

23 - Summary of Bava Basra

- Chapter:
1. Right of privacy regarding your property - trespass, visual trespass, courtyard.
 2. Limitations imposed on a person's use of his own property, because of damages his activities may do to his neighbor's property.
 3. "Chazakeh" is a formal method of conveying property – presumption of ownership. The burden of proof needed to take property from one person and give it to another.
 4. Sale of property with various items on, in, or attached to it. Which items are included in the sale?
 5. Sale of movable objects with attached items, i.e., ship and anchor and sacks in the cargo. Which items are included in the sale?
 6. Sale of produce suitable for eating, but not planting, or vice versa.
 7. Rules regarding sale of land: Types of terrain included, how to measure and how exact the measurement must be.
 8. Laws of inheritance. The order succession, "Yesh Nochlin".
 9. Daughters and inheritance - "Mishemeis".
 10. Documents: Open-Signature of witnesses on inside, at end.
Bound- Signature of witnesses on back of document.

23 - Bava Basra - Introduction

Bava Basra

The Last gate.

The 3rd tractate, in the fourth order, of the Mishnah Nizikin-Torts or Damages.

Civil law: Damages, litigation, personal liabilities, responsibilities.

Property rights and transactions = Bava Basra

Muchzak -possession - “One who wishes to take it from his friend, must bring the proof”. That is so obvious. No scriptural basis for it is necessary (BK 46b) for personal property.

Chazakah - Three year possession, consecutively, with no protest by previous owner, results in ownership.

Kinyon – Formal act to transfer ownership, must be performed (except regarding inheritance). Without kinyon, parties may retract. Kinyon is performed by giving and receiving a document of transfer, or by lifting it up.

23 -Bava Basra - Introduction 2

Chapter 1

Right of privacy - Right of owner to use his property, free of observation (visual trespass).

Private spaces must not look into a neighbor's house, or his enclosed courtyard. You must erect walls, must place windows and doors, so that privacy is maintained.

Non-private spaces- i.e., pastureland, etc., no privacy is needed.

Semi-private spaces- i.e., enclosed courtyard, owned by 2 neighbors.

הַשּׁוֹתֵפִין שָׂרְצוּ לַעֲשׂוֹת מַחִיצָה בַּחֲצֵר

Partners, who agreed to make a partition in a jointly-owned courtyard, must:

- Build a wall in the center- each partner provides $\frac{1}{2}$ the land, using customary material, and conforming to local custom.
- Rough-edge stones – Each required to provide 3 tefachim.
- Smooth-planed stones -Each required to provide $2 \frac{1}{2}$ tefachim.
- $\frac{1}{2}$ sized bricks -Each required to provide 2 tefachim.
- Whole bricks - Each required to provide $\frac{1}{2}$ tefachim

One partner can compel the other to provide.

The law presumes each contributed. Therefore, if the wall falls, the stones belong to them equally, even if the stones fall only on one side of the partition.

Daf Digest

בּוֹנִין אֶת הַכּוֹתֵל בְּאֶמְצַע

They build the wall in the middle.

This means that each contribute to the land needed for the wall.

-If they are equal partners in a tract of land, each provides $\frac{1}{2}$ his land.

-If they are $\frac{1}{3}$ - $\frac{2}{3}$ partners- The wall is built between their two properties and each again contributes $\frac{1}{2}$ (not $\frac{1}{3}$ – $\frac{2}{3}$) to the wall land, expense to build, materials, etc., and if the wall falls, they each can retrieve $\frac{1}{2}$ the stones.

Building a wall does not improve the land, it merely separates the two portions.

However, if they engage in a project that improves the land, they each contribute proportionally to the cost. “In the middle”, therefore, needs to be interpreted based on the nature of the partnership.

אם נפל הכותל המקום והאבנים של שניהם

If the wall falls, the stones belong to the two of them.

What if all the stones tip over and they all fall on the side of only one of the neighbors? They are on his property, to whom do the stones belong? To the two of them.

What if he claims that:

- He purchased his partner's share of the wall? He needs proof, we don't believe him. The presumption is that a wall dividing one field from another, belongs to both partners equally.
- The stones come from elsewhere and they look like they came from elsewhere, he is believed.

The stones are from this wall, but since he could have claimed that they come from elsewhere and they do look like they came from elsewhere – does he have 'migu', 'a presumption of truth'? No. Once he admitted that the stones come from this wall, he no longer has a 'migu'.

וְכֵן בְּגִינָה

Vegetable Garden

If it is customary to make a partition. Each can obligate the other.

Valley of grains.

If it is not customary to build wall, he can't obligate the other, but he can make it entirely on his own land. He can put a sign on it, stating that if the wall falls, it is all his.

- defined the word 'mechitzah' as – a 'wall'.
- one partner can compel the other, because “they agreed” to do so.

The Bais Din can, therefore, compel them to keep their agreement.

If so, we see there is no damage associated with visual trespass.

For if there was damage to visual trespass, one of the partners could compel the other to erect a wall to provide privacy. We see here that he can't do that and the wall is only compelled, because it was agreed upon earlier.

אַלְמָא הַיּוֹק רְאִיָּה שְׂמִיָּה הַיּוֹק

Visual trespass is considered a damage.

Here, the Gemara discusses the erection of a wall to provide privacy to neighbors in a courtyard. Once they have agreed to do so, they must each contribute the land, the funds with which to build it, and in accordance with the quality, i.e., stone, etc., used in that community.

But for neighbors who do not live in a courtyard, or did not agree to create a partition, are they obligated to avoid visual trespass? For example, must they shield their objectionable sights from their neighbors vision? For example, junk in my backyard, the sight of which is objectionable to my neighbor, or must I shield myself from being able to see their backyard junkyard? Is my view a protected property right?

Living next to a house of disabled persons may be objectionable, but that is protected in the US by anti-discrimination laws.

סימן: גינה כותל כופין וחולקין חלונות דרב נחמן

A Sign: Garden, wall, compel and divide windows of Rav Nachman.

Is there an opinion that visual trespass is injurious?

A that adjoins a courtyard must make a wall 4 amos high.	Walls must be built so as to not block a window 4 amos distance. So he can't see into his neighbors window and so that shadow does not block his window.	Only if there is at least 4 amos for each partner	Compel each resident of a courtyard to contribute	If it falls it must be rebuilt to a level of 4 amos	Garden jealousy
					- a wall is needed in a vegetable garden when there is a standing crop. Because a neighbor may see it, be jealous and cast an evil eye upon it!

Height of Wall

A wall is to be 4 amos high = 7 ½ ft. This is sufficient to protect against visual trespass, since it exceeds the height of most people.

(3a1) If visual trespass is considered damaging, it would be a person's right to have a barrier created to prevent visual trespass. Why would our Mishnah state that two neighbors agreed to build a wall, it should be a requirement of their close living together!

- Discuss
- a courtyard that is subject to legal division
 - a courtyard that is not subject to legal division
 - a division with an ordinary marker
 - cannot divide the holy scriptures even if they consent
 - their verbal agreement was strengthened by Chalifin – used only for movable objects
 - their verbal agreement was strengthened by Chazakah – i.e., building a fence, etc.

מְקוֹם שֶׁנֶּהְגוּ לְבָנוֹת כּוֹ

A place where people are accustomed to building.

G - Discusses the building materials - brick with edges.

What type of mortar is placed between the walls of stones/bricks/mud?

Pebbles and mud. - pure mud adheres better!

G - Discusses width/ height ratios – whether this is implied by our Mishnah.

(a hand breath = 3”-5”- approximately 4 inches).

Concept of Amah Traksin – Wall- 30 amos height, 15 Tefachim wide. Therefore, not a ratio.

Amah means wall was 6 Tefachim wide $6 \times 3 + 18$ $6 \times 3.5 = 21$, $6 \times 4 = 24$

Trak means it enclosed the Tablets of the Law, which were in the Holy of Holies.

Sin - Which were given at Sinai.

This is not so. The width of 6 Tefachim is wider than any wall with planned stones required in our Mishnah, therefore, it was stronger and could support a much taller wall.

No, this tall wall was possible, only because of the weights of the ceiling and plaster, which was not possible in the 2nd Temple, because of space. Therefore, it was changed to a curtain.

1st temple stood for 410 years 2nd for 420 years (Rashi)

If plaster is added to the walls, it is included in the Mishnah's measurements.

לֹא לִיסְתּוֹר אִינִישׁ בֵּי כְּנִישְׁתָּא עַד דְּבְנִי בֵּי כְּנִישְׁתָּא

R Chisda – You may not tear down an old synagogue, until you have built the new one, to take its place.

Because – 1. Something may happen to prevent the building of a replacement.
2. No place to pray during construction. (This could be solved by temporary quarters.)

Examples: A second shul in town.

A summer and a winter shul.

Availability of funds does not ameliorate restriction. Perhaps, a more urgent need will arise.

For example, if materials and beams are available, one can demolish the old synagogue.

Exception: If the old synagogue is dangerous, i.e., cracks in wall, you can demolish it before the new one is built.

Was the Temple razed and rebuilt by Herod, without a new one, during that period?

Ans: 1. That would be different. It is different for kings. A king will see to keeping his commitments!!

2. Cracks were seen in the Temple.

3. Perhaps an alternate place was found for the sacrifices? No, they were actually interrupted.

However, in fact, Herod built the new Temple area around the old Temple and only razed the older one, after the new one was already built.

Daf Yomi Digest

לֹא לִיסְתּוֹר אִינוֹשׁ בִּי
בְּנִישָׁתָא עַד דְּבְנִי בִּי בְּנִישָׁתָא אַחֲרֵיתָא

You may not tear down an old synagogue, until you have built the new one, to take its place.

Didn't R Chisda teach that one should not demolish a Bais Hamikdash, etc.?

Must the building materials, or furniture of a shul, be considered items of sanctity, or items of Mitzvah and when they are no longer useful, must they be buried, or disposed of in a special respectful manner?

They could be included in the foundation, or land fill for the new synagogue, or for a cemetery. But, it is not our custom to bury these materials. We assume our synagogues were built with the understanding that once they were no longer useful for sanctified activities, they would revert back to a non-sacred state. The sanctity is transferred to the new synagogue.

הוֹרְדוֹס עֶבְדָּא דְּבֵית חֲשְׁמוֹנָאֵי הָהָא

Dates when Herod was originally a slave in the house of the Hashmonean.

Hashmonean revolt against Syrian Greeks (lasted 20 years)	3597	165BCE
Sanhedrin proclaimed Simon, the last Nasi (surviving son of Matesyahu)	3621	140BCE
Hashmonean dynasty	3621 to 3725	
Overthrown by Herod		36 BCE
Herod and Roman rule		
Destruction of 2 nd temple	3828	68 CE

Story of Herod (a slave) and the last surviving Hasmonean maiden, who committed suicide, rather than be forced to marry him.

Ref: Is a person permitted to commit suicide in that situation?!

Herod preserved her body in honey for 77 years, in order to have intercourse with her dead body.

Herod claimed he had married her and therefore, became King rightfully.

Note: Josephus records that he did marry Marianne, but had her killed because of mistaken jealousy. He did preserve her body in honey.

23-Bava Basra 3b4 line 40 A2
Schottenstein

יוֹמָא חַד שָׁמַע הָהוּא גְבִרָא בֵּת קָלָא דְאָמַר

One day, Herod heard a Heavenly voice that said.

The last remaining Hashmonean killed herself, rather than marry Herod. He preserved her body in honey, so he could claim to be King since he “married” a King’s daughter.

קִטְלֵינְהוּ לְכוּלְהוּ רַבָּנָן

He killed most of the Rabbis.

Herod feared the Rabbis would not be loyal to him.

He made Bava ben Buta blind.

-Herod tried to trick Bava into criticizing Herod (himself).

-Bava would not do that and Herod realized none of the Rabbis would have tried to depose him. He was remorseful for killing them.

BBB advised him, that since he took out the light of the world by annihilating the Rabbis, he should restore it by rebuilding the Holy Temple.

Number 15:24 “If the nation sins by a mistake of Bais Din (called the eyes of the nation)”.

The Rabbis = The eyes of the nation.

The Temple (Ezekiel 24:21) = The Temple, “The desire of your eyes”.

Herod was afraid. Therefore, BBB advised Herod to send a slow emissary to Rome with the request. It took 3 years and the Temple was demolished and rebuilt by the time the emissary returned.

How bricks were cemented together; not between each stone, but behind each stone.

The wall would be smooth.

Was it proper for BBB to advise Herod how to achieve forgiveness for his sins and therefore, save him from Gods retribution? – Yes, to build the Temple, is permitted advice.

He is a slave and obligated to follow his master’s commandments.

איִבְעִית אִימָא דְאִיחִיב בְּמִצּוֹת

The care of a slave is different, since a slave is obligated to observe the commandments.

Therefore, a slave, who is obligated to perform those mitzvahs incumbent upon a woman, therefore, can be considered, “your brother”. Therefore advising such a slave is permitted.

Not so, a gentile King, like Nebuchadnezzar – although Daniel did advise him.

אם עָמַד וְגָדַר אֶת הַרְבִּיעִית מִגְּלָגְלִין עָלָיו אֶת הַכֹּל

If he got up and constructed a fence on the 4th side, we make him pay his share of the entire fence.

Why doesn't he have to pay for the 3 fences, unless he creates the 4th?

Because he gets no protection to his field with only a fence on 3 sides. He should not pay for something, that he gets no benefit from. But, after he encloses the 4th side, he has benefit and then he is to pay for the other 3 sides.

The height of the fence need only be 10 tefachim.

הַכֹּל לְפִי מַה שֶׁגִּדַר

He must pay his share for all the fence.

If a field needed to be fenced in and your 4 neighbors each put up one wall, you must pay your share of all 4 walls.

Do you need to pay for the especially expensive materials they used, without having contacted you?

- a. No. Only for very basic fence reeds and sticks.
- b. Yes. Whatever it costs.

How do we calculate the portion he should pay?

By the proportion of land he has fenced, as compared to the other neighbors.

However, if 3 walls are built and he completes the wall around his property with the same expensive wall materials, he must pay for the expensive materials his neighbors used for the other three walls. But, if he used only sticks and reeds, that what he pays to them.

רוּנְיָא אֶקְפִּיָּה רְבִינָא מֵאַרְבַּע רוֹחוֹתָיו

Ravina surrounded Runia's field on all 4 sides with a fence
(Ravina owned a parcel of land on each side).

Ravina says, "Pay me for the costs I incurred". "No."

- "according to the value of a fence of reeds". "No."

- "according to the cost of a watchman". "No."

Ravina sent his sharecropper to take dates from Runia's field and Runia shouted at him to stop.

"This is proof," says Ravina, "that your dates are valuable and need to be protected, even from a foraging goat. Share the expense of the fence with me".

"No," says Runia, "a goat needs only to be shouted at to stop".

"So," says Ravina, "you at least, need a watchman to shout at the goat".

Bais Din said, "Pay for a watchman".

אַרְבָּעָה לְצִלָּא אַרְבָּעָה לְצִלָּא

Four for the hide and four for the shoemaker.

A Talmud scholar was sustained by money sent to him from his relatives. They were raised Orthodox, but completely left all the religious obligations. May he use the money they send him?

Rav Shlomo Zalman Auerbach- “Certainly, look upon this as their last mitzvah and you should not deprive them of that opportunity”.

וְאָמַר לוֹ פְּרַעְתִּיק בְּתוֹךְ זְמַנֵּי אֵינוֹ נֶאֱמָן

If he says that he paid back the loan before the due date, he is not believed.

We have a principle. People do not pay their loans before the due date.

Except:

1. He claims he is making small payments throughout the duration of the loan, so he will not have to face a huge burden of paying back the large loan all at once, at the end.
2. An employer owes salary and like a loan, he is not expected to pay it until the work, or the term of employment is over. However, if the work was separate tasks, i.e., create and print a series of pamphlets; the employer could pay, or claim to have paid, after each segment was completed. This would not be considered a presumption of an early obligation to pay.

תְּרוּיָהוּ עֵבִיר אִינִישׁ דְּפָרַע בְּגוֹ זִמְנֵיהּ

They both said – It happens that a person does repay a loan within his allotted time.

A person is to pay a loan back at a certain time. The time comes and he claims he paid it already, early, and he no longer owes anything.

We assume that a person will not pay money back before he has to. Why would he, he is not paying interest?!!

Because: He might have gotten some cash and wants to pay his obligation, in order not to be under pressure at the due date and to avoid a sense of obligation when he encounters the lender.

A baby boy (a bechor) needs to have a ‘pidyon haben’. The father died during the child’s first 30 days. Can we suggest that the father might have paid a Kohen the 5 silver coins early and we don’t have to do so now, on his behalf? No. A person does not usually pay off a debt earlier than he has to and besides, if the baby dies (chash va’shalom), no payment is needed.

Statute of limitations

Daf Yomi Digest

הָאִי כְּשׁוֹרָא דְּמִטְלָלְתָּא עַד תְּלָתִין יוֹמִין
 לֹא הוּי חֻזְקָה

A person placed a beam for shade, resting on his neighbor's wall for support, for up to 30 days.

Use of property for up to 30 days does not signify 'a right'. Because for 30 days, an owner might tolerate the use by an unauthorized person, but, if after 30 days, **the** Squatter claims a right to use the property, we assume he has obtained that right by verbal permission, or by payment for it.

He has established a 'chazakah', a "right" to use it.

If the squatter initially attaches a beam for shade permanently, i.e., with cement and the owner saw this and did not protest, his act creates a presumption of acquiescence by the owner.

הָנְהוּ בֵּי תֵרֵי דְהוּוּ דְיִירֵי חָר הָנְהוּ דְיִיר עִילָאֵי

There were two brothers, who lived in the same building they inherited. One on the top and the other on the lower level.

The brother on the lower floor, can force the brother who dwells in the upper apartment to demolish the house and rebuild it when the lower apartment is reduced to a height of only 10 tefachim, i.e., 35 inches.

Then, the brother on the lower floor can say, “Your apartment has descended into my space. Therefore, you cannot stop me from razing the building and you must share in the expense”.

וְלֹא חֲלוּנוֹת זֶה עַל זֶה

No rights regarding a window.

Your next door neighbor has a beautiful garden. He wants to build a wall that will block your view of his garden. Does he have a right to do so?

He wants to build a wall that will block the light that enters your house through your window. Does he have a right to do so?

Controversial. Nahardean Samuel vs Rav

A person has no rights to the view from his window and the neighbor can build a wall to block the view.

A person has the rights to light entering his window. So, a wall cannot be built less than 4 amos (6 feet) from his window. Also, if it darkens his window and he has lived here for 3 years, he has a right to the light. No wall can be built that darkens his window.

23-Bava Basra 7b3 line 40 A19
Bleich 3:279

כּוֹפִין אוֹתוֹ לְבָנוֹת לְעִיר כּוֹ

We compel him (an unwilling resident) to help build a wall.

Society has a right to compel their fellow citizens to contribute to the building of a wall to secure the city from an armed attack. Protection from future danger.

This is used to justify a pre-emptive attack to prevent future danger.

If no imminent danger exists, this activity is not considered a mitzvah and no one involved, is exempt from fulfilling other mitzvahs.

A war to diminish the enemy, so that they do not march against us, is appropriate.

רַבָּנָן לֹא צָרִיכִי נְטִירוֹתָא

Rabbis do not require protection.

Therefore, they are not required to pay taxes that will be used to provide security.

The Torah study that they do, protects them. If the government expects them to pay, the community is obligated to do so for them.

Why does a Talmid Chacham qualify for this exemption?

1. Torah study is their occupation.
2. They study Torah at every opportunity.
3. They don't need to be a formal Rosh HaYeshiva,, merely one who is known to be able to converse intelligently in the majority of Talmud and the rulings of scholars of earlier generations.

(Also see 8A1 line 16 B29)

יְחִלוּ מִמִּשְׁא מֶלֶךְ וְשָׂרִים

And these (Scholars) are released from the burden of Kings and officers.

This phrase is the justification for exempting those, who study Torah, from serving in the Army. Jews, in general, must not fight in unjust wars, or in wars of acquisition.

Jews should not join armies: There is a danger which we should avoid.

If we are killed, R Zev Wolf Leiter considers it tantamount to suicide and more worrisome, we might kill a Jewish soldier in the “enemy” army. We also will violate Shabbos and Kosher laws.

We can participate in just wars, and wars of defense (Mishnah Berurah 329:17).

Jews must allow themselves to be conscripted, according to the “law of the land”, since failure to do so will enrage the citizens.

קופה של צדקה נגבית בשנים ומתחלקת בשלשה

Funds for the charity box are collected by two persons and distributed by three.

Like a Bais Din.

The “Kuppah fund”, ‘charity box’, is for funds for the poor, for every Shabbos.

The ‘Tmuchi, ‘platter’ fund, was money for daily necessities. It was collected by three people and distributed by three people.

Two people are needed for the Kuppah fund, because each member of the community was obligated to contribute a specific amount. If a person did not contribute the collectors had the right to take something from him. Two people can establish authority over the members of the community.

Regarding the Tmuchi collection, three people are needed to decide how much to take from each member of the community, since that was not a fixed amount, as was the

Kuppah collection.

וְרִשְׁאֵיִן בְּנֵי הָעִיר לְהִתְנוּת עַל הַמְדוּת וְעַל הַשְּׁעָרִים

It is permissible for inhabitants of a city to regulate measurement, prices, etc.

The prices of Shmurah matzo, esrogim, even kosher meat, during the year and especially at Yom Tov, has skyrocketed. Thus, making it difficult for Jews to observe the mitzvahs properly.

The Rabbis and communal leaders can establish price guidelines and all Jewish merchants must abide by these communal guidelines. Reasonable profit is permitted, but not price gouging.

וּמִצְדִּיקֵי הַרְבִּים כְּכּוֹכְבֵּים לְעוֹלָם וְעַד " אֵלֹהֵי גְבֹאֵי צְדָקָה

“And those who make the many righteous, will shine like the stars.” These are the Tzedekah Collectors.

Who is more worthy?

- Judges
- Tzedekah Collectors
- Teachers of Torah to children

- Pesachim 49b:
- Judges
 - Torah Scholar
 - Tzedakah Collectors
 - Torah Teachers

23-Bava Basra 9a4 line 48 A18

Weiss #120

גְּדוֹל הַמַּעֲשֵׂה יוֹתֵר מִן הַעוֹשֶׂה

He, who, causes others to do good, is greater than the one who actually performs
the deed.

If one can persuade others to give, he is greater than the one who simply gives himself.

Daf Yomi Digest

גָּדוֹל הַמַּעֲשֶׂה יוֹתֵר מִן הַעוֹשֶׂה

Greater is one who encourages others, than one who performs the action himself.

Regarding giving tzedakah:.

A poor person who cannot give tzedakah, but can convince others to do so, gets rewarded more than if he had given it himself.

Tur says- Not more. He gets equal reward to the one who gave it.

Perisha says – But, if the person who gave the tzedakah, did so with a sour face, or without a full heart, he loses his reward. So, the person who convinced him to give, would get no reward, similar to the one who gave!!

Shelah says – The Tur is correct. The one, who convinces another to give, gets the same reward as the one who gives. However, since we expect him to convince many persons to give tzedakah, his total reward will exceed any one of those who gave.

גְּדוֹל הָעוֹשֶׂה צְדָקָה בְּסֵתֶר יוֹתֵר מִמֹּשֶׁה רַבֵּינוּ

One who gives charity in secret, is greater than Moshe Rabbeinu.

(Sukkah 49b) The reward of charity depends entirely upon the extent of kindness in it.

Mishnah Torah (Hil Matanos Aniyim 10:7) There are 8 degrees of charity.

(Hagigah 5a) R Yannai saw a man give a poor person a coin, publically.

He said to him, “It would have been better had you not given to him, than to have him publicly put to shame”. The humiliation attendant to receiving charity, should be reduced as much as possible, by secrecy, or private giving.

וְהַמְפַיֵּסוֹ בְּדַבָּרִים מִתְבָּרַךְ בִּי"א בְּרָכוֹת

One, who speaks kindly to the poor, earns eleven brachas.

A miser was asked why he did not give charity and he quoted this Gemara,

“One, who, gives charity merits six blessings. One, who, speaks kindly to the poor earns eleven. Obviously, that is a much better reward!”

The Rav responded, “You have learned the Gemara incorrectly. The money you give to tzedakah, really belongs to the poor man. You merely hold it as a deposit. It never was yours. You get blessings for returning the deposit, something which is not yours. But when you give of yourself, i.e., your smile, your kind words, there you also merit the extra blessings.”

Even if you can't help monetarily, speak sympathetically to him to allay his anxieties and depression. This too is considered ‘chesed’, “kindness”.

זו שִׁמְחֵיבֶתֶן לְגִיהֶנָּם

This (the giving of charity) condemns you (the Jewish people) to purgatory!

Turanus Rufus explained his statement:

“If a King condemns his servant to prison, to suffer hunger and thirst, i.e., (poverty) and someone feeds him, the King (God will be angry at that person). Giving charity subverts the will of God”.

R Akiva – If that servant is the son of the King, whom he is punishing, instead of being angry that someone saved his son’s life, by giving him food and drinks, the King would send that man a gift.

בְּזִמְנֵי שֶׁאַתֶּם עוֹשִׂין רְצוֹנוֹ שֶׁל מְקוֹב אַתֶּם קְרוּיִן בְּנִים

When you carry out the desires of God, you are called children. When you do not carry out the desires of God, you are called servants.

How can you be called ‘servant’ if you do not carry out the desires of God.

A servant, in fact, serves his master. There is a difference. A child will serve his father enthusiastically, while a servant carries out his duties in a perfunctory manner.

Rabbi Meir’s view- Whether you behave well or not, you are always called children (BT Kiddushin).

Rav Nachman of Breslov. - Though you may think you have done so much wrong that you are no longer one of God’s children, still, you must realize God calls you ‘his child’.

רַב פָּפָא הָוָה סָלִיק בְּדַרְגָּא אִישְׁתַּמֵּיט בְּרַעִיָּה בְּעֵי לְמִיפַל

Rav Pappa was climbing a tall ladder and almost fell. He proclaimed that had he fallen, it would be the same as the fate meted out to those who are to be punished by ‘skillah’ “stoning”, i.e., cast from a tall height, onto rocks below. This is usually reserved for those who wantonly desecrate the Shabbos, or perform idol worship.

The Vilna Gaon explains that the commandment ‘to open one’s hand for the poor ‘ (Devarim 15:8), has the cantillation notes for those words, which literally means “the ladder breaks”, ‘dargoh severe’. So it is clear that Rav Pappa should examine the method by which he gives Tzedakah and improve upon it. He can use this warning sign to create improvements in his life, as all of us should do.

כָּל צְדָקָה וְחֶסֶד שֶׁיִּשְׂרָאֵל עוֹשִׂין בְּעוֹלָם הַזֶּה
שְׁלוֹם גָּדוֹל וּפְרִקְלִיטִין גְּדוֹלִין בֵּין יִשְׂרָאֵל לְאֲבִיהֶן שְׁבַשְׁמַיִם

All the charity and good deeds done on this earth promote peace and good understanding between the people and God.

23-Bava Basra 10a3 line 38 B16

Weiss #127

גְּדוּלָה צְדָקָה שְׂמַקְרֵבֶת אֶת הַגְּאוּלָּה

Great is charity, in that it brings redemption nearer.

Observe justice and do charity, for soon my salvation will come (Isaiah 56:1).

How can we say that charity alone brings redemption? The verse says, “Justice and charity brings redemption”. That is to tell us that only charity done justly, can bring redemption, using untainted monies, not obtained in a dishonest manner, giving the money in a just manner, secretly, not in an embarrassing manner, but in a warm and considerate manner. How could one shekel atone for the sin of the Golden Calf?

Moshe was surprised, but if it is given with the proper spirit, charity of any amount, is powerful.

23-Bava Basra 10a3 line 38 B16

Daf Yomi Digest

גְּדוּלַּת צְדָקָה שֶׁמְקַרְבֵּת אֶת הַגְּאוּלָּה

Charity is great because it brings the redemption closer.

One who gives, even a pruta, to the poor, merits to receive the presence of God.

23-Bava Basra 10a3 line 38 B16

Daf Yomi Digest

גְּדוּלָּה צְדָקָה שֶׁמְקַרְבֵּת אֶת הַגְּאוּלָּה

Great is charity for it brings near Israel's deliverance.

עֲשָׂרָה דְּבָרִים קָשִׁים נִבְרָאוּ בְּעוֹלָם

10 strong things were created in the world.

Mountain

Iron

Fire

Water

Clouds

Winds

Body

Fear

Wine

Sleep

Death

Charity

Daf Yomi Digest

רַבִּי אֶלְעָזָר יְהִיב פְּרוּטָה לְעַנִּי וְהִדַּר מִצְּלִי

Rav Elazar first gave tzedakah and then davened.

This was to remove any suspicion that he was davening at length, just to avoid giving charity to those who come to shul to receive it.

They tell a story that on Purim, a wealthy man would linger in shul reciting many tehillim and extra prayers. The Rabbi saw through his behavior and told him, “Your job as a wealthy man is to be home to receive the poor, who will come to you for charity. Your presence in shul, ostensibly involved with religious utterances, is merely your method of avoiding and abandoning the poor.”

מֵאֵי: , אֲשַׁבְּעָה בְּהִקְיֵץ תְּמוּנָתְךָ”

What is the meaning of the phrase, “Upon awakening, I will be satisfied”?

Rambam: A person should sleep 1/3 of a 24 hour day.

Bear Heitev cites a posuk (Iyov 2:13). “I slept and I was rested”.

The Gematria of the word ‘aleph zayin’ is 8, suggesting that when one sleeps for 8 hours, he will feel rested.

Ben Ish Chai: -Consulted doctors, who said a person needs between 6 and 8 hours sleep, but no more.

Mishnah Berurah writes that there is no fixed quantity of sleep. Each person has to determine for himself what he needs, to maximize his potential.

23-Bava Basra 10b2 line 26 B5

Weiss #568

אֲשֶׁרֵי מִי שֶׁבָּא לְבֵאן וְתִלְמוּדוֹ בְּיָדוֹ

Praiseworthy is he, who, enters (the world to come) retaining his studies in his hand.

Note: It does not say, “in his head” but “in his hand”. This teaches us that the yardstick used to measure a person’s Torah knowledge, is not his intellectual proficiency, but the exertion expended in gaining it.

-Or, it refers to a person who records his chidushei Torah, thereby leaving a lasting impression (The Maharsha).

וְחֶסֶד לְאֲמִים חֲטָאת׃

The chesed (loving kindness), of the people, is a transgression.

The nations of the world do chesed, then give charity. They construct a “safety net” for the poor and unfortunate. But, it is institutionalized by the social structure of the society. It does not emanate from kindness and consideration of one individual for another. In fact, it may be done out of self-preservation. The wealthy are fearful that deprivation will lead to revolt and anarchy. That is why it is a transgression. Charity has value, only if given with the correct intention; kindness and consideration.

מַעֲשֵׂה בְּמוֹנָבֵז הַמֶּלֶךְ שֶׁבִּזְבֹּז אוֹצְרוֹתָיו

There was an incident involving King Munbaz, who distributed his treasures, etc.

A person may not give away more than 1/5 of his wealth to tzedakah. Here we see that King Munbaz was permitted to empty his treasures, to give charity to his people.

The reason a person should not give more than 1/5th, is because that might cause him to become poor himself. However, if there is a risk that people will die, if they don't receive tzedakah, you may give more than 1/5th. In addition, a king is an exception.

He will never be poor. If he needs income, he can always tax the people and refill his treasury.

וְאֲנִי גִנְזֹתִי בְּמָקוֹם שֶׁאֵין הַיָּד שׁוֹלֶטת

I have placed my wealth in a place, where no one could steal it.

King Munbaz emptied his treasuries during 2 years of famine, to buy food for his hungry people.

He explained that others have their wealth here on earth, where it can be stolen, but he sequestered his, in a place where no person could touch it.

Through tzedakah and mitzvahs, a person is building his place in Heaven.

מִיּוֹם שֶׁחָרַב בַּיִת הַמִּקְדָּשׁ
נִיטְלָה נְבוּאָה מִן הַנְּבִיאִים וְנִיתְּנָה לַחֲכָמִים

From the day of the destruction of the Bais Hamikdash, prophecy was taken from the prophets and given to the Torah Scholars.

Does Divine inspiration exist in our generation? Yes, it resides in the Talmidai Chachamim, to whom God gives wisdom and knowledge, based on their intense knowledge of the Torah. They can propose innovation, modification and insights into the true meaning of the Torah and this is Divine inspiration.

מִיּוֹם שֶׁחָרַב בֵּית הַמִּקְדָּשׁ
נִיטְלָה נְבוּאָה מִן הַנְּבִיאִים וְנִיתְּנָה לַחֲכָמִים

The power of prophecy was taken from the prophets and given to the sages.

This suggests that the authority of the prophets now resides in the Rabbis and in the Rabbinic courts.

Rabban Gamliel claimed that authority rested in the power of the majority in the Rabbinic court. Even to the point of saying that Divine Providence warrants that the majority of the court will invariably be right and may take on the authority of a prophet.

We are ordered to follow the Rabbis decisions (Deut 17:11). Here, their authority is derived by a majority of the court, but we are also enjoined from following the majority, when it is wrong (Ex 23:2).

חָכָם עָדִיף מִנְּבִיא

A wise man is superior to a prophet.

A prophet may be able to announce forthcoming events, but, a wise man knows the reason. He has calculated, by means of his intellect, that certain events might occur.

Since the Temple was destroyed, the power of prophecy has been taken from the prophets and given to the wise.

Despite the fiery rhetoric of the prophets, they could not extinguish oppression, violence, murder, idolatry and immorality. Instead, our wise sages, by disseminating Torah learning, have inculcated proper life styles among the people.

23-Bava Basra 12b1 line 6 A35

Weiss #399

מִיּוֹם שֶׁחָרַב בַּיִת הַמִּקְדָּשׁ נִיטְלָה
נְבוּאָה מִן הַנְּבִיאִים וְנִיתְּנָה לְשׁוֹטִים וְלְתִינוּקוֹחַ

Since the Temple was destroyed, prophecy has been taken from the prophets and given to fools and children.

Out of the mouths of babes may come unexpected wisdom.

The Holy Spirit of Wisdom rests on whoever is worthy of it.

23-Bava Basra 12b2 line 27 A12

Daf Yomi Digest

Weiss #957

קודם שיאכל אדם וישתה יש לו שתי לבבות

Before a person eats, he has 2 hearts, after eating, he has only one heart.

Only when a person feels the pain and suffering of his fellow, can he fully understand the suffering of his fellowman.

There is a Yiddish expression, “Der zatteh gleipt nisht den hungeren”, “The sated one does not believe the hungry one’. After a person eats and drinks, he loses his empathy for the hungry. Before eating, he has two hearts, his own and empathy for others who are hungry. After eating, he has only one heart, his own.

The merit of fasting is charity (Berachot 6b). So you will be hungry and be of two hearts, in order to understand the necessity of providing for the hungry.

כְּגוֹן זֶה כּוֹפִין עַל מִדַּת סְדוֹם

In this circumstance, we coerce a person not to act in a manner of the people of Sodom.

For Example:

One brother owns a piece of land next to his father. When the father dies, he grants $\frac{1}{4}$ of his land to each son. We permit the son, who has a piece of land, to be able to request that the $\frac{1}{4}$ th portion inherited from his father, be adjacent to his other property. The other three brothers will still get their portion. So this accommodation, does not hurt them.

Also, the double portion of the first born, should be contiguous, as suggested by Deut 2:17.

וְהָיָה לֹא נִבְרָא הָעוֹלָם אֶלָּא לְפָרִיָּה וְרִבְיָה

Is it not true that the world was created only for propagation?

God did not create the world to be a void, but rather, he formed it to be inhabited.

This principle was used in the discussion to make a person, who is half slave and half free, totally free. This forced Bais Hillel to change its opinion and agree with Bais Shammai.

”וְשׂוֹנֵא מִתְּנוּת יְהִיָּה”

“He, who hates gifts, will live”.

This is a mandate to have children.

Shulchan Aruch – He should avoid gifts, but should place his trust in God.

- Receiving a gift often requires the recipients to be grateful.
- Receiving a gift would, therefore, disqualify a recipient from ever being a judge, dayan, or community leader, since he is less likely to rebuke one who sent him a gift. Therefore, it is best not to take any gifts from anyone.

There is an exception: Since we are not obligated to rebuke gentiles, it is permissible to accept gifts from them.

Daf Digest

וְעוֹשֶׂה לוֹ עֲמוּד אֵילָךְ וְאֵילָךְ

And a pole should be made for each of the ends.

The different sections of the Torah must be sewn together with threads of sinew.

How should parchment be attached to the wooden rollers?

Shulchan Aruch – Use thread made from sinew.

Rema – If it is not possible, you may use silk. But, if there is another Torah available which is sewn with sinew, it should be used in preference, and the silk threads replaced as soon as possible.

The Torah of Moshe Rabbeinu and the Torah used in the Bais Hamikdash, had only one roller and was, none the less, Kosher.

Rambam does not mention that the absence of rollers, invalidates a Sefer Torah.

Rav Akiva Eiger- It is best to use sinew, but if not available, other material can be used.

Mahari Weil says – Don't use glue.

שיעור ספר תורה בכמה אָמר לָהן בגויל שָׁשָׁה

What is the proper size of a Torah scroll? One G'vil-6 Tefachim

It is the size a Torah scroll would be if written in average sized letters, and it is the size that the original 10 commandments tablets were in height (Note #8).

If written on klaf, what height should the Torah Scroll be?

I don't know!! Rebbi replied.

G'vil - Entire thickness of the hide.

Klaf - The outer layer of the hide.

שֶׁהַלּוּחוֹת וְשִׁבְרֵי לוּחוֹת מוֹנְחִין בְּאֲרוֹן

Both the new set of complete tablets, plus the broken pieces of the first set, rested in the Holy Ark.

What was the purpose of keeping the broken pieces, when we had a new set to replace them? Because even broken, they had intrinsic value. Much like a large piece of gold, even if broken into pieces, each piece has intrinsic value. Besides, they were only broken in the eye of the beholder, only ‘apparently’ broken.

“I will break them before your eyes”. Intrinsically, they remained complete.

Just as after the Holocaust, Jewry was shattered and broken, but only ‘apparently’. Remnants retained their intrinsic value.

Just as (in BT Avodah Zarah 19), the parchment burned, but the letters ascended to Heaven.

23-Bava Basra 14b2 line 29 B22
Daf Yomi Digest

סֵדֶרֶן שֶׁל נְבִיאִים

Chronology and authorship of the books of the Sefer Torah and Tanach.

(14b2 to 14b3)

מֹשֶׁה כָּתַב סֵפֶרוֹ וּפְרָשֶׁת בְּלָעָם וְאִיּוֹב

Moshe wrote his book. The passage of Bilam and the book of Job (14b4 line 47 A3).

Moshe wrote eleven of the psalms in Tehillim and also Sefer Iyov.

Iyov tried to answer the question, “Why do the good suffer and the wicked prosper?”

Why were the righteous Jews suffering and the wicked Egyptians prospering?

Moshe wrote the story of Job, as an attempt to answer this question.

Psalm 92 was also written by Moshe, “Mizmor Shir L’yom HaShabbos”.

It is strange that the psalm never mentions, or hints about Shabbos. It does, however, ask the question, “Why do the wicked bloom like grass and the doers of evil, flourish”.

The Jews had opportunity, only on Shabbos, to ponder this question. That is why it starts with the words, ‘Mizmor Shir L’yom HaShabbos’ and it contains words of hope for their salvation.

23-Bava Basra 14b3 line 44 B28

Weiss #422

מֹשֶׁה כָּתַב סֵפֶרוֹ וּפְרָשֵׁת בְּלָעָם וְאִיּוֹב

Moshe wrote his book and the portion of Bilam and Job.

Since Moshe wrote the entire Torah, which includes the portion of Bilam, why is it mentioned separately?

R J.R. Soloveitchik explains that only this event took place outside of the Jewish community. Moshe took no part in it. It was put into the Torah, so we would be aware, that in each generation there are those who, like Balaam, would seek to destroy, or harm the Jewish people.

אֱלֹהִים עַד כִּאֵן הִקְדוּשׁ בְּרוּךְ הוּא אוֹמֵר וּמֹשֶׁה אוֹמֵר וְכוּתִב

Until now, God would say the words and Moses would say the words and then Moses would write them down.

This is the pattern to this day. When a scribe writes the parchment for a Sefer Torah, or Tefillin, if he is read the words by someone else, or if he copies from a manuscript, he must say the words out-loud as he writes them. This is to infuse the sanctity of the enunciated words, into the words being written on the parchment.

The exception was that the last 8 verses of the Torah were not repeated by Moses before he wrote them down, since they refer to his death.

לֹא הָיָה וְלֹא נִבְרָא

Never was and never was created.

An emphatic phrase that something never really existed.

This refers to Job:

- He is only a parable to teach the virtue of resignation in face of suffering.
- He was never exposed to the suffering described. However, had he been, he would have been able to withstand it.
- It is inconceivable that God would hand over to Satan, an innocent person for such suffering.

The introduction to the book is certainly a fiction, i.e., the words of God handing Job over to an adversary.

בִּימֵי שְׁפוֹט הַשׁוֹפְטִים הָיָה

And it was in the days when the judges judged.

Megillahs Ruth starts with the phrase, “And it was in the days of judging the judges, and there was famine in the land.”

This tells us that the judges were not conducting themselves in an honorable manner and the people were judging them. Because the judges were dishonest, there was a famine in the land.

(Deu 16:18) “Judges and officers appoint for yourselves... in order that you shall live”.

If judges are corrupt, the people will not live in the land.

(15b3 line 37 A13) – What does it mean, ‘When the judges judged’? Why the repetition?

In the days when the judges were judged by the people and were found to be corrupt.

פְּנִינָה לְשֵׁם שָׁמַיִם נִתְכַּוְּנוּ

Peninah had good intentions (for angering her rival Hannah).

Peninah had 10 children and Hannah none. Peninah would taunt Hannah for her childlessness.

R Levi taught that she did so, to cause Hannah to pray for children.

Nonetheless, though Peninah's behavior was for the sake of Heaven, she caused Hannah to suffer. Causing suffering, even if from good intentions, and for a pious purpose, is a culpable act and may beget punishment. Punishment for the pain caused, but reward for the pious intention.

Daf Yomi Digest

בְּשִׁפְתָיו לֹא חָטָא בְּלִבּוֹ חָטָא

With his lips, he did not sin. He sinned in his heart.

Job suffered and complained about what he was forced to endure, until God showed him a Succah.

The Succah had two tall solid walls and the third wall was only one (1) tefach tall. A Kosher Succah, but obviously, not a permanent home. This was to teach Job that this world is temporary and his ultimate residence will be in the world to come. If a person's lot is one of suffering, it should give him hope that his true reward will be eternal.

23-Bava Basra 16a3 line 35 A25

Weiss #109

בְּרָא הַקָּדוֹשׁ בְּרוּךְ הוּא יֵצֶר הָרָע

God created the evil inclination,

but he also created the Torah, as an antidote.

R Yisroel Salanter - Torah is the preventive medicine.

The Lubavitcher Rebbe, R Menachem Schneerson-The evil inclination may provide us with temptation. The Torah allows us to ‘season’ that temptation and transform it’s ‘flavor’ for good behavior.

23-Bava Basra 16a3 line 35 A29
Weinbach p527

בָּרָא לוֹ תוֹרָה תְּבַלִּין

He created the Torah as it's antidote.

God determines who will be righteous by creating the Yetzer Tov and who will be a sinner by creating the Yetzer Hara. The helpless sinner is, therefore, not responsible. How can he combat the irresistible force, which God has created?

Job's comparison refutes his argument, when he speaks, in the name of HaShem, "It is true I created the Yetzer Hara, but I also created the antidote – Torah Study".

Rashi (Kiddushin 30b)- If this monstrosity, Yetzer Hara, encounters you, drag him into the Bais Midrash (the house of study) where he will be destroyed.

Therefore, you are not helpless and a mere victim of divine action. You can combat that tendency with Torah Study. Therefore, you are responsible if you do bad.

וַעֲשֶׂה יַעֲקֹב אָבִינוּ תַבְשִׁיל שֶׁל עֲדָשִׁים לְנַחֵם אֶת יִצְחָק אָבִיו

And Yaakov, our forefather, prepared a dish of lentils to comfort Yitzchak, his father,

following the death of Avraham.

Why? Lentils have no mouth to cry out with, just as mourners have no way to articulate their feelings. It is because, being round, they represent the circle of life.

Similarly, for eggs.

This custom has its origin from this Gemara.

אף אבל אין לו פה

A mourner has no mouth.

He is considered, as though, he has no mouth. No matter what he says, he is not punished. It is as if he never said it. Even if a mourner complains against the decree of Heaven, he is not punished, for a person is not judged in the moment of his anguish.

We serve lentils as a first meal to mourners: It may have a cleft, but does not have a mouth-like opening.

During the first stage of mourning (aninuth), from death to burial, a mourner is exempt from performing mitzvahs. How can a person pray and address himself to God, who is responsible for the occurrence of all things. It is best to remain speechless and even if the mourner does speak, it is as if he had not spoken. 'He has no mouth.'

וְאִידָּךְ הֵהוּא רַחֲמֵי הוּא דְקָא בְּעֵי

And the other Tanna - (David) requests mercy,

(i.e. that his flesh should not decompose in the grave).

Does saying Tehillim serve as learning Torah?

King David requested from God, that saying Tehillim should be equivalent to Torah study. We don't see anywhere that God granted King David this request. So those who feel Tehillim is not equivalent to Torah study, point out that, perhaps, David's wish was not granted.

Others say, David's wishes were always granted, even when (in Tehillim 16) he pleads that his flesh be protected from worms after he dies. God granted his wish, but not for the reason given to the other people, whose requests were granted by God, for example, for their righteousness. King David's request was granted, because of his prayers.

לֹא יִחְפּוּר אָדָם בּוֹר סָמוּךְ לְבוֹרוֹ שֶׁל חֵבֵירוֹ

A person may not dig a pit, close to the pit of his neighbor.

The Mishnah provides guidelines as to when one is restricted from use of his own property, because it may do harm to his neighbor. When the exact distance is known to assure no harm, the Talmud gives it. At other times, it simply says, ‘a distance that will not cause damage’.

You wish to dig a pit close to your neighbor’s fence. If the ground is loose, i.e., sandy, the fence may be weakened by your pit. So in order not to damage his fence, you must leave more room between your pit and his fence.

The Rabbis of each generation would decide.

Examples:

Your pit and his fence; your pit and his pit; your tree and roots which might grow into his property; your window, which may look into his private property, etc.

Daf Yomi Digest

מִרְחִיקִין אֶת הָאֵילָן מִן הַבּוֹר עֶשְׂרִים וְחֲמִשׁ אַמָּה

Where, on your own property, can you dig a pit?

Abaye: It may be built at the border.

If the neighbor wishes to dig a pit later, it must be 6 tefachim from the first pit, i.e., six tefachim inside his own property, so that each pit will be surrounded by three tefachim of solid ground.

Rava: It may be built three tefachim from the border, even though there is, as yet, no pit on the other side. A pit close to the border interferes with the neighbor's use of his land in the future.

BT B Basra 20b - A person may not open a bakery, or a dyer's facility, on the main floor of a building that houses a storage area for grain, oil or wine. The smoke will ruin them. This restriction holds, only if, the warehouse is already in place. However, if the upstairs is empty, he may put a bakery, or tannery on the ground floor.

תָּא שָׁמַע מִרְחִיקִים אֶת הַזֹּרְעִים וְאֶת הַמַּחְרִישָׁה וְאֶת מֵי רַגְלִים
 מִן הַכּוֹתֵל שְׁלֹשָׁה

Come learn: Seeds, plow and urine, must be distanced, at least three tefachim from the wall.

Today's daf discusses the responsibility of avoiding harm to one's neighbor.

One person's zeal may cause harm to others:

i.e.- arise early to get to Shul and wake up the household.

- be hurried and park in such a way, as to interfere with others.

-come late and inconvenience others who come early for a minyan, etc.

Any action, even those with very good intentions, could cause harm to others.

One needs to think about that and avoid harm to others, as much as possible.

הַרְחַק חֵרְדְּלֶךָ מִן דְּבוֹרָאֵי

Principle: The responsibility of a neighbor, to his neighbor.

-Distance your mustard plants from my bees.

It is necessary for a person to distance his mustard plants, from his friend's bees.

The bees will eat the mustard plants and because of the sharp taste of the mustard, they will return to the hive and consume the honey. Therefore, mustard plants, close to a bee hive, will damage your neighbor's property. You might say, "That restricts my use of my own property if I can't plant mustard plants where-ever I wish. The beekeeper should keep his bees away from my mustard plants". But, since we know he can't control his bees, the mustard plants must be far away from the bees.

An ox, that eats fruit and becomes ill, could have been controlled by his owner. Therefore, the owner of the fruit is not responsible. Here, the owner of the mustard plant is responsible.

וְסָד בְּסִיד תִּנּוֹן אוֹ דִילְמָא אוֹ סָד בְּסִיד תִּנּוֹן

Do we learn that he must also line the pit with lime, or that he may either line the pit, or create a distance of three tefachim from his neighbor's pit?

Rashi: The Gemara is not clear.

Rabbeinu Yona: The text later says (either/or).

Tosofos 17a: It reads that both are required.

Rosh: Either is adequate, both is better. However, we can't force him to do both.

Bais Halevi: Either is adequate.

Rambam: Both are necessary.

Ritva: Agrees with Rambam.

Vilna Gaon: It appears that the Rosh and Rambam disagree, but only because they disagree about how to categorize doubtful matters of damages. Rambam's doubt, here, is doubt about a prohibition not to harm your neighbor. Therefore, we must be strict.

Rosh believes doubtful matters of damages, are monetary matters, and thus, we cannot obligate a person to pay more than the minimal obligation.

וְאֵינוּ יְכוּלִים לְמַחֹת בְּיָדוֹ וְלֹמַר לוֹ אֵינוּ יְכוּלִים לִישָׁן לֹא מִקּוֹל הַפֶּטִישׁ

And he cannot protest against him and claim that he cannot sleep because of the sound of the hammer etc.

Rivash - A neighbor cannot protest noise, coming from his neighbor, who is manufacturing utensils. Unless he is ill – noise will then harm him.

For healthy people, a loud noise is merely a disturbance. The resident, who is making the noise, cannot claim he has a right to make the noise.

Chazon Ish says -Since it is common for people to become ill, it should never be permitted for someone to manufacture utensils in his home.

A neighbor may protest only unusual activities and noises, but not usual household noises, i.e., talking, crying baby, etc.

Bleich 2:108

וּמִתְקַנֵּת יְהוֹשֻׁעַ בֶּן גַּמְלָא

And the mandate of Yehoshua ben Gamla.

He came to establish teachers of children.

Judaism has a deep concern for education. Abraham is described as one who “instructs his children and his household that they keep the way of God, to do right and justice” (Gen 18:19).

Jewish education is divided into two forms of religious education.

1. “Chinuch”, “training”, which is actual practice, a ‘dress rehearsal’ on how to perform the mitzvahs, for example, tefillin, etc.
2. Talmud Torah – as an end in itself.

דְּלֵא קֵאֲרִי לִיהוּי צוּתָא לְחַבְרִיה

If a student is inattentive put him next to a diligent one.

Let him see the good example of the diligent student and both become better. The good student now is not only a student, but also a teacher.

“I have learned much from my teachers and from my colleagues, more than my teachers. But from my students, more than from them all” (Taanith 7a).

כִּי מַחִית לִינוּקָא לֹא תִימַחִי אֶלָּא בְּעֵר קֶתָּא דְּמִסְנָא

When you discipline a child (student), do not strike him with anything but a shoelace.

(Rashi) - A light stroke, which can do no harm.

Rambam (Hil Talmud Torah Mishnah Torah 2:2) - A teacher may not strike a student with enmity, or cruelty, but only with a light strap.

Sotah 47a - One should punish a child with his left (weaker) hand, i.e., with indirect restrictions (timeout, extra homework) and draw him close with his right hand i.e., love and respect = a stronger influence.

Avoth 4:15 - Let the honor of your student be as dear to you as your own.

Daf Yomi Digest

כִּי מַחִית לִינוּקָא לֹא תִימְחִי אֶלָּא בְּעַרְקָתָא דְּמִסְנָא

When you hit a child for disciplinary purposes, hit him only with a shoelace.

The number of students in a teacher's class is 25 children.

This limits class size, so that all students can get sufficient attention.

In the case of mentally retarded children, the fathers and the community are still obligated to provide them with Jewish education, “and you shall teach them to your sons”. This dictum is not predicated on the capacity of the child. Such children will need a better ratio of teachers to children, so they get sufficient attention.

R Moshe Feinstein ruled that, if necessary, even charity funds be made available for this purpose.

אַחַר מִבְּנֵי הַחֵצֵר שְׂבִיקָשׁ לַעֲשׂוֹת רוֹפֵא

If one of the residents of a courtyard wants to practice medicine.

For example, he wishes to open a clinic in his home.

Rambam states that residents of a closed mavoi, could protest an activity that would bring more people to disturb the neighborhood.

Shulchan Aruch: Extends this to any mitzvah activity.

Taz: Includes a medical clinic, synagogue, a place to distribute tzedakah.

However, if the majority of the activity is a mitzvah activity, i.e., a medical clinic, where the majority of patients will be in need, the neighbors may not protest.

קָא פֿסַקַת לִיָּה לְחַיּוֹתַי

You are cutting off my livelihood.

Jewish law prohibits the publication of a book, similar to one recently published and still in print, for the purposes of profit. Jewish law forbids competition, which results in financial damage to a competitor. An author can protect himself by securing a formal ‘cherem’, i.e., “ban”, against the publication of a similar book, for a stipulated period of time. This temporary ban, i.e., copy right policy, is derived from this phrase in the Talmud. The cherem will not hold against non-Jews, or in an area where non-Jewish law may supersede the authority of Rabbinic courts. Some say the stipulation of a specific time is a release permitting re-publication, but if there is no specified time, no re-publication is ever permitted. The rights remain with the author.

קָא פֿסַקַת לִיָּה לְחַיּוּתִי

You are cutting off my livelihood.

May a co-op be set up by a group of people for the purpose of buying Kosher meat, if there is already an established butcher in town, whose business would be severely affected by such a move?

- Does the butcher deal fairly. Does he have proper business ethics? Does he protect local shechitah laws to protect local residents? In larger cities, a co-op is merely another option where meat could be purchased. In a small town, it will adversely affect the local butcher and the Satmar Rebbe prohibited co-ops in small towns.
- Reb Moshe Feinstein commented in a case of a proposed breakaway synagogue where there is not enough “business” or, members, to support both. It is prohibited (even though, it is for mitzvah purposes).

Daf Yomi Digest

קְנֵאת סוֹפְרִים תְּרַבֶּה חֲכָמָה

Competition, among Torah scholars, increases wisdom.

A member of a mavoï, who runs a certain type of business (a mill is given as an example), can prevent another member from opening a competing business venture in the same mavoï. However, this does not relate to Torah teachers. They may open a competing school, because competition in Torah scholarship, increases wisdom.

Even if the second teacher over-floods the market and neither of them can make a decent living, which could discourage both from serving as Torah teachers. This is, perhaps, true with other jobs, but not as relates to Torah teaching. Teaching will not suffer, even when the teachers income is sub-par.

Weiss #467

קִנְיַת סוֹפְרִים תְּרַבֶּה חֲכָמָה

The jealousy of scribes, increase wisdom.

It is a virtue, for it leads to more diligent in study and increases wisdom. A person, who is envious of the scholarship of his friends and strives to emulate them. This is an acceptable form of envy. Even though envy is a bad trait, even a bad trait can be used toward desirable ends. However, it is better if one's inspiration to study comes from other stimuli, for example, the joy of learning and the sublime teachings of the Torah.

אַתּוֹ אֲנִי וְיָתִיבִי תוֹתִייהוּ

Bloodletters come and sat under (R Yosef's) trees and crows came to eat the blood and also, ate R Yosef's dates.

1. Water from 2nd floor bathtub overflowed and ruined the lower level.
2. Water, came from rain, through the 2nd floor and damaged the first floor.
3. A pit, filled with rain water and overflowed into the neighbor's wine cellar.

Who is responsible to take steps to prevent damage?

1. 2nd floor neighbor-he brought the water.
2. 1st floor neighbor-to protect his own property.
3. Pit owner – he created the dangerous condition. by which the rain could injure his neighbor.
4. The bloodletters for attracting the birds, they created the condition by which R Yosef's dates were damaged.

Daf Yomi Digest

וְעַל דָּא אֶפְקוּהוּ לְרַבִּי יִרְמְיָה מִבֵּי מִדְרָשָׁא

Because of this question, R Yirmiya was excluded from the Bais Midrash.

The rabbis ruled that the maximum range of a young dove is 50 amos. If found within that diameter, it belonged to the owner of that dovecote and beyond that diameter, it belonged to who ever found it.

R Yirmiya posed a question. What if the dove was found with one foot inside the 50 amah diameter and one leg outside? He was, therefore, kicked out of the Yeshivah. Why?

1. Because it is improbable. However, the Talmud often poses improbable scenarios for deductive purposes.
2. Because the statement from the sages was firm and decisive and his question suggests that the sages were not precise. It was a dangerous premise that the sages were not correct and their authority could be challenged.
3. Because R Yirmiya refused to accept the consensus of the sages.
(P.S. He was readmitted to the Yeshivah on daf 165 Bava Basra.)

Bleich 2: 118

וְעַל דָּא אֶפְקוּהוּ לְרַבִּי יִרְמְיָה מִבֵּי מִדְרָשָׁא

Expulsion of students:

Because of this question, R Yirmiya was excluded from the Bais Midrash.

Rambam (Hil Talmud Torah 4:1) - Teach only those students of good moral character.

- You can accept only those, whose character is known to be good.
- You can accept any student, who is not known to be bad, i.e., who has an unknown moral character.
- One should teach everyone and try to bring up their character.
- Have special training for transgressors.

Degenerate characters may be expelled.

- You may exclude a student from Torah study, only if by so doing, he will be improved and will transform his character, but not if it will not.
- If he breeches school discipline and might be a bad influence on others, or “do them harm”.

Daf Yomi Digest

וְעַל דָּא אֶפְקוּהוּ לְרַבִּי יִרְמְיָה מִבֵּי מִדְרָשָׁא

Because of this question, R Yirmiyah was evicted from the Bais Midrash (the learning room).

He was evicted on daf 23 and readmitted on daf 165. How long was he outside the Bais Midrash?

This depends on how many pages the Yeshivah learned in a month.

-if forty 4 months

-if 20 8 months

-if 1 daf a week 3 years.

Daf Yomi Digest

דָּבָר דְּמִיּוּדֵי וְהֵדָר חָזִי לֵיהּ לְקוּנְיָהּ

Because as long as (the dove) can hop and still turn and see its nest.

Doves never wander far from their nests, it is always in their sight. So they can return to it, if they wish. In Shir Hashirim, we use the reference to doves. We are compared to doves.

R Chaim Berlin tells a story that he was asked to perform a Bris Milah for a child, from a very assimilated family. He asked why they were so interested in having their child circumcised? The father responded, “If my son does not have a Bris, when he grows up, he will not have the option of returning to Judaism. I have had a Bris and could come back anytime. I want him to have that option also”.

קִידְרָא דְּבֵי שׁוּתְפֵי לֹא חֲמִימָא וְלֹא קְרִיָרָא

A communal pot is never hot or cold.

A person may not plant a tree on his own property, within 25 cubits (~ 37 feet) of a city, in order to guarantee a vacant green belt around the city, to beautify it.

If he did so, the city may chop it down without compensation. If he planted it at the proper distance, but the city expanded, the tree may still be chopped down, but he is to receive compensation. The issue of compensation arises only after the tree has been removed. Why cannot the tree owner insist that he be paid before the tree is removed, so he will be certain not to suffer a loss?

Rabbi Kahana refers to human nature. A collective group passes on responsibility and the group will not make a decision (i.e., committees, court proceedings, etc.) for a long time and during that time, the beauty of the city is compromised. Therefore, they cut now and pay later.

Daf Yomi Digest

הַרוֹצֵה שִׁחְכִּים יִדְרִים וְשִׁעֲשִׂיר יִצְפִּין

One who desires wisdom, should face south
and one who wishes riches should turn north.

The menorah in the Bais Hamikdash represented wisdom and was located along the southern wall. The menorah and its lights symbolize Torah.

Turn to the south for wisdom, i.e., learn from the scholars Kfar Dorom.

When you face east to daven, your right hand is south and your left is north.

Performing tasks with your right hand is better. It is your more coordinated side.

If you learn in a coordinated, structured manner, you will retain your knowledge best.

We see people “shokul”, ‘move in prayer’, to right and left suggesting that they wish to succeed in wisdom and also, in wealth.

Daf Yomi Digest

הַרְוֹצָה שִׁיחֲכִים יְדָרִים וְשִׁיעֲשִׁיר יִצְפִּין

Turn south to become wise (i.e., turn toward Eretz Yisroel) and to become wealthy, turn to the north.

When we pray we should turn east to face Jerusalem. Yet, Europe is not exactly due west of Israel, but northwest and therefore, if we wanted to face Jerusalem, we should (when in Europe) face southeast.

Residents of every country would have to calculate and align the shuls, to be able to face Jerusalem.

However, when we pray, we face east, but if we “shokul” side to side, we can benefit from the suggestion(in Bava Basra 25) that if we face east, the south is to our right and north is to our left. Wealth is left and wisdom is right, therefore, face to each side and shokul left to right and right to left.

הַרוּצָה שִׁיחֲכִים יִדְרִים וְשִׁיעֶשִׂיר יִצְפִּין

One who derives wisdom, should face south and one who wishes riches, should turn north.

One should always pray in the direction of the Temple site in Israel. However, a person may angle slightly, in accordance with the purpose of his prayer.

R Yitzchak suggests we should angle south to attain wisdom, since the menorah, a symbol of the light of wisdom, was in the southern part of the Sanctuary and angle north to attain material sustenance, because the Shulchan stood in the north.

R Yehoshua ben Levi suggests we should all angle south, because if we attain wisdom, that will bring wealth along with it.

Bleich 2: 194

מִרְחִיקִין אֶת הָאֵילָן מִן הַבּוֹר עֶשְׂרִים וְחֲמִשׁ אַמָּה

In order to prevent damage (to a pit or a well), no tree may be planted within 25 cubits (i.e., ~ 37 feet) of an existing well.

The sages say -If it was planted, it must be removed.

R Jose says-It need not be removed.

Ramban says - It must be removed, because of ‘settlement of the land’, ‘yishuv haoretz’.

The sages believe the land needs wells, more than trees.

R Jose believes -The land needs trees, more than wells.

So, we see that there is a debate, as to how the land of Israel will be best served.

The land not only must be cultivated, but the quality of that cultivation, should be to the greatest possible degree.

Daf Yomi Digest

לֹא יִטַע אָדָם אֵילָן סְמוּךְ לְשָׂדֵה חֲרִירוֹ אֶלָּא אִם בֵּין הָרְחִיק מִמֶּנּוּ
אַרְבַּע אַמּוֹת

A person may not plant a tree near his friend's field, unless he distances it by 4 amos.

Why 4 amos? That is the distance a plow needs to plow between the trees.

If it is not a practice to plow in that manner, the 4 amos rule does not apply.

What if you buy a house, or a field that already has a tree that is too close? Can your neighbor request that you remove it? No. When you bought the house, or field you bought the chazakah, i.e., the precedent, that the prior owner had and you don't have to remove the tree. You can perpetuate the chazakah.

Daf Yomi Digest

אֵילָן מִקְצָתוֹ בְּאֶרֶץ וּמִקְצָתוֹ בְּחוּצָה לְאֶרֶץ

A tree stands partially in Israel and partially outside of Israel.

Where does this tree exist? Where its branches overhang, or where its roots grow?

Rambam: Where its roots grow determines its status. If in Israel, the fruit is subject to the rules of terumah. If some roots are in and some are out, it is a mixture.

Daf Yomi Digest

אֵילָן שֶׁהוּא נוֹטֵה לְרֵשׁוֹת הָרַבִּים בְּדֵי שְׂוִיָּה גָּמַל עוֹבֵר וְרוֹכְבוֹ

A willow branch, which interferes with people walking in a public place, may be cut and kept by the person who cuts them, for his own use (even for his lulav or schach. Which are items he must fully own in order to use them!).

He is rewarded for removing the impediment to the public's use of the walkway, by being allowed to keep the branches that he cut.

What if he only cut a few branches and the obstacle still remains to the comfortable passage of passersby? Then, there is a question. He has not really provided any service to the public welfare and perhaps, should not be allowed to own the branches he cuts, or we could say the owner loses ownership, when he interferes with the passage of the public. Anyone can take these ownerless branches.

23-Bava Basra 28a Intro
Daf Yomi Digest

Chapter Three Introduction

Chazakah- A formal transaction, by which real property can be acquired.

This chapter relates to uncontested occupancy of land, or a house, which creates the legal presumption, that the occupant owns the occupied premises.

“A person who wishes to take property from another, upon him, is the burden of proof”.

To establish a chazakah, an occupant must have continuous occupancy (3 years) and must use the property as an owner would.

Also, there must be no protest lodged by the previous owner. If a protest was lodged before two witnesses, no chazakah is established, merely by occupancy.

חֲזַקַּת הַבָּתִּים

Chezkas Habatim – the legal presumption of ownership of houses, etc.

Chazakah regarding: Houses, pits, ditches, vaults, dovecotes, bathhouses, olive presses, irrigated fields, slaves,. Any property that provides continuous benefits – occupancy and use for 3 years continually, day in and day out, is necessary to establish a presumption of ownership.

Chazakah regarding: Property that yields benefits seasonally. He needs to be there for a time period spanning three planting, raising and harvesting periods.

R Yishmael 3 - 12 - 3 months

R Akiva 1 - 12 - 1 month

R Yishmael-Any three, distinct harvests – even 3 different products, but all grown in 1 year, are the equivalent of three years of occupancy.

שָׁמַעְתִּי מֵהוֹלְבֵי אוּשָׁא שֶׁהֵיוּ אוֹמְרִים מִנֵּין לַחֲזָקָה ג' שָׁנִים

I heard from those who traveled to Usha that they would ask, “Where do we derive the concept of a three year chazakah?”

Answer: From a muad bull. If it gores three times, its status changes from a tam to muad. Refutation: However, in the case of a muad bull, he pays full amount on the 4th goring. So accordingly, the property should not be his until the 4th year. Therefore, we can't learn the concept of a 3 year chazakah from muad.

Not only must the occupant live there three years, he must claim it is his.

A muad can be established in three days, one goring each day (Ex 21:29). A field that can have three harvestings in three days, should it also have a chazakah in three days, not three years?

R Meir: The bull could become a muad in 1 day, if he gores three separate times and not all the gored animals were present at the same time. Therefore, we can't learn ‘in three years’ from a muad bull. Also, we can't have a chazakah on harvested materials, all which are being grown at the same time. We need different times. We could do this with the aspasta plant (used for animal fodder) which grows in a month. We, could, therefore, have a chazakah, theoretically, in three months. Therefore, not three years, but three utilizations of the property.

Daf Digest

שָׁמַעְתִּי מֵהוֹלְבֵי אוֹשָׁא שֶׁהֵיוּ אוֹמְרִים מִנֵּין לַחֲזָקָה ג' שָׁנִים

I heard from those who traveled to Usha, that they would ask, “Where do we learn that three years creates a chazakah?”

Just as an ox, that gores three times, changes its status from a tam to a muad, so too, land that has been used for three years, changes its status.

In addition, to using the land for three years and not having that use contested, the resident must claim that he bought it, or inherited it, or had some legal explanation for his new ownership.

The cow is not a muad until the 4th goring.

The property does not transfer until the beginning of the 4th year.

The land will not transfer automatically. He must claim it is his by some legal explanation.

People are not careful to maintain their legal papers for more than 3 years.

„שָׂדוֹת בַּכֶּסֶף יִקְנוּ וְכָתוּב בְּסֵפֶר וְחָתוּם“

They shall buy the land for money, and record that in a document and have witnesses sign it.

Perhaps, we derive the three year rule from Jeremiah. In the 10th year of Tzidkiyahu's reign, the exile would take place. The next year, the people were advised to have written documents, with witnesses, since those 2 years is not enough to claim chazakah. We need three years on the document.

No, the prophet was only giving practical advice.

Perhaps human nature would allow a squatter a year to two before a person would protest but certainly not three years.

No. There are people who object immediately. Would we say that if the owner did not protest, the squatter has an immediate chazakah?

People are careful with their deeds for 1-2 years, but after three years of continuous occupancy, we don't insist on seeing his deed, but rely on his occupancy as proof of ownership!

So the 3 year rule is based on human nature, of how long people hold onto their deeds. Perception of general agreement of - but no evidence for this actually being human nature.

הוא שאכלן רצופות

Only if he used the property for three years consecutively.

How must the 3 years be spent?

Three consecutive years:

- Full years - not partial.
- 1 month in 1 year, 12 months and 1 month.
- plant and fallow, alternatively, is permitted, if that is the custom in the community.

Why? Owner sees planting each year and if he, therefore, protests, the land is still his.

The owner sees no planting every other year, so he does not think he has to protest.

But, if that is the usual custom, he does need to protest to maintain his ownership.

If a field is fallow, the fallow year does not count toward establishing a chazakah, only the cultivation years. Therefore, it would take 5 years for the chazakah to take hold, in that situation.

Daf Yomi Digest

הוא שאכלן רצופות

Only if the occupant used the property for three years, consecutively.

A chazakah will be interrupted by a break in the continuous occupancy of a house, or a field.

Many people bemoan the fact that they can't learn regularly, but if they concentrate their learning at special times, they interrupt the continuum of not learning, so that no chazakah of not learning, can ever occur. The Yetzer Hara that tries to create a chazakah of lack of learning, cannot succeed in doing so. It is as though the owner of the land protested the occupancy of the person trying to create a chazakah, and the protest breaks the chazakah.

Daf Yomi Digest

תִּנְן דְּבִימָמָא יָדְעִי בְּלֵילֵיאָא לֹא יָדְעִי

We learned that the chazakah of a house is three years, but witnesses only know about daytime occupancy, not about the nighttime.

The three years necessary to establish a chazakah, must be accumulated consecutively. If the land/house was occupied for only a part of each year, over a period of many years, and even if the total number of days equal 3 years, that is not acceptable. The residency must be consecutive. This must be attested to by his neighbors. However, neighbors can only testify as to what they see in the daylight. They could not testify about his occupancy at night, since they can't see him the dark. Therefore, it might take 6 years, for 3 years of verified occupancy to take place. In this situation, those who rule that the three years mentioned, are actually 6 years of days, contend that intermittent occupancy, i.e., days only (and not nights), can accumulate and fulfill the residency requirements.

וְאָמַרְי אֲנִן אֶגְרִינֵן מֵינִיָּה וְדָרִינֵן בֵּיה תְּלַת שָׁנִין בְּימָמָא וּבַלַּיְלָא

We rented the house and lived in it for three years, day and night.

Chazakah of houses is established in three years. How so? We can't establish that he was there at night. We could, if he rented to two persons, who testified that they paid him rent for three years and they lived there.

No, they could be biased. They have an interest.

If they lived there and paid the wrong person, they still owe the owner rent and would have to sue to get their money from the false owner.

No, we are dealing with tenants, who lived there three years, but did not yet pay rent to anyone. Therefore, they will not lose and are not biased.

Occupier must be able, if owner says, "I did not protest, because I saw he was not there at night and therefore, his occupation was not continuous." The occupier must therefore, bring witnesses (29a4 line 39 B9).

אֶכְלָה בּוֹלָה חוּץ מִבֵּית רוֹבֵעַ

If he used $\frac{3}{4}$ of a field, but leaves $\frac{1}{4}$ part untouched,

does he not have a claim on that part?

What if that part was rocky and not cultivatable? He should still have used it to graze animals, or dry out fruits. He must use it to acquire it.

(30a3) If a person was out of town, or came back only periodically, and was too busy to check on the property, he does not lose it to the squatter.

(31a1) Series of cases: May a person make a claim and return and use another claim.

Yes, if the original claim can be interpreted as being consistent, as being but a modification of the first, i.e., 'the land belonged to my forefathers', and he had a deed. Another claimant comes and says, "No, it belonged to my forefathers" (and he has a claim of chazakah and a statement of purchase) I was secure in my possession, as though it had been my forefathers".

דָּאָמַר לִיּוֹה לְחַבְרִיהָ כֹּל נִכְסֵי דְבֵי בַר סִיסִין

There was a person, who said to his friend, “All the property that I purchased from Bar Sisin, I sell to you”.

There was one piece of land called “the field of Bar Sisin” that the seller claimed was not included in the sale. The buyer says it was included and wants to take it.

Does the rule ‘the one who wishes to take, must bring the proof’ hold in this case?

The land is in the possession of the seller and therefore, the buyer who wants to take it, should bring the proof that it is to be included in the sale. Wrong. The seller claims that what appears be sold, was actually not included. This usual claim places the burden of proof on him, to prove it was not included in the sale.

עֲבִיד אִינוּשׁ דְּלֹא מְגִלֵי טַעֲנָתִיהָ אֶלָּא לְבֵי דִינָא

It is common for a person to not reveal his claims, other than in Bais Din.

Except:

A statement, made to his own detriment, is considered an admission and has the force of 100 witnesses. Such a statement is treated as though witnesses in court had testified to it.

Example: A claim that this land belonged to his father and he inherited it.

He later claims, that he actually purchased the land himself. The judges determined that once he claimed the land belonged to his father, he cannot claim that he bought it. It is an admission that he did not buy it. The two statements are contradictory and to his detriment.

זו בָּאָה בְּפָנַי עֲצֻמָּה וּמַעִיָּדָה

Two sets of witnesses testified opposite to each other

We do not know which set is truthful and which set is lying.

Rava – Neither retains any credibility.

Rav Huna - But they may testify in an unrelated case in the future. Each set retains its status of being kosher, until proven to definitely be liars.

Rav Chisda - No. Each set is tainted, due to being involved in a contradictory case and neither may come to testify.

Rambam agrees with Rav Huna - The ‘presumption of acting properly, “chezkas kashrus”, is retained. Otherwise, whenever a question arose, we would be controlled by the doubt raised. This would be absurd. The chazakah of honesty is retained until proof, otherwise, occurs.

Rav Chisda - Neither may come to testify about other aspects of this case, even about details that are not contradicted.

לְזִילוֹתָא דְּבֵי דִינָא קָא מִיפְלָגִי

It is contempt of court, that we are concerned about.

A ‘get’, “a bill of divorce”, was misspelled. It had only 1 yud in the word for the month of Iyar. The court decided the get was good.

A second instance, with the same error and the court decided it is best to call back the couple and rewrite the get correctly. Why were the two cases handled differently?

The get was accepted as adequate in case #1, since the error was not discovered for several days and the woman was known to be divorced. The second case, the error was found the same day and the get could be recalled and written correctly, to be kosher without question.

אָנן אַחַתִּינִיָּה וְאָנן מִסְקִינָן לִיה

We demoted him and we can, now, elevate him.

A single witness has reliability regarding matters that could be easily revealed, since we assume a person would not lie, only to be discovered as a liar.

May a woman testify that her husband died?

If it is a matter that could easily be tested: Yes. For example, if he shows up – she is a liar.

May a woman testify that her husband divorced her? If he shows up she could still say, “I received a get, but I lost it.”

If she also puts into her claim, the name of a nearby Bais Din, where her claim could be verified, we do believe her.

שְׂטָרָא זַיִפָּא הוּא

It is a forged deed.

A man is asked to leave the property, but says, “I bought it and here is the document of sale. It is a forgery”.

I admit that it is a forgery, but since I did not need to tell you it is a forgery, I have a migu and should be believed!!

Rabbah says – True, he has a valid claim and the property is his.

R Yosef says – He admitted the deed was forged, how can you rule it should be his?

Since the law could not be decided, it was determined that the land remain with the person who possessed it. The benefits of migu prevail, even against evidence of prior ownership, but only if the litigant is in possession of the disputed property. It does not force the transfer of land or money.

Dr. Guttman, who possessed the rare books saved from Holocaust destruction, could have claimed they were bought, or were a gift, and would, on the basis of this migu, be permitted to keep the books as his possession.

הָבָא לִיפְרֹעַ מִנְכָּסֵי יְתוּמִים לֹא יִפְרֹעַ אֶלָּא בְּשׁוּבָעָה

He who wishes to collect from orphans, can only collect with an oath.

The oath would say:

I have not been paid on the loan, I gave to your father.

If one is already in possession of property of orphans, he may legally keep those assets as payment of the loan.

An oath is needed because:

1. We don't know if the loan was already paid back and the receipt misplaced by the deceased father.
2. The payment of a father's debt is a mitzvah and not required. The orphans may choose not to perform that mitzvah,

וְכָל דֵּאֲלִים גָּבַר

Right makes might.

Whoever is stronger, prevails.

Those who believe strongly that they are correct, are likely to fight with greater determination, and self sacrifice, so that they will prevail. In that case, right makes might.

Rav Chaim Volozhiner told an officer in Napoleon's army, that although the French forces are stronger, the Russians are fighting for their own land and would give greater sacrifice than the French and would therefore, emerge victorious.

R Aharon Soloveitchik

The Warmth and the Light p35

וּשְׁמוּאֵל אָמַר. שׁוֹדָא דְדַיְיָנִי

And Shmuel ruled that it is up to the judge's discretion.

Rashbam says – Yes, but that requires the judge to diligently examine all of the facts, to make his determination.

Rabbeinu Tam says - Yes, but the judge can simply decide. No attempt is needed to determine who the correct owner should be.

Shulchan Aruch: Agrees with the Rashbam.

Types of case: 1. Two people- each has a contract for land purchased from the same seller on the same day. Rav says: Split the land. Shmuel says: It is up to the judge's discretion.

2. A grandmother left her jewelry to her granddaughter named Traineleh. But, she has two granddaughters named Traineleh, one married to a Torah scholar and since it is a great merit to support a Torah scholar, that is the granddaughter who should receive the inheritance. But, if the inheritance is not of a material that will help a Torah scholar, there, the two granddaughters should compromise and share the property.

Daf Yomi Digest

אִי דָּלִי לִיָּהּ אִיהוּ גּוֹפִיָּה צָנָא דְּפִירִי לְאַלְתֵּר הֵי חֲזָקָה

If witnesses testify that the challenger himself, loaded a basket of the field's produce onto the occupant's shoulders, the occupant's ownership is proven immediately' and we need not wait for three years of use.

Rabbi Rokeach was visiting the home of one of his followers and was served a big tray of fruit. He called the owner of the house and gave him the first portion. Though his usual custom was to give portions to the most learned of his students, first. He explained, “Not all of you were invited by our host, but you came to do me honor. By my giving him the first portion it indicates that he presented it to me, to distribute as I wish and therefore, I am free to give out portions to the rest of you”.

Just as (in Bava Basra 35) when Rabbeinu Chananel gave fruit to the fruit salesman, it is clear that the fruit belonged to R Chananel and not to the salesman.

וְהַעֲבָדִים וְכוּ'

And slaves....

An object in a person's home, is believed to be his and that he purchased it, since there is no other explanation as to how it reached his home. However, if it is an ambulatory object, i.e., slaves or animals, they could have walked into his home and merely been kept there. So their presence is not proof of his ownership.

However, if the slave was a baby in a crib, i.e., not ambulatory. He could not walk in on his own, so its presence does not invalidate his claim that he bought it. And, if you say,

“No, he did not buy it, the mother merely forgot to retrieve her baby.”

The Rabbi's say, “A mother never forgets her child”.

דָּאִי בָּעֵי אָמַר לְקוֹחוֹת הֵן בְּיָדֵי

For if he wanted, he could claim that he purchased them.

A person who seizes his neighbor's goat and claims that it ate his barley, is believed and may claim compensation for damages up to the value of the goat. Why is he believed? Because, he could have a “migu”, if he wanted. He could claim that he owned the goat!!!

That the goat ate barley, the goat's owner could never be sure, but that the barley owner owns the goat is a flagrant lie, that he knows to not be true. Such a migu is called an ‘audacious migu’. The law is, if the people know each other, an audacious statement is not expected. But, if they do not know each other, he might make an audacious statement.

Daf Yomi Digest

וּמִיָּדָא לְיָדָא מִשְׁלָמִי

And the goats are delivered hand to hand.

Chafetz Chaim: A person must never say that “things are bad”, since everything HaShem does is for our good. Instead, one should say, “Things are bitter”. Since medicines can be bitter, yet we know they are good for us, since they heal us.

And someone who says things are bad, is actually lying, since he says what is ultimately good for him, is bad, simply because he does not understand that it is for his good.

The people of Nehardea would not leave their sheep to find their own way to the shepherd, unsupervised, but would accompany them all the way. So it is with God, he guides our way and does not leave us alone, even for a moment.

זֶה הַחֲזִיק בְּאֵילָנוֹת וְזֶה הַחֲזִיק בְּבַקְרָקָע

This buyer performs a proprietary act on the trees and the other, on the land.

Two people had a yearly custom of baking Shmurah matzos in a facility, one on the day after Shushan Purim and the other, on the first Sunday after Shushan Purim. One year Shushan Purim fell on Shabbos. Both of them had a claim to bake on Sunday.

Who should be given permission?

In our Gemara, a seller sold the land to one person and the trees to another.

Did the seller expect the tree owner to uproot and take his trees?

If you have a ticket on an airplane and the flight is cancelled, should you be given a seat on the next flight and displace a passenger who has a ticket?

Or get to the end of the line and buy a ticket for a seat, not yet the property of another person?

Your option was cancelled. You cannot displace another party.

Daf Yomi Digest

שְׁלֹשׁ אֲרָצוֹת לַחֲזָקָה

There are three lands in Israel regarding chazakah.

This discusses whether the owner lives in the same region as the field.

These three lands, with regard to chazakah, are Judea, Transjordan and the Galilee.

If the land and the owner are in different lands, the squatter never gets chazakah.

R Yehudah - Not so, the three year rule gives the owner time to object, even if he lives in a different land (even in Spain). 1 year to be occupied, 1 year for notification to him and 1 year to reclaim his field.

Is a protest, not in the squatters presence, effective to interrupt his progress toward chazakah?

Yes – Our Mishnah speaks about a time of hostility, when the owner could not learn of the squatter and the owner's protest could not be expected to go by word of mouth to the squatter. Therefore, being in different provinces, voids a claim of chazakah. Is there a chazakah on the land of a fugitive? No. Because the fugitive is not likely to receive word of mouth notice, that there is a squatter on his land. Nor, is his objection likely to be conveyed. If he does object, it is a valid objection.

Daf Yomi Digest

לֹא אָמְרוּ שְׁלֹשׁ שָׁנִים אֶלָּא

The sages stated that only three years are needed for a chazakah.

A chazakah, on land, or a house, takes three years, since a person will keep his sales document for that time period.

Three years is permitted, if the owner is not present in the city. But, if the owner sees someone on the land and does not react immediately, the chazakah of the person residing on the land, can occur immediately.

But, if the land owner lives elsewhere and/or a communication barrier exists, the owner may not know that his land is being used, or that his protest may not reach the occupier. Then, three years is considered the time frame of chazakah. Since that is viewed as sufficient time for the information to be adequately conveyed.

Caution: Therefore, most people believe they have three years in which to register their objection. They may see someone on their land and not complain immediately, thinking that the occupier will leave and if not, “I still have three years to protest”. We see that is not the case.

Weinbach p531

חֶבֶרֶךְ חֶבְרָא אִית לִיהּ וְחֶבְרָא דְחֶבְרֶךְ חֶבְרָא אִית לִיהּ

Your friend has a friend and your friend's friend has a friend.

A squatter lives on a field for three years.

The owner is a fugitive and it is unlikely that he knew of the squatter, so he could not protest. The squatter wins according to Rav.

An owner, who protests to people who are so far away, that the squatter never learns of the protest. The protest is still valid to prevent the squatter from owning the property.

Why?

Both scenarios are based on the supposition that word will, eventually, get to the other party, based on the maxim, "Your friend has a friend and your friend's friend has a friend". Anything known to two witnesses, whether possession, or protest, will inevitably reach the party affected.

הִיכִי דְּמִי מִחֲזָה

How should a protest be worded?

The owner must assert his own ownership and accuse the other of falsely holding, or using the field.

What if witnesses will never travel to the area of the field?

(“Your friend has a friend and your friend’s friend has a friend”). Therefore, the protest is effective.

The witnesses tell the protester, “We will say nothing about this matter.”

“Any matter that was not entrusted to a person, to keep confidential, will eventually be discussed inadvertently”

If we learned that he is given the third year to come back from Spain to protest, that suggests that protest, not in the presence of the squatter, is not effective.

This is not so: R Yehudah was only suggesting good advice, “Come back and defend your property”, but he agrees a protest, in absentia, is valid to defeat a claim of chazakah.

Daf Yomi Digest

פְּלוֹנִי גַזְלוֹנָא הוּא לֹא הוּיָא מְחָאָה

“Ploni is a thief”, is not an effective protest.

A group of students were discussing lofty concepts, but one remarked, “How can we possibly debate such matters, we are not at such a high level of knowledge”.

Their teacher overheard this comment and remarked, “Just as in Bava Basra 39, when the owner complains about the squatter, your comment, complaining about your current level of knowledge, is enough to protest against the Yetzer Hara and displace him. He is now only a temporary squatter, he is not the “baal habayis”, ‘the owner’. This comment indicates that you students, are not content with your level of knowledge and deep within you, you wish to do better. With that attitude, you definitely will succeed.”

Daf Yomi Digest

פְּלוֹנִי גּוֹזֵלֵנִי הוּא לֹא הוּיָא מְחָאָה

“ Ploni is a thief!”, is not a valid protest.

The complaint must say:

- + - Ploni is a thief,
- + - because he is occupying my land,
- + and I plan to take him to Bais Din, tomorrow.

The first two statements are required, but the third is merely an explanation.

For example, ‘I can’t take him today, because I am busy’, it is not a required element of the complaint.

Legal requirement for an effective protest

מְחָאָה בְּפָנֵי שְׁנַיִם

A protest must be lodged in the presence of two witnesses.

If a person spoke disparagingly about another in front of three people. If a person tells this to another, it is not considered disparaging, since enough people heard it, for it to be public knowledge and widely known. Therefore, for a protest, to be widely publicized, it must be said to three people.

- He, who holds that two witnesses are sufficient, uses the two witnesses to verify that a protest was, in fact, made.
- He, who holds that three witnesses are needed, uses the witnesses to disseminate the protest, so the squatter learns of the protest.

Daf Yomi Digest

כָּל מִיִּלְתָּא דְמִתְאַמְרָא בְּאַפֵּי תְלִיתָא

Any matter, that is said in the presence of three, is not considered Lashon Hara.

If a person says something derogatory about himself, in front of three people, they may repeat it to whomever they wish.

If a person says Lashon Hara, about another person, in front of three people, one of them may go to the person involved and tell him that so and so said something bad about him.

This is because, if told before three persons, it is assumed it will become common knowledge. Lashon Hara does not apply to information that will become generally known.

Tosfos says - If you say something in front of three people, it is not even in the category of Lashon Hara.

כִּיּוֹן שְׁמִיחָה שָׁנָה רִאשׁוֹנָה

Once the owner has protested during the first year of another's occupation.

How many times must the owner protest?

-Once: This establishes that the squatter must be on guard to keep his property deed, since his claim is contested. If he does not, his position is undermined and he gets no chazakah.

-Once every three years: If he protests only once, we could say his protest was not serious. If the squatter sits on the land for a period of three years, even after he has been challenged, the squatter has a chazakah. He has been alerted about the fact that his occupation is being challenged, but persists in occupation, because he believes he is the owner.

הוֹדָאָה בְּפָנַי שְׁנַיִם וְצָרִיךְ לוֹמַר כְּתוּבוֹ

He admits before two (witnesses, that he has a financial obligation), he must tell them to write it (or they must not do so).

The witnesses cannot write it down without his permission, because once it is written, he is more severely obligated and even his land can be taken as a guarantee for the loan.

The confession, verbally, may be binding, but he does not agree to have his land used as security.

Daf Yomi Digest

כָּל חֲזָקָה שֶׁאֵין עִמָּה טַעֲנָה

Any chazakah, not accompanied by a claim, fails.

#1 Example: I am here because no one told me to leave – fails.

#2 Example: I am here because:

1. I bought it from you.
2. Your father gave it to me as a gift.
3. You gave it to me as a gift.

Example: One, who receives through inheritance, does not need to make a claim. He is not expected to, fully, be aware of his father's affairs. However, he has to have used the land for three years and prove (with witnesses) that his father occupied the land for at least one day.

This is not true - The person did not make a claim, because he did not believe he needed to do so. He bought the land, lost the deed and now three years later, a former owner says, "Get out – it's mine".

כָּל חֲזָקָה שֶׁאֵין עִמָּה טַעֲנָה

A chazakah is not valid unless it is accompanied by a claim.

If a person is asked, “Why are you on this land?” And he says, “I found it empty, so I moved in.” He has no chazakah, even after three years uncontested. However, if he claims he bought it, or it was a gift, he has a chazakah.

If a person is in possession of a movable object, even without a claim, he possesses the object. Even without a claim, possession is 9/10th of the law.

23- Bava Basra 41a1 line 13 B24
Weiss #941

„פִּתְחֵי פִּיךָ בְּגוֹן זֶה: לְאֵלִים”

Open your mouth for the dumb.

There are times when a litigant does not know how to argue his case. In such cases, the judge should suggest an “argument” for him, based on this principle. ‘We shall not prevent the justice due a stranger, or orphan, or a woman, or anyone of humble standing. But we should open their mouths for them, with proper legal arguments.’

מְחִילָה בְּטָעוֹת הִיא

It is a mistaken relinquishment of a guarantee.

Rav Anan rebuilt his walls with the help of his neighbor, who later learned that the wall was on his property by mistake. He ordered Rav Anan to remove the wall. Rav Anan said, “You helped me build it. Clearly it was okay with you that we put it where it is. I don’t want to move it.” Can the neighbor force him to move it?

A man bought a beautiful rug and rejected the money back guarantee that was offered him. He later learned it was counterfeit. Can he get his money back?

Yes, both are gestures of forgiveness, i.e., helping to build a fence on his own property, or rejecting the guarantee, were based on a mistake and a contract based on a mistake is reversible.

מְחִילָה בְּטָעוֹת הִיא

A 'relinquishment' made in error.

Another case - Chazakah are an error?

Rav Anan - Fences were washed away in a flood. His neighbor helps him rebuild the fence, but by mistake onto the neighbor's property. 1-2 days later, neighbor realizes the error and asks that the fence be moved back.

Rav Anan says - 'No, I have a chazakah on the new land. Your assistance relinquishes the annexed land, tantamount to offering me the land and telling me to acquire it'.

Court - No. You made an error and your neighbor made an error. Therefore, his help to you, does not constitute a relinquishment.

רַב כַּהֲנָא שָׁקַל בַּיּוֹדָקָא בְּאַרְעֵיהּ

A flood swept through Rav Kahana's land.

After the flood, the fence was replaced, but, inadvertently, on land that was not his.

-1 witness said, 2 rows had been encroached upon.

-1 witness said, 3 rows had been encroached upon.

1. View - Witnesses' testimony was contradictory and therefore, inadmissible.

2nd View - Both agree about the 2 rows, therefore, return those two rows. The only remaining controversy relates to the 3rd row.

Bais Shamai vs Bais Hillel regarding the loan:

1 witness says he owes 100 zuz.

2nd witness says he owes 200 zuz.

Bais Shamai says, witnesses need to agree, these don't. Therefore, their testimony is inadmissible.

Bais Hillel says, included in the testimony about the 200 zuz, is the testimony regarding the 100 zuz and therefore, the witness are in accord about 100 zuz .

Therefore, pay 100 zuz and debate the remaining 100 zuz.

Daf Yomi Digest

שְׁלֵשָׁה לְקוֹחוֹת מִצְטָרְפִין

Three successive buyers,

sold one to the next. They combine to make a chazakah.

Reuven to Shimon to Levi to Yehudah - Reuven claims it back.

Rav: It is a good chazakah, if all sales were recorded.

Reuven claims, “I did not protest, for I saw each only there for 1 year, indicating they were not trying to make a chazakah. Therefore, I did not protest”.

His claim does not hold, if the land sales were all recorded.

Deeds become public knowledge and he could/should have protested.

He has no excuse for his failure to protest.

Do we say all sales are public knowledge? Yes.

Case: A son inherited a field from his father, and sold it to a purchaser. A squatter lived here for 3 years and claimed ownership, since no one objected!

Except for the sale of the field. There is no greater proof that the land is yours and not the squatter’s, than exercising your right to sell it. That should be a protest! Ans: It is unless the sale does not specify this particular field, but is worded as, “I sell all my properties” (42a2).

מְנַכְסִים בְּנֵי חוֹרֵין

He may collect only from available properties, if he has no document.

A chazan had a position for many years, but as time went on his voice became very weak. The congregants wanted to change, but he claimed he had a chazakah.

However, a person retained his chazakah, only as long as he is capable and a chazan with a weak voice, no longer has a chazakah!!!

וְלֹא לִבְנֵי בְּנֵי חָסִי הָאֵב

Nor can a son, establish a chazakah on his father's property.

Because, it is common for a father to give permission for his relatives to use his property, and mere use by them, should not be construed as acquisition.

A man sat in his father-in-law's seat in Shul, both while the older man was alive and after he died years later. The man's sons claimed they were his heirs and they wanted the seat.

A chazakah on a seat can be established by using it. Each object has its method of use and by doing so, a chazakah is established. He did use the seat long enough, but since it was his relative's seat and a person cannot establish a chazakah on his (relative's) father's property, the seat in Shul, goes to the heirs-his brothers-in-law.

Daf Yomi Digest

נָעַל וְגָדַר וּפָרַץ כָּל שֶׁהוּא הָרִי זוּ חֲזָקָה

He locked, fenced, or opened the door. This shows ownership.

Mishnah - Locks, fences in, or creates an opening.

Rishonim - Closes the door to the property.

Closes the fence around a field.

Building a door way.

Installing a lock on a pre-existing door.

Rashbam - Sealing a breach in a door way.

Constructing acts, signify ownership.

Lechem Mishnah - Closing a door is sufficient.

Rambam (Hilchos Mechira 1:10)- Must open and close the door, or close and open the door. Once he closes and reopens it, we see he did so, for his own purposes, not as a messenger of the owner and he has acquired the property.

שְׁאֵנִי סֵפֶר תּוֹרָה

It is different, since everyone needs to hear a Sefer Torah when it is being read.

In 42b, we learn that partners may testify for each other. However, it is clear that partners have a clear, direct, interest in this testimony and is, in essence, testifying about his own property. The rabbis, therefore, decided that a partner can only testify, if he dissolves the partnership and makes a legal declaration, that he has no interest in this land (property) being discussed.

A Sefer Torah stolen from a city belongs to all and therefore, no one in the city could testify about it. Perhaps, here too, a person could divest himself of his interest in the Torah? No. Regarding publicly owned items, bathhouse, city plaza, etc., you can't divest yourself. We might think that a Torah is different; that there is no physical benefit from it. But there is. It fulfills your obligation to hear it being read.

Daf Yomi Digest

יְדַעִינוּ בַּיּוֹם הַזֶּה אֵין אֶרֶץ מֵעוֹלָם

We know that this man never owned any land, at all.

Tosphos mentions that every person owns at least 4 amos of land in Israel. The tribes divided the land and their descendants have a parcel of land that belongs to each one of them. Even though, many gentile nations have conquered the land, it does not become theirs, since land cannot be stolen.

A man wanted to use an esrog and lulav that grew on land that he had purchased. Since that land was likely stolen during the passage of history and you can't buy stolen land, the land is really not his. Therefore the lulov and esrog are not his! It is better for him to buy from someone else. Once the owner gave up hope of retrieving the stolen goods, a new buyer actually has full possession and can get the mitzvah without concern.

Daf Yomi Digest

לֹוֹה רָשָׁע וְלֹא יִשְׁלֵם׃׃

A wicked person borrows and does not repay.

Sefer Chassidim tells the story of a man who needed money and instead of asking from the charity fund, he borrowed money directly from people. He reasoned, it is better for me to borrow money and the very poor will still have access to the charity fund monies. He had no visible means of ever paying the money back. Was his approach the advisable one, or should he have taken from the charity fund?

By taking loans from individuals, which he clearly does not intend to pay back, he does irreparable harm, since people will be reluctant to lend to others, who might have paid back their loans.

The entire community suffers.

מִיֵּדַע יָדַע דְּסִתָּם עוֹבֵד בּוֹכָבִים

The buyer knows that the average idolater, is a robber.

Are you allowed to sell your house to an idolater, if you live on a Jewish street?
What if you agree to pay your neighbors for any damage done to their property?

If a neighbor claims damage, he will be believed, because it is assumed that idolaters will cause damage. He must only take an oath regarding the amount of the damage.

1. It is always prohibited, even if he needs the funds to feed his family and even if, he indemnifies his neighbors.
2. Yes, but only if there can be found no Jewish buyer and you indemnify your neighbors.
3. Then, only if he must sell it, to support his family

עַד שְׁיָבֹא הַלָּה וַיִּטּוֹל אֶת שְׁלוֹ

Until the owner comes and takes what is his.

Examples:

1. A person took his clothes to a cleaner and when he picked them up, he noticed he had been given someone else's garments. May he wear the clothes?
2. A person, in shul, came to pickup his coat and realized someone else had taken his and left their own in shul. May he wear the coat home?
 1. We can assume that the cleaner gave his clothes to someone else and the cleaner is now substituting items to make up for his mistake. We can hold this assumption, until the real owner comes with proof that the items are his.
 2. We can assume that the real owner would wish for the owner not to be inconvenienced and to walk home in the cold, without a coat due to his mistake and would not be particular regarding the use of his coat.

תְּלוּיָהוּ וְזָבִין זְבִינִיה זְבִינִי

If they hung him up until he sold, his sale is valid.

When does coercion undermine one's actions?

If a seller is coerced into agreeing to a sale, is it a valid sale?

If a husband is coerced into giving a get, is it a valid transaction?

Yes, if he is paid for the land, even though he objects to the sale.

Yes, even though he is objecting to the divorce, he benefits in that he is released from his obligations to feed, clothe and support his wife. Coercion does not undermine the transaction.

דְּמוּבִין אֵינִישׁ אִי לֹא דְאָנִיס לֹא הָוָה מְזַבִּין

If he was not in need of money, he would not have sold.

A person, who misses a Shemonah Esrei, is permitted to make it up at the next prayer session, if missing was due to circumstances beyond his control. The idea of ‘distressed need’ is extended to financial matters, as well. If you will suffer a loss, if you don’t skip that session of prayer, that is also considered circumstances beyond your control. This is learned from our Gemara, where any sale is considered to contain an element of coercion. If you did not need the money you probably would not sell and despite the coercion, the sale is valid.

R M Feinstein was asked if a person could take a job where he could not wear a yarmulke? R Feinstein answered that making a living was a need, which allowed him to put off a commandment, so, also, a yarmulke.

גֵּט הַמְּעוּשָׂה בְּיִשְׂרָאֵל בְּפֶשֶׁר

If a get was coerced by Jewish authorities, it is valid.

Being coerced to do a mitzvah is not viewed as coercion.

Rambam's idea is that a Jew really wishes to comply with the law, but has an impediment in doing so. Our pressure merely removes the impediment and uncovers his true will to fulfill the mitzvahs of the Torah.

A store owner, who intends to stay open and sell chometz on Pesach: Is there any point in selling his chometz, when he does not recognize the sale as binding? Yes, anything we can do to save him from a greater violation, is appropriate.

The recalcitrant husband, deep down, wants to live as a Jew. Therefore, forcing him to give a get, still makes the divorce valid.

אֵינִי נִיזוֹנֶת וְאֵינִי עוֹשָׂה

I relinquish my right to be supported and therefore, I no longer need to forfeit my income to you.

However, what she relinquishes today, she may change her mind and wish to receive in the future. Support is not a one time grant, but is to be received each and every day.

Since a husband has the right to the produce from his wife's field, his exercising that right over a 3 year period does not provide him with a chazakah of ownership. People, and even his wife, would not see his eating, or selling the produce, as an act of ownership, merely an exercise of his marriage rights. Therefore, a husband cannot establish a chazakah in the property of his wife.

Daf Digest

לָקַח מִן הָאִישׁ וְחָזַר וְלָקַח מִן הָאִשָּׁה מִקְחוֹ בָטוּל

If he first bought it from the husband and then, approached the wife, the sale is void.

If the woman is approached first, waiving of her lien is considered valid, since she cannot claim she agreed just to please her husband.

This is one of the reasons why when the Torah was offered to the Jewish nation at Mt. Sinai, Hashem instructed Moshe, “So shall you speak to the House of Yaakov and tell the children of Israel” (Shemos 19:3), meaning the Torah was first offered to the women.

Had the men been approached first, the subsequent consent of their wives could eventually be challenged as being nothing more than a gesture to please their husbands, Since the women were approached first, the consent of the wives, is considered a wholehearted commitment.

אֵלֶּמָּא אָמְרָה נִחַת רוּחַ עֲשִׂיתִי לְבַעְלִי

We see that she could claim that she agreed, only to please her husband.

A woman is promised money in her ketubah and in essence, she has a lien (a claim) on the property of her husband for those funds. If the husband want to sell his land and she has her lien on that parcel, she must give her consent. Later, however, she can invalidate the sale by saying, “I only agreed to remove my lien, in order to please my husband”. Her consent does not constitute a halachically valid agreement, since she can always back out of it.

However, if she is approached first and agrees to the sale, and later her husband also agrees, she cannot say she agreed only to please her husband, and the sale would be valid.

שְׁנֵיהֶם יִשָּׁן בְּדִין יוֹם אֶחָד יוֹמִים

Both are subject to the law of “a day or two” (because neither owns the slave entirely).

The Gemara (Bava Basra 137a) discusses the case of two brothers, who inherit an esrog. The Gemara rules that they cannot fulfill the mitzvah of benching lulav and esrog as partners, since neither owns the entire esrog. Therefore, their personal ownership is deficient. One must have exclusive ownership of an esrog, in order to fulfill the mitzvah.

As in our Gemara, a slave, sold for 30 days, is not considered the property of the seller, or the buyer, since he is not the exclusive property of either of them.

צְרִיכָה לְמַחֹת

She must protest.

We see that sometimes a failure to protest demonstrates tacit agreement. So, if one sees a spiritual flaw and has the ability to protest it, failure to do so, shows that he agrees that the sin is of no great consequence.

- One should run away from Lashon Hara.
- At Kollel - A person rose from table without benching and was advised to bench.
- If asked to listen to bad things about a person you respect, tell the tale bearer, “Don’t tell me, I don’t want to hear it”.

אֵין חִזְקָה לְנִזְקִין

There is no right to claim ownership, if your activity on the land damages it.

We have learned, it is common for families to permit use of their property to other family members. However, in the Gemara, Rav says, “To prevent a chazakah, she must protest”. This suggests that her husband, in fact, could establish a chazakah in her property. In the discussion, we learn, indeed, he could.

The Gemara explains: If he uses the property in a normal manner, there is no chazakah. However, if he uses the land in a destructive manner, i.e., makes pits and caverns on it, and she remains silent, the husband could claim that he bought the land from her and lost the document. Therefore, to defeat his potential claim under these circumstances, she must protest.

אֵין מִקְבָּלִין פְּקֻדוֹנוֹת

Can you accept an item for safekeeping given to you by a child?

There is a suspicion that he may have taken it from someone, his parents, or from his friend's house and your accepting it makes you an accomplice in the theft. If you refuse to accept it, the child may return it to the rightful owner.

However, if you do accept it, you cannot return it to the child. He is not responsible and may lose, or destroy it. Neither, can you sell it, or invest its proceeds in business, since you might lose it.

Only a safe use of it, i.e., buying a Sefer Torah, or books for the child to learn from, or a fruit tree. This retains the principal and provide immediate returns and security.

Daf Digest

מֵאִי סְגוּלָה רַב חֲסִידָא אָמַר סֵפֶר תּוֹרָה

What is the trust? R Chisda says it is a Sefer Torah.

A person writes a Torah and thereby, he fulfills the last mitzvah in the Torah.

Does he lose the Mitzvah:

-If he gives the Torah away as a gift?

-If he loses the Sefer Torah?

If it gets destroyed in a fire?

Only a King has the responsibility to keep a Sefer Torah with him at all times.

The mitzvah for others, is merely to write a Sefer Torah and that, he has fulfilled.

בְּדַבָּרִים הַעֲשׂוּיִם לְהִשְׁאִיל וְלְהִשְׁכִּיר

Items which are common to lend, or to rent out to others.

Since finding such items in the possession of another person does not indicate that they belong to him, perhaps they were merely lent, or rented to him, such possession does not imply ownership and cannot be used to establish a chazakah.

Certainly, this applies to items that are specifically purchased in order to rent them out to generate income, or to occasionally rent them out, or lend them out.

Such items are precluded from being able to have a chazakah established for it.

וְכֵן הָאִשָּׁה שֶׁהִיא נוֹשֵׂאת וְנוֹתֶנֶת בְּתוֹךְ הַבַּיִת

A woman may do business within her household.

Does this suggest that a woman may conduct business, if she does it inside her house? Is she permitted to be alone with men who wish to buy, or sell items in commerce with her?

No, it only means that she may do business within her household, her family members; not with outside persons.

Daf Digest

מְבַרֵּיחַ אֶרֶץ מִנְכָּסֵי חֵבְרוֹ הוּא

That is like chasing a lion from another person's field.

Acting to prevent a loss in a field:

Constructive acts can show ownership and may serve as a method of acquiring the field. However, some acts do not rise to that level. Which acts serve to create chazakah and which do not?

- Placing a stone to plug up a hole in a wall - Yes, suggests chazakah.
- Remove a stone, thereby creating an opening in a fence - Yes.
- Place a stone to plug up a hole, that prevents a river from entering the field to flood and ruin it. No chazakah.
- Remove a stone, creating an opening which lets water run out of the field, thereby protecting the field. No chazakah.

Acts to prevent damage are incumbent on all Jews. such acts are, therefore, not interpreted as acts to acquire ownership. They are acts to fulfill the mitzvah of “chasing away a lion” and thereby, limiting damages.

וּכְנֵגַד הַפֶּתַח

Opposite the doorway.

Shulchan Aruch cites the Gemara, Bava Basra 60b, that states that since the destruction of the Temple, one who builds a house, should leave an area 1 x 1 amah unfinished. This should be placed opposite or next to the entrance.

-Opposite the entrance so you can see it when you enter:

The Levush

Rashbam

Rav Chaim Tzanz

Sharei Teshuvah

Rav Meir Shapiro of Lublin

Chazal

Yeshivas Chachmei Lublin

-Next to the door

Pre- Megidim

Targum Yonason

23- Bava Basra 54b1 line 9 B4
Bleich 3: 66-73

דִּינָא דְּמַלְכוּתָא דִּינָא

The law of the kingdom is the law.

It is hard to explain why civil ordinances, that have no basis, either in scripture, or in the oral law, should be binding in Halacha.

Can it be explained on ordinary contract theory? A subject, who accepts upon themselves, to live in the area ruled by the King, voluntarily undertakes to pay the taxes imposed by the Monarch. “Since you accept his sovereignty, you accept his edicts”. Only a King who is accepted by the populace, has such authority. A Gentile King may apprehend and punish thieves (BM 83b), and accordingly, a Jew is permitted to turn over criminals to the King’s officers.

However, the King may not act in an arbitrary and capricious manner, but must, himself, conform to the laws of the Kingdom. Elicit orders of the King, must be resisted, even if such resistance requires martyrdom and certainly prohibits turning someone over for punishment, who does not follow unjust laws.

דִּינָא דְּמַלְכוּתָא דִּינָא

The law of the land is the law.

Why?

Rashbam - Because all of the citizens who live in, or visit in, the land, willingly accept upon themselves to follow the local laws and customs.

Ran - If we do not follow the rules, the King could deport us.

Rashi - The laws of a land are set up to fulfill a biblical requirement, i.e., that the Bnei Noach set up a system of justice. This gives the King Torah authority (even if he is not Jewish), to make laws and we, therefore, must follow them.

Rashba and Ritva - The King has total control over his subjects and therefore, can demand that they follow his laws.

דִּינָא דְּמַלְכוּתָא דִּינָא

The law of the Kingdom is the law,

but it does not overrule an actual ruling of Bais Din.

Example:

A person could not pay his property taxes and his home was sold to a person who paid less than ½ of its value. According to Bais Din, a property that was foreclosed for less than ½ its value, is meaningless. Therefore, the Jewish buyer must return it to the Jewish person, whose house was foreclosed, for not one penny more than he bought it.

דִּינָא דְּמַלְכוּתָא דִּינָא

The law of the land is the law.

Nedarim	28a
Gittin	10b
B Kamma	113a
B Basra	54b

This bestows precedence upon the civil law and judiciary, established by the sovereign authority.

All would concede that this is not the case in regard to the odious laws of the Third Reich. Jews, during the Nazi era, were effectively denied access to and relief from, the German courts.

Dr. Guttman violated German law in rescuing the rare Jewish books and manuscripts. Are they to be considered stolen?

Jews, who wished to marry in Nazi Germany, could only do so according to Jewish law, since to make known their heritage, would condemn them to death. Jewish law was not recognized in Germany. Are the people legally married?

23- Bava Basra 55a1 line 10 B3
Bleich 2:361

דִּינָא דְּמַלְכוּתָא דִּינָא

The law of the kingdom is the law,

and is binding regarding the Kings of Israel, enthroned by a prophet, or who is accepted by all of Israel.- Tosphos and Radbaz.

Others extend our requirement to obey, even to non-Jewish Kings, since, if we don't follow, there can be anarchy and insurrection with many people dying. Therefore, he, who, does not follow the King's law, can be viewed as a "rodef", a 'murderer'.

Some say, only those laws that relate to societal benefits, need be followed, but not the mere whims of the monarch, i.e., laws made for his personal benefit and glory.

Daf Digest

פְּרֻדְכָּתָּ מְסִייעַ מְתָא וְהַנִּי מִיְלִי דְאַצִּילְתִּיהָ מְתָא

A loafer must assist the city in paying his taxes, when the city saved him.

A ‘pardacht’ is “an idle person”, a loafer. Rav Ash says, he must, nonetheless, contribute to the general tax of the city. He excused himself, telling the tax collector that he had no money. They let him off, but collected his share from other citizens of the city.

Rav Ashi - He is obligated to pay his share and reimburse the other people of the city, who paid for him.

Rabbeinu Chananel - He pays only a portion, to assist in the burdens of the city.

Maharam and Terumos Hadeshen - He should pay an amount determined by a committee of city residents.

Aruch - He should pay what he can afford.

Yad Ramah - He should pay half of what his share was.

Tur - He should pay his full share.

הַרִי זֶה חֲזָקָה

This is a chazakah.

A man lived on land for more than 3 years and claimed he had bought the land. He never had a deed, or a bill of sale, but trusted his friend, from whom he bought it. His friend claimed he never sold it and was never paid, but merely allowed his friend to live on the land, rent free, never expecting him to claim that he bought it, therefore, he did not protest his friend's living there, because he was his friend.

The original owner should have known that after 3 years his friend would have a chazakah and that Bais Din would believe him, if he claimed to have lost his bill of sale. However, the squatter is not likely to have paid out the money, he claims to have paid, without a bill of sale, since the owner could sell the property out from under him. Therefore, the squatter here has no chazakah. The squatter admitted he never had a bill of sale. Therefore, no chazakah. Could he claim a migu?

„דָּבָר” וְלֹא חֲצִי דָּבָר

“A matter” but not ½ a matter.

A woman, in a distant town, was to receive a get. Witnesses in this town, could testify that Reuven’s daughter is Shimon’s wife. Witnesses in the distant town, could testify that this woman is Reuven’s daughter, but only by extension, extrapolate that she was Shimon’s wife.

The first set of witnesses did not have her before them. The second set of witnesses did not know she was Shimon’s wife, only that she was Reuven’s daughter. Can either sets of testimony convey a legal get?

Witnesses must provide the entire information, not just part of it. Unless it really is not testimony, but merely information, then part knowledge can be provided by a witness.

„דָּבָר” וְלֹא חֲצִי דָּבָר

A full “matter”, but not a half matter.

Is it night, only when you see 3 stars, or is the appearance of stars merely evidence of the arrival of night?

-Stars were not created until the 4th day. Nonetheless, the Torah declares “it was evening and it was morning one day.” Obviously, evening can occur without the appearance of stars and the “evening” of the first 3 days of creation, may have been established retroactively, with the appearance of stars on the 4th day.

-Pubic hair is the sign of puberty, adulthood. Yet, a eunuch never develops pubic hair. At age 20, they are considered to have retroactively achieved halachic maturity at age 13.

The question regarding day and night is important for Jews who travel to polar regions, or orbit earth, or someday interplanetary travel. Certain prayers must be recited at certain times. You could stipulate that you are offering an optional prayer, if the time is not right and Shema should be said when you decide to lie down and get up. Alternatively, a Jew should not go to such places, where he can't follow the laws.

„דָּבָר” וְלֹא חֲצִי דָּבָר

Half a “matter”, is not a matter.

Other examples of circumstances of partial testimony.

Two witnesses:-Each can testify to the presence of one pubic hair. Adulthood is contingent on the presence of 2 hairs and each of 2 witnesses must testify that he saw both.

Three separate witnesses:-Each testify that they saw a single, different star. Can they be combined to determine that “night has arrived”? No, a set of witnesses must see 3 stars for it to be, effectively, night.

Daf Digest

אָחַד אֹמֵר אֶבְלָה חֲטִיִּים וְאֶחָד אֹמֵר אֶבְלָה שְׁעוּרִים

One witness says he planted wheat, the other testifies that he planted barley.

Are these statements contradictory, or can they be combined as 2 witnesses, to establish his chazakah? Apparently, contradictions at this level of detail, are not what would be considered a critical aspect of their observation. It is a level of inconsistency that does not disqualify their input in money matters.

Some say (Ketsos Ha Choshen) such inconsistencies would of course,

1. Not be permitted in a capital case.
2. Nor, in a case where the testimony is used to extract money from someone.
3. But could be used as testimony to permit a person to retain the money that another person wants to extract from him.

בִּי מָטָא לְמַעַרְתָּא דְאַבְרָהָם

When he reached the crypt of Abraham.

R Bna'ah used to mark graves in order for people to know exactly where they are located.

Rishonin said – He did this for Kohanim, so they could not pass over the airspace of those graves.

Rashbam says – No, Kohanim are familiar with this problem and we can rely on them to watch out for themselves. But other people, average Yisroel type, might carry terumah, or other food stuff, which could be defiled and have to be discarded. Kohanim, even if defiled, could always purify themselves.

Does tumah of the grave, extend to the graves of non-Jews? Yes, to anyone whom the Torah refers to as a person. (Bamidbar 19 and 14). Even Adam and Avraham Avinu, are referred to as ‘adam’, “man” and therefore, they do emit tumah.

זֵילוּ חֲבוטוּ קְבֵרָא דְאָבוּכוֹן עַד דְקָאֵי וּמְגַלִּי לְכוּ לְהֵי מִינֵיכוֹן שְׁבָקָא

Go and strike the grave of your father, until he answers and reveals to which of you, he left his estate.

Several men came forward claiming they are a son of the wealthy deceased. The truthfulness of their claim could not be ascertained. R Bana'ah devised a method to solve the problem. He advised that they strike the grave of their father, until he would reveal to which, he left his estate,. Of the several men present, each performed this maneuver, except one, who refused to do so, stating he felt it was disrespectful. R Bna'ah pronounced him the genuine child of the deceased.

לְמִטָּה מִדֵּי אַמּוֹת יֵשׁ לוֹ חֲזָקָה

If the window is within 4 amos of the ground, he has a chazakah.

A person can be prevented from creating a window in the wall of his own house, that will look onto his neighbors property, if:

1. The window is an opening larger than a man's head.
2. Or/and the window is situated lower than 4 cubits, i.e., 6 feet from the floor (the height of the average man standing on his tip-toes).

If the neighbor objects, he is considered like a wicked person of Sodom, unreasonably objecting to his neighbor benefiting, without any loss to him. Since he loses no privacy.

Rabbi Ila'a disagrees and says, "Perhaps, he will stand on a chair to look out the high window. Even though, if they had a fence between them, 4 cubits height would be sufficient, this is different. Outside, where everyone could see that he is standing on a chair, he will be unlikely to do that, but inside his house, he may stand on a chair, violate his neighbors privacy and if the neighbor objects, it is not wicked to object, since he does lose his privacy."

קְשׁוּט עֲצֻמָּה וְאַחַר כֵּן קְשׁוּט אֲחֵרִים

First adorn yourself and then adorn others.

One need not wait until he, himself, is perfect in all regards, before he can teach others properly. However, his efforts at self improvement will influence others for good, as they will follow his example (Lubavitcher Rebbe (Likutei Sichos 1:79).

R Levi Yitzchak of Berdichev, “I became aware that the townspeople were not following my direction. I began to examine my own actions and found that some of my own family members were not behaving respectfully toward me. Eventually, I discovered various defects in my character. I began to improve myself and gradually my family and then the townspeople, began listening to me.” (Living Each Day, Twersky p229).

Daf Digest

מוטב שיהיו שוגגין ואל יהיו מזידין

Is it better that they should be unintentional violators, rather than they should be deliberate violators?

This principle is to be considered when one knows, with certainty, that people will not listen to the rebuke or instruction. But, if there is a possibility that they will accept the instruction, it should be given to them. It is proper to give rebukes, or instruction, if:

- One is teaching – It is the obligation of the teacher even if the students won't listen.
- One believes the majority will listen and adhere, and only a minority will become intentional sinners.
- Someone asks a question. You must give the correct Halacha, even if it is clear he will not listen to the Halacha.
- It is better that a minority become intentional sinners, than a majority sin, unintentionally.