

Shloshim Siyum Daf Yomi – Bava Metzia – Dr. Jesse Hefter

“Nourishing the fruits of the future”

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Maimonides Kehillah – Shabbos Re-eh – Mvorchim Elul

This Siyum on Masechet Bava Metzia is being presented by my Daf Yomi learning partner, Brenda, and me to commemorate the recent Shloshim on Ches, Menachem Av, Erev Tisha B’Av, of our beloved daughter, Ilana, a”h.

The final Mishna of Masechet Bava Metzia deals with the theme of the relationship between owners of properties that are adjacent to each other but one property exists at a higher elevation than that of the other property. Says the Mishna:

שְׁתֵּי גִנּוֹת זֹז עַל גַּב זֹז, וְהַיָּרֵק בֵּינֵיהֶן

Two gardens exist, one above the other, and vegetables are growing out of the side of the vertical surface between the two upper and lower gardens. Who has access/privileges to these vegetables? The Mishna presents a Machlokes between R. Meir and R. Yehuda.

רַבִּי מֵאִיר אֹמֵר: שֶׁל עֲלִיוֹן

R. Meir assigns the ownership of the vegetables to the owner of the higher garden.

רַבִּי יְהוּדָה אֹמֵר: שֶׁל תַּחְתּוֹן

R. Yehuda assigns ownership of the vegetables to the owner of the lower garden.

Now, the Mishna presents their debate:

אָמַר רַבִּי מֵאִיר: אִם יִרְצֶה הָעֲלִיוֹן לִיקַח אֶת עֲפָרוֹ, אֵין כָּאֵן יָרֵק

Says R. Meir, if the owner of the upper garden wishes to remove the dirt of his garden, that would completely eliminate the vegetable. (Meaning that it would seem the owner of the upper garden literally has the upper hand!)

אָמַר רַבִּי יְהוּדָה: אִם יִרְצֶה הַתַּחְתּוֹן לְמַלְאוֹת אֶת גִּנּוֹתוֹ, אֵין כָּאֵן יָרֵק

R. Yehuda says – but R. Meir – if the owner of the lower garden wishes to fill in the earth of his garden to even it out with the upper garden (and thereby cover the vegetable), there will no longer be any vegetables on the vertical wall between the two gardens. (Meaning that it would seem the owner of the lower garden has the upper hand!)

It would seem that, at this point, both positions are valid – what decision should we make in such a case?

אָמַר רַבִּי מֵאִיר: מֵאַחַר שֶׁשְּׁנֵיהֶן יְכוּלִין לְמַחוֹת זֶה עַל זֶה, רוֹאִין מֵהֵיכָן יָרֵק זֶה חֵי

R. Meir suggests – since both owners can prevent each other from utilizing the yarak, let’s determine the source of the vitality of the plant. (Their nourishment derives from watering from the upper garden so the Yarak should be owned by the upper gardener.)

How does R. Yehuda respond? The Ramban explains at this point that R. Yehuda agrees that the nourishment comes from above. However, he holds that since the plant is growing out of the side of the earth in the airspace of the lower garden, the owner of the lower garden is the primary.

The Mishna suggests a third view, that of R. Shimon:

אָמַר רַבִּי שִׁמְעוֹן : כָּל שֶׁהָעֵלְיוֹן יָכוֹל לַפְּשׁוּט אֶת יָדוֹ וְלִטּוֹל – הֵרִי הוּא שְׁלוֹ, וְהַשְּׂאָר שֶׁל תַּחְתּוֹן

Posits R. Shimon: Any plants that the owner of the upper garden can reach by hand and take for him or herself, he or she can claim ownership. Any other vegetables belong to the owner of the lower garden.

Rashi explains that, while R. Shimon agrees with R. Meir that the source of nourishment is from the upper garden and that the Yarak should belong to the upper owner, he also agrees that, in practice, the owner of the upper garden can really only access plants that are within reach; to get to any other plants lower down the earth wall would require access through the owner of the lower garden – so these vegetables would become the property of the owner of the lower garden.

The Gemara concludes that, with regard to R. Shimon's solution to the upper/lower garden problem, that:

אָמַר אֶפְרַיִם סִפְרָא תַלְמִידוֹ שֶׁל רִישׁ לְקִישׁ מְשׁוּם רִישׁ לְקִישׁ : הִלְכָה כְּרַבִּי שִׁמְעוֹן

Ephrayim the scribe the student of Reish Lakish stated that the Halacha is according to the opinion of R. Shimon. The Gemara provides no reason or justification -this Halacha just seems to make sense.

Continues the Gemara:

אִמְרוּהָ קַמִּיָּה דְשִׁבּוּר מִלְּפָא, אָמַר לָהּ: אֶפְרַיִן נְמַטִּיָּה לְרַבִּי שִׁמְעוֹן

This final Halacha was stated in front of Shapur the King (Persian king – 241-272 CE, and according to the Gemara in Avodah Zara 76b was familiar with quite a bit of Jewish law). Shapur stated: we extend our wishes for more Chachamim like R. Shimon!

The plant that grows from the vertical space between the two gardens is nourished from water and other nutrients added from above. In much the same way, a child receives her support from parents who existed before her and in a way are “above” her. They, in turn, received their life and their initial nourishment from those above them, their parents.

As the young girl grows, she continues to benefit from the support and nourishment received and begins to spread out in new directions, making her own choices and decisions but informed by what she absorbed in her earlier years of growth and maturation. The child embarks on her own path.

All during the life of the plant, it continues to be nourished from above; the child, now transformed to an adult, is still nourished by her parents, just in different and possibly more complex ways. While the plant may not be reachable by the owner of the upper garden, the child is always within “reach” of the parent. That bond is unbreakable.

We don't speak words of hesped on Shabbos so there is not much I can say here about Ilana; whose name means a tree and was the first fruit of my marriage to Brenda. We merited to nourish her and support her and had the bracha amuka to see the fruits of her labor extend to her own marriage to Joseph and the next generation of children – their fruits. The word Apiryon according to Rabbeynu Chananel is sourced from Apirya which comes from the root word – para – meaning to be fruitful.

May our memories of Ilana always be fruitful in terms of the joy and kedusha that those memories spark. She left many fruits of her life amongst us and beauty, care, grace, and love in her wake.

Yehi Zichra Berucha

Hadran Alach Perek HaBayis v'Ha-alayah u'slika lach Masechet Bava Metzia.