוּקָא מִמְּטִינִן — If there is a bridge spanning the river, one may take a child across it.** **וְאִי אֵיכָא גַּמְלָא לֹא מִמְּטִינִן — But if there is a bridge that consists of only a narrow plank, one may not take a child across it.**

Another teaching by Rava on the subject of education:

סָךְ מְקָרִי דְּרִדְקֵי עֲשָׂרִין וְחֲמִישָׁה — And Rava also said: **The number of students that teachers have in their classes is twenty-five children.** **וְאִי אֵיכָא חֲמִישִׁין מוֹתְבִין תְּרִי — If there are fifty students, we install two teachers.** **וְאִי אֵיכָא — If there are forty students,** **וּמוֹקְמִין רִישׁ דּוֹכְנָא — we appoint an assistant to the teacher,** **וּמִסְיָעִין לִיה מִמִּתָּא — and [the teacher] is given some financial support from the town to defray the cost of hiring the assistant.^[18]**

A third statement by Rava that pertains to education:

הָאֵם מְקָרִי יְנוּקֵי דְּגָרִיס — If the current teacher of a class of children teaches at a certain pace **וְאֵיכָא אַחֲרֵינָא דְּגָרִיס טָפִי מִינֵיהּ — and there is another teacher available who teaches at a faster pace,^[19]** **לֹא מִסְלִקִין לִיה — we do not remove [the first teacher] and appoint the other one in his stead.** For if the second teacher were to be appointed, **דְּלִמָּא — he might become lax** in his work, arrogantly believing that his teaching abilities are beyond compare and he will never be dismissed.

NOTES

12. The weaver mentioned in the Baraisa is one who works for others. People enter the courtyard to engage his services. But a weaver who makes cloth and sells it in the marketplace cannot be blocked, as the Mishnah taught: "but one may manufacture utensils and go out and sell [them] in the marketplace etc." (*Tosafos*).

13. The same applies to the teaching of secular subjects to Jewish children. The Gemara mentions children of idolaters only because Jewish children are generally taught Torah (*Rabbeinu Yonah, Rashba, Ritva*).

14. The town's teachers are appointed by him and are under his supervision — he teaches them proper methodology (*Rashi*).

15. According to some commentators, the Gemara refers to a single child. Even if only one child requires a teacher, the town must hire one for him. This appears to be the view of *Rashi* (see *Chidushei Anshei Shem*; see also *Rashba, Ritva*). Other commentators, however, understand the Gemara as referring to a group of twenty-five children. In their view, a town is not liable to hire a teacher unless at least twenty-five children require one (*Rosh, Tosafos*). [This dispute corresponds to the dispute presented in note 18.]

16. [Schools were often housed in synagogues — see note 2.]

17. The child might take the journey by himself and fall into the river (*Rabbeinu Gershom*).

[Where a river separates two districts in the same town, it is incumbent upon the local authorities to install a teacher in each district.]

18. The assistant hears the lesson from the teacher together with the students and then repeats it to them until they know it well (*Rashi*).

Since he is learning [in addition to teaching], this assistant receives only a small stipend, not a full salary (*Ritva*).

There is a fundamental difference of opinion among the Rishonim as to how this passage of Gemara should be interpreted. According to some commentators, the numbers given here are maximums. Twenty-five is the maximum number of children to be assigned to one teacher. If there are more than twenty-five students, an assistant must be hired. If there are more than forty students, a second teacher must be hired [instead of an assistant]. If there are more than fifty students, an assistant must be hired [in addition to the two teachers] (*Rambam Hil. Talmud Torah 2:5, Rashba, Ritva, Nimukei Yosef* in the name of *Rabbeinu Yonah, Shulchan Aruch Yoreh Deah 245:15; Chidushei Anshei Shem* writes that *Rashi* takes this approach). (According to this view, the text of the Gemara is possibly understood as follows: **סָךְ מְקָרִי דְּרִדְקֵי עֲשָׂרִין וְחֲמִישָׁה יְנוּקֵי — The [maximum] number of [students that] teachers [should have in their classes] is twenty-five.** **וְאִי אֵיכָא חֲמִישִׁין מוֹתְבִין תְּרִי — If there are [more than forty but not more than] fifty [students], we install two [teachers].** **וְאִי אֵיכָא אַרְבָּעִין מוֹקְמִין רִישׁ דּוֹכְנָא — If there are [more than twenty-five but not more than] forty [students], we appoint an assistant.]**

An alternative approach: These numbers are minimums. A town is not obligated to hire a teacher unless there is a minimum of twenty-five children. It is not required to hire an assistant unless there are at least forty children. It is not required to hire two teachers unless there are at least fifty children (*Rosh, Tosafos*).

19. Literally: who reads more than him. In a given time the second teacher can cover more ground than the first one can (without sacrificing accuracy).

Rav Dimi, however, asserts that the current teacher *should* be replaced with the superior one:

Rav Dimi from Nehardea said: If the second teacher is given the position, **כל שכן דגריס טפי** – **all the more so will he teach at a fast pace**, **קנאת סופרים תרבה חכמה** – for “jealousy between scholars increases wisdom.” The second teacher, wary of the jealousy felt toward him by the teacher he replaced, will exert himself all the more, lest the other teacher be afforded an opportunity to embarrass him by pointing out his shortcomings to the townsfolk.

Another dispute between Rava and Rav Dimi concerning the selection of teachers:

ואמר רבא – **And Rava also said:** If a choice has to be made between **הני תרי מקרי דרדקי** – **these two teachers of children**, **חד גריס ולא דייק** – **one that teaches at a fast pace but is not exact**^[20] – **וחד דייק ולא גריס** – **and one that is exact but does not**

teach at a fast pace, **מותבין הווא דגריס ולא דייק** – **we appoint the one that teaches at a fast pace but is not exact**, **שבשטא** – **for any mistake that a child adopts as a result of learning from such a teacher will, as a matter of course, be corrected later in life.**

Rav Dimi disagrees:

רב דימי מנהרדעא אמר – **Rav Dimi from Nehardea said:** **מותבין דייק ולא גריס** – **We appoint [the teacher] that is exact but does not teach at a fast pace**, **שבשטא בין דעל על** – **for once a mistake enters a child's mind it remains.**

Rav Dimi continues by citing an incident to illustrate his point: **דכתיב** – **As it is written:** **בי ששת חדשים ישב-שם יואב** – **For Yoav and all [the army of] Israel remained there for six months, until he had cut off every male in Edom.**^[21] The females, however, were spared.

כי אתא לקמיה דדוד – **When [Yoav] appeared before King David**, **אמר ליה** – **[David] said to him:**

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20. This does not mean that the teacher himself reads the texts inaccurately. Such a teacher is certainly inferior. Rather, the reference is to one who does not check whether his students are reading accurately (*Ritva*; see *Rashi*, *Tosafos* סך ר"ה).

21. *I Kings* 11:16. This verse refers to the war described in *II Samuel* 8:13, which was fought by Yoav, the general of King David's army, against Edom (Amalek).

Therefore, if a fisherman sets a trap with food in it near the lair of a fish, the fish is viewed as if it is already in his hands. If another fisherman would then take the fish, that would be tantamount to taking it directly from the first fisherman.^[12]

Ravina suggests that Rav Huna's ruling corresponds to a minority Tannaic view:

לימא רב הונא – Ravina said to Rava: **אמר ליה רבינא לרבא** – Are we to say that Rav Huna follows the view of R' Yehudah in a dispute between R' Yehudah and the Sages? **דאמר רבבי יהודה – For we learned in a Mishnah:**^[13] **רבי יהודה** – R' YEHUDAH SAYS: **לא יחלק חנוני קליות ואגוזין לתינוקות** – A STOREKEEPER MAY NOT DISTRIBUTE PARCHED KERNELS^[14] OR WALNUTS TO CHILDREN, **מפני שמרגילין אצלו** – FOR, by doing so, HE accustoms THEM to come TO HIM,^[15] and thereby deprives other storekeepers of the children's patronage. **וחכמים מהירין – BUT THE SAGES PERMIT** this practice.

It would seem that Rav Huna, who does not allow one merchant to take the customers of another, follows the view of R' Yehudah.^[16]

The Gemara replies that this is not necessarily so:

אפילו תימא רבנן – You can say that Rav Huna's ruling corresponds even to that of the Sages. **עד כאן לא פליגי רבנן** – As far as we know, the Sages do not disagree with R' Yehudah there **אלא דאמר ליה – except because they reason that he [the storekeeper distributing sweets] can say to [the other storekeeper],** **אנא קמפלגינא** – "I am giving out walnuts, אתה פלוג שיוסקי – you give out almonds!" That is to say, since both stores are already established, each is permitted to engage in activities that attract customers from the rival store.^[17] **אבל הכא אפילו רבנן מודו – But here [Rav Huna's case], where a merchant had already established a business in a courtyard and a rival came later, even the Sages possibly concede** **דאמר ליה – that [the first merchant] can say to [the newcomer],** **קא פסקת ליה לחיותי – "You are cutting off my livelihood,"** and stop him from using the courtyard.

Rav Huna's ruling is challenged:

מיתבי – They challenged [Rav Huna's ruling] from the following Baraisa: **עושה אדם חנות בצד חנותו של חבירו – A PERSON MAY OPEN A rival STORE NEXT TO THE STORE OF HIS FELLOW,** **ומרחץ בצד מרחצו של חבירו – OR A rival BATHHOUSE NEXT TO THE BATHHOUSE OF HIS FELLOW,** **ואינו יכול למחות בקרו – AND [THE ESTABLISHED OPERATOR] CANNOT PREVENT HIM** from doing so, **מפני שכול לומר לו – BECAUSE [THE RIVAL] CAN SAY TO [THE ESTABLISHED OPERATOR],** **אתה עושה בתוך שליך – "YOU DO**

as you wish INSIDE YOUR PROPERTY, ואני עושה בתוך שלי – AND I DO as I wish INSIDE MY [PROPERTY]!" This Baraisa states clearly that, contrary to Rav Huna's view, an established merchant cannot prevent the opening of a rival store. – ? –

The Gemara responds that Rav Huna's ruling is not refuted by this Baraisa because there is an alternative Tannaic view that does take his position:

תנאי היא – [Rav Huna's ruling] is a matter of dispute between Tannaim, **דתנאי – as it was taught in a different Baraisa:** **בופין בני מבואות זה את זה – RESIDENTS OF MAVOIS CAN COMPEL ONE ANOTHER** **להשיב ביניהם לא חייט ולא בורסקי ולא מלמד – NOT TO ALLOW THE RESIDENCE AMONG THEM OF A TAILOR, TANNER, TEACHER,**^[18] **OR ANY OTHER TYPE OF CRAFTSMAN.** I.e. someone who has established a business in a *mavoi* can prevent the other *mavoi* residents from renting their property to someone from elsewhere who wishes to ply the same trade. **ולשכנו אינו בופיהו – BUT HE CANNOT FORCE HIS NEIGHBOR**^[19] **להימנע מלפתוח עסק מתחרה במבוי.** **רבן שמעון בן גמליאל אומר – RABBAN SHIMON BEN GAMLIEL SAYS:** **אף לשכנו בופיהו – HE CAN FORCE EVEN HIS NEIGHBOR**^[20] **להימנע מלפתוח עסק מתחרה במבוי.**

The Tanna Kamma differentiates between an outsider and a neighbor: one can block local competition if it is from an outsider, but not if it is from a neighbor. Rabban Shimon ben Gamliel, however, holds that even the rival business of a neighbor can be blocked. Rav Huna, who said that a *mavoi* resident can block the business of a member of his own *mavoi*, follows the view of Rabban Shimon ben Gamliel.

The Gemara defines the view of the Tanna Kamma:

אמר רב הונא בריה דרב יהושע – Rav Huna son of Rav Yehoshua said: **בר מתא אבר מתא – It is obvious to me** **פשיטא לי – פשיטא לי – that a resident of one town who plies a certain trade can prevent a resident of another town from plying that trade anywhere in his town, even according to the Tanna Kamma.**^[21] **ואי שייך בכרנא דהכא – But if he [the tradesman from elsewhere] pays the poll-tax of this town,**^[22] **he is viewed as one of its residents,** **לא מצי מעבב – and one cannot prevent him from plying his trade in the town.**

Having discussed the Tanna Kamma's view with regard to banning an outsider from the town as a whole, Rav Huna son of Rav Yehoshua discusses the Tanna Kamma's view as it applies to a *mavoi*:

בר מבואה אבר מבואה דנפשיה לא מצי מעבב – A resident of a mavoi cannot prevent another resident of his own mavoi from

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12. [With regard to a business, however, even a customer who frequents it cannot be said to have provided patronage on any particular occasion until he commits himself to do so. Therefore,] a newcoming rival can say to the established merchant: "Whoever wants to go to you will go to you, and whoever wants to come to me will come to me" (*Rashi*; cf. *Ri MiGash*).

13. *Bava Metzia* 60a.

14. Kernels of wheat sweetened with honey and roasted. This was a popular children's treat.

15. When a child is sent to make purchases, he will go to that store (*Rashi*).

16. The implied difficulty is that Rav Huna follows the minority view [R' Yehudah], rather than the majority view [the Sages], which is generally adopted as halachah.

17. *Ritva*; see *Rashi* אכל ר"ה.

18. We learned above (21a) that a teacher of [Torah to] Jewish children cannot be barred from a courtyard on the grounds that the courtyard

residents are disturbed by the noise. Likewise, a teacher of [Torah to] Jewish children cannot be barred from a *mavoi* on the grounds that he is depriving a teacher, who is already established there, of his livelihood. Therefore, this Baraisa, which rules that a teacher *can* be barred from a *mavoi*, must refer to a teacher of idolaters' children [or a teacher of secular subjects] (*Ri*, cited by *Tosafos*; see *Tosafos* for a dissenting view).

19. [It is unclear what the term "neighbor" means in this context. It certainly includes a member of the same *mavoi*. But it is questionable whether it also includes a member of the same town who lives in a different *mavoi* – see Gemara below and note 23.]

20. I.e. even a member of the same *mavoi*.

21. That is, he can ban the outsider not only from his *mavoi*, but also from the other *mavois* and streets in the town. This is true even according to the Tanna Kamma, for the Tanna Kamma concedes that competition from *elsewhere* can be blocked (see the beginning of the Baraisa).

22. Literally: he is involved with the tax of here.

ing a competing business. This is in accordance with the Tanna Kamma's statement that one's "neighbor" cannot be prevented from competing.

Rav Huna son of Rav Yehoshua concludes his analysis of the Tanna Kamma's view with the following inquiry:

Rav Huna son of Rav Yehoshua said: **בְּרֵי רַב הוּנָא אֲחִירָנָא מַאי** — But what is the law, according to the Tanna Kamma, regarding the resident of a *mavoi* who wishes to prevent the resident of another *mavoi* in the same town from entering his *mavoi* and setting up a rival business? When the Tanna Kamma said that a courtyard resident cannot block a "neighbor," was the reference only to residents of the same *mavoi*, or to any resident of that town?^[23]

The Gemara responds:

ת — Let [the question] stand unresolved.

The Gemara returns to its discussion of Rav Huna's opinion that a *mavoi* resident can prevent anyone, even a member of his

own *mavoi*, from setting up a rival business. It notes an exception to his ruling:

And Rav Huna **— וּמַוְדִי רַב הוּנָא — Rav Yosef said:** **אָמַר רַב יוֹסֵף** — **בְּמַקְרֵי נִרְדְּקֵי דְלֹא מְצִי מַעֲבָב** — that with regard to those who teach Torah to children, he [a teacher who is established in a particular *mavoi*] cannot prevent another from teaching in that *mavoi*.^[24] **רַבָּמֶר מַר — For master said:** **עֲזָרָא תִיקֵן לֵהֶן לְיִשְׂרָאֵל** — **Ezra decreed for the Jewish nation** **שְׂיִהוּ מוֹשִׁיבִין סוּפֵר בְּצַד סוּפֵר — that one teacher should be installed next to another.**

And the following question was asked:

But it should be of concern **— וְנִיחוּשׁ דִּילְמָא אֲתִי לְאַתְרִישׁוּלִי** — that [a teacher] might become lax in his work if he works next to another teacher. So what was the purpose of Ezra's decree?

And the following answer was given:

He [the one who was asked the question] **said to [the questioner]:** **אָמַר לֵיהּ —**

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23. See note 19. The Tanna Kamma holds that a *mavoi* resident cannot bar the use of his *mavoi* to a "neighbor." Hence, according to the broad definition of "neighbor" (viz. a resident of that town), a *mavoi* resident cannot block a tradesman who lives anywhere in that town. But if we follow the narrow definition (viz. a resident of that *mavoi*), a *mavoi* resident can bar the use of his *mavoi* to anyone who does not reside in that *mavoi*.

An apparent difficulty: The first clause of the Baraisa teaches that even according to the Tanna Kamma a *mavoi* resident can bar the use of his *mavoi* to a tradesman from elsewhere. So according to the position that "neighbor" signifies a resident of the same *mavoi*, that clause refers to a tradesman from another *mavoi* in the same town. But according to the position that "neighbor" signifies anyone from the same town, to whom does that clause refer? It cannot refer to a tradesman from a different town, because such a tradesman can be barred from the entire town, whereas the Baraisa implies that he can be barred only from the *mavoi*.

The answer is that the first clause refers to a tradesman who does not actually live in that town, but pays the town's poll-tax. Although he is allowed to ply his trade in the town as a whole, he can be barred from doing so in a *mavoi* where a similar business has already been established (*Rashba*; see *Tsafos* ו"א *Tsafos*).

In summary:

(1) A tradesman who resides outside a town in which the type of business he practices has already been established: He can be barred from plying his trade anywhere in that town.

(2) A tradesman who resides outside the town but pays tax to the town: He may ply his trade in the town as a whole, but not in the particular *mavoi* where the established business is located.

(3) A tradesman who resides in the same town — but not in the same *mavoi* — as one in which a similar business has been established: He is permitted to ply his trade in the town as a whole. The Gemara inquires as to whether he is allowed even in the *mavoi* where the established business is located.

(4) A tradesman who resides in the same *mavoi* as one in which a similar business has already been established: He is allowed to ply his trade even in that *mavoi*. [This follows the view of the Tanna Kamma. According to Rabban Shimon ben Gamliel, however, he is not allowed to ply his trade in that *mavoi*.]

24. Even if the rival is from a different town (*Shulchan Aruch Choshen Mishpat* 156:6).

25. The passage from here to the end of this page is parenthesized for it does not appear in most versions of the text. See *Tsafos* to 22a ד"ה קנאת ו"א *Tsafos* and *Dikdukei Sofrim*.

Jealousy between scholars increases wisdom. – קנאת סופרים תרבה חכמה – Each teacher, fearful of his rival, will perform his role with extra care.

Rav Huna son of Rav Yehoshua stated above that even according to the Tanna Kamma townsfolk may bar tradesmen who live elsewhere from trading in their town. The Gemara notes an exception to this ruling:

Rav Nachman son of Yitzchak said: – אָמַר רַב נַחֲמָן בֶּר יִצְחָק – **But Rav Huna son of Rav Yehoshua agrees** – וּמוֹדָה רַב הוּנָא בְרִיה דְּרַב יְהוֹשֻעַ – **that, with regard to peddlers who go from town to town selling cosmetics,** – בְּרוֹכְלִין הַמְחִיירִין בְּעִיּוּרֵי – **[a merchant] already established in a particular town cannot bar them from his town. The reason for this exception is** – עֲוָרָא חֲקֵן – **as master has said:**^[1] **Ezra decreed for the Jewish nation** – שִׁיְהוּ רוֹכְלִין – **that peddlers should go from town to town selling cosmetics** – כְּדִי שִׁיְהוּ תַּכְשִׁיטִין מְצוּיִין לְבָנוֹת יִשְׂרָאֵל – **so that cosmetics would be readily available to the daughters of Israel.**^[2]

The Gemara qualifies this license to sell cosmetics in a town other than one's own:

This [ruling] permits a peddler of cosmetics to go around from mavo'i to mavo'i and house to house selling his wares and then leave, – וְהָיָה מִיָּלִי לְאַהֲדוּרֵי – **but not to set up a permanent [shop].**

An exception to this point:

But if he [the visiting peddler of cosmetics] is a rabbinical student, – וְאִי צוֹרֵב מִרַבָּנִין הוּא – **he is allowed even to set up a permanent [shop].** – אֲפִילוּ לְאַקְבּוּעֵי נָמִי – **As exemplified by the case** – כִּי הָא – **of R' Yoshiah and Rav Ovadiah** – דְּרָבָא שְׂרָא לְהוּ לְרַבִּי יוֹשִׁיָא וְלְרַב עוֹבַדְיָה – **in which Rava allowed R' Yoshiah and Rav Ovadiah to set up a permanent shop in a town other than their own** – בְּהִלְכַּתָּא – **although this is not in accordance with the strict letter of the law.**^[3] **What is the reason for this special dispensation?** – מַאי טַעְמָא – **Since they are rabbinical students, they are permitted to set up a permanent shop,** – בֵּינָן דְּרַבָּנִין נִינְהוּ – **for otherwise they might come to be diverted from their studies.**^[4]

An incident that illustrates another exception to Rav Huna son of Rav Yehoshua's ruling that a tradesman can be barred from a town other than his own:

There were these basket-sellers^[5] **who brought baskets to the city of Babylon**^[6] **on a market day.** – הָנְהוּ דִּיקוּלַּי דְּאִיְתִי דְּיָקֻלַּי לְבָבֵל – **The residents of the city came to prevent them from selling their baskets, claiming that only the local residents were entitled to sell in the city.** – אֲתוּ בְנֵי מְתָא קָא מַעֲבָדֵי עֲלֵיהוּ – **They came before Ravina for a judgment on the matter.** – אֲתוּ לְקַמְיָה דְּרַבִּינָא – **[Ravina] said to them:** – אָמַר לְהוּ – **מַעֲלָמָא אֲתוּ**

Many [people] have come from elsewhere (i.e. outside the city) **to buy here on this market day, so let [the basket-sellers] sell to those who have come from elsewhere.**^[7]

Ravina continues:

This [permit] applies on a market day, – וְהָיָה מִיָּלִי בְיוֹמָא דְּשׁוּקָא – **when customers from elsewhere come into the city,** – אָבֵל בְּלָא – **but not when it is not a market day.** – וְכִיּוֹמָא – **And even on a market day, we do not say that outside merchants are permitted** – דְּשׁוּקָא נָמִי לֹא אִמְרִינָן – **except to sell in the marketplace itself, where the customers from elsewhere are to be found,** – אָבֵל לְאַהֲדוּרֵי לֹא – **but not to go around from house to house selling to the residents of the city.**

Another exception to Rav Huna son of Rav Yehoshua's ruling that a town can be made off-limits to tradesmen from elsewhere: **There were these wool-sellers who brought wool to the city of Pum Nahara.** – הָנְהוּ עֲמוּרָאֵי דְּאִיְתִי עֲמָרָא לְפֻם נַהֲרָא – **The residents of the city came to prevent them from selling their wool.** – אֲתוּ בְנֵי מְתָא קָא מַעֲבָדֵי עֲלֵיהוּ – **[The quarreling parties] appeared before Rav Kahana for a judgment on the matter.** – אָמַר לְהוּ – **[Rav Kahana] said to [the wool-sellers]:** – דִּינָא הוּא דְּמַעֲבָדֵי עֲלֵיכוֹן – **The law is that [the local residents] can prevent you from selling your wares here.**^[8] **They replied to [Rav Kahana]:** – אִית לָן אֲשָׁרָאֵי – **But we have debts to collect from people in the city.**^[9] **If we are not allowed to sell our wares while we remain here waiting for our payment, how will we support ourselves in the meantime?** – אָמַר – **[Rav Kahana] said to [the wool merchants]:** – וִילּוּ זַבְּנוּ – **Go and sell the amount required for your livelihood** – עַד דְּעִקְרִיתוֹ אֲשָׁרָאֵי דִּידְכוּ – **until you have collected**^[10] **your debts,** – וְאַזְלִיתוּ – **and then you must go.**

A related incident:

Rav Dimi from Nehardea brought dried figs by ship to sell in the town where the Reish Gelusa^[11] **resided.** – רַב דִּימִי מִנְהַרְדְּעָא אִיְתִי גְרוּגְרוֹת בִּסְפִינָה – **The** – אָמַר לִיה רִישׁ גְּלוּסָא לְרַבָּא – **Rava said to his disciple, Rav Adda bar Abba:** – אִי צוֹרֵב מִרַבָּנִין הוּא נָקִיט לִיה שׁוּקָא – **Go and examine him** – **If he is a rabbinic student, hold the marketplace for him** [i.e. announce that no one but he may sell dried figs in the town]. **Go and smell his keg** – רַבָּא לְרַב אָדָא בַּר אָבָא – **to ascertain whether its contents are wine or vinegar** [i.e. examine Rav Dimi with halachic questions to see whether or not he is a Torah scholar]. **[Rav Adda bar Abba] left and went to Rav Dimi.** – נִפֵּק וְאַזְלַל – **He asked [Rav Dimi]:** – בִּטְעָא מִינָהּ – **If an elephant swallowed a willow-reed basket,** – שְׂבָלַע בְּפִיפָה מַצְרִית – **and then ejected it through its rectum,** – וְהִקְיָאָה דְּרָךְ בֵּית הָרַעִי – **what is [the law] regarding the capacity of the excreted basket to contract tumah?** **Is it still considered a**

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1. Bava Kamma 82a-b.

2. Ezra desired to promote family harmony by ensuring that women would have the means to make themselves attractive to their husbands (see Bava Kamma 82b).

3. Rather, it is לְפָנִים מִשְׁנֵי דְּרִין, lit. within [i.e. beyond] the line of the law (Rashi; cf. Yad Ramah).

4. Since a rabbinical student is constantly engrossed in his studies, he does not make it a practice to peddle his wares from house to house [for this would divert him from his studies]. Therefore we permit him to set up a permanent shop (Rashi; see Rabbeinu Gershon).

5. Alternatively: sellers of vats (Rashi).

6. The term בָּבֶל, Bavel, usually signifies the country of Babylonia. In this context, however, it means the city of Babylon.

7. Since many customers have come from outside the town to buy at the market, merchants from outside the town cannot be barred from selling to the people gathered at the market (Rashi).

Provided the outside merchants limit their peddling to the marketplace, they may sell to whomever is there. It is not necessary for them to limit their trade to customers who are from outside the town (inferred by Beis Yosef Choshen Mishpat 156 from Rambam Hil. Shecheinim 6:10 and Nimukei Yosef; cf. Tosafos; see also Prishah ibid. §11 and S'ma §20).

8. In accordance with the ruling of Rav Huna son of Rav Yehoshua.

9. They had sold on credit (Rashi), before they knew that a protest had been lodged against them (Ritva).

10. Literally: uprooted.

11. The Exilarch – political leader of Babylonian Jewry.

basket of reeds, which can contract *tumah*? Or, since it passed through the animal's digestive system, perhaps it is now reckoned as a utensil made of excrement, which cannot contract *tumah*?^[12] אמר ליה – לא הוה בדידיה – [Rav Dimi] did not have an answer.^[13] – מר ניהו רבא – [Rav Dimi] said to [Rav Adda bar Abba]: – טפח ליה בסנדליה – [Rav Adda bar Abba] deprecatingly tapped his stick on [Rav Dimi's] shoe, – בין ידי לרבא איבא טובא – and said to him: – מיהו על ברחק – “Between me and Rava there is a great gap, – אגא רבך – but, at any rate, you are bound to concede that I am your teacher (i.e. your superior), – ורבא רבה דרבך – and Rava is the teacher of your teacher!” – לא נקטו ליה שוקא – They did not hold the marketplace for [Rav Dimi]. פסיד גרונרות דידיה – As a result, his dried figs spoiled. אתא לקמיה דרב יוסף אמר – [Rav Dimi] came before Rav Yosef and said to him: קזי – “Master, look what they did to me!” אמר – [Rav Yosef] said to [Rav Dimi]: מאן דלא שהייה לאוניתא – “The One Who did not delay avenging the humiliation of the king of Edom – לא נשהייה לאוניתוי – will not delay avenging your humiliation.”^[15] דכתבי – For it is written: על-שלשה פשעי מואב ועל-ארבעה לא אשיבנו – “Thus says HASHEM: Regarding three sins of Moav I will grant pardon, but regarding a fourth – namely, that he burned the bones of the king of Edom into lime – I will not turn away from punishing him.”^[16] נח – Rav Adda bar Abba died.

Each of several Sages lamented that he was responsible for the demise of Rav Adda bar Abba:^{17]}

demise of Rav Adda bar Abba.
אמר – Rav Yosef said: I punished him (i.e. Rav Adda Bar Abba was punished on my account), **דאנא** (i.e. **for I cursed him** by saying that God will not delay avenging the humiliation to which he subjected Rav Dimi. **רב** **אנא** – **Rav Dimi from Nehardea said: I punished him** (i.e. he was punished on my account), **ענישתיה** – **for he caused my dried figs to spoil.** **אבאי – Abaye said: I punished him** (i.e. he was punished on my account), **דאמר להו לרבנן** – **for he [Rav Adda bar Abba] would say to the rabbinical students,** **“Instead of chewing bones in the house of Abaye, come and**

eat juicy meat in the house of Rava [i.e. you will derive more satisfaction from the teachings of Rava than from those of Abaye].” Abaye was afraid that it was because of this insult he had suffered that Rav Adda bar Abba was punished.

had suffered that Rav Adda bar Abba was punished.
אָמַר – וְרָבָא שָׁחַט – I punished him (i.e. he was punished on my account), **וְרָבִי הָוָה אָזִיל לְבֵי טְבָחָא לְמַשְׁכָּל – רַבִּי הָוָה אָזִיל לְבֵי טְבָחָא לְמַשְׁכָּל – for when [Rav Adda bar Abba] would go to the butcher to buy meat, אָמַר לְהוּ לְטַבְּחִי – he would say to the butcher: אָנָּה שְׁקִילָנָא בִּישׁוּרָא מִיֻּשְׁמֵי שְׁמַעֲיָה דְרָבָא – “I will take meat before the servant of Rava [who had been sent by Rava to buy meat], וְאֲנָא עָרִידָנָא מִיָּנְיָה – for I am greater than him.”^[18]**

Rava was afraid that it was because of this insult he had suffered that Rav Adda bar Abba was punished.

that Rav Adda bar Abba was punished.¹⁹

אָנאָ – Rav Nachman bar Yitzchak said: רב נחמן בר יצחק אמר
ענישתי – I punished him (i.e. he was punished on my account).
For Rav Nachman bar Yitzchak was the lecturer of the *kallah* discourses,^[19] כל יומא
and every day, before [Rav Nachman bar Yitzchak] entered the area in which the *kallah* lecture was
given, מרהיט בהדיה רב אבא בר אבא לשמעתיה – Rav Adda bar
Abba quickly went through his lesson with him, והדר צייל
and it was only then that [Rav Nachman] entered the
kallah lecture area to give the lecture. – ההוא יומא – That day
(i.e. the day on which Rav Adda bar Abba died), נקטוה רב פפא
– Rav Pappa and Rav Huna son of Rav Yehoshua took Rav Adda bar Abba aside
before he came to review the *kallah* lecture with Rav Nachman,
– משום דלא הוו בסיומא – for they had not been present at the
lecture given by Rava on the final chapter of tractate *Bechoros*,
and they wished to find out what Rava had said.^[20] – אמרו ליה
– “Tell us, – אימא לן – They said to [Rav Adda bar Abba]:
– שמעתתא דמעשר בהמה – those halachic passages in the chapter
of *Maaser Beheimah* [the final chapter in tractate *Bechoros*],
– אמר להו – how did Rava explain them?” – היכי אמרינהו רבא
[Rav Adda bar Abba] said to them: – אמר רבא והכי אמר רבא
– Rava said this and Rava said that (i.e. he repeated Rava’s
discourse). – אדרבאי נגה ליה [לרב נחמן בר יצחק] – In the
meantime, the hour had grown late for Rav Nachman bar
Yitzchak to start his lecture – (ולא אתי רב אבא בר אבא) – and
Rav Adda bar Abba had still not arrived to review it with him.

NOTES

12. The Torah lists the types of utensils that can contract *tumah* contamination, and wooden vessels are among them (see *Leviticus* 11:32,33 and *Numbers* 31:20-24). Reed baskets are classified as wooden utensils and therefore are susceptible to *tumah* contamination. Utensils made of excrement, however, are not included in this list (see *Keilim* 10:1. *Menachos* 69b).

13. Literally: it was not in his hands. The correct answer is that the excreted basket can still contract *tumah*. The Mishnah (*Keilim* 25:9) states that a utensil which has the capacity to contract *tumah* does not lose that capacity unless its physical form is changed (*Rashba*; cf. *Tosafos*).

14. Rav Dimi thought that his questioner was Rava, for he had heard that Rava was the outstanding authority in that town (*Rashi*).

15. God, who did not delay avenging an Edomite, will certainly not delay avenging you (see *Rashi*).

Rava's intention was only that if Rav Dimi was not found to be a scholar, he should not be given the privilege of having the exclusive right to sell his wares in the marketplace. Rav Adda bar Abba went beyond this and embarrassed Rav Dimi by tapping him on the shoe and saying, "I am your teacher etc." (*Maharsha*).

16. *Amos 2:1*. The king of Moav burnt the heir to the Edomite throne, mixed his ashes with lime and smeared them on a wall (see *II Kings 3:27* with *Radak* and *Malbim*).

17. The Gemara (*Shabbos* 149b) says that one who causes punishment to

be fall his fellow is not admitted to God's inner enclosure (*Tosafos*).

18. Although Rav Adda bar Abba recognized that Rava was the greater scholar ("Between me and Rava there is a great gap etc."), he thought that he should precede the *servant* of Rava. Rava, however, was concerned that perhaps this was nevertheless considered an insult to him since it was known that the servant was buying meat on his behalf (*Riaf* on *Ein Yaakov*).

19. The *kallah*, בָּלָה, was a public lecture given on the Sabbath (*Rashi*). [*Rashi* here implies that the *kallah* discourse was delivered every Sabbath. However, *Rashi* indicates below (ר"ה הוּ בְּסִימָא) that the discourse was held on “the Sabbath of the pilgrimage festival” (see *Hagahos Melo HaRo'im* and *R' Gershom*), and this is in harmony with his comments to *Yevamos* 122a תַּלְתָּא ר"ה. In *Berachos* 6b אָגַר וּכְלָה ר"ה, *Rashi* writes that the discourse was held on the Sabbath preceding the festival. See *Rashi* to *Berachos* 57a ד"ה יַעַר and *Sukkah* 26a ד"ה כְּרֻטִים where he gives a different interpretation to the term *kallah*.]

20. This is one of two explanations cited by *Rashi*. Alternatively, *Rashi* explains: *בשום דלא הוו בסיטגא*, for [Rav Pappa and Rav Huna] had not been present at the final meeting at which Rav Nachman was appointed the lecturer of the *kallah* discourses. [According to this interpretation, the reason the Gemara mentions this point is possibly as follows: Rav Pappa and Rav Huna were unaware of Rav Nachman's appointment, and therefore did not realize that by conversing with Rav Adda bar Abba they were delaying the *kallah* lecture.]

אֶמְרוּ לִיה רַבָּנָן לְרַב נַחְמָן בַּר יִצְחָק – The rabbis who had assembled to hear the lecture said to Rav Nachman bar Yitzchak: קוּם – “Arise to give the lecture, for it is late. Why is master sitting?” אָמַר לָהֶן – [Rav Nachman] said to them: “I am sitting and waiting for the bier^[21] of Rav Adda bar Abba to arrive.”^[22] אָבָא – In the

meantime, word came out that Rav Adda bar Abba had died.^[23]

The Gemara concludes:

וּמִסְתַּבֵּר דָּרַב נַחְמָן בַּר יִצְחָק עֲנִישָׁיה – And the most likely explanation is that it was Rav Nachman bar Yitzchak who punished him; i.e. Rav Adda bar Abba died as a result of the remark made by Rav Nachman bar Yitzchak.

Mishnah The Mishnah sets forth restrictions against erecting a wall near the wall of a neighbor:

לֹא יִסְמוֹךְ – One whose wall was near the wall of his neighbor – מִי שֶׁהָיָה בּוֹתֵלֹו סְמוּךְ לְבוֹתֵל חֲבִירוֹ – One whose wall was near the wall of his neighbor – אֵלָּא אִם בֵּן הֶרְחִיק מִמֶּנּוּ אַרְבַּע אַמּוֹת – unless he distances it at least four *amos* from [his neighbor's wall].^[24]

– בֵּין מִלְּמַעַל בֵּין מִלְּמַטָּן – One who builds a wall opposite the windows of his neighbor's house – must ensure that either above or below [the windows], – בֵּין בְּנִגְדָן – and certainly in front of them, – אַרְבַּע אַמּוֹת – there is a distance of at least four *amos*. I.e. the top of the wall must be either four *amos* higher or four *amos* lower than the window; and, regardless of the wall's height, the horizontal distance between it and the window must be at least four *amos*.^[25]

Gemara The first sentence of the Mishnah seems to mean that one who had a wall within four *amos* of his neighbor's wall and it collapsed^[26] may not build another in its stead unless he distances it at least four *amos* from the neighbor's wall. The Gemara finds this to be an inherent contradiction:

– וְכִמָּא הֵיכִי קָמִיד – But how could he have put the first [wall] near the wall of his neighbor? Why is it that only the second wall must be distanced and not the first one?

The Gemara answers:

– אָמַר רַב יְהוּדָה – Rav Yehudah said: הֵכִי קָאָמַר – This is what [the Mishnah] means:

NOTES

21. Literally: his bed. A stretcher was used for this purpose [Emendation follows *Bach*.]

22. [Rav Nachman said this jocularly: Since Rav Adda has not yet arrived, it would seem that he has died!]

23. Rav Nachman was afraid that it was his statement (“I am waiting for the bier of Rav Adda bar Abba”) that had brought about Rav Adda bar Abba's death. A curse uttered by a righteous man, even if it

is unintentional, is carried out immediately. The Gemara (*Moed Kattan* 18a, *Bava Metzia* 68a) compares this to a king who issues an order to execute someone. The king's order is carried out even if it was in error.

24. The Gemara (22b) explains what this means (*Rashi*).

25. The reasons for these restrictions are discussed by the Gemara (22b).

26. *Tosafos*.

אֶחָד בּוֹתֵל גִּינָה וְאֶחָד בּוֹתֵל חֲצֵר – R' Oshaya said: – רַבִּי אוֹשְׁיָא אָמַר – The law is the same whether the neighbor's wall is the wall of a garden or the wall of a courtyard. – אִם בָּא לְסוּמוֹף אֵינוֹ סוּמוֹף – In either case, if one wants to build a wall near it (i.e. within four *amos*), one may not do so.

The Gemara explains the difference between the teachings of Rav and R' Oshaya:

This explanation is rejected:

וְהָא מִתְקִיף לָהּ רַבָּא – Rava challenged [this explanation:] מִי – מי שֶׁהָיָה בּוֹתֵל סוּמוֹף לְבִיתוֹ חֲבִירוֹ קָתְנִי – But the Mishnah says: "ONE WHOSE WALL WAS NEAR THE WALL OF HIS NEIGHBOR." The words, "one whose wall was," indicate that he had a wall previously. – ? –

Having rejected the preceding explanation, Rava advances his own:

אֲלֵא אָמַר רַבָּא – Rather, Rava said, הִכִּי קָתְנִי – this is what [the Mishnah] is saying: מִי שֶׁהָיָה בּוֹתֵל סוּמוֹף לְבִיתוֹ חֲבִירוֹ בְּרֹחוֹק אַרְבַּע אַמּוֹת – One who had a wall near his neighbor's wall, at a distance of four *amos*, – וְנָפַל – and it collapsed, לֹא יִסְמוֹף לוֹ בּוֹתֵל אַחֵר – may not place another wall near [the neighbor's wall] to replace the collapsed one – אֲלֵא אִם בֵּין הָרְחִיק מִמֶּנּוּ אַרְבַּע אַמּוֹת – unless he distances it at least four *amos* from [the neighbor's wall].^[2]

Rava gives the reason for this law that one may not build a wall within four *amos* of a neighbor's wall:

דְּדוּשָׁא דְּהָבָא – What is the reason for this restriction? – מֵאִי טַעְמָא – Because treading the ground here (i.e. between two walls) is beneficial to the ground there (i.e. at the base of each wall). Constant pedestrian traffic between two walls is beneficial for the walls in that it hardens the earth, thereby strengthening the walls' foundations. Accordingly, one must leave a gap of four *amos* between one's wall and a neighbor's, for if the gap is narrower, people will be unlikely to walk there and the neighbor's wall will not be reinforced.^[3]

Rav qualifies the law that one may not build a wall within four *amos* of a neighbor's wall:

אֲמַר רַב – Rav said: לֹא שֵׁנוּ – They did not teach this ruling – אֲלֵא בּוֹתֵל גִּינָה – except in reference to a case where the neighbor's wall is the wall of a garden. People do not walk next to the inner side of a garden wall; therefore, it requires a passageway on its outer side through which people will pass and harden the ground. – אֲבָל בּוֹתֵל חֲצֵר – But in a case where the neighbor's wall is the wall of a courtyard, – אִם בָּא לְסוּמוֹף סוּמוֹף – if one wants to build a wall near it (i.e. within four *amos*), one may do so. Since people do walk next to the inner side of a courtyard wall, it does not require a passageway on its outer side to harden the ground.

A different ruling on this matter:

וְלֹא פְּלִיגִי – R' Yose bar Chanina said: – אָמַר רַבִּי יוֹסֵי בַר חֲנִינָא – They do not disagree with each other. – הָא בְּעִיר יְשָׁנָה – This [the statement of Rav, that distancing is required from a garden wall but not from a courtyard wall] refers to an old town. A courtyard wall in an old town does not require reinforcement, because the earth adjacent to it has been amply hardened by people passing alongside it through the years. – הָא בְּעִיר חֲדָשָׁה – And this [the statement of R' Oshaya, that distancing is required even from a courtyard wall], refers to a new town. In a new town, both types of walls require reinforcement, for the earth has not yet been sufficiently hardened.^[4]

Rava explained that the reason for our Mishnah's restriction against erecting a wall within four *amos* of a neighbor's is that a passageway is required through which people will pass and harden the ground. The Gemara challenges this explanation:

בֵּין – But we learned in the Mishnah: הַחֲלוּנוֹת – One who builds a wall opposite THE WINDOWS of his neighbor's house – בֵּין מִלְּמַעַל בֵּין מִלְּמַטָּן – must ensure that EITHER ABOVE OR BELOW [THE WINDOWS], – בֵּין מִבְּנִינָן – AND certainly IN FRONT OF THEM, – אַרְבַּע אַמּוֹת – there is a distance of at least FOUR AMOS. – וְהִנֵּי עֲלָה – And the following Baraisa was taught in reference to [this Mishnah]: מִלְּמַטָּן כְּדִי שֶׁלֹּא יִצְיֵץ וְיִרְאֶה – If the wall is to be higher than the windows, it must be high enough ABOVE THEM SO THAT ONE who leans over the wall WILL NOT be able to PEER AND LOOK into the windows. – מִלְּמַעַל שֶׁלֹּא יַעֲמוֹד וְיִרְאֶה – If the wall is to be lower than the windows, it must be low enough BELOW THEM so THAT ONE CANNOT STAND on top of the wall AND LOOK into the windows. – וּמִבְּנִינָן שֶׁלֹּא יִפְּסֵל – AND a distance is required OPPOSITE [THE WINDOWS], between the windows and the wall, so THAT [THE WALL] WILL NOT DARKEN the neighbor's house by blocking the entry of sunlight.^[6]

The Gemara makes the following inference from the Baraisa's last point:

טַעְמָא שֶׁלֹּא יִפְּסֵל – The reason why distancing is required in front of the windows is that [the wall] should not darken the neighbor's house, – אֲבָל מִשּׁוּם דְּדוּשָׁא לֹא – but not to provide space for treading.^[7] This refutes Rava's explanation that the reason space must be left next to a wall is so that the ground will be trodden.^[8] – ? –

NOTES

1. [According to this interpretation, the new wall is described by the Mishnah as אֶחָד בּוֹתֵל אַחֵר, *another wall*, in reference to the wall of the neighbor.]

2. According to this interpretation, there is no internal contradiction in the Mishnah. The first wall as well as the second one was distanced four *amos* from the neighbor's wall.

Although this law is taught in the context of a wall that had collapsed, the same applies to a wall that is built where none had stood before. Why then did the Mishnah choose to teach this law in this particular context? The Mishnah could simply have stated: "One may not build a wall within four *amos* of a neighbor's wall" (*Tosafos*). An answer to this question is given in the following note.

3. With this reasoning, it can be understood why the Mishnah specifies the case of a wall that had collapsed (see previous note). Before the wall collapsed, the traffic passing between the walls was confined to the relatively narrow space of four *amos* between the two walls. One might have thought, therefore, that the ground has been sufficiently hardened, and when the replacement wall is built, it need not be distanced four *amos* from the neighbor's wall. To reject this notion, the Mishnah teaches that even a wall built to replace one that had collapsed is subject to distancing (*Rosh*; see *Rashba* and other *Rishonim* who suggest other interpretations of the Gemara).

of the Gemara).

4. Our Mishnah [which does not differentiate between the wall of a garden and the wall of a courtyard] refers to a new town (*Tosafos, Rashba*).

The classification of a town as "new" or "old" is dependent upon the prevailing circumstances. This determination is made by the local *beis din* (*Rashba*).

5. The second half of our Mishnah, 22a.

6. The last clause applies to a wall that is higher than the window. If the wall is lower than the window, it will not block sunlight regardless of how close to the window it is (*Rambam Hil. Shecheinim* 7:3 with *Maggid Mishneh, Shulchan Aruch Choshen Mishpat* 154:21).

7. There is a practical difference between these two reasons: If the reason is to allow the entry of light, distancing is required only from a wall in which there is a window. But if the reason is to provide for the reinforcement of the wall, distancing is required even from walls that have no windows (see *Rashi*).

8. This difficulty cannot be resolved by saying that the Baraisa speaks of an old town (whose earth does not require hardening), for the Baraisa was stated in reference to our Mishnah, which speaks of a new town [see note 4] (*Tosafos*).

The Gemara answers:

הָכָא מִן הַצֵּד – What are we dealing with here? – The Baraisa refers to [a wall] that is perpendicular to the wall in which the window is situated. In such a case, hardening the ground is not a consideration, because only a small portion of the neighbor's wall is affected in this regard.^[9]

The Baraisa did not specify how much space must be left so as not to darken the neighbor's window. It merely said: "And [a distance is required] opposite the windows so that the wall will not darken [the neighbor's house]." The Gemara now gives the specific distance required by the Baraisa:

וְכַמָּה – And how much distance is required by the Baraisa? – אָמַר רַבִּי אֲשֵׁיבָא בְּרַבְרָה – Rav Yeiva, the father-in-law of Ashyan bar Nadbach, said in the name of Rav: בְּמֵלֵא רֵחֶב חֲלוֹן – The equivalent of the width of a standard window; i.e. one *tefach*.^[10]

The Gemara asks:

וְהֵלֵא מַעֲיֵן – But he will surely be able to look into the window? Since the width of the wall is only one *tefach* away from the window, one who leans over the end of the wall will be able to look into the window even if the wall is considerably higher than the window.^[11] – ? –

The Gemara answers:

אָמַר רַב זְבִיד – Rav Zevid said: בְּמַדִּיר אֶת כּוֹתֵלּוֹ – The Baraisa refers to a sloping wall.^[12] The wall slopes towards the window and thus it is impossible to stand or lean on it.

It was explained above that the Baraisa, which requires distancing only for the sake of providing light, refers to a wall that is perpendicular to the wall in which the window is situated. From the fact that the second clause of our Mishnah specifies a wall with windows, it is evident that there too the only reason for distancing is the provision of light.^[13] Hence, that part of our Mishnah must also speak of a wall that is perpendicular to the window. The Gemara now points out a contradiction between the Baraisa and the Mishnah.

Mishnah מִכְרִיכִין אֶת הַסּוּלָם מִן הַשּׁוֹבֵךְ אַרְבַּע אַמּוֹת – One must distance a ladder four *amos* from a neighbor's dovecote, כְּדִי שֶׁלֹא תִקְבּוֹץ הַנְּמִיּוּה – so that a marten should not be able to climb up

אֲרַבַּע אַמּוֹת – But we learned in our Mishnah: The required distance is FOUR AMOS. This contradicts Rav Yeiva's explanation of the Baraisa, according to which a gap of one *tefach* is sufficient. – ? –

The Gemara answers:

לֹא קְשִׁיָּא – This is not a difficulty: בָּאֵן מִרוּחַ אֶחָת – Here [the Baraisa], the reference is to a single wall built on one side of the window. In such a case, the light blockage is minimal and therefore a distancing of one *tefach* is sufficient.^[14] בָּאֵן מִשְׁתֵּי – Here [the Mishnah], the reference is to two walls built on the two sides of the window. In such a case, the light blockage is substantial and therefore a distancing of four *amos* is required.^[15]

Again, the Gemara challenges Rava's explanation that the reason why a gap is required between parallel walls is to provide space for treading the ground:

הָא שְׂמַע – Come, learn the following proof from a Mishnah:^[16] וְאֵת הַכּוֹתֵל מִן הַמְּזוּחִילָה אַרְבַּע אַמּוֹת – A WALL must be distanced FOUR AMOS FROM THE GUTTER of a neighbor's house כְּדִי שֶׁיְהִי זֶקֶף אֶת – SO THAT the neighbor has space in which HE CAN PROP UP A LADDER against his house for the purpose of cleaning out his gutter.^[17]

The Gemara infers from this Mishnah:

טַעֲמָא מִשּׁוּם סוּלָם – The reason distancing is required is to provide space for a ladder, אָבֵל מִשּׁוּם דְּוִשָּׂא לֹא – but not to provide space for treading. – ? –

The Gemara answers:

הָכָא מִמַּזְחִילָה – What are we dealing with here? – That Mishnah refers to a gutter on a slanted roof which overhangs the area between the two walls.^[18] In such a case, it is not necessary to distance one's wall four *amos* from the edge of the neighbor's roof for the purpose of having the ground trodden, דְּאִי מִשּׁוּם דְּוִשָּׂא הוּא – because as far as treading is concerned, הָא קָא אָזִיל וְאֵתִי תוֹתִיבָה – [people] go back and forth under [the overhang].

NOTES

9. See diagram. Even if the gap between the two walls is too narrow for a passageway, only a small portion of the neighbor's wall (the shaded area in the diagram) will not be reinforced (*Rashi, Yad Ramah*).

10. The required distance is a *tefach*, regardless of the width of the window in question. The Gemara says חֲלוֹן (i.e. a standard window), as opposed to חֲלוֹן, the window (i.e. the window in question) (*Yad Ramah*). There is an alternative version of the text which reads: וְכַמָּה טַפַּח, And how much? A *tefach* (see *Rif, Rosh, Rabbeinu Yonah*).

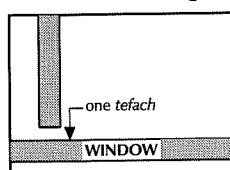
This one-*tefach* separation is to the side of the window, not in front of it (see diagram to note 14). [In this manner separating it from the window by a mere *tefach* allows sufficient light to enter] (see *Rashi* below משתי רוחות).

11. *Rashi*. [*Ritva* rejects this understanding of the Gemara on account of the following difficulty: If one can see into a window (even though the wall is higher than that window, as required by the Baraisa) when the wall is only a *tefach* away from the window, certainly one will be able to see into the window when the wall is further away and the angle of the line of vision is less acute! See *Ritva* et al. for different explanations of the Gemara.]

12. Literally: one who slopes his wall.

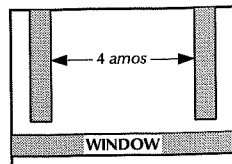
13. *Tosafos*. If the reason for distancing is that the neighbor's wall requires reinforcement, the Mishnah would not have mentioned windows – see note 7.

In fact, instead of challenging Rava's explanation (viz. distancing is required for the sake of reinforcement) from the Baraisa, the Gemara could have challenged Rava from the second part of our Mishnah. The Baraisa was chosen only because it states explicitly that distancing is required for a reason other than that given by Rava (*Rashba, Maharsha*).



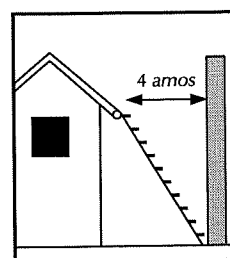
14. See diagram.

15. This means that the two new walls must be distanced four *amos* from each other (*Rambam Hil. Shecheinim* 7:5; see *Rosh*; cf. *Rashba*). See diagram.



16. The next Mishnah on this *amud*.

17. The owner of the house purchased the right to place a ladder in his neighbor's property. The Mishnah teaches that although he did not specify any dimensions, he is entitled to a gap of four *amos* between the wall of his house and his neighbor's wall (*Tosafos*). An alternative approach: Once someone builds a house at the edge of his property without any protest from his neighbor, he automatically acquires the right to place a ladder in his neighbor's property for this purpose (*Rambam Hil. Shecheinim* 9:8; see *Maggid Mishneh* there).



18. See diagram.

the ladder and **spring** into the dovecote.^[19] וְאֵת הַכּוֹתֵל מִן הַמְּזוּחִילָה אַרְבַּע אַמּוֹת – One must **also** distance a wall four **amos** from the gutter of his neighbor's house, כְּדֵי שֶׁיִּהְיֶה זֶקֶף אֶת הַסּוּלָם – **so that** [the neighbor] has space in which he can prop up a ladder against his house for the purpose of cleaning out his gutter.^[20]

Gemara The Gemara inquires whether the Mishnah's first rule is disputed:

יֹסִי – לֵימָא מִתְּנִיתִין דְּלֵא כְּרַבִּי יוֹסִי – Shall we say that our Mishnah is not in agreement with the view of R' Yose? דָּאִי רַבִּי יוֹסִי – For if you will suggest that it agrees with the view of R' Yose, הָאֵ – but [R' Yose] has said, with regard to planting a tree near a boundary where its roots threaten to breach the walls of a neighbor's pit: זֶה חוֹפֵר בְּתוֹךְ שְׁלוֹ וְזֶה נוֹטֵעַ בְּתוֹךְ שְׁלוֹ – Just as THIS ONE MAY DIG a hole WITHIN HIS property, THAT ONE MAY PLANT a tree WITHIN HIS property.^[21] In that instance, R' Yose holds that one is not required to distance a potentially harmful object from a neighbor's property. Does this not indicate he disagrees with our Mishnah?

The Gemara answers:

אֲפִילוּ תִּימָא רַבִּי יוֹסִי – You can even say that the Mishnah concurs with R' Yose, הָאֵ אָמַר רַב אֲשִׁי – for Rav Ashi has said: כִּי – This Mishnah informs us גְּרָמָא בְּנִיזְקִין אֲסוּר – that a causative act of damage, i.e. an action that may cause damage indirectly, is forbidden. That is why the Mishnah rules that one is forbidden to place a ladder within four *amos* of a dove-cote.^[25] הָאֵ – When we were students at Rav Kahana's academy, he (Rav Kahana) would often say: מוֹדִי – R' Yose agrees, with regard to "his arrows" (i.e. actions that cause damage directly), that one must distance himself from a neighbor who may be harmed.^[22] הָאֵ – Here too, R' Yose agrees that one must distance his ladder from a neighbor's dove-cote, זְמַן – because it may sometimes

occur דְּכַהֲדִי דִּמְנָח לֵיה – that as he places [the ladder] against the wall, יִתְבָּא בְּחוּר וְקַפְצָה – [a marten] will be resting in a hole in the wall and it will jump onto the ladder and then immediately spring into the dove-cote. Should this occur, the resulting damage to his neighbor will be a direct outgrowth of his action. Therefore, R' Yose agrees that one may not place the ladder near a dove-cote.^[23]

The Gemara raises a question:

וְהָאֵ גְרָמָא הוּא – But even if a marten springs onto the ladder as one places it against the wall, it is merely a **causative** act of damage that he commits by holding the ladder. Being that one is not liable for indirect damage, why must he distance his ladder from a dove-cote?^[24]

The Gemara answers:

זֵאת אוֹמְרָת – Rav Tuvi bar Masnah said: אָמַר רַב טוּבִי בַר מִתְנָה – This Mishnah informs us גְּרָמָא בְּנִיזְקִין אֲסוּר – that a causative act of damage, i.e. an action that may cause damage indirectly, is forbidden. That is why the Mishnah rules that one is forbidden to place a ladder within four *amos* of a dove-cote.^[25]

The Gemara cites a related incident:

רַב יוֹסֵף הָהוּא תַּאֲלִי דְּהוּו – Rav Yosef had these small date palms that

NOTES

19. If one's neighbor has a dove-cote near the wall that divides their properties, one may not prop up a ladder on his side of the wall within four *amos* of the dove-cote, lest a marten [a small, weasel-like animal that has a tendency to climb and spring] jump into the dove-cote and kill the doves (*Rashi*). This is consistent with the rule that one must refrain from performing within one's own property any activity that is potentially harmful to a neighbor.

20. See note 17.

21. Below, 25b. R' Yose maintains that one may plant a tree near the border of one's property even though its roots may damage a neighbor's pit. His opinion is that with regard to damages that arise from activities performed within one's own property, it is up to the one being damaged to protect himself by removing his vulnerable item from the proximity of the threatening object [עַל הַנִּיזָק לְהַרְחִיק אֶת עַצְמוֹ].

22. Although R' Yose permits planting a tree near a neighbor's pit, he agrees that one must refrain from performing within his property any activity that may cause damage to a neighbor *directly*.

23. If a marten jumps onto the ladder while he is in the process of placing it against the wall, his placement of the ladder will qualify as an "arrow," since by holding it in a position where it enables a marten to spring into the dove-cote, he causes damage to his neighbor directly (*Rashi*). [Although there is usually no marten waiting to jump onto the ladder as one places it near a dove-cote, one is nevertheless forbidden to place it there due to the possibility that such direct damage may occur. Moreover, one cannot argue that he will guard against a marten jumping onto the ladder as he places it against the wall, because any object that has the capability of acting as an "arrow" is forbidden according to R' Yose (*Ramban*).]

24. [Under the law of torts, one is liable only for damage that he commits with his own force, not for incidental damage that results from his

actions.] The Gemara contends that any action that can result in nothing more than incidental damage should not qualify as "his arrow" (*Rabbeinu Yonah*).

25. I.e. although one is not required to *pay* for incidental damage that results from his actions, one is forbidden to perform any action that may result in damage to another person (*Rashi*). Accordingly, such action does qualify as "his arrows" (*Rabbeinu Yonah*).

What emerges from the Gemara's discussion is that the term "his arrows" does not merely refer to actual physical acts of damage, but includes also actions that *result* in damage. *Rashi* explains that any activity in which a damaging force emerges directly from one's action qualifies as an "arrow" and must be distanced from a neighbor's property, even if the force that inflicts the damage is not his own (as in the case of a marten that springs from his ladder). On the basis of this explanation, *Rashi* notes that although the Gemara has reconciled our Mishnah's ruling with R' Yose's opinion, numerous other Mishnahs in this chapter [such as the Mishnah (above, 17a) which ruled that one must distance olive refuse, salt, manure, lime and flint stones three *tefachim* from a neighbor's wall] cannot be reconciled with R' Yose's view. In those cases any resulting damage does not emerge directly from the physical act of placing the items near the wall. Accordingly, these items do not qualify as "his arrows."

Tosafos, however, deduce from the fact that the Gemara raised the question of whether the Mishnah agrees with R' Yose only in regard to our Mishnah, that all the other Mishnahs in the chapter can be readily reconciled with R' Yose's opinion. They therefore explain that the category "his arrows" includes any action that is *immediately*, albeit indirectly, detrimental to a neighbor's property. Thus, olive refuse, salt, manure and the like all qualify as "his arrows," because they begin to emit fumes that are detrimental to the neighbor's wall the moment one puts them down (cf. *Ramban*, *Rashba*).

bloodletters would come and sit under while they drew blood.^[1] — **Now, crows would come to consume the blood, and would then fly up onto the palms and ruin the dates by smearing them with blood.**^[2]

Rav Yosef asked the bloodletters to move elsewhere:

Rav Yosef said to [them]: **Draw blood elsewhere, so that crows will not come here and ruin my dates.**

A claim was made in defense of the bloodletters:

Abaye said to [Rav Yosef]: **It is merely causative damage that the bloodletters are committing. Being that one is not liable for causative damage, why must they move away?**^[3]

Rav Yosef responded:

[Rav Yosef] replied to him: **This is what Rav Tuvi bar Masnah said, in reference to the Mishnah: This Mishnah informs us that causative acts of damage, i.e. activities that cause damage indirectly, are forbidden.** Accordingly, the blood-

letters are required to move away.^[4]

Abaye continued his defense of the bloodletters:

But they have already established a *chazakah*, since you raised no objection to their bloodletting for the past three years.^[5] — ? —

Rav Yosef rejected this contention:

Rav Nachman has said in the name of Rabbah bar Avuha: **There is no *chazakah* for damage.**^[6]

Abaye continued his argument:

But was it not said regarding this dictum of Rav Nachman: **Rav Mari said: It applies to smoke; and Rav Zevid said: It applies to an outhouse?**^[7] With regard to all other sources of damage, however, a *chazakah* can be established. — ? —

Rav Yosef replied:

To one with a delicate nature, such as I, the discomfort caused by these crows **is comparable to smoke and an outhouse.**^[8]

Mishnah — One must distance a dovecote fifty *amos* from a city. — **Similarly, a man should not build a dovecote within his property unless he owns fifty *amos* of land bordering the dovecote in each direction.**^[9] — **R' Yehudah says: One must have an area of four *kor* — one *beis kor* in each direction, which is the extent of a dove's single, uninterrupted flight.**^[10] — **However, even if the entire property is only the area of a quarter-kav, [the dovecote] retains its *chazakah*.**^[11]

NOTES

1. The bloodletters sat on their own property, in the shade of Rav Yosef's palms (*Tosafos*).

2. The bloodletters would shoo away the crows that were attracted by the blood, and the crows would then fly up onto the trees. The damage to the dates was thus attributable to their actions (*Rabbenu Yonah*; cf. *Tosafos*, 26a ויקא רי).^[1]

3. See above, 22b note 24.

4. See 22b note 25.

5. One who engages in activity that is harmful to a neighbor for a period of three years without being challenged by the neighbor may claim that he purchased from his neighbor the right to engage in such activity, even though he is unable to produce evidence to substantiate the claim. His claim is presumed to be true, for had he not purchased that right, his neighbor would certainly have objected within the first three years. [The legal term for the establishment of presumptive ownership is *חזקה*, *chazakah*.] In this case, the bloodletters claimed that Rav Yosef had sold them the right to engage in this objectionable activity underneath his palms (*Tosafos*; see *Hagahos HaBach*). Abaye argued on their behalf that their claim was credible, since they had established a *chazakah*.

[According to *Rambam* (*Hil. Shecheinim* 11:4), a *chazakah* can be established by performing an objectionable activity in view of one's neighbor *even once*, if it goes unchallenged by the neighbor. Moreover, the one performing the harmful activity need not claim that he *acquired* the right to do so from his neighbor. If his activity is carried out on his own property and he is not laying claim to anything owned by his neighbor, the neighbor's silence in the face of his disturbing activity is tantamount to yielding him the right to engage in it (*Rambam* *ibid.*, as explained by *Maggid Mishneh*; see also the opinion of *Ri bar R' Mordechai*, cited in *Tosafos* והא רי).]

6. I.e. one cannot claim on the basis of three years of freedom of activity that his neighbor sold him [or yielded him] the right to engage in the harmful activity. The neighbor may have thought that his objection was self-evident and therefore did not deem it necessary to express it. Thus, his three-year silence does not lend credence to the damager's claim (*Rabbenu Yonah*). [*Rabbenu Tam*, cited in *Tosafos*, rules that even if the neighbor did sell this right he may nevertheless object if he claims that the discomfort is worse than he anticipated.]

7. *To smoke*: i.e. to install a kiln, which emits heavy clouds of smoke that drifts over a neighbor's property (*Tosafos*).

To an outhouse: i.e. to the type of outhouse common in Talmudic days in which the waste remains above ground (*Rashi*).

Only in regard to these highly disturbing items did Rav Nachman rule that there is no *chazakah*, because, barring concrete evidence, the claim that the neighbor relinquished his right to object to them is not credible. Accordingly, the neighbor need not publicize his objection, and his three-year silence lends no credence to the damager's claim (*Rabbenu Yonah*). With respect to hazardous activity that is less objectionable, three years of silence on the part of the affected neighbor does support the claim that he sold the right to engage in that activity.

8. Rav Yosef was known to be a highly sensitive individual (*Tosafos* from *Pesachim* 113b), and as such, he could not bear the thought of using bloodstained dates (*Tosafos*). He therefore argued that just as there is no *chazakah* for smoke or an outhouse because the claim that a neighbor relinquished his right to object is not credible, there could be no *chazakah* for bloodletting under his palm trees because it was inconceivable that he had waived the right to object to this practice.

The same holds true for any individual who has an obvious intolerance toward a certain type of disturbing activity. A neighbor cannot establish a *chazakah* for engaging in that activity near his property (*Rosh*).

9. Doves generally feed on grain that they find within fifty *amos* of their roost. Accordingly, one who builds a dovecote on the outskirts of a city must distance it fifty *amos* from the city's edge to prevent the doves from feeding on produce growing in the city's gardens, and one who builds a dovecote on his own property must leave fifty *amos* between it and his boundary to protect the produce of his neighbor's field (*Rashi*).

10. A *beis kor* (i.e. the area suitable for sowing a *kor* — thirty *se'ah* — of barley grain) covers 75,000 square *amos*. This comes to a distance of 273.86 *amos* in each direction (*Tos. Yom Tov*).

11. [A *kav* is 1/6 of a *se'ah*, and there are thirty *se'ah* in a *kor*. Thus, a *kav* is 1/180 of a *kor*, and a quarter-*kav* is 1/720 of a *kor*. Since a *beis kor* covers 75,000 square *amos*, the area of a quarter-*kav* is approximately 104 square *amos*.] Thus, an area of a quarter-*kav* measures roughly 10.2 x 10.2 *amos* (*Rambam*, *Commentary to Mishnah*).

If one purchased a property this size on which a dovecote was located, he may keep the dovecote even if the neighbors object, provided that the previous owner had established a *chazakah* for the dovecote (*Rashi*). [See note 5.]

Gemara The Gemara infers from the *Tanna Kamma* that the extent of a dove's flight is fifty *amos*, and asks: **הַמְשִׁימִים אֶמָּה וְהוּא לֹא** – Do doves fly fifty *amos* and no further? **וְרַמְיָנָהּ** – But I will contrast this with the following Mishnah:^[12] **אֵין פּוֹרְסִין נֶשְׁבִּין לְיוֹנִים** – ONE MAY NOT SET OUT TRAPS TO catch DOVES – אֲלֵא אִם בֵּן הָיָה רְחוֹק מִן הַיִּשּׁוּב שְׁלֹשִׁים רִיס – UNLESS HE IS THIRTY *RISS* AWAY FROM THE nearest SETTLEMENT, because otherwise he might trap doves that belong to others. We learn from this Mishnah that doves travel up to thirty *riss* from their roost, a distance of 8,000 *amos*!^[13] – ? –

The Gemara answers:

אָמַר אַבַּי – Abaye said: **מִישַׁט שְׁיִטִּי טוֹבָא** – They fly a great distance, **וְכִרְסֵיהוּ בְּחֻמְשִׁים אֶמָּתָא מְלִיא** – but their stomach is filled by the grain that they find in the first fifty *amos* of their flight and they are unable to eat afterward. Therefore, distancing a dovecote fifty *amos* from one's boundary suffices to protect his neighbor's grain.

The Gemara now raises a contradiction to the Mishnah it cited: **וּמִישַׁט שְׁלֹשִׁים רִיס וְהוּא לֹא** – Do [doves] fly thirty *riss* and no further? **וְהִתְנַיָּא** – But we have learned in a Baraisa, regarding dove traps:^[14] **וּבִישׁוּב – AND IN A SETTLED AREA,** **אֶפְלוּ מֵאָה מִיל לֹא יִפְרוֹס** – ONE MAY NOT SET OUT traps EVEN if there is no dovecote within A HUNDRED *MIL*! We learn from this Baraisa that doves are capable of traveling more than one hundred *mil* from their roost. – ? –

The Gemara offers two answers:

רַב יוֹסֵף אָמַר בְּיִשׁוּב כְּרָמִים – Rav Yosef said: The Baraisa refers to an area “settled” with vineyards. **רָבָא אָמַר בְּיִשׁוּב שׁוֹבְכִין** – Rava said: It refers to an area “settled” with dove-cotes. When flying from vineyard to vineyard, or from one dovecote to the next, doves travel very great distances. However, when there are no vineyards or dove-cotes along the way, they travel no more than thirty *riss*.

The Gemara challenges Rava's explanation of the Baraisa: **וְתִפּוּק לִיה מִשּׁוּם שׁוֹבְכִין גּוֹפִיָּיהוּ** – But let it (the prohibition to set traps) emerge because of the nearby dove-cotes themselves. In an area settled with dove-cotes, one is forbidden to set out traps on account of the nearby doves. Why must the Baraisa base its prohibition on the dove-cotes that are a hundred *mil* away?

The Gemara offers three possible answers to this question:

אִיבָעִית אֵימָא דִּידְהָא – If you wish, I can say that the nearby dove-cotes are his own, i.e. they belong to the one setting out the traps; **וְאִיבָעִית אֵימָא דְכֻנְעִי – or, if you wish, I can say** that they are owned by a Canaanite;^[15] **וְאִיבָעִית אֵימָא דְהַפְקָר – or, if you wish, I can say** that they are ownerless. In any of these instances, the nearby dove-cotes are not a factor in forbidding one to set out traps.

The Mishnah states:

רַבִּי יְהוּדָה אָמַר בֵּית אֶרְבַּעַת בּוֹרִין וְכו' – R' YEHUDAH SAYS: One must have AN AREA OF FOUR *KOR* etc. [However, if he purchased the dove-cote from the previous owner of the property, even if the entire property is only the area of a quarter-*kav*, the dove-cote retains it *chazakah*.]

The Gemara deduces a law from this ruling:

אָמַר רַב פַּפָּא וְאִיתִימָא רַב זְבִיד – Rav Pappa, and some say Rav Zevid, said: **זֹאת אוֹמְרָא – This Mishnah informs us,** **טוֹעֲנִין לְלוֹקָה – that we (the court) plead on behalf of a purchaser** **וְטוֹעֲנִין לְיֹרֵשׁ – and we (the court) plead on behalf of an heir.**^[16]

The Gemara asks:

וְיֹרֵשׁ תִּנְיָא – With respect to an heir, we have already been taught this law in another Mishnah, which states:^[17] **הָבָא מִשּׁוּם זֶרֶק – ONE [WHOSE CLAIM] to a property COMES BY VIRTUE OF INHERITANCE** **אֵינוֹ צָרִיךְ טַעְנָה – NEEDS NO PLEA** as to the source of his ownership, because the court pleads on his behalf. Why must our Mishnah repeat the identical law?

The Gemara answers:

לֹקָה אֵינְטְרִיבָא לִיה – [Our Mishnah] is necessary because it teaches this law in regard to a purchaser. The other Mishnah merely stated it with respect to an heir.

The Gemara asks further:

וְיֹרֵשׁ נִמִּי תִנְיָא – With regard to a purchaser as well, we have been taught this law in another Mishnah:^[18] **לִקְחָ הָצֵר וְהָזִין – if ONE PURCHASED A COURTYARD, WHICH HAS LEDGES AND BALCONIES** that extend over the public domain, **וְהָיָה כְּחֶזְקָתָהּ – IT RETAINS ITS CHAZAKAH,** for we plead on behalf of the purchaser that the seller built the projections legally.^[19] Why must our Mishnah repeat this law?

NOTES

12. *Bava Kamma* 79b.

13. Thirty *riss* are equal to four *mil* (*Rashi*, from Mishnah, *Yoma* 67a). There are 2,000 *amos* in a *mil* and thus, four *mil* equal 8,000 *amos*.

14. This Baraisa is an elaboration of the previously cited Mishnah (see *Tosefta*, *Bava Kamma* 8:4).

15. Doves belonging to a Canaanite that fly into one's trap are considered the Canaanite's lost property, which the finder is permitted to keep (see *Bava Kamma* 113b).

16. [A *chazakah* for the ownership of real property is established by three years of continuous occupancy. After three years, if the occupant is challenged by a previous owner of the property who claims that it is still his, he is not required to produce proof of ownership, for he is presumed to have acquired the property from the previous owner. However, he is required to advance a valid claim as to how he came to own the property; i.e. that the previous owner sold it to him or granted it to him as a gift.] Three years of unchallenged occupancy with no valid claim to the property do not suffice to establish a *chazakah* (Mishnah, below 41a; see Introduction to Chapter Three). Nevertheless, there is a law that if one occupies a property for three years and then sells it, or dies and leaves it to an heir, the purchaser or the heir need not advance a claim as to the source of their ownership. All that they need do to retain possession of the property is prove that their benefactor enjoyed three years of unchallenged occupancy. Since they cannot be expected to know with certainty how their benefactor acquired the property, the

court is obliged to consider (“to plead”) on their behalf the claim that he purchased it from the original owner.

Our Mishnah teaches us this law, since it rules that one who purchases a dove-cote on a small plot of land retains the *chazakah* that was established by the previous owner. Although he may not know what right the seller had to build the dove-cote, the court pleads on his behalf that the seller negotiated a deal with the neighbors whereby they sold him the right to build the dove-cote within fifty *amos* of their property (*Rashi*).

17. Below, 41a.

18. Below, 60a.

19. Emendation follows *Bach*. [זִין, *ledges*, are small extensions; גִּזְזִינָא, *balconies*, are larger extensions (*Rashbam*, 60a).]

The preceding portion of this Mishnah (60a) teaches that one who builds a house may not construct ledges or balconies that extend over the public domain because passersby might bump into them. However, if he chooses to draw the wall of his house back from the edge of his property, he may build a ledge that extends until the boundary. The segment of the Mishnah cited here continues that one who purchased a courtyard from which a ledge or a balcony protrudes retains the *chazakah* that the previous owner enjoyed, because we plead on his behalf that the previous owner built the extension legally, either by recessing his wall and building it on his own property, which was then utilized by the public, or by acquiring permission from the public to build it over the public domain (*Rashi*).

The Gemara answers:

דאי אשמעין הנהם גבי – Both Mishnahs are necessary. – צריכא
 רשות הרבים – For if [the Mishnah] had taught this ruling
 there, in the case of ledges that extend over the public domain,
 I might have said that only in that case do we plead on behalf of a
 purchaser, דאימור בוגס לתוף שלו הוא – for it is reasonable to
 say that [the previous owner] recessed the wall into his
 property and built the extension over his own land, אי נמי אחולי
 גביה – or that the public^[20] yielded him
 the right to build an extension over their domain, since it is
 unlikely that anybody could have defied the public and built it
 illegally. Therefore, our claim on behalf of the purchaser is well
 grounded. – אבל הכא – But here, in the case of a dovecote that is
 harmful to an individual neighbor לא – we do not plead on the
 purchaser's behalf, because we must consider the possibility that
 the previous owner was a powerful person, whom the neighbors
 were unable to prevent from building the dovecote illegally. Our
 Mishnah therefore teaches us that in this case we also plead on
 behalf of the purchaser.^[21]

The Gemara's answer continues:

ואי אשמעין הכא – And if [the Mishnah] had taught this rule
 here, in the case of a dovecote, I might have said that only in this
 case do we plead on the purchaser's behalf, דכיון דיחיד הוא – for
 since [the neighbor] affected by the dovecote is an individual,
 אימא פיוסיה (ה) פיוסיה – it is plausible to say that [the previous

owner] came to terms with him and acquired the right to build
 the dovecote, אי נמי אחולי גביה – or that [the neighbor]
 yielded him the right to build the dovecote. – אבל רבים – But
 with regard to a public that is endangered by a protruding ledge,
 מאן פויס – with whom could he possibly have come to terms?
 וימאן שביק – And who could have yielded the public's right to
 object? Nobody is authorized to act on the public's behalf in this
 matter!^[22] – אימא לא – Accordingly, I might say that we do not
 plead on the purchaser's behalf. – צריכא – Therefore, another
 Mishnah is necessary, to teach us that we plead on behalf of the
 purchaser, even in that case.^[23]

The Mishnah concludes:

הרי הוא בחזקתו – [THE DOVECOTE] RETAINS ITS CHAZAKAH.

The Gemara raises a question:

– והא אמר רב נחמן אמר רבה בר אבוה – But Rav Nachman has said
 in the name of Rabbah bar Avuha: אין חזקה לנזקין – There is
 no *chazakah* for damage! Accordingly, how can a *chazakah* have
 been established for a dovecote that is a source of damage to the
 neighbors?

The Gemara answers:

– רב מרי אמר בקיטרא – Rav Mari said: Rav Nachman's ruling
 applies to smoke. – רב זביד אמר בבית הכסא – Rav Zevid said: It
 applies to an outhouse. However, a *chazakah* can be established
 for less objectionable sources of damage.^[24]

NOTES

20. Literally: members of the public domain.

21. Although we have no compelling reason to assume that the claim is true, it is nevertheless a plausible claim and we therefore plead it on behalf of the purchaser.

22. Earlier, the Gemara did consider the possibility that the public yielded him the right to build an extension over their domain, because the seven trustees of a city, acting in the presence of the townspeople, are authorized to yield public property (*Tosafos*; see *Megillah* 26a). Here, however, the Gemara rejects that consideration, because it is

unlikely that they would do so (and had they indeed done so, it would most likely be common knowledge). Accordingly, the Gemara states that although the passersby may have yielded their objection to the extension, they are not authorized to act on behalf of the entire populace.

23. We plead on behalf of the purchaser that the seller recessed the wall of his house and built the protrusion over his own property, which was subsequently utilized by the public (*Ritva*).

24. See notes 5-7.

Mishnah Pursuant to the previous Mishnah which dealt with dovecotes, the following Mishnah discusses further laws that apply to a dovecote. Specifically, it deals with the status of a bird whose ownership is unknown that is found near a dovecote:^[1]

הרי הוא של בעל השוכך – If a young dove was found within fifty amos of a dovecote, it belongs to the owner of the dovecote. חוץ מחמשים אמה – But if it was found more than fifty amos away from the dovecote, הרי הוא של מוצאו – it belongs to the one who found it.^[2]
 נמצא בין שני שוככות – In the event that a bird was found between two dovecotes,^[3] the law is as follows: קרוב לזה – If it was found closer to this [dovecote], it belongs to [the owner of this dovecote]; קרוב לזה שלו – if it was found closer to [the other dovecote], it belongs to [the owner of that dovecote]. מחצה על מחצה שניהם – If both dovecotes are equal^[4] in distance from the bird, the two [owners] divide it.

Gemara Two principles can be used to determine the origin of a found object: (1) The principle of רוב, majority, stipulates that the object is from the same place as the majority of such objects. (2) The principle of קרוב, proximity, stipulates that it is from the nearest location of such objects. The Gemara discusses what the law is when these two principles are in conflict:

רוב וקרוב הולכין אחר הרוב – R' Chanina said: – When a conflict arises between the principles of “majority” and “proximity,” one follows the principle of “majority.”
 ואף על גב דרובא דאורייתא וקרובא דאורייתא – Although the principles of “majority” and “proximity” are both of Scriptural origin,^[5] nevertheless, the principle of “majority” is superior.

R' Chanina's rule is challenged:

והיה העיר – R' Zeira challenged this rule: מתיב רבי זעיר – Scripture states: *And it shall be that the town which is nearest to the slain person, the elders of that town shall take a calf etc.*^[6] The Torah rules that the obligation of the “decapitated calf” devolves upon the nearest town, ואף על גב דאיקא אחריתי דנפישא מינה – and, since the Torah does not state otherwise, it would seem that this ruling applies even in a case where there is another [town] in the area which is larger (i.e. more populous) than it [the nearest town]. This indicates that, contrary to R' Chanina's ruling, the principle of “proximity” overrides that of “majority.” – ? –

The Gemara rejects the assumption of the question:

בדליקא – The Torah obligates the nearest town only in a case where there is no town in the area larger than it.^[7]

The Gemara persists:

וליוזיל בתר רובא דעלמא – But we should follow the “majority of the world”! I.e. since people from the world at large pass through

the area in which the corpse was found, the murderer might have come from a town far from this area, which is larger than the nearest town.^[8] Hence, the fact that the Torah obligates the nearest town proves that, contrary to R' Chanina's ruling, the principle of “proximity” overrides that of “majority.” – ? –

The Gemara answers:

ביושבת בין ההרים – The Torah refers to [a town] that is situated between mountains. It is in an isolated area that is not frequented by people from elsewhere.^[9]

The Gemara attempts to refute R' Chanina's ruling from our Mishnah:

ניפול הנמצא בתוך חמשים – We learned in our Mishnah: הרי הוא של בעל השוכך – If a young dove was found within fifty amos of a dovecote, it belongs to the owner of the dovecote. The Mishnah rules that the bird is from the dovecote that is within fifty amos, ואף על גב דאיכא אחרת – and, since the Mishnah does not state otherwise, it would seem that this ruling applies even in a case where there is another [dovecote] in the area which is larger than [this dovecote] but is more than fifty amos from the bird. Since the Mishnah rules that the bird is from the nearer dovecote rather than the larger one, evidently, the law is that, contrary to R' Chanina's ruling, the principle of “proximity” overrides that of “majority.” – ? –

The Gemara rejects the assumption of the question:

בדליקא – The Mishnah's ruling applies only in a case where there is no dovecote in the area that is larger than this one.^[10]

The Gemara challenges this interpretation of the Mishnah:

אי הכי – If this is so, that the Mishnah speaks of an instance where there is no dovecote in the area larger than this one,

NOTES

1. Were it not for its connection to the previous Mishnah, this Mishnah would have been included in the second chapter of *Bava Metzia*, which deals with the laws of found articles (*Ritva*).

2. These laws are explained in the Gemara.

3. But within fifty amos of each one (*Rashi*; see note 18).

4. Literally: half by half.

5. The principle of “majority” is derived from the verse (*Exodus 23:2*): *אחרי רבים להטת*, which is interpreted to mean, [follow] after the majority to tilt [the scales of judgment] (see *Chullin 11a*).

The principle of “proximity” is derived from the passage of *עגלה ערופה*, the decapitated calf (*Deuteronomy 21:1-9*). The Torah commands that if the corpse of a murdered person is found and it is not known who killed him, a measurement must be made to ascertain which town is nearest to the corpse (the presumption being that the murderer came from there). The elders of that town bring a calf to an untilled valley and kill it there by breaking its neck. They then make a statement denying responsibility for the murder (*Rashi*).

6. *Deuteronomy 21:3*. See previous note.

7. All the towns [in the vicinity] are equally populous (*Rashi*). Since all of the towns have the same population, the principle of majority does not help to identify the town from which the murderer came. Therefore, we follow the principle of “proximity,” which stipulates that the murderer

came from the nearest town.

An apparent difficulty: Since most of the residents of the area do not live in the nearest town; the principle of “majority” stipulates that the murderer is not from that town! So why is the nearest town obligated? [*Ritva* answers this difficulty by stating that we speak of a case where there are only two towns in the vicinity. However, *Rashi* implies (see *ד"ה כ"א*) that there are more than two towns in the area.]

Tosefos Rid answers that the various other towns cannot be combined to form a majority because each town is viewed as a separate entity. Therefore, since the murderer must have come from one of the towns, and no single town is larger than any of the others, we must assume that he came from the nearest town (see *Chidushei Chasam Sofer*, *Chidushei R' Shimon*).

8. *Tosefos Rid*.

9. Thus, the murderer must have come from one of the towns in the vicinity. (See first paragraph of note 7.)

In conclusion: The passage of *עגלה ערופה*, the decapitated calf, refers to an area that is not frequented by people from elsewhere and in which each town in the area has the same population. It is only in such a case that a measurement is made (see note 5), and the obligation devolves upon the town nearest to the corpse.

10. I.e. all the dovecotes in the area are of the same size (see *Tosefos Rid*, note 7).

חזק – consider the latter clause of the Mishnah: חזק – But if it was found MORE THAN FIFTY AMOS AWAY from the dovecote, IT BELONGS TO THE ONE WHO FOUND IT. ואי דליכא – Now if there is no dovecote in the area larger than this one, ודאי מהרהר נפל – [the dove] certainly fell from this [dovecote]!¹¹ Why then does the Mishnah rule that the finder can keep the dove?¹²

It is evident, therefore, that the Mishnah speaks of a case where there is a larger dovecote in the area. But if so, the original question falls back into place: Why, in the case where the bird was found within fifty amos of a dovecote, does the Mishnah award the bird to the owner of the dovecote?¹³

Its previous answer having been rejected, the Gemara advances a different answer:

במדרה – What are we dealing with here? – The Mishnah refers to a [bird] that only hops, for it is too young to fly. If such a bird is found within fifty amos of a dovecote, it is awarded to the owner of that dovecote even if there is a larger dovecote more than fifty amos away, דאמר רב עוקבא בר חמא – for Rav Ukva bar Chama said: כל המדרה אין מדרה יותר מחמשים – Any bird that hops (for it is too young to fly) does not hop more than fifty amos from its nest. The bird could not have come from the larger dovecote for it is more than fifty amos away from it. Therefore, without resort to the principle of “proximity,” the bird is awarded to the owner of the dovecote that is within fifty amos.¹⁴

R' Yirmiyah raised a question concerning the Mishnah's teaching:

ר' ירמיה שאל – R' Yirmiyah asked: רגלו אחת בתוך חמשים אמה – If a bird was found with one of its legs within fifty amos of a dovecote ורגלו אחת חוץ לחמשים אמה – and one of its legs more than fifty amos away from the dovecote, מהו – what is [the

law]? Does the bird belong to the finder or the dovecote owner?¹⁵

The Gemara relates:

ועל דא אפקיהו לרבי ירמיה מבי מדרשא – And for asking this question, [the Rabbis] ejected R' Yirmiyah from the house of study.¹⁶

The Gemara now attempts to disprove R' Chanina's ruling from the second half of our Mishnah:

הא שמע – Come, learn the following proof from our Mishnah: נמצא בין שני שוכבות – In the event that a bird was FOUND BETWEEN TWO DOVECOTES, the law is determined as follows: קרוב לזה שלו – If it was found CLOSER TO THIS dovecote, IT BELONGS TO [THE OWNER OF THIS DOVECOTE]. וקרוב לזה שלו – BUT if it was found CLOSER TO THE OTHER dovecote, IT BELONGS TO [THE OWNER OF THAT DOVECOTE]. The Mishnah rules that the bird is from the nearer dovecote, ואף על גב דחד מיניהו נפיש מחבריה – and, since the Mishnah does not state otherwise, it would seem that this ruling applies even in a case where one of [the two doveccotes] is larger than the other. This proves that, contrary to R' Chanina's ruling, the principle of “proximity” overrides that of “majority.” – ? –

The Gemara rejects the assumption of the question:

ששניהו שוין – What are we dealing with here? – The Mishnah refers to a case where both [doveccotes] are equal in size.¹⁷

The Gemara persists:

ולאיל בתר רובא דעלמא – But we should follow “the majority of the world!” Since there are birds flying through this area that could have come from anywhere in the world at large, the finder of the bird should be allowed to keep it.¹⁸ – ? –

The Gemara answers:

הא במאי עסקין – What are we dealing with here?

NOTES

11. [For it is the nearest dovecote and there is none larger than it.]

12. This is not a problem if we say, as the Gemara originally assumed, that there is a dovecote in the area larger than the nearest one. In such a case, the Mishnah's ruling is in order, for one could say that the largest dovecote is ownerless and therefore its birds become the property of whoever finds them (*Tosafos*).

The thrust of the Gemara's challenge to R' Chanina is as follows: What difference does it make whether the bird was found more or less than fifty amos away from the nearest dovecote? If there is a larger (ownerless) dovecote in the area, the finder should be allowed to keep the bird even if it was found within fifty amos of the nearest dovecote. And if there is no larger dovecote in the area, the bird should be awarded to the owner of the nearest dovecote even if it was found more than fifty amos away. Thus, whichever way the Mishnah is understood, it does not seem to conform to R' Chanina's ruling.

An apparent difficulty: But even if we take the opposite position, viz. the principle of “proximity” overrides that of “majority,” the same difficulty applies: What is the reason for the Mishnah's distinction between more than and less than fifty amos? In either case, the bird should be awarded to the owner of the nearest dovecote. (See *Rabbeinu Yonah* for an answer to this question.)

13. [According to R' Chanina, the bird should be awarded to the one who found it, for in his view the principle of “majority” overrides that of “proximity” (see first paragraph of previous note).]

It should be noted that the Gemara could have asked a different question: Birds fly through this area that are not from any of the doveccotes in the area. So if R' Chanina's ruling is correct that the principle of “majority” overrides that of “proximity,” the finder should be allowed to keep the bird even in the event that he finds it within fifty amos of a dovecote. Why does the Mishnah rule that in such a case the bird belongs to the owner of the dovecote?

Instead of asking this question, the Gemara asked a stronger one (*Rashi*).

14. In the Mishnah's latter case, however, where the bird was found

more than fifty amos away from the nearest dovecote, [even if currently it is only hopping] it is assumed to have the capacity to fly, for otherwise it could not have come this far. Now, a bird that is capable of flying could have come from anywhere within flying range (*Rashi*). Therefore, the finder may keep it.

15. [Is such a bird deemed to have the capacity to fly and therefore is awarded to the finder? Or is it incapable of flying and therefore must have come from the nearest dovecote?]

16. They ejected him because he was burdening them (*Rashi*) with an absurd question (*Ritva's* understanding of *Rashi*).

Some say that the problem with R' Yirmiyah's inquiry was not that it was purely hypothetical. Indeed, our Mishnah speaks of a case where a bird was found equally distant from two doveccotes. (This must refer to a case where the bird had one foot on one side of the line that is equidistant from the two doveccotes and one foot on the other side of the line – *Rashba*.) Rather, R' Yirmiyah was ejected because he should have known that all Rabbinic measurements are absolute. If even only one of its legs is more than fifty amos from the dovecote, the bird cannot be classified as one that lacks the capacity to fly (*Tosafos* et al.). By raising this question, R' Yirmiyah displayed a lack of respect for Rabbinic law (*Ritva*).

[R' Yirmiyah's expulsion was only temporary. Later, when he displayed the proper respect, he was readmitted to the study hall (see below, 165b).]

17. [But where one is larger than the other, the bird would be deemed the property of the owner of the larger dovecote.]

18. Since the Mishnah does not state otherwise, it is assumed that it refers even to a bird found more than fifty amos from the doveccotes. Such a bird is deemed to have the capacity to fly (see note 14).

The Gemara could have resolved this difficulty by stating that the Mishnah refers specifically to a case where the bird was found within fifty amos of the doveccotes (*Tosafos*). [Indeed, this is how *Rashi* explained the Mishnah (see note 3).] The Gemara, however, proceeds to give a different answer.

בשכיל של כרמים – The Mishnah refers to a case where the dovescotes between which the bird was found were situated at opposite ends of a path between vineyards. In such a case, even if the bird is found more than fifty *amos* from one of the dovescotes, there is no basis for assuming that it is capable of flying, for it could have hopped more than fifty *amos* by using the vines as a guide. Now, since it is incapable of flying, it could only have come from one of these two dovescotes, דאם איתא דמיעלמא – **for if you will argue that it came from elsewhere** (i.e. it hopped from other dovescotes that are on the other sides of the vineyards), one could retort: כיון דמידדי לא מצי אהי – **Since it hops** (for it is incapable of flying), **it would not have been able to come here**, דכל דמידדי והדר חוי ליה לקנייה – **because as long as [such a bird] can hop and still turn around and see its nest**, מידדי – **it will continue to hop**, ואי לא לא מידדי – **but if it is not able to see its nest, it will not continue to hop**. Therefore, since the vineyards block the sight of the other dovescotes from the path, a young bird would not have hopped from those dovescotes to the path.^[1]

Abaye adduces support for R' Chanina's ruling that the principle of "majority" overrides that of "proximity":
אמר אביי – Abaye said: אף אגן נמי תנינא – **We have also learned this in a Mishnah:**^[2] דם שנמצא בפרוזדור – **If BLOOD WAS FOUND IN "THE CORRIDOR"** (i.e. the vaginal canal),^[3] ספיקו – **even though IT IS of QUESTIONABLE origin**, for it could have come from either the uterus (in which case it is *tamei*), or "the upper chamber"^[4] (in which case it is *tahor*), IT IS deemed definitely *TAMEI*,^[5] שחוקתו מן המקור – **BECAUSE IT IS ASSUMED to have come FROM THE UTERUS**. ואף על גב דאיכא עלייה – **And this is so even though there is "the upper chamber" above the vaginal canal, which is in fact closer to the vaginal canal than the uterus is and from which the blood might have come!** Presumably, the reason for this ruling is that there is *more* blood coming from the uterus than from "the upper chamber." Thus, we see that the principle of "majority" overrides

that of "proximity."

Rava rejects the proof:

רוב ומצוי קא אמר – Rava said to [Abaye]: **You speak of a case in which two factors – "majority" and "frequency"**^[6] – conflict with the principle of "proximity!"^[7] רוב ומצוי ליכא למאן דאמר – **Regarding a case where the factors of both "majority" and "frequency" conflict with the principle of "proximity," no one says that we follow the principle of "proximity."** Hence, this Mishnah does not prove R' Chanina's ruling that the principle of "majority" alone takes precedence over that of "proximity."

The Gemara cites a related Baraisa:

For^[8] R' Chiya taught the following Baraisa: דם הנמצא בפרוזדור – **If BLOOD WAS FOUND IN "THE CORRIDOR"** (i.e. the vaginal canal) of a woman, it renders her *tamei* to the extent that חייבין עליו על ביות מקדש – **ON ACCOUNT OF IT, [SHE] IS LIABLE to bring a chatas offering FOR ENTERING THE TEMPLE,**^[9] ושורפין עליו את התרומה – **AND, ON ACCOUNT OF IT, TERUMAH touched by her IS BURNED.**^[9]

Evidently, R' Chiya holds that blood found in a woman's vaginal canal renders her *tamei* beyond any doubt.^[10] This is the basis for the following statement by Rava:

ואמר רבא – And^[11] Rava said: שמע מינה מדרבי חייא תלת – **One can learn three points from this statement of R' Chiya:** שבע – **Firstly, one can learn from it that where a רוב וקרוב – conflict arises between the principles of "majority" and "proximity," we follow the principle of "majority."**^[12]

רובא דאורייתא – **Secondly, one can learn from it that the principle of "majority" is Scriptural in origin.**^[13] ושמע – **And thirdly, one can learn from it that R' Zeira's ruling is correct.** דאמר רבי זירא – **For R' Zeira said in reference to a Baraisa which permitted meat found in the street of a city the majority of whose butchers sell kosher meat: "The Baraisa's ruling applies even where the gates of the city are locked** (i.e.

NOTES

1. *Rashba*; see *Tosafos*.

2. *Niddah* 17b.

3. The Mishnah uses the layout of a building as a metaphor for the reproductive organs in a woman's body. The uterus, which is towards the back of the body, is described as "the room." The vaginal canal, which leads from the uterus, is called "the corridor." There is a cavity above these organs which is referred to as "the upper chamber" (*Rashi*). [As is consistent with our policy, our elucidation of the following passage reflects *Rashi's* approach. However, as noted by *Chasam Sofer*, it is difficult to reconcile *Rashi's* approach with current anatomical knowledge. See *Chasam Sofer* to *Niddah* 18a, *Rambam Commentary to Mishnah* *ibid.* 17b.]

4. See note 3.

5. The emission of menstrual blood renders a woman *tamei* (*Leviticus* 15:19). The blood itself is also *tamei* (*Mishnah, Niddah* 54b; see *Gemara* there).

6. Not only is the blood of the uterus more plentiful than any blood that might be found in "the upper chamber" but it is more likely to flow into the uterus than the blood of the upper cavity is (*Rashi*). [Only a wound would cause the presence of blood "in the upper chamber" and its emission into the uterus.]

7. The presence of the word "for" (the *dalei* prefix of דהני) is difficult to explain, because the following does not support the immediately preceding statement. *Tosafos* suggest that the following Baraisa is cited by the *Gemara* to support Abaye's proof that was stated above. Since the Mishnah adduced by Abaye can be interpreted as meaning that the woman is only questionably *tamei*, the *Gemara* cites the following Baraisa to prove that the Mishnah means that the woman is definitely *tamei* (see the next two notes) and therefore Abaye's proof from the

Mishnah is valid.

From *Tosafos* it seems that there is an alternative version of the text which lacks the *dalei* prefix – דהני רבי חייא, *R' Chiya taught*. According to this version, the following is a new point cited for the sake of pointing out a contradiction between two statements of Rava (see the continuation of the *Gemara*).

8. It is an offense to enter the Temple while in a state of *tumah*. One who does so unintentionally is liable to bring a *chatas* offering.

Since R' Chiya rules that this woman is liable to bring a *chatas* offering, evidently he holds that she is *tamei* beyond any doubt. For if her *tumah* status would be in question, her offering might not be consecrated and she would not be *allowed* to bring it to the Temple lest she violate the prohibition against bringing unconsecrated animals into the Temple [as an offering] (*Rashi*).

9. [*Terumah* is the portion of the crop (typically between 1/40 and 1/60) that must be given to a Kohen. *Terumah* that is *tamei* may not be eaten. If it is *tamei* beyond any doubt, it is burned.] If it is questionably *tamei*, it is neither eaten nor burned. From R' Chiya's ruling that *terumah* is burned if it was touched by a woman whose vaginal canal was found to contain blood, it is evident that he considers such a woman to be definitely *tamei* (*Rashi*).

10. See the two preceding notes.

11. *Bach* deletes the *vav* prefix, which usually means *and* (see note 7).

12. [Otherwise, the woman would not be definitely *tamei*.] This contradicts Rava's prior statement that no such inference can be drawn. The *Gemara* addresses this problem below.

13. If it were a Rabbinic principle, the woman's status of *tumah* would be only Rabbinic. One does not bring a *chatas* offering or burn *terumah* on account of Rabbinic *tumah*.

there is only one “majority”).^[14] דְּהָא אִשָּׁה דְּכִי דָּלְתוֹת מְדִינָה – For the case of blood that was found in the vaginal canal of a woman is analogous to the case of meat found in a city whose gates are locked, for in the case of the woman as well there is only one “majority.”^[15] וְאִפְּלוּ הָכִי קָא אָלְיִנָּן בְּתֵר רִיבָא – and yet R' Chiya ruled that we follow the principle of “majority” in that case.

The Gemara points out a contradiction in the statements of Rava:

רוֹב – But it was Rava who said above: וְהָא רַבָּא הוּא דְקָאָמַר – Regarding a case where the factors of both “majority” and “frequency” conflict with the principle of “proximity,” no one says that we follow the principle of “proximity.” With this reasoning, Rava rejected Abaye’s attempt to prove from the case of blood found in the vaginal canal that the principle of “majority” overrides that of “proximity.” But here, Rava himself adduces this very proof! – ? –

The Gemara answers:

הָרִר בֵּיהּ רַבָּא מְהֵיָא – Rava retracted [that statement]. That is, Rava retracted his rejection of Abaye’s proof.^[16]

The Gemara suggests that R' Chanina’s ruling is a matter of dispute between Amoraim:

אֵיתָמַר – It was stated – חֲבִית שְׂצֵפָה בְּנָהָר – concerning a keg of wine whose origin is unknown that was found floating in the River Euphrates: אָמַר רַב – Rav said: נִמְצְאָת בְּנָהָר עִיר שְׂרוּבָה – If it was found floating parallel to a city the majority of [whose residents] are Jews, [the wine] is permitted. – If it was found floating parallel to a city the majority of [whose residents] are non-Jews, [the wine] is forbidden.^[17] – וּשְׂמוּאֵל אָמַר – But Shmuel says: אִפְּלוּ נִמְצְאָת בְּנָהָר עִיר שְׂרוּבָה וְיִשְׂרָאֵל אֲסִירָא – Even if [the keg] was found floating parallel to a city the majority of [whose residents] are Jews, [the wine] is forbidden, – אֵימַר – for I can say – מֵהָא דְקָרָא אֲתָא – that it came down the river from Hai Dekira (a non-Jewish province situated on the banks of the Euphrates).^[18]

The Gemara shows how this dispute between Rav and Shmuel corresponds to the ruling of R' Chanina:

לֵימָא בְּדִרְבֵּי חֲנִינָא קָא מִיפְּלִגִּי – Shall we say that they differ with regard to R' Chanina’s ruling that the principle of “majority” supersedes that of “proximity”? – דִּמְר אֵית לֵיהּ דְּרַבִּי חֲנִינָא – One master [Shmuel, who rules that the wine is forbidden, as is the majority of the wine in the entire region, even if it was found nearest to a Jewish town] agrees with R' Chanina’s ruling. – וְיִמַר לִית לֵיהּ דְּרַבִּי חֲנִינָא – And the other master [Rav, who rules that if the wine is found nearest to a Jewish town, it is permitted,

even though the majority of the wine in the region is forbidden] disagrees with R' Chanina’s ruling.

The Gemara counters that this explanation of the dispute is not compelling:

לֹא – This is not necessarily the correct explanation of the dispute between Rav and Shmuel. – דְּכֻלֵּי עֲלָמָא אֵית לְהוּ דְּרַבִּי חֲנִינָא – For it is possible that all [Rav and Shmuel] agree with R' Chanina’s ruling that the principle of “majority” overrides that of “proximity.” – וְהָא בְּהָא קְמִיפְּלִגִּי – And here, they argue about the following: – דִּמְר סָבַר – One master [Rav] reasons that the keg could not possibly have come from Hai Dekira – אִם אֵיתָא – for if it had come from Hai Dekira, – עֲקוּלִי – the eddies and stagnant bodies of water that are so commonplace in the river would have prevented it^[19] from flowing downstream. – וְיִמַר סָבַר – And the other master [Shmuel] reasons that it could have come from Hai Dekira, – חֲרִיפָא דְנִהָרָא נָקַט וְאֲתָא – for it could have caught the swift current in the middle of the river and thus come downstream without being obstructed on the way. According to this explanation of their argument, Rav and Shmuel do not dispute the validity of R' Chanina’s ruling; rather, they argue as to whether it is applicable in this case.

The Gemara cites an incident related to the ruling of R' Chanina:

– There was this barrel of wine that was found in a vineyard of *orlah*,^[20] and it was not known whether the wine had been stolen from this vineyard (in which case it would be forbidden as *orlah*) or whether it had come from some other vineyard.^[21] – שְׂרִיָא רַבִּינָא – Ravina permitted the wine. He was not concerned that it might have been stolen from this vineyard.

The Gemara inquires:

– Shall we say that Ravina permitted the wine because he agrees with R' Chanina’s ruling? This would seem to be so, since Ravina assumed that the wine came not from the nearest vineyard, but from any one of the vineyards in the world at large, the majority of which are not *orlah*.

The Gemara responds that it is not evident from Ravina’s decision that he agrees with R' Chanina’s ruling, for his decision might have been based on a different consideration:

– That case is different. Perhaps, Ravina reasoned that the wine could not have been stolen from this particular vineyard, – דָּאִי מִיִּגְנוֹב מִינָה – for if it had been stolen from [this vineyard], – אֲעִנְיָא בְּגִינָה לֹא מִצְנֵי – [the thieves] would not have hidden it [there], lest it be discovered.^[22]

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14. In some cases, the Rabbis legislated that a single “majority” is insufficient and two “majorities” are required (see *Kesubos* 15a). Therefore, one might have thought that this Baraisa’s ruling applies only where butchers from elsewhere bring meat into the town and most of these visiting butchers sell kosher meat, in which case there are two “majorities” which dictate that the meat is kosher: (1) the majority of stores in the town; (2) the majority of butchers visiting the town. To reject this understanding of the Baraisa, R' Zeira states (ibid.) that even where the gates of the city are locked and no one brings in meat from outside, the found meat is nevertheless assumed to be kosher (*Rashi*).

15. Viz. most of the blood found in that part of her body will have come from the uterus.

16. Upon further reflection, Rava concluded that the case of blood found in the vaginal canal is indeed a valid proof for R' Chanina’s ruling that the principle of “majority” overrides that of “proximity.” [The Gemara does not explain why the phenomenon of “frequency” does not make a crucial difference. Possibly, the reason is that “frequency” is merely *due*

to majority, rather than an independent factor.]

17. It is forbidden to derive benefit from wine that was used for idolatrous purposes [יֵין נֶסֶךְ, *libation wine*]. The Rabbis extended this prohibition to include any wine that was touched by a non-Jew [יֵינָם, *their standard wine*].

18. [Hai Dekira is mentioned as an example of a non-Jewish province that was located upstream from the major Jewish centers of population (e.g. Nehardea, Pumbedisa) in the Euphrates region.]

19. Literally: would have sunk it.

20. *Orlah*, is fruit that grows on a tree during its first three years. The Torah forbids the derivation of benefit from such fruit (see *Leviticus* 19:23).

21. Since the owner of the vineyard knows nothing about this barrel, it must have been brought there from another vineyard, or else it was stolen from this vineyard (see *Rabbeinu Yonah*).

22. By the workers who press the grapes (*Rashi*; see following note).

The Gemara adds:

אָבֵל עֵינְבִי – This reasoning applies to wine. וְהָיָה מִלִּי חֲמֻרָא – But, as far as grapes are concerned, [thieves] might hide them in the very vineyard from which the grapes had been stolen.^[23]

The Gemara cites another incident related to the ruling of R' Chanina:

הָיוּ זֵקִי דְחֻמְרָא – There were these leather bags of wine דְּאִשְׁתַּבְּחָן בֵּי קוּפְאֵי – that were found between the vines of a vineyard that belonged to a Jew. Even though they might have fallen from a non-Jew, in which case they would be forbidden,^[24] שְׁרָהוּ רָבָא – Rava permitted them.

The Gemara asks:

לִימָא לָא סָבֵר לָהּ לְרַבִּי חֲנִינָא – Are we to say that [Rava]

disagrees with [the ruling] of R' Chanina? In this case, it would seem that the principle of "majority" dictates that the bags of wine are forbidden, for most of the people from whom they could have fallen are non-Jews; whereas, the principle of "proximity" dictates that they are permitted, for the location in which they were found was frequented by Jews. Thus, Rava, who permitted the wine, apparently favors the principle of "proximity" over that of "majority." This runs contrary to R' Chanina's ruling which stipulates that the principle of "majority" is superior. – ? –

The Gemara responds that Rava could hold, as R' Chanina does, that the principle of "majority" overrides that of "proximity," and yet he permitted the wine for the following reason:

שְׂאֵנִי הָתָם – That case is different. דְּרוּבָא – Since, in the region under discussion, most

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23. For thieves could steal grapes before the harvest, at a time when there are no workers in the vineyard, and hide them there without fear of the grapes being discovered. But wine is present in a vineyard only when the grapes are pressed; hence, thieves would not leave wine in a vineyard lest it be discovered by the workers who press the grapes (*Taz Yoreh Deah* 294:17 as explained by *Nachalas Moshe*; see previous note;

cf. *Rabbeinu Yonah*).

Therefore, if grapes are found in a vineyard of *orlah*, they would be forbidden were it not for R' Chanina's ruling that the principle of "majority" overrides that of "proximity" (*Rabbeinu Yonah*; cf. *Ramban*, *Ritva*, *Nimukei Yosef*).

24. See note 17.

וְשֹׁכְבֵי יִשְׂרָאֵל נִינְהוּ – of those who pour wine into bags (in order to sell the wine) are Jews, if one finds bags of wine they most probably fell from a Jew.

The Gemara explains further:

וְהָיָה מִלִּי בְּרִבְרֵי – Now, this presumption is valid with regard to large [bags], which are used by wine merchants and not by travelers.^[1] אֲבָל וּזְרָקִי – But if one finds small [bags], the wine in them is forbidden, אִימור מְעוֹבְרֵי דְרָבִים נָפֹל – for I could say that they fell from travelers, the majority of

whom are non-Jews.

A qualification:

וְאִי אִיבָא בְּרִבְרֵי בְּהוֹדְיָהוּ – But if there are large [bags] found together with [the small ones], even the small ones are permitted. The large bags must have come from a wine merchant, for travelers do not carry large bags with them. And, as far as the small bags are concerned, אִימור בְּאִבְרֵי הָהָּ מִנְחֵי – I could say that they were placed on the wine merchant's animal (that was carrying the large bags) for the sake of balancing its load.

Mishnah The Mishnah returns to the subject of items that must be distanced from a neighbor's property:

מִרְחִיקִין אֶת הָאֵילָן מִן הָעִיר עֶשְׂרִים וְחֲמִשָּׁה אַמָּה – One must distance a tree twenty-five amos from the edge of a city, וּבְחֶרֶב וּבְשִׁקְמָה – and a carob or a sycamore tree, חֲמִשִּׁים אַמָּה – fifty amos.^[2] אֲבָא שְׂאוּל – Abba Shaul says: כָּל אֵילָן סָרֵק חֲמִשִּׁים אַמָּה – All barren trees must be distanced fifty amos.^[3]

The Mishnah now turns to the law of a tree that has already been planted within the forbidden area:

וְאִם הָעִיר קָדְמָה – If the city was there first and one planted a tree afterward, קוֹצֵץ וְאִינוּ נֹתֵן דָּמִים – he must cut down the tree, and [the city] need not pay compensation. וְאִם אֵילָן קָדָם – However, if the tree came first and the city was built afterward, קוֹצֵץ וְנֹתֵן דָּמִים – he must nevertheless cut down the tree, and in this case [the city] pays compensation.^[4] סָפֵק זֶה קָדָם וְסָפֵק זֶה קָדָם – If it is unclear whether [the tree] or [the city] came first, קוֹצֵץ – he must cut down the tree, וְאִינוּ נֹתֵן דָּמִים – and [the city] need not pay compensation.^[5]

Gemara The Gemara seeks the reason for the Mishnah's rule:

מַאי טַעְמָא – What is the reason that trees must be distanced from a city?

The Gemara explains:

אִמְרַת עוּלָא – Ulla said: מִשּׁוּם נֹוֵי הָעִיר – For the sake of the city's beautification.

The Gemara questions the need for the Mishnah to mandate a twenty-five-amah clearing:

וְהִיפּוּק לִיה – But this prohibition (to plant trees in the vicinity of a city) has already emerged^[6] from another Mishnah, which states דְּאִין עוֹשִׂין שְׂדֵה מִגְרָשׁ – that THEY (the inhabitants of a city) MAY NOT TURN FIELDS that are on the outskirts of a city INTO a MIGRASH וְלֹא מִגְרָשׁ שְׂדֵה – NOR may they turn a city's MIGRASH INTO FIELDS.^[7] Under that law, it is forbidden to plant anything within the one-thousand-amah migrash that borders a city. Why must our Mishnah forbid planting a tree within twenty-five amos?

The Gemara answers:

לֹא צְרִיכָא לְרֵבִי אֶלִיעֶזֶר – [Our Mishnah] is necessary according to the view of R' Eliezer, דְּאִמְרַת עוֹשִׂין שְׂדֵה מִגְרָשׁ וּמִגְרָשׁ שְׂדֵה – who says that ONE MAY TURN FIELDS INTO MIGRASH AND MIGRASH

INTO FIELDS.^[8] הָכָא – Nevertheless, our Mishnah teaches that here, within twenty-five amos of a city, מִשּׁוּם נֹוֵי הָעִיר לֹא עֲבָדִין – for the sake of the city's beautification, trees may not [be planted]. וְלִרְבִּין נָמִי – And according to the Rabbis as well, דְּאִמְרַת אֵין עוֹשִׂין שְׂדֵה מִגְרָשׁ וְלֹא מִגְרָשׁ שְׂדֵה – who say that ONE MAY NOT TURN FIELDS INTO MIGRASH NOR MIGRASH INTO FIELDS, our Mishnah's ruling is necessary, because הָיָה מִלִּי זְרָעִים – that law against planting in a migrash applies to grain,^[9] אֲבָל – but trees may be [planted] in a migrash.^[10] וְהָכָא – Nevertheless, our Mishnah teaches that here, within twenty-five amos of a city, מִשּׁוּם נֹוֵי הָעִיר לֹא – for the sake of the city's beautification, trees may not be planted.

The Gemara seeks a source for the distinction it made between trees and grain:

דְּשִׂאנֵי בֵין זְרָעִין לְאֵילָנוֹת – And how do we know^[11] וּמָנָא הִתְמַרָא – that there is a distinction between grain and trees, with regard to planting in a migrash?

The Gemara answers:

וְהִתְנַח – We know it for we have been taught in a Baraisa: קִרְפָּה יוֹתֵר מִבֵּית סְאִתִּים – With regard to A KARPAF GREATER THAN TWO BEIS SE'AH שְׂדֵהוּקָף לְדִירָה – WHICH WAS ENCLOSED FOR RESIDENTIAL USE, thus making it permissible to carry in it on

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1. Therefore, if the bags that were found were large, there are no grounds for assuming that they fell from travelers (*Rashi*).

2. The Gemara explains that it is considered aesthetically pleasing for a city to be framed by an expanse of open land. Therefore, no tree may be planted in the immediate vicinity of a city's boundary. Carob and sycamore trees must be distanced further than other trees because their branches are more numerous (*Rashi*). This law applies only to cities in Eretz Yisrael (*Rashi* to Gemara חמיטא מִגְרָשׁ; *Tur Choshen Mishpat* 155:27) and only when the land is in the hands of the Jewish people (*Beis Yosef* ad loc.).

3. The presence of trees that do not bear fruit in the vicinity of a city is considered unbecoming to the city (*Rashi*). Such trees must therefore be distanced further than trees that bear fruit.

4. Although the tree was planted legally, it must be cut down because the public interest takes precedence over the rights of the individual. (Nevertheless, the tree's owner is compensated for his loss.) This stands in contrast to the law of a tree that was planted legally and afterward became a nuisance to an individual neighbor. In that case, the tree is not cut down (see Mishnah, 25b and *Ramban* here).

5. This ruling is explained in the Gemara.

6. Literally: but let this emerge.

7. (*Arachin* 33b). In earlier times, cities in Eretz Yisrael were bordered by an open expanse of land one thousand amos wide. This open expanse was known as a *migrash*. Another thousand amos around that expanse was reserved for fields which the cities' inhabitants would cultivate. The Mishnah cited here teaches that it is forbidden to convert either of these areas from its original use to a different function. The *migrash* immediately outside a city must be maintained as such in order to preserve the aesthetic quality of the city, and the fields must be maintained as such to ensure that the national food supply is not threatened (*Rashi* to *Arachin* ibid.).

8. R' Eliezer maintains that only with respect to cities reserved for Levites is it forbidden to convert the *migrash* into fields and vice versa (*Rashi*), because the Torah mandates that the *migrash* and fields of the Levites' cities be preserved. With respect to other cities in Eretz Yisrael, R' Eliezer's view is that the allocation of land surrounding the city is left to the choice of its owners (see *Arachin* 33b and *Tos. Yom Tov, Arachin* 9:8).

9. Or other types of plants.

10. The reason for this distinction will emerge from the Gemara's discussion.

11. Literally: from where do you [learn to] say.

Shabbos despite its size.^[12] **וְנִרְעָ רֹבּוֹ** – If a majority of it was when sown with seed,^[13] **הָרִי הוּא כְּגִינָה וְאִסּוּר** – [The karpaf] is comparable to a garden and [carrying] in it is prohibited. Since a garden is not suitable for dwelling, the karpaf has lost its residential designation.^[14] **וְנִשְׁטַע רֹבּוֹ** – However, if most of [the karpaf] was planted with trees, **הָרִי הוּא כְּחֶצֶר וּמוֹקֵר** – it is comparable to a courtyard, and [carrying] in it is permitted. Since people stroll in the wooded area, it retains its status as a karpaf designated for residential use.^[15] We learn from this Baraisa that sowing an open area with seed is considered a modification of the area's function, while planting it with trees is not. Accordingly, it is permissible to plant trees in a *migrash*.^[16]

The Mishnah states:

וְאִם הָעִיר קָדְמָה קוֹצֵץ וְאִינוּ נֹתֵן דָּמִים וְכוּ' – IF THE CITY WAS there FIRST and the tree was planted afterward, HE MUST CUT DOWN the tree, AND [THE CITY] NEED NOT PAY compensation etc.

The Gemara contrasts this law with a law stated in another Mishnah:

מַאי שְׁנָא גִבִּי בֹר – What is the difference between the case of a tree that was planted illegally within twenty-five amos of a neighbor's pit, דְּקָתְנִי – with regard to which [the Mishnah] teaches: קוֹצֵץ וְנֹתֵן דָּמִים – HE (the tree's owner) MUST CUT DOWN the tree, AND [THE PIT'S OWNER] PAYS compensation,^[17] וְמַאי שְׁנָא הֶכָּא – and this case (of a tree planted illegally within twenty-five amos of a city), דְּקָתְנִי – with regard to which [the Mishnah] teaches: קוֹצֵץ וְאִינוּ נֹתֵן דָּמִים – HE (the tree's owner) MUST CUT DOWN the tree, AND [THE CITY] NEED NOT PAY compensation? Why is a city not required to pay compensation just as the owner of a pit is?

The Gemara answers:

קִידְרָא דְּבִי שׁוּתְפִי לֹא חֲמִימָא – Rav Kahana said: אֶמֶר רַב כְּהֵנָּא – A pot in the charge of two cooks is neither hot nor cold, because each one relies on the other to do the necessary work.^[18] I.e. were he free from cutting down the tree unless the city paid compensation, it would never be cut down because none of the city's residents will consent to make the first contribution toward this cause.^[19]

The Gemara challenges the premise of the original question:

וּמַאי קוֹשְׁיָא – But what difficulty do these contrasting Mishnahs present? דְּלָמָּא שְׁאֵי הִזְיקָא דְּרַבִּים מִהִזְיקָא דְּיָחִיד – Perhaps damage inflicted on the public is different than damage inflicted on an individual. Therefore, although one is compensated for cutting down a tree whose roots threaten an individual's pit, there is no compensation for cutting down a tree that mars public property.^[20]

The Gemara accepts this rationale, and retracts its assertion that Rav Kahana's statement was made in regard to the previous question:

אֵלָּא אִי אִיתְמַר דְּרַב כְּהֵנָּא – Rather, if Rav Kahana's answer was stated in reference to our Mishnah, אֲסִיפָא אִיתְמַר – it was stated in regard to a difficulty presented by the latter case of the Mishnah, which states: אִם הָאֵילָן קָדָם קוֹצֵץ וְנֹתֵן דָּמִים – IF THE TREE CAME FIRST and the city was built afterward, HE MUST CUT DOWN the tree, AND [THE CITY] PAYS compensation.

The Gemara describes the difficulty presented by this ruling: **וְלִימָא לֵהוּ – But let [the tree's owner] say to [the city's residents]: הָבוּ לִי בְּרִישָׁא דְּמִי וְהָדָר אֵיקוּץ – "Pay me first and I will then cut down the tree."** Why must he cut down the tree before he receives payment?^[21]

Rav Kahana resolved this difficulty:

קִידְרָא דְּבִי שׁוּתְפִי לֹא חֲמִימָא – Rav Kahana said: אֶמֶר רַב כְּהֵנָּא – A pot in the charge of two cooks is neither hot nor cold. I.e. were he entitled to let the tree remain until he was paid, it would never be cut down because none of the city's residents would consent to be the first to pay. Therefore, the Sages required him to cut it down first, and, if the city's residents do not pay, he may demand compensation in court.

The Mishnah states:

סָפֵק זֶה קָדָם וְסָפֵק זֶה קָדָם וְאִינוּ נֹתֵן דָּמִים – If it is UNCLEAR WHETHER [THE TREE] OR [THE CITY] CAME FIRST, HE MUST CUT DOWN the tree, AND [THE CITY] NEED NOT PAY compensation.

The Gemara contrasts this law with a law stated in another Mishnah:

מַאי שְׁנָא מְבוֹר – Why is the law in this case different than the law of a tree that has been planted near a neighbor's pit, דְּאִתְמַר – where [the Mishnah] states^[22] that if it is unclear

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12. [It is Biblically forbidden to transport an object four amos in a רשות הרבים (a public domain; i.e. an unenclosed public area or thoroughfare) on Shabbos.] The Sages decreed that it also be forbidden to carry an object four amos within an enclosure that is larger than the Tabernacle courtyard, whose area was two beis se'ah (5,000 square amos). However, they applied this decree only to large enclosures (karpafs) that are designated for non-residential use. If a karpaf was enclosed for the purpose of residential use (i.e. to be lived in, or to serve as the courtyard of a house), it is permissible to carry within the karpaf regardless of its size. This Baraisa discusses the law of a karpaf greater than two beis se'ah that was originally enclosed for residential use and in which carrying was therefore permitted, but was later converted to a different function (Rashi).

13. The verb נִרְעָ refers to planting or sowing things other than trees. The verb for planting trees is נִשְׁטַע.

14. Accordingly, carrying for four amos is forbidden throughout the karpaf, since it is larger than two beis se'ah (Rashi).

15. This karpaf is similar to a courtyard in front of a house, which is considered an enclosure designated for residential use (Rashi).

16. The Gemara draws an analogy from the law of a karpaf to the law of a migrash. Just as planting trees does not effect a change in the status of a residential karpaf because the area remains suitable for strolling, so too it does not alter the status of a migrash. An area which can be used by a city's residents for leisure meets the criteria for migrash (Ritva).

17. The Mishnah below (25b) states that one may not plant a tree within twenty-five amos of a neighbor's pit because the tree's roots will

eventually spread a great distance and may breach the walls of the pit. If a tree was planted illegally, its owner must cut it down but he is compensated for its loss by his neighbor (see 25b note 35).

18. This was a popular folk saying in Talmudic times (see Eruvin 3a).

19. Therefore, to ensure that the beauty of Eretz Yisrael is preserved, the Sages ruled that a tree planted outside a city is cut down without compensation (Rashi). On the other hand, in a case where the tree threatens an individual neighbor, it is up to the affected party to pay compensation if he wishes to have the tree removed.

20. [One who does actual monetary damage to property belonging to an individual is no less liable than one who damages public property. However, a tree planted within twenty-five amos of a neighbor's pit does not do any damage for which its owner is liable, because any damage that it might cause is merely an indirect result of planting the tree (Ramban, Kuntres Dina DeGarmi). Nevertheless, in both cases the Sages required the tree's owner to cut it down because it is a nuisance to others.] The Gemara reasons that while the Sages would not have required him to cut down the tree without compensation where it is merely disturbing to an individual neighbor, they may have required him to do so where his tree mars public property (Rashi).

21. Since the tree was planted legally before the city was built and he is being forced to cut it down with compensation for the sake of the city's beautification, he is in effect selling his tree to the city. As such, he should not be required to cut it down until he receives payment (Ramban; see also Tosafos וְלִימָא דְּרִיָּה).

22. Below, 25b.

whether the tree or the pit came first, **he need not cut down** the tree? Why is an instance of uncertainty decided in favor of the tree's owner in the case of a pit and against the tree's owner in the case of a city?

The Gemara answers:

התם – **There**, in the case of a tree that has been planted near a pit, **דוראי** – **where** a tree that **definitely** came before a pit **לאו למיכץ קאי** – **is not subject to cutting**,^[23] **ספיקו נמי** – **in a case of uncertainty as well**, **לא אמרין ליה קוץ** – **we do not tell [the tree's owner] to cut it down**. The burden of

proof that the tree was planted illegally lies upon the owner of the pit.^[24] **הכא** – **Here**, however, in the case of a tree that has been planted near a city, **דוראי** – **where** even a tree that **definitely** came before the city **למיכץ קאי** – **is subject to cutting**,^[25] **ספיקו נמי** – **in a case of uncertainty as well**, **אמרין ליה קוץ** – **we tell [the tree's owner] to cut it down**. **ואי** – **And as for compensation**, **אמרין ליה** – **we tell him**: **אייתי ראיה ושקול** – **"Prove that your tree was here before the city and you may then collect compensation for cutting it down."**^[26]

Mishnah **מרחיקין את גורן קבוע מן העיר חמשים אמה** – **One must distance a permanent granary fifty amos from a city**.^[27] **לא יעשה אדם גורן קבוע בתוך שלו** – **Similarly, a person may not make a permanent granary within his property**, **אלא אם כן יש לו חמשים אמה לכל רוח** – **unless he owns fifty amos of land bordering it in each direction**. **ומרחיק מנוטעותיו של חבירו ומנירו** – **One must also distance a granary from his neighbor's saplings, as well as from his plowed field**,^[28] **בכדי שלא יזיק** – **far enough that [the chaff] that flies from the granary not cause them any damage**.^[29]

Gemara The Gemara examines the contradiction between the two cases of the Mishnah with regard to the distance required between a granary and neighboring property: **מאי שנא רישא ומאי שנא סיפא** – **What is the difference between the first case of the Mishnah, which mandates a distance of fifty amos, and the latter case, which implies that a lesser distance suffices?**

The Gemara offers a solution:

סיפא אתאן לגורן שאינו קבוע – **Abaye said: The latter case refers to a temporary granary**. A temporary granary does not require as great a distance as a permanent granary.

The Gemara seeks a clarification:

What is the definition of "a temporary granary"? – **היכי דמי גורן שאינו קבוע** – **What is the definition of "a temporary granary"?**

The Gemara answers:

R' Yose the son of R' Chanina said: **אמר רבי יוסי ברבי חנינא** – **R' Yose the son of R' Chanina said:**

Any granary so small that a shovel is not used for winnowing its grain.^[30]

The Gemara offers another interpretation of the Mishnah:

מה טעם קאמר – **The second clause of [the Mishnah] states the reason** that a distance of fifty amos is required: **מאי טעמא מרחיקין גורן קבוע מן העיר חמשים אמה** – **"What is the reason that one must distance a permanent granary fifty amos from a city?"** **בדי שלא יזיק** – **In order that [the chaff] that flies from the granary not cause any damage**.^[31] Thus, the latter clause of the Mishnah is not an independent ruling that represents a contradiction to the first clause, but is rather an explanation of the Mishnah's first clause.^[31]

The Gemara cites a challenge to Abaye's explanation of the Mishnah:

They challenged Abaye from the following Baraisa:

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23. Only a tree that has been planted illegally, after the neighbor's pit was in place, must be cut down (see Mishnah below, 25b).

24. The rule for any case of uncertainty regarding monetary matters is *the [burden of] proof lies upon one who [wishes to] exact [money] from another*. Here too, since the owner of the pit wants to force the tree's owner to cut down his tree, he must prove that the tree was planted illegally.

25. A tree planted close to a city must be cut down regardless of whether it was there before the city or vice versa. The difference between a tree that was planted legally and one that was planted illegally is only in regard to compensation.

26. I.e. the burden of proof lies on the owner of the tree, who wishes to exact compensation from the city.

27. [The granary referred to here is an open-air storage area for grain. The grain in this place is winnowed by being shoveled and tossed in the air for the wind to separate the grain from its chaff.] Consequently, it must be located at least fifty amos away from the city so that the wind-swept chaff should not injure any townspeople or fall on their plants, causing them to dry out (*Rashi*). [The Gemara examines the significance of a permanent granary, as opposed to a temporary one.]

28. It was customary for farmers to plow furrows in their fields during the summer in preparation for the next winter's planting in order to destroy the roots of any weeds in the ground from the previous season. This practice is alluded to in Jeremiah's admonition (*Jeremiah 4:3*): **גרו ואל תזרעו** – **Plow your furrow and [thereby] avoid sowing unto thistles**. [The message conveyed in this allegorical criticism is: Uproot your evil deeds in order that your prayers not go unanswered (*Rashi ad loc.*)] The Gemara explains how chaff is detrimental to a neighbor's plowed field (*Rashi*).

29. The implication of this rule is that a distance of less than fifty amos

suffices to prevent the chaff from causing damage. The Gemara inquires why the law in this case is more lenient than in the previous case, where a distance of fifty amos is required (*Rashi*).

30. A granary that contains a large pile of grain can only be winnowed by shoveling the grain and tossing it in the air for the wind to separate the grain from the chaff. Since the wind blows the chaff a great distance, the granary may not be located within fifty amos of a city. Grain that is stored in a small pile can be winnowed without being tossed in the air. Since the grain is not heavily weighted, the wind blowing across the pile automatically separates the grain from the chaff. In such a case the chaff does not fly very far, and therefore a distance of less than fifty amos suffices between the granary and the city (*Rashi*).

[The Gemara presumes that a permanent granary contains a large volume of grain. Any pile of grain small enough to be winnowed without a shovel was most likely placed in its location temporarily.]

31. The Gemara originally understood the Mishnah as stating two laws: 1) A granary must be distanced fifty amos from a city or a neighboring property. 2) A granary must be distanced from a neighbor's saplings or plowed field *far enough* so that the chaff that blows from it will not cause any damage.

According to that interpretation, the second law seems to require a smaller distance than the first law. Therefore, Abaye explained that the second law refers to a temporary granary, i.e. a small pile of grain that is winnowed without shoveling.

Rav Ashi reinterprets the Mishnah – the second clause is not an independent ruling that implies a smaller measurement than the first ruling, but is actually an explanation of the first clause. Thus, the Mishnah states only one law: One must distance a granary fifty amos from a city or from a neighbor's property *in order* that the chaff not cause any damage. [The Mishnah's words in the second clause: **בכדי שלא יזיק**, can either be interpreted as "[far] enough that (the chaff) not cause any damage," or as "*in order* that (the chaff) not cause any

מִרְחִיקִין גֹּרֶן קְבוּעַ מִן הָעִיר חֲמִשִּׁים אַמּוֹת – A PERMANENT GRANARY
 MUST BE DISTANCED FIFTY AMOS FROM A CITY, וְכֵשֶׁם שֶׁמִּרְחִיקִין מִן
 הָעִיר חֲמִשִּׁים אַמּוֹת – AND JUST AS IT MUST BE DISTANCED FIFTY
 AMOS FROM A CITY, כֵּן מִרְחִיקִין – SO TOO, IT MUST BE DISTANCED
 מִדְּלוּעִין וּמִקְשׁוּאֵין וּמִנְטִיעוֹתָיו וּמִנִּירוֹ שֶׁל חֲבִירוֹ חֲמִשִּׁים אַמּוֹת – FIFTY
 AMOS FROM A NEIGHBOR'S GOURDS, CUCUMBERS, SAPLINGS
 AND PLOWED FIELD, כִּדִּי שְׁלֹא יִזִּיק – IN ORDER THAT [THE CHAFF]
 NOT CAUSE them any DAMAGE. The Baraisa cites the possibility
 that the chaff may cause damage as the reason that the granary
 must be distanced fifty *amos*. It follows that the Mishnah should
 be interpreted the same way.^[32] בְּשִׁלְמָא לְרַב אֲשִׁי נִיחָא – This is
 well according to Rav Ashi, who indeed interpreted the Mishnah
 in that manner, אֲלֵא לְאַבְי קִשְׁיָא – but according to Abaye who
 interpreted the Mishnah differently, the Baraisa poses a diffi-
 culty!

The Gemara has no answer and concludes:
 קִשְׁיָא – The difficulty stands.

The Gemara now explores in what way flying chaff can be
 harmful to the various items mentioned in the Baraisa:
 בְּשִׁלְמָא מִמִּקְשׁוּאֵין וּמִדְּלוּעִין – It is well that a granary must be
 distanced from cucumber and gourd plants^[33] דְּאִיִּל אֲבָקָא
 וְאִתִּי בְּלִיבָהּ וּמִצְוֵי לִיה – for the chaff^[34] flies off and reaches the
 heart of the plant and dries it out, אֲלֵא מִנִּירוֹ אֲמַאי – but why
 must a granary be distanced from [a neighbor's] PLOWED FIELD?
 How can flying chaff cause damage to the FIELD?

The Gemara answers:

אָמַר רַבִּי אֲבָא בַר זֻטְרָא וְאִתְיָמָא רַבִּי אֲבָא בַר זֻטְרָא – R' Abba bar
 Zavda, and some say R' Abba bar Zutra, said: מִפְּנֵי – It must
 be distanced because

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damage.”]

[See *Ritva*, who says that Rav Ashi actually argues with Abaye, and
 maintains that in the case of a temporary granary *no* distancing is
 necessary.]

32. The Baraisa paraphrases the Mishnah, and nevertheless clearly
 mandates a distance of fifty *amos* both in regard to a city (the first case
 of the Mishnah) and in regard to a neighbor's saplings and plowed field
 (the latter case of the Mishnah) (*Rashi*). It is thus clear that the phrase

“that [the chaff] not cause damage” is not to be interpreted as “far
 enough that it not cause damage,” i.e. a distance of less than fifty *amos*,
 but rather as “in order that it not cause damage,” i.e. the reason for the
 fifty-*amah* rule (cf. *Ritva*).

33. The words for cucumbers and gourds are קְשׁוּאֵין וְדְלוּעִין. The words
 for cucumber and gourd *plants* are מִקְשׁוּאֵין וּמִדְּלוּעִין (see *Rashi* ר"ה
 מִקְשׁוּאֵין).

34. Literally: the dust.

שעושה אותו גלל – [The chaff] falling into the plowed fields and decomposing makes [the soil] into manure; i.e. it causes the field to be overfertilized, which ruins the next crop to be planted.^[1]

Mishnah The Mishnah continues its discussion of the enterprises that must be kept at a distance from a town because of their adverse effects — in this case, due to foul odors. The Mishnah will also discuss the distance one must separate his crops from those of his neighbor because of the potential damage that might result to the neighbor's crops:

– and a tannery – **One must distance animal carcasses, graves** – **and a tannery** – **fifty amos from a town**, so as not to disturb the town's residents with their foul odor. – **Even at this distance, one may not make a tannery except to the east of a town**, for the east wind is gentle and not usually strong enough to carry the odor to the town.^[2] – **R' Akiva, however, says: One may make a tannery on any side of a town except for its west side;**^[3] – **and one must distance it fifty amos from the town.** – **One must distance a flax pool**^[4] **from vegetables,** – **and mustard plants from the bees of his neighbor;**^[5] – **and one must distance it fifty amos from the town.** – **R' Yose, however, permits planting close by the threatened property in the case of mustard plants.**^[7]

Gemara The Gemara analyzes R' Akiva's ruling that one may locate a tannery on any side of a town except

its west side, and that one must locate it at least fifty amos away: – **They inquired: How did R' Akiva mean this? Did he mean that one may make it on any side of the town and place it close by, except for its west side, where one must place it at a distance of fifty amos from the town in order to be allowed to make it; or perhaps R' Akiva meant that one may make a tannery on any side of a town, but he must place it at a distance of fifty amos; except for its west side, where one may not make a tannery at all?**

The Gemara resolves the issue from a Baraisa:

– **Come, learn the proof from the following: R' Akiva says: One may make a tannery on any side of a town, but he must place it at a distance of fifty amos; except for its west side, where one may not make a tannery at all, because it is constant.**

The Gemara investigates the meaning of the Baraisa's last statement:

– **Rava said to Rav Nachman: What is the meaning of the Baraisa's statement that the west is "constant"? If you will say that it means that the winds from the west are constant, i.e. there is a constant breeze from the west which would carry the odors of the tannery to the town, but Rav Chanan bar Abba has said in the name of Rav: Four winds blow each day, and the north wind blows with all of them; and if it were not so, for if it were not so, the world would not survive even one hour. And the south wind is the harshest of them all; and if it were not for the angel "Ben Neitz" who blocks it, it would destroy the world. As [the verse] says: "Is it from your wisdom that the 'neitz' extends its limbs, and spreads its wings to the south?" We see from the first part of Rav's statement that the wind which blows constantly is the north wind, not the west wind. Thus, R' Akiva, who speaks in the Baraisa of the west**

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1. *Rashi*. Although manure is beneficial to grain, too much ruins the crop (*Tosafos* שעושה אותו גלל).

2. The east wind is normally warm and gentle (*Rashi*), especially in the Land of Israel and surrounding areas (*Rambam, Commentary to Mishnah*). The east wind blows strongly only as a [Divinely sent] ill wind, bringing misfortune in its wake (*Rashi*).

3. The Gemara will explain the reason for this restriction.

4. Before flax stems may be processed into linen thread, the stems must be retted (soaked) to break down their woody tissue and dissolve the substance binding their fibers together. The stems of flax plants would be soaked in a pool or pond for several days. The substances absorbed by the water during this process are toxic to growing plants, and they pass into the ground around the pool and damage the surrounding vegetation (see *Rambam, Hil. Shecheinim* 10:5). One must therefore distance these pools from the areas in which a neighbor grows vegetables.

5. Whether this requirement applies generally or only along the border of a field in which the neighbor is actually growing vegetables is the subject of a dispute between Abaye and Rava, as we learned above (18a).

6. Leeks diminish the sharpness of onions growing nearby (*Rambam Commentary*). Thus, one may not grow leeks too close to his neighbor's onions.

7. The bees feed on the mustard plants, which leave a sharp taste in their mouths. The bees then consume the honey in their hives to relieve their discomfort (*Rashi* 18a). Others explain that the mustard

consumed by the bees renders their honey pungent (*Rambam Commentary*).

The Mishnah does not specify in these last three cases how far one must distance the harmful agent. The Rishonim (see *Ramban, Rashba, Rabbeinu Yonah* and *Nimukei Yosef*) conclude that the distance required is the same as that in the beginning of the Mishnah — fifty amos.

7. R' Yose's opinion was discussed in depth in the Gemara above (18a-b). According to the Gemara's conclusion (18b), R' Yose permits placing the harmful agent close to the boundary of one's property in all three cases listed in this part of the Mishnah, because he holds that in such situations it is up to the injured party to remove his property from harm's way. The reason he speaks of mustard plants specifically was explained above in the Gemara on 18b; see also 25b note 33.

8. [I.e. the wind blows from each of the four directions every day, but no matter which direction the primary wind comes from, there is always a breeze accompanying it out of the north.] The north wind [in and around Eretz Yisrael (see *Hagahos Yavetz*)] is "soft, sweet and clear" [i.e. it blows gently, and its air is pleasant and clear], and it softens the impact of the winds blowing from the other directions (*Rashi*).

9. Literally: son of the hawk; i.e. an angel with a "resemblance" to a hawk. This angel spreads its wings to block the south wind (*Rashi*).

10. *Job* 39:26. This is from God's rebuke to Job, in which He asks Job whether it is by his wisdom and doing that the wonders of God's creation unfold each day.

as being constant, cannot be referring to the constancy of the wind. — ? —

The Gemara therefore advances another explanation:

אֵלָא מַאי תְּדִירָא — Rather, what is meant by the Baraisa when it says that the west is “constant”? **תְּדִירָא בְּשִׁכְנָה — That it is the constant direction of the Shechinah.**^[11] It is therefore improper to locate a tannery in that direction.

The Gemara quotes a statement of R' Yehoshua ben Levi to support the contention that the designated direction of the Shechinah is to the west:

בּוֹאוּ — For R' Yehoshua ben Levi said: **וְנַחֲוִיק טוֹבָה לְאַבוֹתֵינוּ שֶׁהוֹדִיעוּ מְקוֹם — Come, let us show gratitude to our forefathers, the Men of the Great Assembly, מְקוֹם — who, by stating the following verse,^[12] made known to us the place, i.e. the proper direction, of prayer.** **וְיִצְבְּא הַשָּׁמַיִם לְךָ מִשְׁתַּחֲוִיִּים — And the heavenly legions bow to You** — i.e. the sun, the moon and the stars rise in the east and then “bow” towards the west as they set.^[13] Since they are bowing toward God, we see that the direction designated for the Shechinah is the west.

Rav Acha bar Yaakov takes issue with R' Yehoshua ben Levi's proof:

רַב אַחָא בַר יַעֲקֹב — Rav Acha bar Yaakov challenged this interpretation of the motion of the heavenly bodies: **וְדִלְמָא — Perhaps the motion of the sun and moon is like the motion of a servant who receives a portion from his master** **וְחוֹזֵר לְאַחֲרָיו וּמִשְׁתַּחֲוֶה — and then backs away bowing!**^[14] Thus, the “bowing” movements of the heavenly bodies while moving west would indicate that the Shechinah is in the east!^[15]

The Gemara concludes:

קָשְׁיָא — This is indeed a difficulty.

The Gemara now quotes other opinions as to the direction of the Shechinah:

וְרַבִּי אוֹשְׁיָא סָבַר שְׁכִינָה בְּכָל מְקוֹם — And R' Oshaya holds that the Shechinah is in all directions equally,^[16] as we see from the following statement. **דָּאָמַר רַבִּי אוֹשְׁיָא — For R' Oshaya said:**

What is the meaning of that which is written: “אַתָּה הוּא ה' לְבַדְּךָ אַתָּה עָשִׂיתָ אֶת־הַשָּׁמַיִם וְגו'” — You are God, You alone; You have made the Heavens etc.^[17] R' Oshaya explained: **שְׁלוּחֵיךָ — Your messengers,**^[18] **גוֹד, אֵלָא — God, are not like the messengers of a creature of flesh and blood.** **מִמְקוֹם — from the place from which they are sent, there they return a report on their mission to the one who sent them.** **אֲבָל שְׁלוּחֵיךָ — But Your messengers, God, are unique, for לְמִקוֹם שְׁמִשְׁתַּלְחִין — to the place to which they are sent, (מִ)שָּׁם מְחֻזְרִין שְׁלִיחוֹתָן — there^[19] they return a report on their mission, for the Shechinah is in all places.**

R' Oshaya demonstrates this from the following verse:

הֲתִשְׁלַח בְּרָקִים וְיֵלְכוּ וְיֹאמְרוּ לָךְ הִנֵּנוּ” — As it states:^[20] “Can you send forth lightning bolts that they will go, and say to you, “Behold, we are here”? R' Oshaya explains: **יָבֹאוּ וְיֹאמְרוּ — It does not say that “they (the bolts) will come and say,”** which would have implied that they will return to their point of departure to report. **אֵלָא, וְיֵלְכוּ וְיֹאמְרוּ — Rather, it says: “and they will go and say,”** which implies that they will report at their destination! **מְלִמַּד שֶׁהִשְׁכִּינָה בְּכָל מְקוֹם — This teaches that the Shechinah is in every place.**

The Gemara quotes a Tanna who concurs with R' Oshaya:

וְאַף רַבִּי יִשְׁמָעֵאל סָבַר שְׁכִינָה בְּכָל מְקוֹם — And R' Yishmael, too, holds that the Shechinah is in all directions. **דְּתַנָּא רַבִּי יִשְׁמָעֵאל — For a Baraisa of the academy of R' Yishmael has taught:** **מִנֵּין שְׁכִינָה בְּכָל מְקוֹם — FROM WHERE do we learn THAT THE SHECHINAH IS IN ALL PLACES?** **שֶׁנֶּאֱמַר — FOR [THE VERSE] STATES:^[21] הִנֵּה הַמַּלְאָךְ הַדֶּבֶר בִּי יָצָא — BEHOLD, THE ANGEL WHO SPOKE WITH ME CAME FORTH from God's presence** **וּמִלְאָךְ אַחֵר — AND ANOTHER ANGEL CAME FORTH from God's presence TOWARDS HIM.** **אֲחֲרָיו לֹא נֶאֱמַר — It does not say in this verse that the second angel came forth “following [the first],”** which is what would have happened had he emerged from the same place as the first. **אֵלָא, לְקִרְאָתוֹ — Rather, the verse says that the second angel came towards the first — i.e. from the opposite direction — although they were both coming from God's**

NOTES

11. *Shechinah* — the manifestation of the Divine Presence. Although God's presence is everywhere, there are places where it is more manifest than others (such as in the Temple, for example). The discussion that follows addresses whether any specific direction possesses a greater presence. The Gemara explains the Baraisa by attributing to it the view of R' Yehoshua ben Levi, who says that it is proper to face west when praying, because the west is designated as the direction of the Divine Presence. [See note 15 below.] For this reason, it is improper to locate a tannery (which, due to its stench, is considered a base enterprise) to the west of a town.

12. *Nehemiah* 9:6. [Although Ezra wrote this book (Gemara 15a), this prayer was not authored by him, but by members of the Great Assembly; see *Rashi*.]

13. Bowing is the mark of submission to a greater authority. The setting of the sun and the other heavenly bodies is, metaphorically, the ultimate sign of their submission. Thus, the direction in which they set is the direction of their “bow” (*Maharal, Chidushei Aggados*).

14. A servant who receives a gift from his master does not turn his back on him as he departs, but backs away bowed, expressing his gratitude (see *Rashi*).

15. Bowing towards a master expresses the submission that results from one's sense of inconsequence relative to a superior. In the context of the heavenly bodies, this motion represents the realization that they are no more than the creations of God, to Whom they owe their very existence. Bowing while backing away from a master expresses the sense of gratitude that one feels for the favors he has received. In the context of the heavenly bodies, this motion represents the realization that they

continue to shine and move about in their orbits only by the will of God. Since these movements are also appropriate to the heavenly bodies, Rav Acha bar Yaakov contends that the path of their motion cannot be used to prove that the west is the designated direction of the *Shechinah* (see *Maharal, Chidushei Aggados*).

Meiri suggests that the very point of designating the west as the direction of the *Shechinah* and praying in that direction is that the “bowing” of the heavenly bodies in that direction demonstrates the falseness of the widely held belief that the heavenly bodies were themselves deities possessed of an absolute existence. See also *Rambam, Moreh Nevuchim* 3:45.

16. [Thus, there is no preferred direction in which to pray, as the Gemara will state below in the name of Rav Sheishess.]

17. *Nehemiah* 9:6. This verse concludes with the passage cited above — *and the heavenly legions bow to You*, indicating that the unique quality to which the verse refers pertains to the relationship of the heavenly legions to God (*Rashi*; see *Rashash*).

18. I.e. the heavenly legions — the sun, the moon and the stars (*Rashi*).

19. I.e. at the site of their mission. (This translation follows the emendation of *Mesoras HaShas*.)

20. *Job* 38:35 (see note 10).

21. *Zechariah* 2:7. The two angels mentioned came with conflicting assignments: The first came to lay down boundaries for the city of Jerusalem. God then “reconsidered,” and sent a second angel to instruct the first to desist, for Jerusalem was to be an open city, without boundaries (*Rashi*).

presence! מְלִמֵּד שֶׁשְׁכִינָה בְּכָל מְקוֹם – This teaches that the *Shechinah* is in all places.^[22]

The Gemara quotes yet another concurring opinion:

וְאָף רַב שֵׁישֶׁשׁ, וְאָף רַב שֵׁישֶׁשׁ סָבַר שְׁכִינָה בְּכָל מְקוֹם – And Rav Sheishess, too, holds that the *Shechinah* is in all places. דָּאֲמַר לִיה רַב שֵׁישֶׁשׁ – For Rav Sheishess, who was blind,^[23] said to his attendant: לָכֵן רִוּחָא אֹקֵמֵן לְבָר מִמּוֹרָה – Stand me up to pray facing any direction except east. וְלָאוּ מִשּׁוּם דְּלִית בֵּיהּ שְׁכִינָה – And the reason I do not wish to face east is not because the *Shechinah* is not present there, אֲלָא מִשּׁוּם דְּמִוְרוּ בֵּהּ מִינִי – but rather, because the heretics instruct that one pray to that side (east), and Rav Sheishess did not wish to lend credence to their heresy. From his lack of preference otherwise, we see that Rav Sheishess agrees that the *Shechinah* is manifest in all directions equally, so that there is no inherently preferred direction for prayer.^[24]

The Gemara now quotes a differing view:

וְרַבִּי אֲבָהוּ אָמַר שְׁכִינָה בְּמַעֲרָב – But R' Abahu said that the *Shechinah* is in the west. דָּאֲמַר רַבִּי אֲבָהוּ – For R' Abahu said: מַאי אֹרִיָּה – What is the etymology of the word *oryah*, meaning “east”?^[25] אֲוִיר יָהּ – It comes from two words *avir Yah* – the “air of God.” Since the *Shechinah* is in the west, the east is the open “air” before the *Shechinah*.

The Gemara now returns to the discussion of winds, quoting a homiletical interpretation of *Deuteronomy* 32:2, in which the Torah is compared to the four winds.^[26]

אָמַר רַב יְהוּדָה – Rav Yehudah said: מַאי דְּכָתִיב – What is the meaning of that which is written: וַיֵּצֶרֶף בְּמִטְרָא לִקְחֵי – Let My teaching drip (*ya'arof*) like the rain? זוּ רִוּחַ מַעֲרָבִית שְׁבָאָה – This (the word *ya'arof*) refers to the west wind, which comes from the “back” (*oref*) of the world.^[27]

Rav Yehudah continues his exposition of the verse: תִּזְלַל בְּטַל אֲמָרְתִּי – Let My words distill (*tizal*) like the dew. זוּ רִוּחַ צְפוֹנִית – This (the word *tizal*) refers to the north wind, which devalues the worth of gold (*zal*) by destroying the crops and bringing famine, thereby forcing people to spend money freely on food.^[28] וְכֵן הוּא אֹמֵר – And so it states in another verse which applies the word *zal* to spending gold freely: הַזֵּלִים זָהָב מִבֵּיס – Those who spend gold freely (*zalim*) from the purse.^[29]

The third phrase of the verse:

בְּשִׁעְרִים עָלֵי דְשָׂא – Like winds (*se'erim*) which blow the vegetation. זוּ רִוּחַ מִזְרָחִית – This (*se'erim*) refers to the east wind, which churns up the entire world like a demon (*sa'ir*).^[30]

The final phrase of the verse:

וְכִרְבִּיבִים עָלֵי-עֵשָׂב – And like showers (*revivim*) upon the grasses. זוּ רִוּחַ דְּרוֹמִית – This refers to the south wind, which brings up the showers and causes grasses to grow.

The Gemara quotes a Baraisa concerning the path of the sun.^[31] רַבִּי אֱלִיעֶזֶר אָמַר – R' Eliezer says: עוֹלָם – THE WORLD

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22. [Scripture's reference to this unusual phenomenon is meant to teach us that we are not to associate the *Shechinah* – the manifestation of the Divine Presence – with one direction more than another. See note 11.]

23. *Rashi*. Thus, he could not tell which direction he was facing.

24. The Gemara has cited two opinions as to whether it is proper to pray specifically towards the west, or whether there is no directional preference. The Gemara in *Berachos* (30a) cites a Baraisa that the proper direction in which to pray is towards the Temple Mount in Jerusalem. [This opinion will also be cited by the Gemara below (25b) in the name of Rav Chanina.] Thus, there are in effect three Tannaic opinions regarding the direction in which one should pray: R' Akiva of our Mishnah, who prohibits placing a tannery to the west of a town, is of the opinion that one should pray towards the west. (In this he is followed by the Amora, R' Yehoshua ben Levi.) R' Yishmael (followed by the Amoraim, R' Oshaya and Rav Sheishess) holds that one may pray in any direction. The Tanna of the Baraisa quoted in *Berachos* (followed by the Amora, Rav Chanina, quoted below) rules that one should pray towards the Temple Mount (*Tsafos*). The halachah follows this last opinion. Therefore, those who live in Europe [and in the Americas], which are to the west of the Land of Israel, face east in prayer (*Tur* and *Rama*, *Orach Chaim* 94:2). However, since most of Europe [and North America] is not due west of the Land of Israel but somewhat north of it as well, it is best to face a bit to the southeast (*Levush* *ibid.*; *Mishnah Berurah* 94:11).

25. R' Abahu offers a homiletic etymology of a foreign word which means east (*Rashi*, in his preferred explanation). *Tsafos* prefer *Rashi's* other interpretation, that it is a Persian word meaning *west*, and is so called

because the *Shechinah* is on the west side.

26. This verse is from the opening section of the song of *Haazinu*, in which God's words (specifically the Torah; see commentaries) are likened to the dew and the rain falling to earth. Rav Yehudah's interpretation sees in this verse a further comparison to the four winds. This is meant to convey that just as the world cannot long exist without the four winds (as stated above in the name of Rav), so too, the world cannot exist without Torah (*Rashi*).

27. The Biblical word for “east” – קֶדֶם – also means *front*. Thus, we see that Scripture depicts east as the “front” of the world, making “west” its *back*. This may be seen from the verse in *Job* (23:8): הִנּוּ קֶדֶם אֶחָלָה וְאֵינֶנּוּ – Behold, I go east, but He is not there; and west [lit. backward], but I cannot perceive Him (*Rashi*).

28. The north wind warms [the Land of Israel] and dries out the land and its crops (*Rashi*). Although the north wind is a gentle wind (see note 8 above), it tends to disperse the clouds and thereby reduces the amount of rainfall (*Tsafos*, *Yevamos* 72a דלא ריח).

29. *Isaiah* 46:6.

30. As mentioned above (note 2), when the east wind blows strongly, it is catastrophic. The word שָׁעִיר is used in Scripture as a name for demons (see *Leviticus* 17:7).

31. [This is introduced here because it in turn introduces another Baraisa, which also speaks about the winds, and is therefore relevant to our discussion. It should be borne in mind that whenever the Gemara discusses the orbits of the astronomical bodies, it discusses them from the perspective of the observer, in which the sun and other heavenly bodies are seen to revolve around the earth.]

לְאֶבְסָרָהּ הוּא דוֹמָה - RESEMBLES A PAVILION,^[1] in that it is enclosed on three sides and open on the fourth; וְרוֹחַ צְפוֹנִית אֵינָהּ - AND THE NORTHERN SIDE IS NOT ENCLOSED.^[2] וְכִינּוֹן - WHEN THE SUN REACHES THE NORTHWEST CORNER of the world,^[3] נִכְפָּפֶת - IT TURNS ABOUT וְעוֹלֶה לְמַעְלָה מִן הָרָקִיעַ - AND ASCENDS ABOVE THE HEAVEN, where it travels back to the east to rise in the morning. עוֹלָם לְקוֹנָהּ הוּא דוֹמָה - AND R' YEHOShUA SAYS: - THE WORLD RESEMBLES A TENT, which is enclosed on all four sides, וְרוֹחַ צְפוֹנִית מְסוּבָּבָהּ - AND THE NORTHERN SIDE IS also ENCLOSED. וְכִינּוֹן שְׁחֵמָה מְנַצֵּת לְקֶרֶן מְעֻרְבִית צְפוֹנִית - WHEN THE SUN REACHES THE NORTHWEST CORNER of the world, מִקְפָּה

וְחוֹזֶרֶת אַחֲרָי בִּיפָה - IT continues to CIRCLE AND PASSES BEHIND THE DOME of the sky.^[4]

R' Yehoshua cites a verse in support of his position:

וְשִׁנְאָמֶר - AS [THE VERSE] STATES^[5] regarding the sun's path: "הוֹלֵךְ אֶל-דָּרוֹם וְסוֹבֵב אֶל-צָפוֹן" - IT [the sun] TRAVELS TOWARD THE SOUTH AND IT CIRCLES TO THE NORTH. בַּיּוֹם - "הוֹלֵךְ אֶל-דָּרוֹם" - IT TRAVELS TOWARD THE SOUTH - DURING THE DAY, when the sun traverses the southern part of the sky.^[6] "וְסוֹבֵב אֶל-צָפוֹן" - AND IT CIRCLES TO THE NORTH - DURING THE NIGHT, when the sun passes behind the northern portion of the sky to return to its sunrise position.^[7]

R' Yehoshua continues his exposition of the verse:

NOTES

1. An אֶבְסָרָה, *pavilion*, is a structure walled on three sides and open on the fourth (*Rashi*). [Such structures were commonly used in Greek and Roman times as meeting places. The technical name for such a structure is an *exedra*.]

2. [The discussion that follows views the sky as a dome poised over the earth. This dome has substance and thickness to it, and the sun travels along it.] According to R' Eliezer, the dome does not extend completely around the world, but is open in the northern latitudes.

3. [The northwest corner of the world is the point along the horizon where the sun sets on the longest day of the year (see *Eruvin* 56a, and below, note 9).] According to R' Eliezer, the dome ends at a point opposite this spot. When the sun reaches this point, it slips out through the open side of the dome, curves around and over it, and then travels through the night across the outside of the dome from west to east, where it re-enters the dome and rises in the morning.

[Maharal (*Chidushei Aggados*) maintains that the Gemara here is not discussing the actual astronomical phenomena, but a metaphysical concept couched in astronomical language; see there for his detailed explanation (see also his *Be'er HaGolah*, *Be'er* 6). A similar view is expressed by R' Moshe Chaim Luzzatto in his essay regarding Aggadah (*Maamar al HaAggados*), which is also printed in the introduction to *Ein Yaakov*. He makes the point that the non-halachic component of the Talmud includes ideas too esoteric to be presented to the general public, who would surely misunderstand and distort them. When compiling the Talmud, therefore, the Sages encapsulated these ideas in various cryptic statements and parables whose superficial meaning masked their true, esoteric content. These hidden meanings were divulged only to the few disciples in each generation deemed both worthy and capable of comprehending such sublime ideas. Occasionally, as in the Gemara here, the Sages even chose the commonly held notions of their day as a convenient metaphor for the secret knowledge they meant to convey. They did not concern themselves with the scientific accuracy of those notions because the superficial meaning was in any case meant only to obscure from public view the ultimately profound ideas being set down.]

An exposition of some of the deeper meanings of this Gemara suggested by these two commentators is beyond the scope of this work. Our commentary will therefore restrict itself to explaining the simple meaning of this passage.]

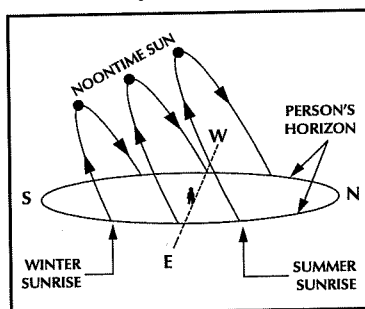
4. According to R' Yehoshua, after the sun sets, it enters a "window" in the dome of the sky, passes through it (*Rashi*) and continues on behind it. It follows the path of its previous orbit, travels below the sphere of the Earth [along the outside of the dome] and circles completely around to the east, where it rises again the next morning (*Maharsha*). [There are a series of "windows" in the dome to accommodate the daily shift in the position of sunrise and sunset (see *Rabbeinu Chananel* to *Eruvin* 56a).]

5. *Ecclesiastes* 1:6. The following Gemara makes reference to astronomical facts, which we will briefly introduce:

Though the sun rises each day in the east and sets in the west, it does not rise and set each day at the same points along the horizon. If one draws an imaginary line from himself to the horizon due east and due west, he will observe that in the summer the sun rises and sets north of this line, while in the winter it rises

and sets south of this line. In the Northern Hemisphere, the sun rises and sets at its most northerly points on the longest day of the year (the summer solstice), and at its most southerly points on the shortest day of the year (the winter solstice). See diagram. Following the winter solstice, the sun rises and sets a bit further north each day until it reaches its most northerly point on the summer solstice, after which it begins rising and setting a bit further south each day until it again reaches its most southerly position on the winter solstice. The sun rises due east and sets due west only on the spring and autumn equinoxes.

Not only does the point of sunrise and sunset change through the seasons, but so does the entire daily path of the sun across the sky. Furthermore, the sun does not pass directly overhead in Eretz Yisrael (or anywhere on earth north of Eretz Yisrael). Rather, the arc of the sun's path is tilted at an angle to the earth, so that to an observer in the North Temperate Zone (from 23.5 degrees north latitude to the Arctic Circle), the noontime sun is never directly overhead, but remains to his south even in summer. [Although the sun reaches the zenith of its arc at noon, that point is still south of the point directly above the observer. See diagram below.] Since the entire arc of the sun moves further south each day from summer to winter, the noontime sun reaches its zenith further south each day until the winter solstice, when it reaches its most



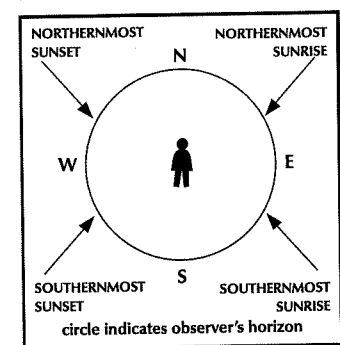
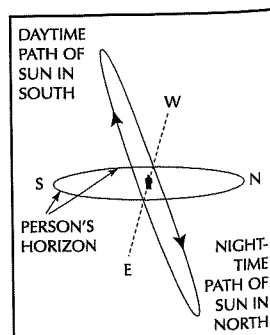
southerly extension. The process then reverses itself, with the arc of the sun's path and the noontime sun moving north (i.e. higher in the sky) each day, until it reaches its most northerly point on the summer solstice. However, even then, the noontime sun is still to the south of the observer in the North Temperate Zone. See diagram.

Thus, to an observer in Jerusalem (approximately 31.8 degrees north latitude), the noontime sun on the longest day of the year (the summer solstice) is still 8.3 degrees south of the point on the celestial sphere directly above the observer, while on December 21-22, it is 55.3 degrees to the south, as may be seen from the diagram. [The Gemara deals always with the Northern Hemisphere, the *חֶצִי כְּדוּר הַיָּשׁוּב*, the *settled hemisphere*, i.e. the part of the globe in which most of the civilized world resided. Virtually all the cities and countries mentioned in Scripture and the Talmud are within this zone. All references in the Gemara and the notes which follow are with respect to a person in this zone.]

6. I.e. the sun *always* traverses the southern part of the sky, from east to west, even during a winter day, when the sun's daytime path is at its shortest (*Rashi*). [As noted above, the daytime path of the sun goes

through the southern portion of the sky at all times of the year and at an angle to the observer. In winter, it traverses only the southern sector of the sky, since it rises and sets at or near its most southerly position.]

7. The sun *always* passes behind the northern portion of the sky, even on short summer nights (*Rashi*). [As noted above, the sun is seen to complete a circle around the earth each twenty-four hours. Thus, its return path at night must circle the northern portion of the sky behind the earth (relative to the observer). See diagram.



הוּ סוֹבֵב סוּבָב הוֹלֵךְ הוּ – It goes *AROUND, CIRCLING, TRAVERSING* THE DIRECTIONS of the horizon; וְעַל-סְבִיבוֹתָיו שֶׁב הָרוּחַ – AND ITS CIRCLINGS IT RETRACES THE DIRECTIONS.^[8] אֵלּוּ פְּנֵי מוֹרָח – THIS section of the verse refers to THE EASTERN FACE OF THE WESTERN FACE of the horizon;^[9] שְׁפָעִמָּם מְסַבְּבָתָן – OR SOMETIMES [THE SUN] CIRCLES THEM, when it passes behind them during the night in winter, וּפָעִמָּם מְהַלְכָתָן – AND SOMETIMES IT TRAVERSES THEM, when it passes over them during the day in summer.^[10]

The Baraisa continues:

הוּא הֵיךְ אָמַר – HE WOULD SAY:

The Gemara interrupts its quotation of the Baraisa to identify the author of this statement:

אֵתָּאן לְרַבִּי אֱלִיעֶזֶר – This brings us back to R' Eliezer.^[11]

The Baraisa resumes. What is the meaning of the verse which states:^[12]

מִן-הַחֲדָר הַבּוֹא סוּפָּן – FROM THE INNER CHAMBER COMES THE HIRLWIND – זוּ רוּחַ דְּרוּמִית – THIS REFERS TO THE SOUTH WIND, which comes from the innermost region of the world; וּמִמְקוֹרָם – AND FROM THE DISPERSED PARTS,^[13] הַקָּרוֹ – THIS REFERS TO THE NORTH WIND, which comes from the open side of the world.^[14] The Baraisa continues with an exposition of the next verse. "מִנְשֵׁמֶת-אֵל יִתֵּן-קָרָח" – BY THE BREATH OF GOD HE GIVES ICE – זוּ רוּחַ מַעֲרִבִית – THIS REFERS TO THE WEST WIND; "וְרָחֵב מַיִם בְּמוֹצָק" – AND AN EXPANSE OF WATER IN A TORRENT – זוּ רוּחַ מוֹרָחִית – THIS REFERS TO THE EAST WIND.

The Gemara points out a contradiction between this Baraisa and the statement made above (25a) by Rav Yehudah:

בִּלְבָד – But did the master [Rav Yehudah] not say רוּחַ

– that it is the south wind that brings up showers and causes the grasses to grow, while this Baraisa says that it is the east wind that brings rain ("water in torrents")! – ? –

The Gemara answers:

לֹא קָשִׁיָּא – This is not a difficulty. הָא – This (the statement of Rav Yehudah) דְּאֵתָּא מִטָּרָא בְּנִיחוּתָא – refers to when the rains come gently. The gentle (i.e. normal) rains come from the south and cause the grasses to grow. הָא – This (the Baraisa's statement) בְּשִׁפְיוֹתָא – refers to when the rains come in torrents; as the verse states, the east wind brings torrents of rain.

The Gemara continues its discussion of winds:

מַאי דְּכֵתִיב – What is the meaning of that which [the verse] states: מִצְּפוֹן יָהֵב – From the north, gold will come?^[16] יֵאָתֶה – This refers to the north wind, which devalues gold, by bringing famine and forcing people to spend their gold freely on food. וְכֵן הוּא אָמַר – And so it states in another verse, which applies the word *zal* to spending gold in this manner: הַזֵּלִים יָהֵב מִבֵּיס – Those who spend gold freely (*zalim*) from the purse.^[17]

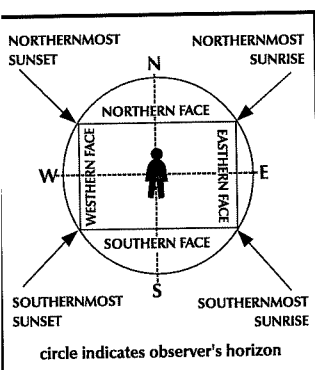
The Gemara quotes another statement about winds:

אָמַר רַבְרַם בְּרַם פָּפָא – Rav Chisda said in the name of Rav Chisda: מִיּוֹם שֶׁחָרַב בֵּית הַמִּקְדָּשׁ – From the day the Temple was destroyed, לֹא הוּנְשָׁמָה רוּחַ דְּרוּמִית – the south wind has not been filled with rain;^[18] שְׁנָאֵמַר – as [the verse] states: וַיִּגְזַר עַל-יָמִין וָרֵעֵב – He decrees on the right

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The verse's choice of words would seem to bear out R' Yehoshua's view that the dome of the sky is completely enclosed. The verse distinguishes between "traversing" [הוֹלֵךְ] in regard to the south, and "circling" [סוֹבֵב] in regard to the north. As the Gemara will explain below in regard to the eastern and western sides of the world, the difference between these two terms is that "circling" refers to passage behind the dome, whereas "traversing" refers to movement inside the dome [see note 10 below]. If so, when the verse uses the term "circling" to describe passage around the northern sector, it must refer to passage behind the dome, in which case the north side must be enclosed by the dome, as R' Yehoshua contends (*Maharsha*).

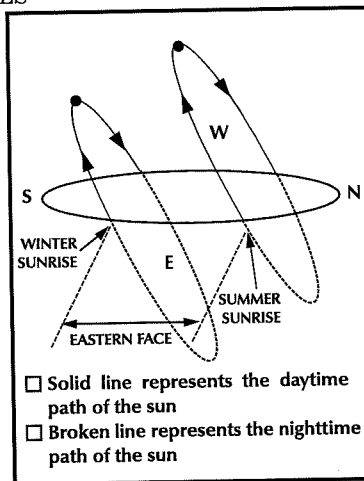
3. This translation is based on the Gemara's interpretation of the verse as referring to the sun's path around the horizon (see *Rashi* to *Ecclesiastes* 1:6).



9. The horizon is always seen as a circle (360 degrees) around the observer. The farthest points of sunrise and sunset mark four points along this circle, roughly corresponding to the NE, SE, SW, NW. These four points may be connected to form a rectangle inside the circle. The four arcs formed by these four lines represent, in a general way, the four directions of the world; the areas of the horizon in front of these are the "faces" of these directions. See diagram.

10. The daytime path of the sun is referred to as "traversing," since it occurs inside the dome of the sky. The path of the sun during the night is referred to as "circling" because it takes place outside the dome of the sky (*Rashi*).

During the long summer days near the summer solstice, the sun rises and sets far to the north, and its path crosses over the areas at the eastern and western horizons during the day. Around the time of the winter solstice, however, the sun does not pass over these areas during the day, but circles (behind) them at night (*Rashi*).



See diagram. When the sun crosses over these areas during the day, it is said to *traverse* them [מְהַלְכָתָן]. When it does not cross over them during the day but passes behind them at night, it is said to *circle* them [מְסַבְּבָתָן]. However, the sun always traverses to the south during the day, and always passes behind the north during the night.

11. [I.e. the interpretation of the verse that follows expresses the view of R' Eliezer,] who says that the world is enclosed on only three sides and is open in the north (*Rashi*).

12. *Job* 37:9. This verse is part of a passage describing God's mastery over the climatic forces.

13. See *Radak*, *Shorashim* ורה; see also *Malbim* to verse.

14. Since in R' Eliezer's view the world is open in the north but closed on the other three sides, the south is the "innermost" region of the world. It is therefore identified as the "inner chamber" (*Rabbeinu Gershom*). The north, being open, is termed the "dispersed" section of the dome (*Rashi*).

15. The translation of this verse is based on *Rashi*'s commentary to *Job* 37:10.

16. *Job* 37:22. The simple meaning of the verse is that the "gold" is sunshine, which is revealed when the clouds are dissipated by the winds. However, the dissipation of the clouds by the north wind also causes drought and, consequently, famine.

17. *Isaiah* 46:6. This was explained in the Gemara at the end of 25a.

18. I.e. the beneficial rains, which bring forth the vegetation, have not been carried by the south wind (*Rashi*).

26. *Proverbs 3:16*. Thus we see that Torah can provide wealth as well (*Rabbeinu Gershom*).
27. Above (25a).
28. This is based on the verse stated by Solomon in his prayer at the consecration of the Temple (*I Kings 8:48*): *And they shall pray to You by way of their land, which You gave to their ancestors, [and] the city that You chose and the house that I have built to Your name*.
- R' Chanina's position follows the view of a Baraisa quoted in *Berachos* 30a (see *Tsafos* 25a ל"ד), and indeed this is the accepted halachah (*Orach Chaim* 94:2; see above, 25a note 28).
29. The geography of this is problematic, since Babylonia is more to the east of Eretz Yisrael than it is to the north. This is evident not only from a glance at a map but from the numerous references in the Babylonian Talmud to the scholars of Eretz Yisrael as במערבא, *in the west* (see, for example: *Berachos* 47a with *Rashi* מערבא ד"ה; *Shabbos* 65b, *Rashi* ד"ה מערבא; *Bava Metzia* 7a, *Rashi* בר מערבא). *Tsafos* (*Bechoros* 55b מערבא במערבא) note this problem and answer that Babylonia is actually to the northeast of Eretz Yisrael. [Accordingly, we may perhaps say that the meaning of R' Chanina's instruction אָרְיָנוּ אַרְרוּמִי, *turn to the south*, is only that those living in Babylonia should turn at an angle to the south, and not face due west. (It was unnecessary for R' Chanina to mention that the people of Babylonia should face west, since it was well known that Eretz Yisrael was to the west. The only novelty of his

דְּבָתִּי – For it is written in Scripture regarding the destruction of the land by the Babylonians:^[30] **מִצְפוֹן תִּפְתַּח הָרְעָה עַל** „Out of the north the evil shall open (i.e. come north) upon all the inhabitants of the land.

The Gemara quotes the next section of the Mishnah:

מִרְחִיקִין אֶת הַמִּשְׁרָה מִן הַיֶּרֶק וְכִי – ONE MUST DISTANCE A FLAX FROM VEGETABLES etc. [leeks from onions, and mustard plants from the bees of his neighbor. R' Yose permits in the case of the mustard plants].

The Gemara quotes a Baraisa that explains R' Yose's dissenting opinion:

Mishnah **מִרְחִיקִין אֶת הָאֵילָן מִן הַבּוֹר עֶשְׂרִים וְחָמֵשׁ אַמּוֹת** – One must distance a tree twenty-five *amos* from a neighbor's pit, **וְהַרְוֵב וְהַשִּׁקְמָה חֲמִשִּׁים אַמּוֹת** – and a carob or a sycamore tree, fifty *amos* from the pit,^[34] **בֵּין מִלְּמַעְלָה בֵּין מִן הַצֶּדֶק** – whether one is located above the other, on higher ground, or beside it, on level ground.

The Mishnah now turns to the law of a tree that has already been planted near a pit:

קוֹצֵץ וְנוֹתֵן דָּמִים – If the pit came first, and one planted a tree within twenty-five *amos* afterward, **אִם הַבּוֹר קָדְמָה** – he must cut down the tree, and [the neighbor] pays him compensation,^[35] **וְאִם אֵילָן קָדָם** – but if the tree came first, and the pit was dug afterward, **לֹא יִקְוֶץ** – he need not cut it down. **סָפֵק זֶה וְסָפֵק זֶה קָדָם** – If it is unclear whether [the tree] or [the pit] came first, **לֹא יִקְוֶץ** – he need not cut down the tree.^[36] **ר' יוֹסֵי אוֹמֵר** – R' Yose says: **אֲףִי עַל פִּי שֶׁהַבּוֹר קוֹדֶמֶת לְאֵילָן לֹא יִקְוֶץ** – Even if the pit preceded the tree, he need not cut it down, **שֶׁזֶה חוֹפֵר בְּתוֹךְ שְׁלוֹ וְזֶה נוֹטֵעַ בְּתוֹךְ שְׁלוֹ** – because just as this one may dig a pit within his property, that one may plant a tree within his property.^[37]

Gemara The Gemara cites a Baraisa that elaborates on the rule that a tree must be distanced from a pit even if they are not on level ground:

תִּנָּה – It was taught in a Baraisa: **בֵּין שֶׁהַבּוֹר לְמַטָּה וְאֵילָן לְמַעְלָה** – The requirement to distance a tree applies WHETHER THE PIT IS BELOW AND THE TREE ABOVE it on higher ground, **בֵּין שֶׁהַבּוֹר** – OR THE PIT IS ABOVE AND THE TREE BELOW it on lower ground.

The Gemara explores the rationale for the Baraisa's ruling in each case:

תִּנָּה – It was taught in a Baraisa: **ר' יוֹסֵי מְתִיר בְּהַרְדֵּל** – R' YOSE PERMITS planting close to the neighbor's property in the case of MUSTARD plants **שֶׁיִּכּוֹל לֹאמַר לוֹ** – BECAUSE HE [the owner of the mustard] CAN SAY TO HIM [the owner of the bees]: **עַד שֶׁאֶתָּה** – JUST AS YOU SAY TO ME,^[31] **“DISTANCE YOUR MUSTARD plants FROM MY BEES,”** so that they not harm the honey,^[32] **הִרְחַק דְּבוֹרְךָ מִן הַרְדֵּלִי** – I reply to you, **“DISTANCE YOUR BEES FROM MY MUSTARD plants”** **שֶׁבָּאוֹת וְאוֹכְלוֹת** – FOR THEY COME AND EAT THE FLOWERS OF MY MUSTARD plants.” Thus, the owner of the mustard plants has no greater obligation to remove his plants than does the owner of the bees to remove his bees, and neither can evict the other.^[33]

בְּשִׁלְמָא בּוֹר לְמַטָּה וְאֵילָן לְמַעְלָה – It is understandable that one must distance the tree in the case where the pit is below and the tree above it, **קָא אָזְלוּן שְׂרָשֵׁין מִזְקֵי לָהּ לְבוֹר** – because the tree's roots will travel downward and damage the pit, **אֵלָּא בּוֹר** – but in the case where the pit is above and the tree below it, **לְמַעְלָה וְאֵילָן לְמַטָּה** – why must one distance the tree? Will its roots travel upward into the pit?

The Gemara answers:

אָמַר ר' חַגְגָּה בְּשֵׁם ר' יוֹסֵי – R' Chagga said in R' Yose's name: **מִפְּנֵי שֶׁמִּלִּידִין אֶת הַקֶּרֶק וּמִלְקִין קֶרְעִיתָהּ שֶׁל בּוֹר** – The tree must

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statement was that they should also angle to the south.) Thus, R' Chanina's instruction to face south parallels R' Yehoshua ben Levi's earlier instruction that one who wishes to acquire knowledge should face south, which the Gemara above explained to mean: **אֲצִידִין**, that he should turn to the side at somewhat of an angle to the south.

It follows from this that when the Gemara asks how we know that Babylonia is to the north of Eretz Yisrael, it does so not because the geographic facts were uncertain, but quite the contrary, because it was known that Babylonia was east of Eretz Yisrael. The Gemara's question therefore is how we know that it is also somewhat to the north. The Gemara cites the verse as proof that Babylonia is somewhat to the north of Eretz Yisrael.]

30. *Jeremiah* 1:14. God is telling the prophet Jeremiah about the impending destruction of Israel by an invasion from the north.

31. Literally: until you say to me.

32. See 25a note 7.

33. The Gemara above (18b) explained that the Rabbis (i.e. the Tanna Kamma) reject R' Yose's argument because they do not consider the damage inflicted by the bees to be significant. See also *Tosafos* 18b ד"ה לגלוג.

The Gemara above (18b) explained that R' Yose actually disagrees with the Tanna Kamma in all three of the cases mentioned in the Mishnah. It is his view that as long as the owner of the harmful agent remains within his property and does not actively damage his neighbor, he has the right to make whatever use of his property he wishes, and it is up to the threatened party to protect himself by moving his objects out of harm's reach [עַל הַנִּיזָק לְהַרְחִיק אֶת עַצְמוֹ]. R' Yose states his objection in the case of mustard plants specifically only because he argues that planting them close to beehives should be permissible even according to

the Tanna Kamma's view. Although the Tanna Kamma rules that it is the responsibility of the owner of the harmful agent to move it out of range [עַל הַנִּיזָק לְהַרְחִיק אֶת עַצְמוֹ], since the bees are not only damaged by the mustard plants but damage them in turn, the owner of the beehive has no greater claim for protection than the owner of the mustard plants, as explained above on 18b.

34. The root systems of most trees extend up to twenty-five *amos* from the tree. Therefore, one must maintain that distance between a tree and a neighbor's pit to ensure that the tree's roots do not breach the walls of the pit (*Rashi*, 18a עשרים וחמשה). Carob and sycamore trees, which have extensive root systems, necessitate a greater distance (*Rashi*).

35. Although the tree is potentially harmful to the neighbor's pit, its owner is compensated for cutting it down. The reason is that since the roots will not damage the pit until much later, when they reach the pit, one does not damage his neighbor's property at the time that he plants the tree. Therefore, the Rabbis did not require him to cut it down at a loss. However, compensation is awarded only where the party threatened by the tree is an individual neighbor. [A tree planted within twenty-five *amos* of a city is cut down without compensation (above, 24b).] (*Rashi*).

36. Since the requirement to cut down the tree is unclear, the owner of the tree cannot be made to suffer the loss of his tree out of doubt. This is consistent with the rule for any case of uncertainty regarding monetary issues, in which the ruling is made in favor of the defendant (*Rambam, Commentary to Mishnah*).

37. R' Yose maintains that with regard to damages that result from activities performed within one's own property, it is up to the one who is being damaged to protect himself by removing his vulnerable item from the proximity of the threatening object (see note 33).

43. I.e. what degree of vibration is above the limit that can be tolerated?

The Gemara answers:

בְּדִינֵי נִתְמָא אֶפּוֹמִיָּה דְּחֻצְבָּא – Enough that the lid of a barrel resting on one of its walls shakes from the vibrations.^[1]

The Gemara cites another incident that clarifies R' Yose's opinion:

דְּבִי בַר מֵרְיוֹן בְּרִיָּה דְּרַבִּין בִּי הָוָה נִפְצָא בֵּיתָא – When members of the household of Bar Meryon the son of Ravin would beat their flax,^[2] הָוָה אֱוָלָא רִקְתָּא וּמִזְקָא אִינוּשִׁי – the chaff would fly off and injure people. [The injured parties] came before Ravina, requesting that he order the flax-beaters to work elsewhere. אָמַר לְהוּ – He told them: בִּי – When we say R' Yose agrees, with regard to "his arrows," that one must distance himself from a party that may be harmed, הָנִי מִיָּלִי דְּקָא אֱוָלָא מִכּוּחַ – we refer to a case where [the injurious article] is propelled by one's own force, just as an arrow is. הָקָא וִיקָא הוּא דְּקָא מִמֶּטִּי – Here, however, it is the wind that carries off [the chaff] and flings it forcefully upon people. Therefore, although the damage results directly from their flax-beating, it is not analogous to one's arrows, and the flax-beaters are not required to move away.

The Gemara challenges Ravina's ruling:

מַר בַּר רַב אֲשִׁי – Mar bar Rav Ashi challenged [this ruling]: מַאי שְׁנָא מִזְוָה וְרוּחַ מְסִיעֵתוּ – What is the difference between this law and the law of winnowing on Shabbos with the wind's assistance? By winnowing, one desecrates the Shabbos, even though the wind assists him by carrying off the chaff. Here,

too, let the flax-beaters be held responsible, even though the wind assists in the damage.^[3] – ? –

The Gemara records another opinion:

אָמְרוּהּ קָמִיָּה דְּמֵרִימָר – They stated the facts of [this case] before Mereimar, to hear his opinion, אָמַר לְהוּ – and he said to them: הָיִינוּ זֹוֶרָה וְרוּחַ מְסִיעֵתוּ – This is analogous to the law of winnowing on Shabbos with the wind's assistance. Therefore, the flax-beaters are required to move to another location.

The Gemara presents another challenge to Ravina's ruling: אָמַר לְהוּ – But according to Ravina, who ruled that the flax-beaters may continue their activity, even though the wind flings the chaff upon people, מַאי שְׁנָא מִגִּיץ הַיּוֹצֵא מִתַּחַת הַפֶּטִישׁ וְהַזִּיק – what is the difference between this case and the case of a spark that shoots out of^[4] a blacksmith's hammer and damages another's property, דְּחֵיבִיב לְשַׁלֵּם – where [the blacksmith] is required to pay for the damage, even though the spark is borne by the wind?

The Gemara answers:

הָתָם נִיקָא לִיה דְּלִיזָל – There, [the blacksmith] prefers that [the sparks] fly off his property, for he fears that they may set his smithy afire. He therefore strikes the anvil with great force, so that the sparks fly off on their own without the wind's assistance. Accordingly, he is liable for damage caused by the flying sparks.^[5] הָקָא לֹא נִיקָא לִיה דְּלִיזָל – Here, however, [the flax-beaters] do not prefer that [the chaff] fly off their property, for it poses them no threat. Accordingly, they do not beat the flax forcefully, and the chaff would not fly at all were it not for the wind. Therefore, they are not liable for damage caused by the flying chaff.

Mishnah The previous Mishnah dealt with the issue of planting a tree in a location where its roots might damage a neighbor's pit. This Mishnah deals with a situation where the roots do not pose a threat

to a neighbor's pit:^[6]

אֵלֹא אִם בֵּן הָרְחִיק מִמֶּנּוּ – One must not plant a tree near his neighbor's field אֲחֵד גִּפְתִּים וְאֲחֵד כָּל אֵילָן – unless he distances the tree four amos from [his neighbor's] boundary, אֲרַבַּע אַמּוֹת – whether planting grapevines or any other tree.^[7] הָיָה גֵּדֶר בֵּינֵיהֶם – If there was a fence between the two fields, וְהָיָה סוּמֶךְ – this [neighbor] may bring his tree close to the fence on [one side] of the boundary, וְהָיָה סוּמֶךְ – and [the other neighbor] may bring his tree close to the fence on [the other side] of the boundary.^[8]

The Mishnah now addresses the issue of roots of a tree that was planted near a boundary: If one planted a tree and the roots extended into his neighbor's property,

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1. Literally: a lid on the mouth of a barrel moves. If the lid of a barrel resting on the mansion's outer wall shakes as a result of their pressing, the vibrations are deemed excessive and they are required to move away (*Rashi*). (*Ri* (quoted in *Tosafos* and *Ritva*) contends that the barrel's lid would not vibrate unless the walls shook so much that they were near collapse. Obviously, a lesser degree of vibration is sufficient to force the pressers to move away. He therefore interprets the Gemara's answer as an analogy: If the wall's trembling is comparable to the quivering of a barrel's lid that is occasioned when one carries the barrel (i.e. a very slight tremor), the pressers are required to move away.)

2. Flax is beaten to break up the fiber.

3. The force of the wind is normally employed in the winnowing process. Grain is tossed into the air and the wind carries away the chaff, while the heavier kernels fall back to earth. Although one who winnows does not separate the chaff from the kernels with his own hands, winnowing is counted among the thirty-nine *Avos Melachos* [Primary Categories of Labor] forbidden on Shabbos (see *Shabbos* 73a). The reason is that one who employs the force of the wind to carry out an action transgresses the prohibition against the performance of labor on Shabbos. We learn from this that performing an activity with the wind's assistance is akin to carrying out that action oneself. Therefore, Mar bar Rav Ashi argues that injury caused by the flying chaff is attributable to the flax-beaters, whose blows to the flax propel chaff into the air, to be carried off by the wind. Although the wind does the actual damage, the chaff may nevertheless be considered their "arrows." Therefore, they should be required to move away.

Ravina did not bother to respond to Mar bar Rav Ashi's challenge. He

rejects the analogy to winnowing on Shabbos (see *Bava Kamma* 60a), because with regard to Shabbos, the Torah forbids מְחֻשְׁבָּה, purposeful labor, a category that includes making purposeful use of an external force [such as the wind] to accomplish a desired objective. Monetary issues are subject to different guidelines, under which one is held responsible only for damages attributable to his own force, not for those caused by the force of the wind. Accordingly, he ruled that the flax-beaters need not move away (*Rashi*).

4. Literally: that goes out from underneath.

5. Even if the wind carries a spark a great distance, the blacksmith is liable for any damage it may cause. A spark sent flying into the street is apt to start a fire wherever it lands. Therefore, the blacksmith is liable whether the air is calm and the spark falls near the smith or it is windy and it lands farther away (*Tosafos*).

6. See Gemara above, 18a.

7. A space of four amos is required for maneuvering a plow around the tree when tilling the soil, without entering his neighbor's property and damaging its crops. The restriction applies whether one plants grapevines or other trees, and whether the neighbor's property is used as a grain field or an orchard, for in any case the plow might damage his neighbor's field (*Rashi*).

[The Mishnah specifies that this rule applies to trees as well as grapevines, because otherwise one might think that the four-amah distance applies only to grapevines, with regard to which the same distance is required under the laws of *kilayim* (the prohibition of planting vines together with other species) (*Tosafos*).]

8. The fence ensures that their plows will not cross the boundary.

כדי שלא יעכב את – [the neighbor] may excavate three *tefachim* of earth and remove the roots, – המחרשה – so that they should not impede the movement of his plow. – If [the neighbor] was digging a pit, a ditch, or a vault, and came upon the roots, – קוצץ ויורד – he may cut downward to whatever depth he finds necessary, – והעצים שלו – and the wood cuttings are his.^[9]

Gemara The Gemara cites a Baraisa that explains the reason for the Mishnah's first rule:

We learned in a Baraisa: – ארבע אמות שאמרו – The FOUR AMOS THAT [THE SAGES] SAID must be maintained between vines and a neighboring field – כדי עבודת הכרם – are needed to provide SUFFICIENT space FOR THE CULTIVATION OF THE VINEYARD without encroachment on a neighbor's property.^[10]

The Gemara asserts that this rule does not apply universally: – אמר שמואל – Shmuel said: – לא שנו אלא בארץ ישראל – They (the Sages of the Mishnah) taught this law, mandating a distance of four *amos*, only in reference to Eretz Yisrael, where large plows are commonly used. – אבל בבבל – But in Babylonia, where smaller plows are common,^[11] – שתי אמות – two *amos* suffice.

The Gemara cites a Baraisa that supports Shmuel's ruling: – תניא נמי הכי – It was taught similarly in a Baraisa: – לא יטע אדם – ONE MUST NOT PLANT A TREE NEAR HIS NEIGHBOR'S FIELD – אלא אם כן הרחיק ממנו שתי אמות – UNLESS HE DISTANCES it TWO AMOS FROM [HIS NEIGHBOR'S] boundary.

The Gemara inquires: – But we learned in our Mishnah: FOUR AMOS! – אלא לאו בדשמואל – Rather, is it not clear that the Baraisa concurs with Shmuel's ruling that the Mishnah refers only to Eretz Yisrael, while in Babylonia a distance of two *amos* suffices? Therefore, referring to Babylonia, the Baraisa mandates a distance of only two *amos*. – שמע מינה – Indeed, we learn from [this Baraisa] that Shmuel's ruling is correct.

The Gemara now records another version of the preceding discussion:

– ואיבא דרמי לה מירמא – There are those who contrasted [the Baraisa] with our Mishnah, as follows: – תנן – We learned in the Mishnah: – לא יטע אדם אילן סמוך לשדה חבירו – ONE MUST NOT PLANT A TREE NEAR HIS NEIGHBOR'S FIELD – אלא אם כן הרחיק ממנו – UNLESS HE DISTANCES it FOUR AMOS FROM [HIS NEIGHBOR'S] boundary. – ארבע אמות – But we were taught in a Baraisa: TWO AMOS!

Shmuel resolves this apparent contradiction:^[12] – אמר שמואל לא קשיא – Shmuel said: This is not a difficulty. – כאן בבבל – Here, in the Baraisa that mandates a distance of two

amos, we refer to Babylonia, where small plows are commonly used, – כאן בארץ ישראל – while here, in the Mishnah, which mandates a distance of four *amos*, we refer to Eretz Yisrael, where larger plows are common.

The Gemara relates an incident which illustrates another exception to the Mishnah's rule:

– רבא בר רב חנן היה הנהו דיקלי – Rava bar Rav Chanan had these palm trees – אמיצרא דפרדיסא דרב יוסף – along his boundary with Rav Yosef's vineyard.^[13] – הוּוּ אָתוּ צפורי ותבי – Now, birds would occasionally come to perch in the palms, – ונחתי בפרדיסא ומפסדי ליה – and from there they would descend into the vineyard and damage [its crop].

Rav Yosef sought to have the palms removed: – אמר ליה – He said to [Rava bar Rav Chanan]: – Go cut down your palms, since by providing a perch for the birds they cause damage to my vineyard. – אמר ליה – [Rava bar Rav Chanan] replied to him: – והא ארחיקי לי – But I have already distanced the palms four *amos*^[14] from your property, as prescribed by the Mishnah! – אמר ליה – [Rav Yosef] said to him: – Those words of the Mishnah refer to the distance required for trees (i.e. where the neighbor had planted trees in his field), – אכל לגפנים בעינן טפי – but for grapevines (i.e. where the neighbor had planted a vineyard), a distance of more than four *amos* is required.^[15]

Rava bar Rav Chanan protested: – והא אנן תנן אחר גפנים ואחר כל אילן – But we learned in the Mishnah that the four-*amah* distance applies to GRAPEVINES AS WELL AS ANY OTHER TREE! I am therefore permitted to maintain my trees at a distance of four *amos* from your vineyard.^[16]

Rav Yosef reinterpreted the Mishnah: – אמר ליה – He said to [Rava bar Rav Chanan]: – אלהי מילי אילן – Those words of the Mishnah refer to the distance required between one tree and another tree, or between grapevines and grapevines, – אכל אילן לגפנים בעינן טפי – but between a tree and grapevines, a distance of more than four *amos* is required.^[17]

Upon hearing this argument Rava bar Rav Chanan acquiesced: – אמר ליה – He said to [Rav Yosef]: – אנא לא קייצנא – I will not

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9. The Gemara (26b) inquires whether the word *his* refers to the one who cut the roots or the one who planted the tree.

10. Although the Baraisa singles out the case of a vineyard, its reason applies equally to all trees. [See note 7.]

11. The hilly terrain of Eretz Yisrael necessitated larger, stronger plows than the flat ground of Babylonia (*Ramban*).

12. According to this version of the discussion, the Gemara did not cite the Baraisa to support Shmuel's ruling, but rather, Shmuel himself presented his ruling as a resolution to the apparent contradiction between the Mishnah and the Baraisa.

13. From the ensuing discussion, it is clear that he had distanced the trees four *amos* from the boundary, as mandated by the Mishnah.

14. (*Rashi*). *Rabbeinu Yonah* points out that Rava and Rav Yosef resided in Babylonia, where the distance required is only two *amos*. However, see *Tsafos* (אבל), who prove that there were areas in Babylonia where large plows were used and the four-*amah* distance applied.

15. The Mishnah's four-*amah* distance serves only to ensure that one will not maneuver a plow onto his neighbor's property. However, if the

neighbor had planted a vineyard, one must take into account the fact that birds which perch in his trees may damage his neighbor's grapes. Accordingly, he must distance the trees far enough from the vineyard that birds which perch in them cannot fly to the vineyard in one swoop (*Rosh*).

16. Rava bar Rav Chanan interpreted the Mishnah's clause "whether grapevines or any other tree" as referring to the item planted in the neighbor's field, not to the tree being planted now. According to his interpretation, the Mishnah reads: One must distance a tree four *amos* from his neighbor's field, whether the neighbor has planted a vineyard or trees (*Rosh*). [Rava bar Rav Chanan maintains that the owner of a tree is not held responsible for damage caused by birds that perch in his tree because that damage is not attributable to the tree itself.]

17. Rav Yosef interprets the Mishnah's clause "whether grapevines or any other tree" as referring to the tree being planted. Thus, the Mishnah reads: One must distance a tree four *amos* from his neighbor, whether planting vines [near a vineyard] or trees [near other trees]. The Mishnah does not refer to trees planted near a vineyard; in that case a greater distance is called for, since the trees provide a perch for birds that might cause damage to the vineyard.

cut down the palms myself, דאמר רב – for Rav said: האי – It is forbidden to cut down a palm that bears even a *kav* of fruit per season.^[18] ואמר רבי חנינא – And furthermore, R' Chanina said: לא שכיב שבת ברי אלא – “My son, Shikchas, died prematurely for no [reason] other than that he cut down a fig tree before its time had arrived.”^[19] מר אי גיחא ליה ליקוי – However, if the master (Rav Yosef) wishes to, he may cut them down himself.^[20]

The Gemara cites an incident related to the latter part of the Mishnah, which rules that a neighbor may remove roots that extend into his property:

רב פפא הוה ליה הנדו דיקלי – Rav Pappa had these palm trees along his boundary with Rav Huna the son of Rav Yehoshua. The roots of his palms extended into Rav Huna's property. ואזל אשכחיה דהנהו חפר – Now, [Rav Pappa] once went out and came upon [Rav Huna the son of Rav Yehoshua] digging holes in his property, וקא – and cutting [Rav Pappa's] roots. אמר ליה מאי – [Rav Pappa] said to him: What is this? Why are you cutting the roots of my palm trees? אמר ליה – [Rav Huna the son of Rav Yehoshua] replied to him: תנן – We learned in a

Mishnah: היו שרשים יוצאים לתוך של חבירו – IF the ROOTS EXTENDED INTO HIS NEIGHBOR'S property, שלא יעבב המחרושה – [THE NEIGHBOR] MAY EXCAVATE THREE *tefachim* of earth and remove the roots, SO THAT THEY SHOULD NOT IMPEDE THE movement of his PLOW. I am merely following the Mishnah's ruling.

The argument continued:

אמר ליה – [Rav Pappa] said to [Rav Huna the son of Rav Yehoshua]: הני מילי שלשה – Those words of the Mishnah permit excavating three *tefachim* of earth, מר קא חפר טפי – while the master (Rav Huna the son of Rav Yehoshua) is digging beyond three *tefachim* and cutting roots. אמר ליה – [Rav Huna the son of Rav Yehoshua] replied to him: אנא בורות – I am digging pits, ditches and vaults.^[21] I am therefore entitled to cut downward to any depth, דהנהו חפר בור שיח – for we learned in the Mishnah: וימערך קוצץ ויורד והעצים שלו – If [THE NEIGHBOR] WAS DIGGING A PIT, A DITCH, OR A VAULT, HE MAY CUT DOWNWARD to whatever depth he finds necessary, AND THE WOOD cuttings ARE HIS.

Rav Pappa later recounted the ensuing events:

אמר רב פפא – Rav Pappa said: אמרי ליה בולחי – I told him all the proofs there are that he was forbidden to cut the roots,^[22] ולא יכולי ליה – but I could not win him over with my arguments,

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18. The Torah forbids cutting down any tree that bears fruit (see *Deuteronomy* 20:19). Rav ruled that a palm which yields a *kav* of produce per season qualifies as a fruit-bearing tree and is subject to this prohibition. [A *kav* is a measure of volume. There are differing views regarding the conversion of this Talmudic measure into contemporary terms, with opinions ranging from approximately 1.5 quarts (R' *Avrohom Chaim Noeh*) to 2.65 quarts (*Chazon Ish*).]

19. I.e. the sin of cutting down a tree prematurely, while it still bore fruit, was the cause of his premature death. [R' Chanina's statement underscores the gravity of this sin.]

20. The prohibition against cutting down fruit trees does not apply to a tree that is a source of damage to others. Now, Rav Yosef held that these trees were harming his vineyard by providing a perch for birds that would fly across and damage its crop. He therefore demanded that they be cut down. Rava bar Rav Chanan was not fully convinced by Rav

Yosef's argument that damage caused by birds is attributable to the tree in which they perch. Although he was willing to suffer the loss of his trees based on this contention, he refused to risk transgressing a prohibition by chopping them down. Accordingly, he told Rav Yosef: If you are confident in the validity of your argument – that the trees are considered a source of damage and are therefore not subject to this prohibition – you may cut them down yourself (*Rabbeinu Yonah*; cf. *Tosafos* אנה אנה).

21. He was probably digging only one of these, but borrowed the Mishnah's terminology to make his point. [See *Chasam Sofer*, who explains why Rav Huna phrased his reply in this manner, and also why he did not give this reply when first challenged by Rav Pappa.]

22. I.e. I cited many Mishnahs and Baraisas that support my point of view (see *Rashi*).

עַד דָּאָמַרְי לִיהָ הָא דָּאָמַר רַב יְהוּדָה – until I told him the following statement of Rav Yehudah: מִצַּר שְׁהָיוּקוּ בּו רֵבִים – A private boundary divider on which the public established a right of way אֶסוּר לְקַלְקְלוֹ – may not be ruined by its owner.^[1] I, too, had established the right to have my roots extend into his property and he was therefore forbidden to cut them.^[2]

Although Rav Huna the son of Rav Yehoshua yielded to this argument, he later regretted having done so:

אַמַּאי לֹא אָמַרְי לִיהָ – After [Rav Pappa] left the field, [Rav Huna the son of Rav Yehoshua] said to himself: אָמַאי לֹא אָמַרְי לִיהָ – Why did I not reply to [Rav Pappa] as follows: בָּאֵן בְּתוֹךְ שֵׁשׁ – כאן בתוך שש – Here, protected by the right that he had established in my property, are roots within sixteen amos of the tree, בָּאֵן – כאן – while here, in the incident at issue, I was cutting roots that were beyond sixteen amos.^[3]

The Mishnah states:

הָיָה חוֹפֵר בּוֹר שִׁיחַ וּמְעָרָה – IF [THE NEIGHBOR] WAS DIGGING A PIT, A DITCH, OR A VAULT, and came upon the roots, קוֹצֵץ וַיּוֹרֵד – HE MAY CUT DOWNWARD to whatever depth he finds necessary, וְהַעֲצִים שָׁלוֹ (וְכוֹר) – AND THE WOOD CUTTINGS ARE HIS.

The Gemara seeks a clarification of this ruling:

בְּעֵאֵן מִיָּנִיָּה נֶעֱקַב הַדְּרִיבָא מִרַב חֲסִידָא – Yaakov the Hadiyavian^[4] inquired of Rav Chisda: עֲצִים שֶׁל מִי – To whom do the wood cuttings belong – to the neighbor who cuts them or to the owner of the tree?^[5]

אָמַר לִיהָ תְּנִיתוּהָ – [Rav Chisda] said to him: We learned [the answer] to this question in a Mishnah:^[6] שְׂרָשֵׁי אֵילָן שֶׁל – הָרִיטוּ הַבָּאִין בְּשֵׁל הַקֶּדֶשׁ – The ROOTS OF A TREE THAT IS PRIVATELY OWNED^[7] WHICH EXTEND INTO [LAND] OWNED BY THE TEMPLE TREASURY are subject to the following rule:^[8] לֹא נִהְיִין – ONE MAY NOT DERIVE any BENEFIT from the roots, וְלֹא מוֹעֲלִין – BUT ONE DOES NOT COMMIT ME'ILAH by deriving benefit from them.^[9]

Rav Chisda now explains the Mishnah's ruling and the proof that emerges from it:

אִי אָמַרְתָּ בְּשֵׁלָמָא בְּתַר אֵילָן אֲזִילִין – It is understandable if you say that ownership of the roots follows the tree from which they grow;^[10] מִשּׁוּם הָיָה לֹא מוֹעֲלִין – that is why one does not commit me'ilah by deriving benefit from these roots. Since roots growing in a neighboring property belong to the tree owner, these roots of a private tree are not Temple property and are therefore not subject to me'ilah.^[11] אֲלָא אִי אָמַרְתָּ בְּתַר קֶרְקַע אֲזִילִין – But if you will say that ownership of the roots follows the ground in which they grow, אָמַאי לֹא מוֹעֲלִין – why does one not commit me'ilah by deriving benefit from the roots? If roots belong to the owner of the ground in which they grow, these roots that grew in Temple property belong to the Temple treasury and should be subject to me'ilah! We therefore learn from this Mishnah that roots belong to the tree owner, even if they grow in another person's property.

The Gemara challenges Rav Chisda's interpretation of the Mishnah:

אֲלָא מַאי בְּתַר אֵילָן אֲזִילִין – But what is your conclusion – that ownership of the roots follows the tree? אִימָא סִיבָא – I will cite the latter portion of that same Mishnah, which contradicts your conclusion: שֶׁל הַקֶּדֶשׁ הַבָּאִין בְּשֵׁל הָרִיטוּ – [ROOTS] OF A tree that is owned by THE TEMPLE TREASURY WHICH EXTEND INTO PRIVATELY HELD [PROPERTY]^[12] are subject to the following rule: לֹא נִהְיִין – ONE MAY NOT DERIVE any BENEFIT from the roots, וְלֹא מוֹעֲלִין – BUT ONE DOES NOT COMMIT ME'ILAH by deriving benefit from them. וְאִי בְּתַר אֵילָן אֲזִילִין – Now, if ownership of the roots follows the tree, אָמַאי לֹא מוֹעֲלִין – why does one not commit me'ilah by deriving benefit from the roots? Since the tree is owned by the Temple treasury, its roots are also Temple property and should be subject to me'ilah! Thus, the latter part of the Mishnah contradicts Rav Chisda's conclusion that ownership of the roots follows the tree. – ? –

NOTES

1. In Talmudic days, fields were generally separated by narrow strips of land that were higher or lower than the fields themselves (*Rashbam* 53b (ר"ה או)). These strips would occasionally be used by the public as shortcuts to their own fields. Rav Yehudah ruled that if a property owner stood by while the public established a right of way on his boundary strip, and did not raise any objection, he could not afterward ruin their walkway and reclaim the strip for private use.

2. [Apparently, Rav Pappa's palm trees had been stationed on the boundary for some time before this incident occurred.] Rav Pappa claimed that since the trees had been there for so long with no objection raised by Rav Huna, he had established the right to let their root system develop on Rav Huna's property (*Rashi*). Accordingly, Rav Huna was now forbidden to destroy the roots, just as the owner of a boundary strip who stood by silently while the public established a walkway on his property cannot afterward ruin their walkway.

[*Tosafos* take issue with this explanation, noting that one is forbidden to take back only a right of way that was established by the public, not one that was established by an individual (such as Rav Pappa). They therefore offer alternative explanations for this passage.]

3. Although the root system of a tree extends for twenty-five amos (as indicated by the Mishnah on 25b), the tree is nourished chiefly by those roots that are within sixteen amos, as the Gemara will later prove. Therefore, establishing the right to develop a root system on a neighbor's property prohibits the neighbor from cutting only those roots that are within sixteen amos of the tree (*Rashi*). Roots that extend beyond sixteen amos are not essential to the tree's survival and are not protected by this right.

4. He was a native of the ancient nation of Adiabene, located in what is today northern Iraq (see *Aruch* ד"ה חרייב and ד"ה חרייב, with *Mossaf HaAruch*).

5. A simple reading of the Mishnah indicates that the roots belong to the neighbor who cuts them; presumably they are his because they grew in

his property. However, one can argue that roots are a part of the tree and should belong to the owner of the tree. The wording of the Mishnah can be understood in this fashion as well. Thus, a clarification is necessary.

6. *Me'ilah* 13b.

7. Literally: that is a commoner's (property). [The term שֶׁל הָרִיטוּ refers to property that is privately held, as opposed to שֶׁל הַקֶּדֶשׁ – property owned by the Temple treasury (*hekdes*).]

8. While the Temple stood, it was common for people to consecrate property as a donation to the Temple treasury (*hekdes*). (Such property would normally be sold by the Temple treasurers, who would then use the proceeds as necessary.) The Torah forbids private citizens to derive any benefit from property that belongs to *hekdes*. If one inadvertently derived benefit from *hekdes* property, one must pay *hekdes* the value of that benefit plus a fine of one-fifth. Additionally, one is obligated to bring a sacrifice (see *Leviticus* 5:14-16; *Rashi* ad loc.). This transgression is known as *me'ilah*. The Mishnah now relates how the rule of *me'ilah* applies to roots of a privately held tree that grow in land belonging to *hekdes*.

[*Me'ilah* does not apply to items that are attached to the ground (*Me'ilah* 18b). The Mishnah's ruling applies after the roots are cut from the ground.]

9. I.e. he does not violate the Biblical prohibition of *me'ilah* and is not obligated to add a fifth to his payment, nor to bring a sacrifice. He must, however, pay for the benefit he has derived (*Rambam, Hil. Me'ilah* 1:6).

10. Literally: we follow the tree [in determining the owner of the roots].

11. Nevertheless, though the Biblical injunction of *me'ilah* does not apply, the Sages forbade one to derive any benefit from roots that grow in *hekdes* property (*Rashi*). Accordingly, the Mishnah rules that one may not derive any benefit from these roots, but if he does, he has not committed *me'ilah*.

12. This is the inverse of the previously cited case.

The Gemara continues its rebuttal of Rav Chisda's conclusion by providing an alternative explanation of the Mishnah:

מִיִּדֵי אֵינָא – In truth, is [the Mishnah] at all relevant to the question of to whom the roots belong? No, for the following reason: בְּגִידוּלֵין הָבְאִין לְאַחַר מִבְּאֵן עֶסְקִינָן – In this Mishnah, we are dealing with a new growth of roots, that came into being after [the property was consecrated].^[13] With new growth, the question of ownership is irrelevant, וְקָא קָבַר אֵין מַעִילָה בְּגִידוּלֵין – because [the Tanna] of this Mishnah holds that new growth is not subject to *me'ilah*, even if produced by property that belongs to the Temple treasury.^[14] Therefore, whether roots belong to the tree owner or to the landowner, they are not subject to *me'ilah* in this case. Thus, the Mishnah offers no indication as to the ownership of the roots.

The Gemara presents another interpretation of the Mishnah cited:

רַבִּינָא אָמַר לָא קָשְׁיָא – Ravina said: The contradiction between the first and latter case of the Mishnah presents no difficulty, for the following reason: בְּאֵן – Here, in the first case, which implies that roots belong to the tree owner, בְּתוֹךְ שֵׁשׁ עֶשְׂרֵה אַמָּה – we are dealing with roots that are within sixteen amos of the tree, בְּאֵן – while here, in the latter case, which implies that roots belong to the landowner, חוּץ לְשֵׁשׁ עֶשְׂרֵה אַמָּה – we are dealing with roots that extend beyond sixteen amos.^[15]

Having concluded that roots within sixteen amos nourish a tree, the Gemara cites a related law:

אֵילָן הַסְמוּךְ לְמִצְרַיִם בְּתוֹךְ שֵׁשׁ עֶשְׂרֵה אַמָּה – Ulla said: – אמר עולא – Ulla said:

A tree that is within sixteen amos of a boundary גִּזְלָן הוּא – is a "thief," because it draws nutrients illegally from the neighboring field. וְאֵין מְבִיאִין מִמֶּנּוּ בְּבוּרִים – Accordingly, one does not bring *bikkurim* (i.e. first-fruit offerings) from [its fruits].^[16]

The Gemara seeks a source for the assertion that a tree draws nourishment from the area within sixteen amos:

מִנָּה לִיה לְעוּלָא הָא – From where does Ulla derive this measurement? אִילִימָא מִדְּהִנָּן – If you will say that he derives it from that which we learned in a Mishnah, with regard to pre-*Shemittah* cultivation.^[17] עֶשְׂרֵה נְטִיעוֹת הַמְּפֹזְרוֹת בְּתוֹךְ בֵּית סֵּאָה – TEN SAPLINGS THAT ARE evenly DISTRIBUTED THROUGHOUT A BEIS SE'AH^[18] qualify for the following leniency: חוֹרְשִׁין כָּל בֵּית – ONE MAY PLOW THE ENTIRE BEIS SE'AH ON THEIR ACCOUNT UNTIL ROSH HASHANAH of the *Shemittah* year, because plowing the field contributes to the saplings' development and does not merely prepare the land for *Shemittah* growth.^[19] We learn from this Mishnah that ten saplings draw nourishment from an entire *beis se'ah*.

The Gemara now calculates the area allotted for each sapling: בְּמָה הוּוּ לָהּ – How many square amos are in [a *beis se'ah*]? שְׁנַיִם אֶלְפִין וְחֲמִשָּׁה מֵאוֹת – Two thousand five hundred square amos. לְכָל חֹד וְחֹד בְּמָה מְטִי לָהּ – How much does that come to for each [sapling]? מֵאוֹתָן וְחֲמִשִּׁין – Two hundred fifty square amos.^[20]

The Gemara asks:

הָא לֹא הוּוּ דְּעוּלָא – That is not as great as Ulla's measurement! According to Ulla, a tree is nourished by sixteen amos of soil in each direction, an area of 1,024 square amos!^[21] – ? –

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13. I.e. a person consecrated a field to the Temple treasury, and an adjoining tree later developed a root system in that field (in the first case of the Mishnah), or a person consecrated a tree to the Temple treasury and its roots later spread into an adjoining field (in the latter case of the Mishnah).

14. The Mishnah (*Me'ilah* 13a) records a dispute as to whether the law of *me'ilah* applies to new growth that accumulated on property owned by *hekdesh* (e.g. roots, tree branches, fruit). Although the new growth belongs to *hekdesh*, there is an opinion that it is not subject to *me'ilah* because it was not consecrated by a human donor, but merely accumulated naturally on *hekdesh* property (*Ramban* et al., below, 79a; see also *Tosefos R' Akiva* to *Me'ilah* 3:6 and *Ketzos HaChoshen* 200:1). Now, the Mishnah cited here rules that *me'ilah* does not apply to any roots, whether roots of a private tree that extend into *hekdesh* property, or roots of a *hekdesh* tree that extend into private property. Therefore, the Gemara reasons that this Mishnah must refer to roots that grew after the property was consecrated, and follows the opinion that new growth is not subject to *me'ilah* (*Rashi*). [Nevertheless, the Rabbis decreed that one is forbidden to derive any benefit from such new growth.]

15. As explained above (note 3), a tree draws nourishment chiefly from the area within sixteen amos. Therefore, Ravina explains, only the roots within sixteen amos are considered a part of the tree itself and belong to the tree owner. Roots beyond sixteen amos belong to the owner of the land in which they grow (just as one owns a new seedling that sprouts on his property). [The Mishnah cited is to be understood as follows: Roots of a private tree that extend into *hekdesh* property [within sixteen amos of the tree] are not subject to *me'ilah* (because they belong to the tree owner). Roots of a *hekdesh* tree that extend into private property [beyond sixteen amos] are not subject to *me'ilah* (because they belong to the landowner) (*Rashi*).]

Thus, the Gemara's original question – when a neighbor cuts roots that grew in his property, to whom do these roots belong – has now been resolved: Roots within sixteen amos of the tree belong to the tree owner, while roots beyond sixteen amos belong to the landowner.

16. The Torah obligates landowners in Eretz Yisrael to bring the first fruits of each year's crop of any of the seven species with which Eretz Yisrael is praised to the Temple and give them to a Kohen. However, the Torah qualifies this commandment as follows (*Deuteronomy* 26:2):

וְלָקַחְתָּ מִרְאשִׁית כָּל־פְּרִי הָאֲדָמָה אֲשֶׁר תִּבְּיָא מֵאֶרֶץ – And you shall take from the first of all fruits of the earth that you bring from your land... Thus, only fruit that grows from one's own land falls under this obligation. Fruit of a tree that draws nourishment from a neighbor's land is exempt from *bikkurim* (*Rashi*). [*Tosefos* offer another reason: Stolen produce is unfit for Temple service. Therefore, the fruit of this tree cannot be offered at the Temple.]

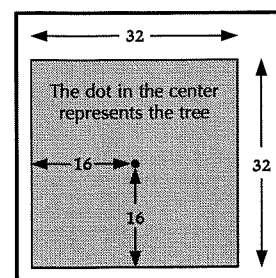
17. *Sheviis* 1:6. In the days of the Temple, it was forbidden to cultivate land in preparation for the *Shemittah* (Sabbatical) year (see *Rambam's Commentary* to *Sheviis* 1:1). For example, it was forbidden to plow a grain field after Pesach or an orchard after Shavuot of the year before *Shemittah*, because such plowing merely served to prepare the ground for *Shemittah* (*Sheviis* 1:1, 2:1). On the other hand, cultivation that provided an immediate benefit to the land was permitted until the very end of the pre-*Shemittah* year. This Mishnah describes a case in which plowing is permitted until the *Shemittah* year begins.

18. An area fifty amos square is known as a *beis se'ah* (literally: room for a *se'ah*) because it is suitable for sowing a *se'ah* of barley grain.

19. If the saplings are scattered over a larger area or condensed in a smaller area, one may not plow the entire *beis se'ah*, but only a small patch of land around each tree (see *Sheviis* *ibid.*).

20. As noted above, a *beis se'ah* is fifty amos square, and thus amounts to 2,500 square amos, or 250 square amos for each of the ten saplings.

Rashi's method for calculating square amos differs from the method commonly used today. *Rashi* explains the Gemara as follows: A *beis se'ah* (50x50) can be divided into fifty strips of land, each fifty amos long and an *amah* wide. Placed end to end, these would form a strip 2,500 amos long. Divide by ten and the result is that each sapling can be allotted a strip 250 amos long and an *amah* wide (i.e. 250 square amos).



21. At this point, the Gemara assumes that the area from which a tree draws its sustenance forms a square, with the tree in the middle. Counting outward from the tree sixteen amos in each direction results in a square 32 amos across, or an area of 1,024 square amos. See diagram.

The Gemara proposes another source for Ulla's measurement:

ואלא מדרתון – But perhaps Ulla derived his measurement from that which we learned in another Mishnah:^[22] שלשה אילנות

של שלשה בני אדם – If THREE TREES BELONGING TO THREE different PEOPLE are planted within a *beis se'ah*, הרי אלו מצטרפין – THEY COMBINE to attain the status of an orchard,^[23] וחורשין כל – AND ONE MAY therefore PLOW THE ENTIRE

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22. *Sheviis* 1:5. This Mishnah deals with cultivating fully grown trees prior to the *Shemittah* year. [Fully grown trees have extensive root systems, and therefore require more land than saplings (*Rashi*).]

23. The deadline for tilling the soil of a grain field in the year before *Shemittah* was Pesach. An orchard, however, could be tilled until Shavuot. The Mishnah rules that if three trees are evenly distributed

within the area of a *beis se'ah*, they form an orchard and the entire area may be plowed until Shavuot, even if the trees are owned by three different people. [If the trees are scattered in a larger area, they do not form an orchard. In such a case, one may plow only a small patch of land around each tree after the Pesach deadline — a patch large enough for a harvester to circle the tree while holding his basket.] (*Rashi*).

בית טאה בשבילן — *BEIS SE'AH ON THEIR ACCOUNT* until Shavuot of the pre-*Shemittah* year. We learn from this Mishnah that three trees draw nourishment from an entire *beis se'ah*.

The Gemara now calculates the amount of land allotted for each tree:

במה הוּוּ לְהוּ — *How many square amos are in [a beis se'ah]? Two thousand five hundred square amos.* לְכָל חֵד בְּמֵה מְטִי לִיה — *How much does that come to for each of the three trees? תְּמִנִּי מֵאָה וְתֵלָתִין וְתֵלָתָא — Eight hundred thirty-three and one-third square amos.*

The Gemara asks:

אֲבָתִי נְפִישִׁי לִיה דְּעוּלָא — *Still, Ulla's total is greater, for Ulla allots a tree 1,024 square amos.* — ? —

The Gemara answers:

לֹא דָק — *[Ulla] was imprecise in his measurement. He merely gave an approximation.*^[1]

The Gemara rejects this approach:

אִימור דְּאִמְרִין לֹא דָק — *When can we say that an Amora was imprecise in a measurement? לְחֻמְרָא — Only where his approximation results in a stringency. לְקוּלָא לֹא דָק מִי אִמְרִין — Can we say that an Amora was imprecise where the approximation results in a leniency?*^[2] In our case, Ulla exempted from *bikkurim* any tree that is within sixteen *amos* of a neighboring field, while the Mishnah indicates that the true measurement is less than that.^[3] — ? —

The Gemara reconciles the measurements:

מִי כְּבֵרֶת בְּרִיבּוּעָא קָא אִמְרִין — *Do you think we mean to say that the area from which a tree is nourished is a square? בְּעִיּוּלָא קָא — Come, learn a proof from the following Mishnah.*^[7] אִימִין — *No! We mean to say that it is a circle. The area of the*

circle, according to Ulla, closely parallels the Mishnah's measurement.^[4]

The Gemara calculates the area of this circle:

בְּמֵה מְרֻבֵּעַ יוֹתֵר עַל הָעִיגוּל — *Let us see. How much larger is a square than a circle that is inscribed in it? רְבִיעַ — One-fourth.*^[5] Thus, the area of the circle from which a tree is nourished, according to Ulla, is one-fourth less than the 1,024 square *amos* that we calculated previously. If we deduct one-fourth of 1,024 (256), פְּשׁוּ לְהוּ שְׁבַע מֵאָה וְשִׁתִּין וְתֵלָתָא — *the remainder is seven hundred and sixty-eight square amos.*

The Gemara asks:

אֲבָתִי פֶשׁ לִיה פְּלָגָא דְּאִמְתָּא — *There still remains a discrepancy of one-half amah between Ulla's measurement and the Mishnah's.* According to the Mishnah, a tree draws nourishment from an area of 833⅓ square *amos*. A circle with that area has a radius of sixteen and one-half *amos*.^[6] — ? —

The Gemara answers:

הֵינּוּ דְּלֹא דָק — *This is where [Ulla] was imprecise in his measurement, וְלְחֻמְרָא לֹא דָק — and his imprecision results in a stringency.* According to the Mishnah, a tree within 16½ *amos* of the boundary should be exempt from *bikkurim*, while Ulla gave the round figure of 16 *amos*. We may therefore conclude that Ulla's measurement was derived from this Mishnah.

Ulla ruled that a tree which draws nutrients from a neighbor's property is exempt from *bikkurim*. The Gemara now presents several Mishnahs from which it attempts to refute Ulla's ruling: הָא שְׁמַע — *Come, learn a proof from the following Mishnah.*^[7] הַקּוֹנֶה אֵילָן וְקִרְקָעוֹ — *One who purchases a tree and its sur-*

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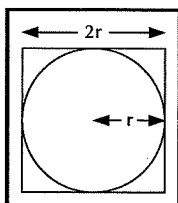
1. An area of 833⅓ square *amos* forms a square with slightly less than 29 *amos* on each side. The distance from a tree in the center of this square to its perimeter is 14½ *amos*. Thus, according to the Mishnah, a tree draws nutrients from the area within 14½ *amos*. Ulla chose to give the approximate measurement of sixteen *amos*. [Amoraim occasionally laid down rulings based on approximate measurements, as the Gemara will shortly explain.]

2. When a ruling is based on a certain measurement, approximating the measurement will result in either a more stringent ruling or a more lenient one. We can postulate that an Amora's ruling reflects an approximate measurement if the approximation results in a more stringent ruling than the exact measurement would, but not if it results in a more lenient ruling.

3. According to the Mishnah, a tree draws nutrients from a distance of 14½ *amos* (see note 1). Applying this measurement to *bikkurim* would exempt only trees that are within 14½ *amos* of a boundary. Thus, Ulla's measurement is more lenient than that of the Mishnah.

4. Until this point, the Gemara had assumed that a tree's roots radiate to the four points of the compass and form a square. Therefore, if the roots that draw nutrition extend sixteen *amos* in each direction, their total area is a square of thirty-two *amos*, or 1,024 square *amos*. This is far greater than the Mishnah's calculation of 833⅓ square *amos*. The Gemara now recognizes its assumption as incorrect, for the diagonal of this square extends more than sixteen *amos* from its center (*Rashi*). Therefore, the Gemara concludes that the roots fan out in a circle whose radius is sixteen *amos*. Thus, the roots take up less area than originally thought.

5. I.e. the area of a circle is three-fourths the area of a square in which it can be inscribed. Thus, the square is larger than the circle by one-fourth the area of the square.



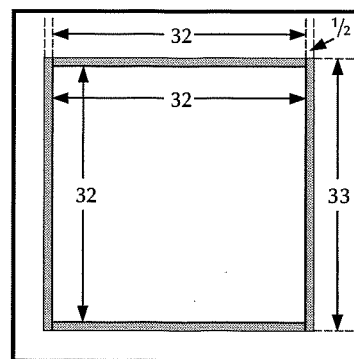
The Talmudic method for determining the area of a circle is to inscribe it inside a square and calculate the area of the square; the area of the circle is presumed to be three-quarters the area of the square.

This can be calculated as follows: When a circle is inscribed in a square, each side of the square is twice the length of the circle's radius. [See diagram.] Thus, the area of the square is $2r \times 2r$ or $4r^2$. The

area of the circle is $3r^2$ — three-quarters the area of the square. [The formula for calculating the area of a circle is πr^2 , or mathematically, approximately $3\frac{1}{7}\pi r^2$. However, in matters of Talmudic law the fraction is disregarded (see *Eruvin* 14a).]

In our case, a circle with a diameter of 32 *amos* (and a radius of 16) will have an area one-fourth less than that of a 32-*amah* square.

6. *Rashi* calculates this as follows: The Mishnah's figure (833⅓) exceeds Ulla's figure (768) by [approximately] 65 square *amos*. This can be made into a strip 65 *amos* long and one *amah* wide. Split the strip lengthwise and place the two halves end to end to form a strip 130 *amos* long and ½ *amah* wide. Apply this strip around the sides of a 32 *amah* × 32 *amah* square (which is the area from which a tree is nourished, according to Ulla) as follows: Place 32 × ½ on top, and 32 × ½ on bottom. The resulting figure is a rectangle 33 *amos* long and 32 *amos* wide. From the original 130-*amah* strip (of which 64 *amos* have been accounted for), a strip of 66 *amos* × ½ *amah* remains. Place 33 × ½ on one side of the rectangle and 33 × ½ on the other side, to form a square of 33 × 33 *amos*. Thus, the extra 65 square *amos* accorded by the Mishnah result in a square that is one *amah* larger than Ulla's. A tree placed in the center of this square has an extra half-*amah* of land in each direction. The Mishnah's measurement is thus one-half *amah* greater than Ulla's.



Rashi points out that this calculation is not accurate, for the Gemara has already discarded the notion that a tree's roots grow outward in a square, and has concluded that they form a circle. A circle with an area of 833⅓ square *amos* has a radius of 16⅓ *amos* [based on the formula: $\text{area} = 3r^2$]. *Rashi* explains that the Gemara was not concerned with calculating the difference so precisely. However, there is a variant version of the text, which reads: *there remains a discrepancy of two-thirds of an amah.*

7. *Bikkurim* 1:11.

rounding LAND מביא וקורא – MUST BRING *bikkurim* from the tree's fruit AND also RECITE the *bikkurim* verses.^[8]

The Gemara asks:

מאי לאו כל שהוא – Does this not include one who purchased a minute measure of land around the tree?^[9] If so, the Mishnah contradicts Ulla's rule, because in such a case the roots obviously extend into a neighboring field. – ? –

The Gemara answers:

לא שש עשרה אמה – No! The Mishnah refers to one who purchased at least sixteen amos of land around the tree. Thus, the Mishnah concurs with Ulla's ruling.^[10]

The Gemara attempts once more to refute Ulla's ruling:

הא שמע – Come, learn a proof from the following Mishnah:^[11] קנה שני אילנות בתוך של חבירו – If one PURCHASED TWO TREES that are WITHIN HIS FELLOW'S PROPERTY, מביא ואינו קורא – HE MUST BRING *bikkurim* from the trees' fruit, BUT HE DOES NOT RECITE the *bikkurim* verses, because he does not own the land from which the trees are nourished.^[12]

הא שלשה מביא וקורא – This implies that if, however, he purchased three trees, he brings *bikkurim* from the trees' fruit

and also recites the *bikkurim* verses, for in that case he does acquire ownership of the land around the trees.^[13]

The Gemara asks:

מאי לאו כל שהוא – Is it not a minute measure of land around each tree that the purchaser acquires? If so, the roots extend into the neighboring property, and nevertheless, the Mishnah implies that the purchaser brings *bikkurim* and recites the *bikkurim* verses.^[14] – ? –

The Gemara answers:

לא – No! The purchaser does not merely acquire a minute measure of land around each tree. הלא נמי שש עשרה אמה – Here too, as in the previously cited Mishnah, he acquires sixteen amos of land around each tree. Thus, the roots do not extend into a neighbor's property.

The Gemara again attempts to refute Ulla's ruling:

הא שמע – Come, learn a proof from the following Mishnah:^[15] קרקע כל שהוא – RABBI AKIVA SAYS: Even A MINUTE MEASURE of LAND חייב בפאה ובבכורים – IS SUBJECT TO THE REQUIREMENTS OF PE'AH^[16] AND BIKKURIM, וכותבין עליו – AND IS fit TO WRITE A PROSBUL ON ITS ACCOUNT,^[17]

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8. When bringing *bikkurim* to the Temple, one would recite verses of praise to Hashem for having granted him a parcel of land and having blessed it with a crop. This recitation is composed of the verses in Deuteronomy 26:5-10.

9. Literally: whatever [amount of land] it is. Since the Mishnah does not state the amount of land that one must purchase to be subject to the *bikkurim* requirement, we deduce that it applies to any amount of land.

10. The Mishnah did not state explicitly that its ruling applies only to one who purchases sixteen amos of land around the tree, because it assumed that Ulla's rule was self-evident.

11. *Bikkurim* 1:6.

12. The *bikkurim* verses were recited only by one who owned the land from which the crops grew. This is because one of the verses is (Deuteronomy 26:10): ועתה הנה הבאתי את ראשית פרי האדמה אשר נתת לי ה'. And now, I have brought the first fruit of the land that You, Hashem, have given me. One who does not own the land that produced his fruit (e.g. a sharecropper) cannot recite this verse and is therefore excluded from the entire recitation. [Nevertheless, he is obligated to bring *bikkurim*.] Now, if one purchases two trees from his fellow, it is presumed that the land around the trees is not included in the sale. Therefore, although the purchaser is obligated to bring *bikkurim*, he does not recite the *bikkurim* verses (Rashi).

13. When one purchases three or more trees from his fellow, it is presumed that the sale is not limited to the trees, but also includes the land around the trees. Since the purchaser owns the land from which the trees are nourished, he recites the *bikkurim* verses (Rashi).

14. It would seem that the law stated explicitly in the Mishnah (one who purchased two trees brings *bikkurim*, even though he does not own the land around the trees) should suffice to refute Ulla's rule. See *Tos. Rid* and *Toras Chaim* who explain why the Gemara based its question on

the Mishnah's implied ruling that one who purchased three trees brings *bikkurim* and recites the verses.

15. *Pe'ah* 3:6.

16. When harvesting a field, one may not take its entire crop, but must leave a corner (*pe'ah*) of the field uncut, for paupers to gather its produce (see *Leviticus* 19:9). This Mishnah teaches that even a minute parcel of land is subject to the *pe'ah* obligation. [However, there must be enough produce to allow for both harvesting and leaving for the poor (see *Tosafos* to *Kiddushin* 26a קרקע ר"ה).]

17. A *prosbul* is a document in which a creditor transfers to a court the authority to collect his debts. The Gemara in *Gittin* (36a) explains the need for this document: The Torah mandates that all outstanding debts be canceled every *Shemittah* year. Towards the end of the Second Temple era, Hillel noted that people would refrain from lending money close to the *Shemittah* year, in violation of the Torah's injunction (Deuteronomy 15:9): השמר לך פרייהו דבר עם לבבך כל ימך לאמר קרבה. Take heed, lest your heart entertain a subversive thought, saying: "The seventh year, the *Shemittah* year, is approaching," and you will look unkindly upon your impoverished brother and not give him [a loan]. To alleviate this problem, Hillel ordained that before the *Shemittah*, one should draw up a *prosbul* document, thereby transferring his outstanding loans to a court. Loans owned by the court are not canceled by *Shemittah*. Therefore, the creditor can act as the court's agent, and collect the debt. [The legal basis for Hillel's enactment is further discussed in *Gittin* (ibid.).]

A *prosbul* may be written only for a debt which is secured by land. This is because Hillel instituted the *prosbul* only for ordinary instances of debt, and it was unusual to lend money without real property to secure the debt (Rashi). The Mishnah informs us that the value of the property he owns need not equal the full amount of the loan – even a minute parcel of land can serve as the basis for a *prosbul*.

וְנִקְנִין עִמָּה נִכְסִים שֶׁאֵין לָהֶם אַחֲרִיּוֹת — AND MOVABLE PROPERTY^[1] CAN BE ACQUIRED ALONG WITH IT.^[2] Now, one of the laws taught in the Mishnah is that a minute measure of land is subject to *bikkurim*. This contradicts Ulla's ruling that a tree within sixteen *amos* of a neighboring property is exempt from *bikkurim*.^[3]

The Gemara answers:

הָכָא בְּמַאי עֲסָקִין — With what are we dealing here, in the Mishnah? בְּחִטִּי — With stalks of wheat growing on a minute piece of land. Wheat is subject to *bikkurim* even if it grows near a boundary.^[4] It is only a tree within sixteen *amos* of a boundary that Ulla exempted from *bikkurim*.

The Gemara finds support for this interpretation of the Mishnah:

וְדִקְא נָמִי — One can also infer this from a precise reading of the Mishnah, דְּקִתְנִי בִלְ שְׁוֵא — for the Mishnah states: A MINUTE MEASURE of land. This implies that the Mishnah refers to wheat, which can indeed grow on a minuscule portion of land, and not to a tree, whose trunk surely takes up more than a "minute measure of land." שְׁמַע מִינָּה — Indeed, we learn from [this wording] that the Mishnah refers to wheat.

The Gemara attempts once again to refute Ulla's ruling:

הָא שְׁמַע — Come, learn a proof from the following Baraisa: אֵילָן — If A TREE is growing PARTLY INSIDE THE LAND of Israel AND PARTLY OUTSIDE THE LAND,^[5] טֶבֶל וְחֻלִּין מְעֻרְבִין זֶה בָּזֶה — its fruit is deemed to be TEVEL AND ORDINARY non-tevel produce INTERMINGLED WITH ONE ANOTHER.^[6] דְּבָרֵי רַבִּי — These are THE WORDS OF REBBI. רַבֵּן — RABBAN SHIMON BEN GAMLIEL SAYS:

הַגֵּדֵל בְּחִיּוֹב חֵיִיב — [THE FRUIT] THAT GROWS IN [THE AREA] SUBJECT to *terumos* and tithes (i.e. inside the Land of Israel) IS SUBJECT to these requirements, הַגֵּדֵל בְּפֶטוּר פֶּטוּר — while [THE FRUIT] THAT GROWS IN [THE AREA] EXEMPT from *terumos* and tithes (i.e. outside the Land) IS EXEMPT from these requirements.

The Gemara now presents the proof:

עַד בָּאֵן לֹא פְּלִיגִי אֱלָא — They (Rebbi and Rabban Shimon ben Gamliel) do not disagree except insofar — דְּמַר סָבֵר יוֹשֵׁ בְּרִירָה — as one master (Rabban Shimon ben Gamliel) holds that a determination can be made as to which part of the tree is growing inside the Land of Israel and which is not, וְמַר סָבֵר אֵין בְּרִירָה — while the other master (Rebbi) holds that no such determination can be made.^[7] אָבֵל גֵּדֵל בְּפֶטוּר דְּבָרֵי הַבֵּל פֶּטוּר — However, if the entire tree were growing in [the area] exempt from *terumos* and tithes (i.e. outside the Land), all would agree that its fruit would be exempt from these requirements, even if the tree were within sixteen *amos* of the Land of Israel. This contradicts Ulla's view that a tree's status is affected by the fact that it draws nourishment from the area within sixteen *amos*.^[8] — ? —

The Gemara answers:

הָכָא בְּמַאי עֲסָקִין — With what are we dealing here, in the Baraisa? דְּמַפְסִיק צוּנְמָא — With a case where an underground section of rock separates the roots along the border. Thus, the roots on each side of the border are not nourished by soil on the other side. Similarly, if a tree were entirely outside the Land and a section of rock prevented its roots from crossing the border and drawing nutrients, its fruit would be exempt from *terumos* and tithes, because in that case, Ulla's rule would not apply.

NOTES

1. Literally: properties that have no responsibility. The Baraisa uses this term to describe movable property, in contrast to real property (land and houses), which is generally described as "properties that have responsibility."

When one incurs a debt and the debt is recorded in a document [קְלוּדָא], a lien automatically takes effect on any real property owned by the debtor at that time. Even if the debtor subsequently sells the property, the lien is not voided. Should the debtor default on his obligation, the creditor can seize the real property from the buyer to satisfy the debt. For this reason, real property is said to have "responsibility." Since it will always be there, the lender relies on it for surety when he lends money (*Rashi* to *Kiddushin* 26a שיש ר"ה). In contrast, movable property has "no responsibility," i.e. the lender does not rely on it for surety.

The fact that movable property has "no responsibility" is not pertinent to the point of law discussed here. The term *properties that have no responsibility* is merely the Baraisa's idiom for "movable property," a way of characterizing the legal difference between real and movable property.

2. It is a basic principle of law that the ownership of an object cannot be transferred from one person to another unless the transaction is formalized by an *acquisitory act* (an act of *kinyan*). Torah law defines various *kinyanim* for acquisition of different types of property, and a *kinyan* effective for one category of property may not be effective for another. Movable property is generally acquired by *meshichah* (meshichah), i.e. the prospective owner draws the object near to himself. Real property is acquired by *bi'yeush* (by means of money (i.e. payment), a document, or a proprietary act (i.e. an act of improving the property)). Nevertheless, the Mishnah (*Kiddushin* 26a) teaches: נִכְסִים שֶׁאֵין לָהֶם אַחֲרִיּוֹת נִקְנִין עִמָּה — Movable property may be acquired together with real property by means of money, a document, or a proprietary act. This means that if one sells movable property along with real property, the act of acquiring the real property by any method effective for its acquisition suffices to acquire the movable property as well. [The acquisition of movable property through the acquisition of real property is known as *קנין אגב* — acquisition by dint of (*Rashi*).

This Mishnah informs us that even the acquisition of a minute portion of land suffices to acquire movable property by dint of it.

3. The Gemara assumes that the Mishnah refers to a tree whose owner owns only a minute portion of land around it (*Rashi*). Thus, it stands in clear contradiction to Ulla's ruling.

4. The *bikkurim* obligation applies to all seven species of fruit for which the Land of Israel is distinguished [wheat, barley, grapes, figs, pomegranates, olives and dates] (*Rashi*). Although the roots of wheat stalks extend up to three *tefachim* in each direction, each stalk's main source of nourishment is the ground directly beneath it (*Tosafos*).

5. I.e. a tree was planted on the border of the Land of Israel, so that part of the trunk is on either side of the border.

6. Fruit grown in the Land of Israel may not be eaten until all *terumos* and tithes are separated from it. Untithed produce is known as *tevel*. Fruit grown outside the Land is exempt from these requirements. Thus, the fruit of a tree situated partly inside and partly outside the Land is a mixture of *tevel* and non-*tevel* produce, i.e. each individual fruit is partially subject to *terumos* and tithes and partially exempt from these requirements (*Ritva*).

7. According to Rabban Shimon ben Gamliel, we can determine which part of the tree is subject to *terumos* and tithes by splitting it along the border. Fruit growing inside the border is considered produce of the Land of Israel and is subject to these requirements, while fruit growing outside the border is considered foreign produce and is exempt from them. [The critical factor with regard to *terumos* and tithes is the location of the tree. In this case, each part of the tree is judged according to its own location (*Chazon Ish*, *Bava Basra*, *Likutim* 21; see also *Chidushei Maran Riz HaLevi*, *Hil. Terumos* 1:24).] Rebbi, on the other hand, holds that we may not look at each part of the tree individually, but must view it as a unit; the entire tree is growing both inside and outside the Land of Israel. Therefore, all of its fruit is a mixture of *tevel* and non-*tevel* produce (see *Rashi* and *Rabbeinu Gershom*).

8. The basis for Ulla's rule is that a tree's status with regard to *bikkurim* (as well as *terumos* and tithes) depends not only on its location, but also on its source of sustenance. Accordingly, a tree located within sixteen *amos* of the Land of Israel cannot be exempted from any requirements incumbent upon produce of the Land. Since it draws its nourishment from both inside and outside the Land, its fruit must be considered a mixture of *tevel* and non-*tevel* produce (*Chidushei Maran Riz HaLevi*, *ibid.*).

This view is contradicted by Rabban Shimon ben Gamliel, who ruled that the fruit growing on the side of the tree that is directly outside the border is exempt from tithes, and by Rebbi, who disagreed only in the case of a tree that is situated on both sides of the border.

The Gemara challenges this explanation:

– If so, that the roots are separated along the border, – **what is Rabbi's reasoning?** If the tree is divided underground, it stands to reason that we should view each section individually above the ground as well. – ? –

The Gemara answers:

– [The nutrients] drawn by all the roots mix in the tree's trunk. We must therefore view the tree as a unit from the trunk upward.

The Gemara re-examines the dispute between Rabbi and Rabban Shimon ben Gamliel in light of its assertion that they are dealing with a tree whose roots are separated underground:

– **Now, in what point do they disagree?** – One master (Rabbi) holds that the trunk mixes together all the nutrients. We therefore view the tree as a unit, all of whose fruit is the produce of soil on both sides of the border. – The other master (Rabban Shimon ben Gamliel) holds that each side of the tree is independent of the other side.^[9]

The Gemara now challenges the accuracy of Ulla's measurement:

– Do roots extend sixteen amos from a tree and no further? – But we learned in a Mishnah:^[11] ONE MUST DISTANCE A TREE TWENTY-FIVE AMOS FROM A neighbor's PIT, so that its roots should not breach the walls of the pit. – ? –

The Gemara answers:

– [The roots] travel a great distance, up to twenty-five amos from the tree, – Abaye said: – Abaye said: –

Mishnah – If the branches of one's tree extend over a neighbor's field, [the neighbor] may cut off enough of the lower branches to allow clearance for the full height of an ox-goad raised over the plow.^[13] – In the case of a carob or a sycamore tree, whose branches are very dense, he may cut all the protruding branches along a plumb line suspended over the boundary.^[14] – If the neighbor's property is an irrigated field, he may cut the branches of all trees along the plumb line.^[15] – Abba Shaul says: The branches of all barren trees^[16] may be cut along the plumb line.

Gemara The Gemara analyzes Abba Shaul's ruling: – They inquired: – Abba Shaul addressed the first case of the Mishnah, –

– however, they only drain the earth of nutrients within sixteen amos. – Beyond that distance they do not drain the earth of nutrients because a tree is not nourished by its outlying roots. Accordingly, a tree that is more than sixteen amos from a boundary is not considered a "thief."

The Gemara cites an opinion that concurs with Ulla:

– When Rav Dimi arrived in Babylonia from Israel, he said: – Reish Lakish inquired of R' Yochanan: – What is the law of *bikkurim* with regard to a tree that is within sixteen amos of a neighbor's boundary? – [R' Yochanan] said to him: – [The tree] is a "thief," because it draws nutrients from the neighboring field, and one does not bring *bikkurim* from its fruits.

The Gemara now cites another version of R' Yochanan's opinion:

– When Ravin arrived in Babylonia from Israel, he said in the name of R' Yochanan: – Whether a tree is planted near a neighbor's boundary (within sixteen amos) or the branches of a tree extend over a neighbor's property, one brings *bikkurim* from the tree's fruit, and also recites the *bikkurim* verses. The fact that the tree encroaches on another's property is irrelevant, – for it was on the condition [that this practice be tolerated] that Joshua apportioned the Jews their inheritance in the Land of Israel.^[12] Under Joshua's enactment, one is entitled to plant a tree near a boundary, and therefore, the tree is not considered a "thief."

– or did he address the latter case of the Mishnah, which deals with an irrigated field?^[17]

NOTES

9. Literally: the air (i.e. the trunk, which is above the ground).

10. [Literally: this (side) stands by itself and that (side) stands by itself.] According to Rabban Shimon ben Gamliel, location is the absolute criterion for determining whether a tree is subject to *terumos* and tithes. Therefore, although it is indisputable that nutrients from both sides of the border mix in the tree's trunk, we judge each side of the tree individually. The part that is inside the Land of Israel is subject to *terumos* and tithes even though some nutrients of foreign origin nourish its fruits. The part that is outside the Land is exempt from *terumos* and tithes even though it derives some nourishment from the Land (*Chazon Ish* ibid; cf. *Rashi* to *Gittin* 22a מ"ס ר"ה).

11. Above, 25b.

12. [The Land of Israel is known as the Jews' inheritance because it was originally promised to their forefathers by *Hashem*.]

When the Jews first entered Israel, the land was apportioned among them by Joshua. At that time, Joshua enacted a number of ordinances under which landowners were required to tolerate encroachments on their property in the public interest (*Rashi*; cf. *Tosafos* 26b גולן ר"ה). One of the ordinances was that a landowner is permitted to plant a tree along his property line, even though its roots and branches may extend into his neighbor's property. [See *Bava Kamma* 81a-82a for a listing of Joshua's enactments.]

13. He may cut the branches off to the height necessary to allow clear-

ance for a man driving a plow to pass under the tree and raise his ox-goad over the plow in order to prod the oxen (*Meiri*).

14. The owner of the affected field may cut away any branches that cross a plumb line hanging directly over the boundary, i.e. anything within the airspace of his property. This is because the branches of these two species of trees cast a great deal of shade, which is detrimental to produce growing in the field (*Rashi*).

15. The shade of any tree, even one whose branches are not as thick as a carob or a sycamore, is harmful to an irrigated field (*Rashi*). Sunlight assists in the proper absorption of the moisture provided by irrigation (*Nimukei Yosef*).

16. I.e. trees that do not bear fruit. It is unclear whether Abba Shaul is referring to trees that lean over an ordinary field or an irrigated field. This question is explored in the Gemara.

17. If Abba Shaul addressed the first case of the Mishnah (i.e. an ordinary field), his disagreement with the Tanna Kamma is this: The Tanna Kamma rules that all trees whose branches protrude may be cut enough to allow clearance for an ox-goad raised over a plow. Only carob and sycamore trees may be cut along the plumb line. Abba Shaul rules that all barren trees may also be cut along the plumb line.

If Abba Shaul addressed the latter case of the Mishnah (i.e. an irrigated field), the disagreement is as follows: The Tanna Kamma rules that all trees may be cut along the plumb line, while Abba Shaul holds

The Gemara answers:

אֶפְשָׁר דְּגָחִין וְחִלִּיף תוֹתִיָּה — It is possible for [a rider] to bend over and pass beneath [the branches]. Therefore, a camel rider presents no difficulty, even if his height is greater than that of a laden camel.

The final segment of the Mishnah is cited:

ר' שִׁמּוֹן אָמַר כָּל הָאֵילָן בְּנֶגֶד הַמְּשֻׁקָּלֶת מִפְּנֵי הַטּוּמָאָה — R' SHIMON SAYS: ANY TREE may be cut ALONG THE PLUMB line, BECAUSE OF TUMAH.

The Gemara cites a Baraisa that explains R' Shimon's statement:

מִפְּנֵי אֹהֶל הַטּוּמָאָה — We are taught in a Baraisa: BECAUSE the branches may create A TENT OF TUMAH.^[25]

The Gemara asks:

מִפְּנֵי הַטּוּמָאָה הֵנֵּן — It is obvious that this is the reason,

— for we learned in the Mishnah that the branches are cut off BECAUSE OF TUMAH. What concern for *tumah* can the Mishnah refer to other than a tent of *tumah*?

The Gemara answers:

אִי מִמִּיתָיו הָיָה אֲמִינָא — Had we merely learned the reason from the Mishnah, I might have said our concern is מִיִּיתָיו — that perhaps a crow will bring an article of *tumah*^[26] and toss it [onto the branches], where it might become lodged. One who passed underneath the article would be rendered *tamei*.^[27] וְסָגִיא בְּדִחְלוּלֵי בְּעֵלְמָא — Were that our only concern, it would be sufficient to merely thin out the branches,^[28] so that no article of *tumah* could remain lodged in them. קָא מְשַׁמַּע לָן — [The Baraisa] therefore informs us that we must be concerned for the possibility that the branches will create a tent of *tumah*. Accordingly, all the branches must be cut along the plumb line.

הָדָרִין עֲלֶיךָ לֹא יִחְפּוּר

WE SHALL RETURN TO YOU, LO YACHPOR

NOTES

25. A human corpse (or even an olive-sized piece [כִּזְיֹת] of its flesh) can convey its *tumah* to an item merely by being present under the same roof as the susceptible item. This method of conveying *tumah* is referred to as אֹהֶל הַטּוּמָאָה — a tent of *tumah*, because the Biblical verse from which it is derived (Numbers 19:14) deals with a corpse that is located inside a tent.

Tree branches qualify as a "tent" (i.e. a roof) with regard to this law (see *Ohalos* 8:2). Accordingly, where branches lean over the public domain, there is room for concern that a small piece of flesh from a corpse may fall beneath the branches, and unknowing passersby who

walk under them will be rendered *tamei* (*Rashi*). To preclude this occurrence, R' Shimon permits cutting off any branches that extend over the public domain.

26. I.e. an object that imparts *tumah*, such as a piece of flesh from a corpse.

27. One of the laws of *tumah* is that one who passes beneath a corpse (or a piece of its flesh) is rendered *tamei* (see *Ohalos* 3:1).

28. Literally: create spaces [between the branches]. According to this interpretation, the Mishnah would mean that alternate branches are to be cut along the plumb line.