

A בס"ד

Intro

Today we will Be"H learn ק"ח of מציעא דף קח. Some of the topics we will learn about include:

The Gemara discusses several matters of communal responsibility, including:

איגלי גפא

Building gates for the city wall;

כריא דפתיא

Digging wells; and

נתקלקל המעין

ונסתם הביב

Clearing a blocked stream or drainage pipe;

A

Matters of Communal Responsibility

כריא דפתיא
Digging wells

איגלי גפא
Building gates
for the city wall

נתקלקל המעין
ונסתם הביב
Clearing a blocked stream
or drainage pipe

B בר מצרא

A neighboring landowner has first rights to purchase an adjacent property, as an application of the principle ועשיית הישר והטוב

One should do what is good and proper, and a landowner has more benefit from buying an adjoining property.

Therefore, we do not apply this principle במקום פסידא דמוכר

In cases where the seller would suffer a loss or hardship; OR

לצורך לוקה

It is proper to sell to this particular buyer, such as בעלים הראשונים, if he is the property's original owner, or אשה, to a woman, who cannot easily acquire property. הקדמה

The Gemara lists other examples of those who take precedence in sales, such as:

שכן, someone who lives near you, and תלמיד חכם, a Torah scholar.

B

בר מצרא
ועשיית הישר והטוב

1 So let's review...

The Gemara discusses several matters of communal responsibility:

הכל לאיגלי גפא
ואפילו מיתמי

Even orphans have to contribute towards the expense of building gates for the city wall.

However,

רבנן לא

Torah scholars do not have to contribute, because

רבנן לא צריכי נטירותא

They do not require protection, as the Pasuk says

בשכבך תשמור עליך

The Torah protects those who study it.

On the other hand,

לכריא דפתיא

ואפילו מרבנן

גובין מעות ושוכרין פועלים

Even Torah scholars have to contribute towards the expense of hiring workers to dig wells, since they also need water. However,

לאוכלוזא לא

לאוכלוזא לא

They do not have to join the townspeople in digging themselves, because

רבנן לאו בני מיפק באוכלוזא נינהו

It is not befitting the honor of a Torah scholar to perform menial labor in public.

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1

Several matters of communal responsibility...

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ואפילו מיתמי**

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2 The Gemara cites a ברייתא regarding other communal needs:
 חמש גנות המסתפקות מים מומעין אחד ונתקלקל המעיין
 If a single stream irrigates gardens owned by five separate people, and it became blocked;
 כולם מתקנות עם העליונה
 If the blockage is upstream, the lower landowners have to assist the uppermost landowner, because the lower ones also benefit from the upper section of the stream.
 However, התחתונה מתקנת לעצמה
 If the blockage is downstream, the upper landowners do not have to assist the lowest landowner, because the upper ones do not benefit from the lower section of the stream.

2 Other communal needs...

ברייתא:
חמש גנות המסתפקות מים ממעין אחד ונתקלקל המעיין
 If a single stream irrigates gardens owned by five separate people, and it became blocked

<p>התחתונה מתקנת לעצמה If the blockage is downstream, the upper landowners do not have to assist the lowest landowner Because the upper ones do not benefit from the lower section of the stream</p>	<p>כולם מתקנות עם העליונה If the blockage is upstream, the lower landowners have to assist the uppermost landowner Because the lower ones also benefit from the upper section of the stream</p>
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3 Conversely, וכן חמש חצרות שהיו מקלחות מים לביב אחד ונתקלקל הביב
 If five courtyards use the same drainage pipe, and it became blocked, the rule is in the opposite direction: כולן מתקנות עם התחתונה
 They upper ones have to assist the lower owner in clearing the blockage, because they also benefit from the lowest section so that the water continues to run down and does not back up.
 However, העליונה מתקנת לעצמה
 The lower ones do not have to assist the upper owner, because they do not benefit from the upper section.
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3 Conversely,
וכן חמש חצרות שהיו מקלחות מים לביב אחד ונתקלקל הביב
 If five courtyards use the same drainage pipe, and it became blocked

<p>העליונה מתקנת לעצמה The lower ones do not have to assist the upper owner in clearing the blockage Because they do not benefit from the upper section</p>	<p>כולן מתקנות עם התחתונה They upper ones have to assist the lower owner in clearing the blockage Because they also benefit from the lowest section so that the water continues to run down and does not back up</p>
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4 Another Halacha regarding property adjacent to a river:
 האי מאן דאחזיק ברקתא דנהרא
 The Persian government allowed anyone to stake a claim
 in a property, as long as they paid taxes to the king. If
 someone claimed land adjacent to a river, which was
 previously used by the public for unloading ships,
 חציפא הוי
 סלוקי לא מסלקינן ליה
 Although it's a Chutzpah of him to grab that land, we
 cannot legally compel him to vacate the property.

Similarly,

האי מאן דאחזיק ביני אחי וביני שותפי
 If one claimed a parcel of land located in between
 property owned by two brothers or partners,
 חציפא הוי
 However, it is a מחלוקת whether
 מסלקינן ליה
 We compel him to vacate the property, because the land is
 far more useful to the partners, since they can adjoin their
 properties, OR
 לא מסלקינן ליה
 We do not compel him to vacate.

4 Property adjacent to a river...

האי מאן דאחזיק ברקתא דנהרא

If someone claimed land adjacent to a river,
 which was previously used by the public
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האי מאן דאחזיק ביני אחי וביני שותפי

If one claimed a parcel of land located
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However, it is a מחלוקת whether

לא מסלקינן ליה

We do not compel him
 to vacate the property

מסלקינן ליה

We compel him
 to vacate the property

Because
 the land is far more useful
 to the partners,
 since they can adjoin
 their properties

5 However,
משום דינא דבר מצרא
If someone bought a property and the neighbor also
wanted to buy the property, it is a מחלוקת:
מסלקינן ליה hold
מסלקינן ליה
We remove him from the property to allow the neighbor-
ing landowner to buy it, because the Pasuk says
'ועשית הישר והטוב בעיני ה'
One should do what is right and proper.
Therefore, the חכמים instituted that a neighboring
landowner has precedence, because the land is much
more valuable to him, while the buyer could just as easily
buy land elsewhere.
On the other hand, רב נחמן holds,
לא מסלקינן ליה
We do not remove him from the property, because as
Rashi explains, רב נחמן holds that we do not give
precedence to a neighboring landowner.
Tosfos disagrees, and says
מודים כו"ע
דשייך דינא דבר מצרא
Everyone subscribes to this principle; and Tosfos offers
an alternate explanation of רב נחמן.
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משום דינא דבר מצרא
*If someone bought a property
and the neighbor also wanted to buy the property*

<p><i>רב נחמן holds,</i> לא מסלקינן ליה <i>We do not remove him from the property</i></p> <p>✓</p> <p>רב"י: <i>רב נחמן holds</i> <i>we do not give precedence to a neighboring landowner</i></p> <p>✓</p> <p>תוס': <i>Everyone subscribes to this principle; and Tosfos offers an alternate explanation of רב נחמן</i></p>	<p><i>hold נכרדצי</i> מסלקינן ליה <i>We remove him to allow the neighboring landowner to buy it</i></p> <p>✓</p> <p>ועשית הישר והטוב בעיני ה' <i>One should do what is right and proper The חכמים instituted a neighboring landowner has precedence, because the land is more valuable to him, while the buyer can buy land elsewhere</i></p>
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6 The Gemara now elaborates on the rights of the בר מצרא, the neighboring landowner:
 אתא אימליך ביה
 ואמר ליה איזיל איזבון
 ואמר ליה זיל זבון
 If the buyer asked the neighbor if he wants to purchase the property, and he said, "Go ahead and buy it,"
 צריך למיקנא מינה
 He must perform a קנין to finalize this commitment.
 Otherwise, as Rashi explains, the בר מצרא can say
 משטה הייתי כך
 כדי להעמידה על דמים הראויין לה
 I did not mean it. I only said that, because the owner would have charged me a premium because of my greater need. Therefore, I wanted you to buy it at a fair price, and I would then claim it from you.

The Gemara adds
 אי לא קנו מיניה
 אייקרו וזול ברשותיה
 If he buys the property without securing this commitment, the neighbor can claim it from him for his purchase price, regardless of whether it increased or decreased in value in the interim.

Similarly;
 זבן במאה ושוי מאתן
 If he bought the property for 100 זוז while it was actually worth 200 זוז, and the neighbor now claims it;
 חזינא
 אי לכולי עלמא קא מוזילא ומזבין
 יהיב ליה מאה ושקיל ליה
 If this seller always offers a discount, the neighbor may take it for 100;
 ואי לא
 יהיב ליה מאתן ושקיל ליה
 If he offered a discount especially for this buyer, the neighbor must pay him 200.

6 The rights of the בר מצרא...

**אתא אימליך ביה
 אמר ליה איזיל איזבון
 ואמר ליה זיל זבון**
 If the buyer asked the neighbor if he wants to purchase the property, and he said, "Go ahead and buy it"

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 If he buys without securing this commitment, the neighbor can claim it from him for his purchase price, regardless of whether it increased or decreased in value in the interim

זבן במאה ושוי מאתן
 If he bought the property for 100 זוז while it was actually worth 200 זוז, and the neighbor now claims it

חזינא

<p>ואי לא יהיב ליה מאתן ושקיל ליה If he offered a discount especially for this buyer, the neighbor must pay him 200</p>	<p>אי לכולי עלמא קא מוזילא ומזבין יהיב ליה מאה ושקיל ליה If this seller always offers a discount, the neighbor may take it for 100</p>
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7 On the other hand,
זבן במאתן ושויא מאה
If he bought it for 200 זוז while it was actually worth 100 זוז,
the neighbor must pay 200, because
אין אונאה לקרקעות
Overcharging for land is not considered fraud.
=====

7

זבן במאתן ושויא מאה
If he bought it for 200 זוז
while it was actually worth 100 זוז,
the neighbor must pay 200

Because
אין אונאה לקרקעות
*Overcharging for land
is not considered fraud*

8 At this point Rashi explains
אין לנו לומר על דינא דבר מצרא
ועשית הישר והטוב
אלא ללוקח
These laws apply only to the buyer, to whom we say
משוך ידך ויקחנה זה
Allow the neighbor to buy it, because it is much more
valuable to him, while you can just as easily buy land
elsewhere.
However, it does not apply to the מוכר, the seller, because
שהמוכר אומר לו
מה עשיתי לך
אם ארצה לא אמכרנה לך
ותהא בידי
I am not causing you any harm, because I could just as
well keep the property.

8

At this point Rashi explains...

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to the
מוכר
שהמוכר אומר לו
מה עשיתי לך
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אלא ללוקח
These laws apply
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משוך ידך ויקחנה זה

Based on this understanding the Gemara lists many
exceptions to the principle of
דינא דבר מצרא
1.

מתנה
If the property was a gift, the neighbor has no claim,
because the recipient is certainly not obligated to forego a
gift so that the neighbor can buy this property.

Based on this understanding
the Gemara lists many exceptions to
דינא דבר מצרא

1

מתנה

**If the property was a gift
the neighbor has no claim**

Because
*the recipient is not obligated to forego a gift
so that the neighbor can buy this property*

10

6.

משכנתא

If the seller had pledged this property as security to his debtor, and now sold it to him, the neighbor has no claim, because as Rashi explains

שזה שכן מצרן מכולן

שכולו שכונה בידו

He is the closest neighbor, since he's already in possession of this property.

7.

לאשה וליתמי ולשותפי

One may sell his property to a woman, an orphan, or his partner, instead of his מצרא. As Rashi explains;

לאשה וליתמי

Because

דלאו אורח ארעא לאהדורי ולבקש

מי שיש לו קרקעות למכור

They cannot go out and seek to buy other properties.

And

לשותפי

Because

הרי הוא כשכן בכולה

He is the closest neighbor.

=====

10

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משכנתא

If the seller had pledged this property as security to his debtor, and now sold it to him, the neighbor has no claim

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They cannot go out and seek

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11 In the next 4 cases there's no obligation of מצרא דבר on the לוקח, because of the hardship it would cause the מוכר:

8. למכור ברחוק ולגאול בקרוב
ברע ולגאול ביפה

One may sell his property to enable him to buy another property that is closer or of superior quality, and he does not have to delay the sale for the sake of the מצרא בר.

9. לכרגא ולמזוני ולקבורה

One may sell his property to raise funds to pay his taxes, to support his father's widow and children, or for burial expenses, and he does not have to delay the sale for the sake of the מצרא בר.

10. הני זוזי טב והני זוזי תקולי

If the מצרא בר and a stranger offered different currency, one of which is more accepted, while the other weighs more, he can sell to whomever he prefers.

11. הני ציירי והני שרי

If the מצרא בר offered him a sealed package of coins, while the stranger offered him loose coins, he may sell to the stranger, because he does not want to risk an argument concerning the contents of a sealed package.

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If the מצרא בר offered him a sealed package of coins, while the stranger offered him loose coins, he may sell to the stranger
Because he does not want to risk an argument concerning the contents of a sealed package





12 The Gemara discusses the extent of his obligation to his בר מצרא:
 אמר איזיל ואטרח ואייתי זוזי
 לא נטרינן ליה
 He does need to wait until the neighbor raises funds for the purchase.
 However,
 אמר איזיל אייתי זוזי
 If he merely needs to go fetch the money,
 חזינן
 אי גברא דאמיד הוא
 דאזיל ומייתי זוזי
 נטרינן ליה
 ואי לא לא נטרינן ליה
 He must wait for him if it seems reasonable that he can afford the purchase, and has the money available.
 The rest of the Daf discusses various forms of preferences in sales where there is no בר מצרא involved.

12 The extent of his obligation to his בר מצרא...
 אמר איזיל ואטרח ואייתי זוזי
 לא נטרינן ליה
 He does need to wait
 until the neighbor raises funds for the purchase
 However,
 אמר איזיל אייתי זוזי
 If he merely needs to go fetch the money
 חזינן
 אי גברא דאמיד הוא
 דאזיל ומייתי זוזי
 נטרינן ליה
 ואי לא
 לא נטרינן ליה

