

Daf Notes

Insights into the Daily Daf

11 Tishrei 5770

Bava Basra Daf 39

Sept. 29, 2009

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HaRav Refoel Dov ben HaRav Yosef Yechezkel o"n.

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Daily Daf

Protesting

The *Gemora* asks: What constitutes a protest (*when the occupant is absent; a protest within the three years breaks the occupier's chazakah*)?

Rav Zevid says: If the owner says, "So-and-so is a thief," this is not a protest (*for he did not assert that he is the true owner*). If, however, he says, "So-and-so is a thief who is occupying my land wrongfully and tomorrow I am going to sue him in court," this is a valid protest.

The *Gemora* inquires regarding the following four cases:

1. Suppose the owner says to the witnesses to whom he makes the protest, "Do not tell the occupier that I am protesting," is this an effective protest?

Rav Zevid says: It is not, because he has explicitly told them not to tell (*and the occupier will therefore not hear about it*). Rav Pappa, however, says that it is valid, because what he meant to say was, "Do not tell the occupier, but you can tell others," and there is an expression: "Your friend has a friend and your friend's friend has a friend."

2. If the witnesses to whom he made the protest say, "We will not tell the occupier," is the protest valid?

Rav Zevid says: It is not, because they explicitly said, "We will not tell him (*and the occupier will therefore not hear about it*)." Rav Pappa, however, says that it is valid, because what they meant to say was, "We will not tell the occupier himself but we will tell others," and there is an expression: "Your friend has a friend and your friend's friend has a friend."

3. If he said to them, "Don't say a word about this," is this an effective protest?

Rav Zevid says: It is not, because he has explicitly told them not to tell (*and the occupier will therefore not hear about it*).

4. If the witnesses to whom he made the protest say, "We will not say a word about this," Rav Pappa says that it is not a protest, because they have explicitly said, "We will not say a word." Rav Huna the son of Rav Yehoshua, however, says that it is an effective protest, because if a person has no responsibility in regard to a certain statement (*to keep it confidential*), he will eventually say it without thinking. (38b – 39a)

Protest not in the Presence of the Occupier

Rava said in the name of Rav Nachman: A protest made not in the presence of the occupier is nevertheless a valid protest.

Rava questioned Rav Nachman's ruling from the *Mishna*: Rabbi Yehudah says: They said "three years" (*for a chazakah*) only for the owner to be in Spain while someone takes possession for a year, and they travel a year to notify him and he returns the following year (*to claim his land*). Now if we are to assume that a protest made not in the presence of the occupier is nevertheless a valid protest, why should the owner be required to return (*to protest*)? Let him remain there and make the protest!?

The *Gemora* answers: Rabbi Yehudah is merely suggesting as a piece of good advice that he should return and take possession of his land and the produce (*for he can demand to be compensated for all the produce consumed by the occupier*).

The *Gemora* notes: From the fact that Rava questioned Rav Nachman's ruling, it would seem that he was not of opinion that a protest made not in the occupier's presence is valid. But didn't Rava rule that a protest made not in the presence of the occupier is valid?

The *Gemora* answers: He adopted this view after he had heard it from Rav Nachman. (39a)

In Front of how Many?

Rabbi Yosi bar Chanina once came across the students of Rabbi Yochanan and inquired of them whether Rabbi Yochanan had ever ruled regarding the number of persons in whose presence a protest must be made.

Rabbi Chiya bar Abba replied that Rabbi Yochanan had ruled that a protest must be made in the presence of two people. Rav Avahu said that it must be made in the presence of three people.

The *Gemora* suggests that the difference in principle between them is in regard to that which Rabbah the son of Rav Huna said, for Rabbah the son of Rav Huna said that disparaging remarks related in the presence of three people do not constitute slander (*for the person hearing about it now would have heard it anyways*). [*Evidently, the word will spread only if it said in front of three people, not two!*] The one who says that a protest can be made in the presence of two people (*Rabbi Chiya bar Abba*) would not accept that which Rabbah the son of Rav Huna said, whereas the one who says that three people must be present (*Rav Avahu*) does accept it.

The *Gemora* rejects this and says that both may accept Rabbah the son of Rav Huna's ruling, and the essential difference between them here is this: The one who says that the protest may be made in the presence of two people is of opinion that a protest which is made not in the presence of the occupier is not effective (*and therefore it is never necessary to have three people in order for it to be publicized*), whereas the one who says that three people must be present is of opinion that a protest made not in the presence of the occupier is valid (*and therefore it is necessary to have three people in order for it to be publicized*).

Alternatively, we may say that both Rabbi Chiya bar Abba and Rav Avahu agree that a protest made not in the presence of the occupier is valid, and the point on which they argue is this: The one who says the protest may be made in the presence of two people regards that which we require them for is to provide testimony (*that he protested, and therefore two is sufficient*), whereas the one who holds that three people must be present regards that which we require them for is to ensure that the matter should be publicized. (39a – 39b)

How Many Times must he Protest?

Giddal bar Minyumi had occasion to lodge a protest (*against the occupation of some land of his*). He found Rav Huna and Chiya bar Rav and Rav Chilkiyah bar Tuvi sitting together and made his protest in their presence. A year later he came again to make a protest. They said to him: This is not

necessary. Rav has ruled that if the owner makes a protest in the first year, it is not necessary for him to repeat it. According to another version, Chiya bar Rav (*and not all three of them*) said to him: Since the owner made a protest in the first year, it is not necessary for him to repeat it.

Rish Lakish said in the name of Bar Kapara: It is necessary to repeat the protest at the end of every three years. Rabbi Yochanan wondered about this: Can a thief make a *chazakah* (*once the owner protested, the occupier is regarded as a thief*)? The *Gemora* interjects: Why do you say that he is a thief? [*It has not been proven!?*] Rather, Rabbi Yochanan said: Can one who is like a thief make a *chazakah*? Rava said: The *halachah* is that the owner must make a protest at the end of every three years. (39b)

INSIGHTS TO THE DAF

Tale in Front of Three is not Subject to Lashon Hara

By: Reb Avi Lebowitz

The Chofetz Chaim dedicates an entire chapter (*klal three*) to discuss the various interpretations of Rabbah bar Rav Huna who says that disparaging remarks related in the presence of three people do not constitute slander.

Rashbam understands that he is discussing a case where Reuven violated the prohibition of *lashon hora* by saying something negative in the presence of three people about Shimon. It would then be permitted for these people to repeat to Shimon what Reuven said about them, since it was said in the presence of three - it is assumed that Shimon will find out anyway.

The difficulty with this approach is that it seems somewhat circular - the three people are allowed to repeat the tale to Shimon because they will repeat it to him anyway, so he is bound to find out.

Therefore, the Chofetz Chaim writes (2:5) that if one of the three is a G-d fearing person and is not likely

to repeat the *lashon hora* by saying the tale to Shimon, it would be forbidden for any of the three to repeat it, because it is as if it wasn't said in the presence of three.

The Rambam seems to take a similar approach, but rather than explaining it based on *rechilus*, he simply says that the three people who heard the *lashon hora* are permitted to repeat it to others since they are bound to find out anyway. But the Rambam stipulates that when one of the three repeat over the *lashon hora*, they cannot intend to degrade the person they are speaking about or make it more revealed (*for example, if it a local group knew about it, it would be forbidden to publish in the papers for the purpose of spreading the news to others*).

Tosfos has an entirely different approach where he completely avoids the permission of the Rashbam and Rambam. The *Gemora* is speaking of an *avak lashon hora*, which can be interpreted both for good and for bad. The idea of telling it over in front of three people is a litmus test whether it is actually *lashon hora*. If the teller is not embarrassed to say it over in front of three people which will likely lead to the one being spoken about hearing that he was spoken about, it is not *lashon hora*. But if the speaker would be afraid to tell it over to three people out of fear that the person being spoken about will find out, it is *lashon hora*. [*The Chofetz Chaim proves that Tosfos cannot be matir outright lashon hora even if told to three.*]

Rabbeinu Yonah (Shaarei Teshuva 228) has an alternate approach where he explains the case to be when the *lashon hora* is being spoken about a person who there isn't any real prohibition to speak about - see there.

According to all the approaches, the connection to the protest is very simply that we find by *lashon hora* an assumption that word travels when told in the presence of three, therefore a protest must be done in the presence of three. But, as the Rashbam points out, there is no violation of *lashon hora* at all to spread a protest because it is being done for a constructive purpose, so that the occupier holds on to his contract to prove that the field belongs to him.