

Bava Basra – Simanim

דף כג – Daf 23

פרק ב – לא יחפור

1. Bloodletters causing crows to dirty Rav Yosef's dates, אין חזקה לניזקין

The Gemara relates that bloodletters were drawing blood (in their property), under the shade of Rav Yosef's palm trees, and crows would come to consume the blood, and then fly up to the trees and dirty the dates with blood. Rav Yosef said: אפיקו לי קורקור מהכא – *"Rid me of this crowing! Draw blood elsewhere!"* Abaye asked that their action is a mere גרמא, and Rav Yosef replied that damaging is forbidden, even through גרמא. Abaye asked that they established a חזקה, having done so for three years!? Rav Yosef responded that Rabbah bar Avuha ruled: אין חזקה לניזקין – *there is no chazakah for damage* (i.e., he has no right to continue damaging). Although Amoraim say on this *amud* that this ruling only applies to extremely objectionable damages, such as קוטרא – *smoke* from a furnace, or בית הכסא – *an outhouse* where the waste remains visible, Rav Yosef said: כי קוטרא ובית הכסא דמו לי – *to me, whose nature is delicate, these crows are like smoke and an outhouse*, because I cannot tolerate the bloody dates.

2. טוענין ללוקח וטוענין ליורש

The next Mishnah states that a dovecote must be distanced fifty *amos* from a city, and from other people's properties, so the doves do not eat their produce. The Mishnah concludes: ואם לקחו – *If he purchased* [property with a dovecote] from its previous owner, – *ואם אפילו בית רובע – even if the surrounding area is only a quarter-[kav],* הרי הוא בחזקתו – *it retains its chazakah* to be in this proximity.

Rav Pappa says: זאת אומרת טוענין ללוקח – *this Mishnah demonstrates that we make claims in Beis Din on a purchaser's behalf,* וטוענין ליורש – *and we make claims on an orphan's behalf.* Although one who occupies property unchallenged for three years is believed that the property is his, he must ordinarily explain how it became his (through purchase, etc.). This Mishnah teaches that if the occupied property was left to an heir or purchaser, he may retain it without claiming how the occupier came to own it, since he may not know. The application regarding orphans is a Mishnah later, and Rav Pappa's novelty was the application regarding purchasers. Although another Mishnah teaches that if one purchased property with ledges which extend into רשות הרבים, it retains its *chazakah* to leave them, Rav Pappa teaches its application regarding a private neighbor, and the Gemara explains the novelty of each.

3. רוב וקרוב

The Gemara compares the relative strength of following "רוב" – *majority*, and "קרוב" – *proximity*. Rebbe Chanina said: רוב וקרוב הולכין אחר הרוב – *In a case where ruling based on majority and proximity would be in conflict, we follow the majority.* Although the principles of רוב and קרוב are both *d'Oraysa*, אפילו הכי – *even so, majority is stronger.* He is challenged from the Mishnah: ניפול הנמצא בתוך חמשים אמה – *if a young bird was found within fifty amos of a dovecote, הרי הוא של בעל השוכר – it belongs to the dovecote's owner.* This seems to apply even if there is a larger dovecote further away, yet we assume it came from the closer one!? The Gemara ultimately answers: במדדה – *the Mishnah's case is [a bird] which hops* (and cannot yet fly), because Rav Ukva bar Chama said that a hopping bird does not hop further than fifty *amos*. Therefore, it is known to be from the dovecote within fifty *amos*, and not the larger one further away. If it is not within fifty *amos* of any dovecote, it must have flown, and belongs to the finder, since it could have come from anywhere. Rebbe Yirmiyah asked what the *halachah* is if a hopping bird is found with one foot within fifty *amos* of a dovecote, and one foot outside of it. He was removed from the Beis Medrash for this question. Rashi explains that they ejected him because he was bothering them with an absurd question.

Siman – Kugelach (Children's game like Jacks)

The boys getting bloody playing kugelach under a date tree where a bloodletter worked, watched a Rabbi chase away crows dirtying his dates, because אין חזקה לניזקין, and heard one of the bloodletter's clients disclose that he had no idea how his seller had obtained the rights to keep a dovecote so close to town, and that the dove found nearby was his because it couldn't fly yet and the principal of רוב וקרוב doesn't apply to it.

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Kugelach



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3 things to remember

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2. טועבין ללוקח וטועבין ליורש
3. רוב וקרוב

