



Today's Daf In Review is being sent l'zecher nishmas Habachur Yechezkel Shraga A"H ben R' Avrohom Yehuda

### Gittin Daf Nun

- **Mar Zutra the son of R' Nachman in the name of R' Nachman** said, if a creditor comes to collect his debt from the debtor's orphans, even if the loan document specifically allows the debt to be collected from the best lands, he may still only collect from ziburis.
  - **Abaye** said, we can prove this from the general rule that a creditor collects from beinunis, and yet from orphans he only collects from ziburis.
    - **Rava** said, this is no proof, because **Ulla** said that D'Oraisa a creditor only collects from ziburis, and the reason the **Rabanan** allow him to collect from beinanis is so that people not be discouraged to lend money. So, maybe when collecting from orphans the **Rabanan** set the halacha back to that of the D'Oraisa. However, when a stipulation was made in the loan document, the halacha D'Oraisa is that we follow that stipulation, and that is why we would follow the stipulation even when he is collecting from orphans!
      - **Q:** The Gemara asks, **Avrohom Choza'ah** taught a Braisa that says that even a damaged party collects ziburis when he collects from the orphans of the one who damaged. Now, D'Oraisa that person should collect from idis, and yet, when he collects from the orphans he collects from ziburis. According to **Rava**, this should not be so!? **A: Rava** would say that this Braisa is a case where the idis of the damaged party is equal in quality to the ziburis of the damager, and the Braisa is following **R' Yishmael**, who says in this case that D'Oraisa the damager need only give his ziburis. The **Rabanan** came along and said that he must give from his idis. When collecting from orphans the **Rabanan** allowed the halacha D'Oraisa to stay in place, and he will only collect from the ziburis.
      - **Q: R' Eliezer Nivta'ah** taught a Braisa, that a creditor collecting his debt from orphans only collects from ziburis, "even if there are idis". What does this last phrase mean? Presumably it means that even if there was a stipulation in the document for him to collect idis, he does not. This contradicts **Rava's** ruling!? **A:** The Braisa means to say that if there was a stipulation to collect from the debtor's best land, and that best land became ruined, we do not say that he now collects from the next best land. Rather, he now reverts to the halacha D'Oraisa of a creditor, and he only collects from ziburis.

EIN NIFRA'IN MINICHSEI YESOMIM ELAH MIN HAZIBURIS

- **Q: R' Achdivoy bar Ami** asked, the orphans referred to are only if they are minors or even if they are adults? Was it a Rabbinic enactment for the orphans, and therefore it was only enacted for minors, or do we say that the concern of discouraging people to lend money (which is the reason we allow a creditor to collect from beinanis rather than ziburis) is not present by orphans, because a person never thinks that his debtor may die, and would therefore not be discouraged if he could only collect ziburis from the orphans, in which case he would only collect ziburis even from adult orphans. **A: Abaye Kashisha** taught a Braisa that the orphans referred to are adults, and certainly minors.
  - The Gemara says this is no proof. It may be that that was said regarding making someone swear before collecting from orphans, and the reason that applies to adult orphans as well is because they don't know the affairs of their father. However, it may be that it was not said regarding ziburis.

- The Gemara paskens, the term “orphans” refers to adults and to minors, both, for the halacha of swearing and for the halacha of ziburis.

#### EIN NIFRA'IN MINICHASIM MISHUBADIM B'MAKOM SHEYEISH BNEI CHORIN

- **Q: R' Achdivoy bar Ami** asked, may a creditor collect from beinanis land that the debtor gave as a gift (and did not sell) rather than collecting from the debtor's remaining ziburis? Do we say that he must always collect from unencumbered land to prevent the purchasers from losing, in which case, where it was given as a gift they can even take the gifted land, because there is no purchaser who is losing, or do we say that the debtor would only have given the gift if he got something from the recipient, and therefore there is a loss to the recipient as well? **A: Mar Kashisha the son of R' Chisda** said to **R' Ashi**, a Braisa says, if a deathly ill person writes instructions to give 200 zuz to Person A, 300 zuz to Person B, and 400 zuz to Person C, we do not say that the money is distributed in that order, rather they all share in whatever money there is, in that proportion. Therefore, if a creditor comes he collects from all of them. However, if the instruction was, give 200 to Person A *and then* give 300 to Person B *and then* give 400 to Person C, we say that they take money in that order. Therefore, if a creditor comes, he first takes from Person C, and if need be he then takes from Person B, and then from Person A. Now, this seems to be the case even if Person C had ziburis and Person B had beinanis. We see that even when land was given as a gift the creditor takes from free ziburis before he collects from gifted beinanis.
  - The Gemara says this is no proof. The Braisa may be talking about where Person A, B, and C were actual creditors, and the creditor coming to collect was coming for an earlier loan than theirs, but the Braisa has no bearing on a case of an actual gift.
    - **Q:** The Braisa says that the person instructed to “give”, which suggests it was a true gift!? **A:** He meant “give for repayment of my loan”.
    - **Q:** If this is true, why does the order of the instruction have any bearing? Why don't we just look at the loan documents to decide who is to be repaid first? **A:** The case is where there are no loan documents.
  - We can also say that the Braisa is no proof, because it may mean that the creditor actually collects beinanis (even from Person B), and when the Braisa says that Person C is the one to lose, it means that he will bear the financial loss, because he will have to give his ziburis to Person B to make up for the beinanis that was taken from him. If this true, we can say that a creditor does collect from gifted property even if there is unencumbered ziburis available.
  - We can also say that the Braisa speaks of where equal quality land was gifted to all the people. Therefore, there is no proof whether or not he can go to gifted beinanis before going to unencumbered ziburis.

#### EIN MOTZI'IN LA'ACHILAS PEIROS

- **Ulla in the name of Reish Lakish** explained, the reason the purchaser cannot collect from encumbered property for the produce taken from him is because this obligation was never written in the document.
  - **Q: R' Abba** asked **Ulla**, the obligation to support a wife and daughters after one's death is as if it is written (they are automatic obligations and are therefore considered publicized) and yet the Mishna says that they may not be collected from encumbered properties!? **A: Ulla** answered, when the **Rabanan** instituted these support obligations, they instituted them as if they were written for purposes of unencumbered properties, but not for encumbered properties.
  - **R' Chanina** said, the reason the purchaser cannot collect from encumbered property for the produce taken from him is because this obligation is not a fixed amount and a purchaser of any of the other fields is unable to properly protect himself against such an open-ended obligation.
    - **Q:** Does **R' Chanina** need something to be fixed and written in order to be able to collect from encumbered properties, or as long as it is fixed, even if it is not written, it can be collected from encumbered properties? **A:** We find that **R' Chanina** says that a dowry for a girl is collected from encumbered property of her father's estate. Now, this dowry is a fixed amount (she is given an amount

equal to 10% of the estate), but it is not written in a document, and still it is collected from encumbered properties!

- The Gemara says this is no proof, because the dowry obligation is so well known that it is as if it is written. That may be why it can be collected from encumbered properties.