



# Daf In Review – Weekly Chazarah

## Maseches Gittin, Daf גו – Daf נב

Daf In Review is being sent I'zecher nishmas R' Avrohom Abba ben R' Dov HaKohen, A"H  
vI'zecher nishmas Habachur Yechezkel Shraga A"H ben R' Avrohom Yehuda

-----Daf גו---46-----

### MISHNA

- If someone divorces his wife based on rumors that she was mezaneh, he may never remarry her. If he divorces her because of nedarim that she made, he may never remarry her. **R' Yehuda** says this is only so if the neder was known to the public. If it was not, he may remarry her. **R' Meir** says, if he divorced her because of any neder that needs to be annulled by a chochom, he may not remarry her. If it does not need a chochom to be annulled, he may remarry her. **R' Elazar** says, he may not remarry her if the neder needs a chochom to annul it only as a gezeira for the case of where a chochom is not needed, in which case it would surely be assur to remarry her. **R' Yose the son of R' Yehuda** said, it once happened in Tzidon that a man made a neder on himself that he will divorce his wife, and he divorced her, and the **Chachomim** allowed him to remarry her. This was done for the benefit of the world.

### GEMARA

- **R' Yosef bar Menyumei in the name of R' Nachman** said, he may not remarry her only if at the time of the divorce he told her “I am divorcing you because of the rumors of your zenus” or “because of the neder that you have made”.
  - This is because he holds that the reason he may not remarry her is that if after the divorce he finds out that the rumors were untrue, he may say “Had I known they were untrue I never would have divorced you”. This would make the whole divorce questionable, and if she had already married someone else and had children, those children would be thought of as mamzeirem. Therefore, the **Rabanan** instituted that he may not remarry her, so that he knows it is final and forever if he divorces her and cannot bring the get into question. Based on this, the situation would only be problematic if he stated the reason for the divorce at the time of the divorce.
  - **Others** say that **R' Yosef** said that he must tell the wife when he divorces her “You should know, I am divorcing you because of the rumors” or “because of the neder”. This is because he holds the reason we don't let them remarry is so that women should understand the severity of these actions and not engage in them. Therefore, he must tell her so that she understands why she is being treated so severely.
  - There is a Braisa that explains the reason as is explained initially. There is another Braisa that explains the reason as explained by the “Others”.

### R' YEHUDA OMER KOL NEDER SHEYADU BO RABBIM...

- **R' Yehoshua ben Levi** said, **R' Yehuda's** view (that a neder made in public cannot be annulled) is based on a pasuk that says that the Yidden didn't kill the Givonim, because the leader of the Yidden swore that they would not kill them. We see that a neder made in public cannot be annulled. The **Rabanan** (who argue) say, that was not even a neder at all, because the Yidden were fooled into thinking that the people were someone that they weren't. It wasn't a neder that prevented them from killing them, it was to prevent chilul Hashem (because they promised, albeit mistakenly, with Hashem's Name).
- **Q:** How many people constitute “a public” for this purpose? **A: R' Nachman** says 3 people, as we find the word “rabbim” is understood to refer to 3 in other places. **R' Yitzchak** says 10 people, since the pasuk of the drasha with the Givonim uses the word “eidah”, which generally refers to 10 people.

### R' MEIR OMER KOL NEDER SHETZARICH...

- A Braisa says, **R' Elazar** said he may not remarry her when her neder is of the type that needs a chochom to annul it, because of a case where the neder is of the type that does not need a chochom to annul it.

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- **Q:** What is the machlokes between **R' Meir and R' Elazar**? **A:** **R' Meir** says a person would take his wife to Beis Din to have her neder annulled, and therefore there is the concern that he would say the divorce was only given because he didn't know it could be annulled. **R' Elazar** says a person would not take his wife to Beis Din to have her neder annulled and would therefore not claim that the divorce was only because he thought it could not get annulled.

AMAR R' YOSE B'R' YEHUDA MAASEH B'TZIDON...

- **Q:** Which ruling of the Mishna prompted this (seemingly unrelated) story? **A:** The Mishna is missing words and should be read as follows: All these rulings are where *she* made the neder. However, if *he* was the one who made a neder, there would be no ban on remarriage. In fact, it once happened where he made a neder and the **Rabanan** allowed them to remarry.
- **Q:** What is meant by the Mishna that the man said “konam if I do not divorce you”? **A:** **R' Huna** said, the husband said “All the fruits in the world should be assur on me if I do not divorce you”.

V'HETIRU LO SHEYACHZIRENA

- **Q:** Why would we think that we should not allow remarriage in this case? None of the previously explained reasons apply here!? **A:** We would think that since **R' Nosson** says that making a neder and following through on it is such a terrible thing (it is as if he built a bamah and brought a korbon on it), we should penalize him for doing so and prohibit him to remarry her.

MIPNEI TIKUN HA'OLAM

- **R' Sheishes** said, this is referring to the enactment not to remarry a woman who was divorced based on rumors or for a neder (the benefit for the world is so that the husband not annul the divorce or so that women realize the severity of the conduct). **Ravina** said, this is referring to the case where the husband made the neder, and the Mishna is saying, in this case there is no reason to prohibit remarriage, because there is no concern that it would adversely affect the “tikun ha'olam”.

MISHNA

- If a man divorces his wife because she is an “aylunis”, **R' Yehuda** says he may not remarry her, and the **Chachomim** say that he may remarry her.
  - If she then marries another man and has children with him and therefore goes to Beis Din and demands payment on her kesubah from the first marriage (since she is now proven not to have been an aylunis), **R' Yehuda** says, the first husband can tell her, “Your silence is better than your talking” (if you insist on your demand I will say that the divorce was given on a mistaken belief that you were an aylunis).

GEMARA

- **Q:** From this Mishna it seems that **R' Yehuda** is the one concerned that the woman will get remarried, have children, and the original divorce will then be called into question, and the **Rabanan** are not concerned. However, in the earlier Mishna it was the **Rabanan** who were concerned and it was **R' Yehuda** who was not concerned!? **A:** **Shmuel** said, we must reverse the shitos in this Mishna.
  - **Q:** The end of the Mishna says that **R' Yehuda** says the husband can tell her “Your silence is better than your talking”, which clearly shows **R' Yehuda** is concerned for the issue!? **A:** We must change that part of the Mishna so that it be the view of the **Rabanan**.
  - **A:** **Abaye** said, we do not have to reverse the views. The reason **R' Yehuda** is not concerned in the previous Mishna is only in the case of her neder, and the reason he is not concerned is that he holds like **R' Meir** (that there is no concern in a case where a chochom is not needed to annul the neder) and he also holds like **R' Elazar** (that there is no concern in a case where a chochom is needed to annul the neder).
    - **Q:** **Rava** asked, that deals with the contradiction of **R' Yehuda**, but not with the contradiction of the **Rabanan**!? **A:** **Rava** therefore said, that the **Rabanan** in this Mishna (of aylunis) follow **R' Meir**, who says that a condition must be two sided (stated in the positive and the negative) in order for it to take effect, and the condition that he was divorcing her because she was an

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aylunis was not stated in the two sided way, which is why it does not take effect and could not serve to annul the divorce.

### MISHNA

- If one sells himself and his children to goyim, we do not redeem him. However, we do redeem the children after the death of their father.

### GEMARA

- **R' Assi** said, this is only if he sold himself and his children after being redeemed once, and then again after being redeemed a second time.
- There were people who borrowed from goyim and were taken as slaves when they couldn't repay. They went to **R' Huna** and asked him to redeem them. He told them, the Mishna says that we cannot do that. **R' Abba** asked, we have learned that we don't redeem them only if they have sold themselves numerous times? **R' Huna** said, these people do this all the time, so they fall into this category.
- There was a person who sold himself to goyim who were cannibals. He asked **R' Ami** to redeem him. **R' Ami** said, we have learned that we redeem the children to save them (from assimilating). In this case the person is surely to be killed as well, so we must redeem him. The **Rabanan** asked **R' Ami**, we have seen this person eat neveilos on purpose! **R' Ami** then told the person, "Go, because the **Rabanan** do not let me redeem you".
  - The Gemara tells the story of how **Reish Lakish** went ahead and killed these cannibalistic people. He allowed himself to be captured and when they granted him a last wish before killing him he asked them to tie themselves up and allow him to hit them with a bag that he had. He had a metal ball in the bag, and when he hit them, he killed them.

-----Daf 17---47-----

### MISHNA

- If a Yid sells his field in EY to a goy, he must buy the first fruits of the field every year and bring them as bikkurim, for the benefit of the world.

### GEMARA

- **Rabbah** said, although a goy can't have an ownership in land in EY to remove it from the chiyuv of maaser, he can have ownership rights to the land to do with as he wishes, even to dig ditches and make it useless. **R' Elazar** said exactly the opposite – a goy can have ownership to remove the chiyuv of maaser, but cannot have ownership to do with the land as he wishes.
  - **Rabbah** said, I can prove my view from a Mishna. The Mishna says that the leket, shikcha, and peyah of a goy are chayuv in maaser. Now, this can't be talking about the leket of a Yid's field that was picked up by a goy and then sold, because the leket of a Yid's field is not chayuv in maaser. This must be talking about the leket of a goy's field that was picked up by a Yid, and since the goy is not commanded to leave leket, it is chayuv in maaser. We see that a goy's produce is chayuv in maaser!
    - The Gemara says, this is no proof, because the Mishna may be discussing the leket of a Yid's field that was taken by a goy, and the reason the leket is chayuv in maaser is because leket is only patur from maaser when it is taken by a Yid.
  - **Q:** Maybe we can bring a proof to **R' Elazar** from a Braisa. The Braisa says, if a field of a goy was bought by a Yid before the produce grew to 1/3 of its growth, and was then sold back to the goy after the produce reached 1/3 of its growth, the produce would be chayuv in maaser, because it grew to that level in the possession of the Yid. We see from here that the produce of a goy is not chayuv in maaser!  
**A:** It may be that the Braisa is talking about a field in Surya, and the Tanna holds that the conquering of an individual did not give Surya the status of EY. Therefore, the produce there is chayuv in maaser only D'Rabanan, which is why a goy's field there will not be chayuv in maaser.

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- **Q:** A Braisa says, if a Yid and a goy own a field in EY in partnership, **Rebbi** says it is as if each kernel is owned in partnership and half of each kernel is therefore subject to maaser, and **R' Shimon ben Gamliel** says, when they divide the produce, the share of the goy is patur and the share of the Yid is chayuv in maaser. Now, the machlokes seems to be whether we say “breirah” or not, but all would presumably agree that the goy does have ownership in the land even to remove the produce from any maaser obligation!? **A:** This Braisa is also discussing a field in Surya, as in the last answer given, above.
- **Q: R' Chiya bar Avin** said, our Mishna says that the **Rabanan** instituted that one must buy the first produce of a field sold to a goy and bring it as bikkurim. This suggests that D'Oraisa there is no bikkurim obligation. This must be because a goy takes ownership in the field to exempt the produce!? **A: R' Ashi** said, there were stages to this takanah. Initially, if a Yid sold his field to a goy, the Yid would have to buy the first fruits and bring them as bikkurim D'Oraisa. However, the **Rabanan** saw that people took that to mean that the field retained its kedusha even when sold to a goy, and therefore the people felt that selling a field to a goy was allowed. Therefore, they instituted that bikkurim should not be brought from fields sold to a goy. However, people who needed money still sold their fields to goyim and did not even try to buy them back. The **Rabanan** therefore said that bikkurim must be purchased and brought so that the people would understand not to sell their fields, and to redeem them if they had sold them.
- If one sells the rights to the produce of his field to another (but not the actual field), **R' Yochanan** says the purchaser brings bikkurim and even reads the parsha, because the rights to produce is equal to having the rights to the actual field. **Reish Lakish** says that he would bring bikkurim but would not read the parsha, because rights to the produce are not equal to rights in the actual field.
  - **Q: R' Yochanan** asked, a Braisa learns from the pasuk of “uliveisecha” that a husband brings bikkurim from his wife’s melog property and reads the parsha. Now, a husband only has the right to the produce of melog, and you see that he reads the parsha, which means that rights to produce are equal to having rights in the actual field!? **A: Reish Lakish** answered, that case is the exception, based on the gezeiras hakasuv of “uliveisecha”.
    - **Others** say that **Reish Lakish** asked this as a question to **R' Yochanan**, that we see the Torah had to make an exception, which means that generally the rights are not equal!? **R' Yochanan** answered, that that case is not an exception, but rather serves as the basis for all other cases.
  - **Q:** A Braisa says that if one was bringing bikkurim from his wife’s melog property, and on his way to Yerushalayim he heard that she died, he brings the bikkurim and reads the parsha. Now, this suggests that only after she died (and he therefore inherits her) does he read the parsha, but if she was still alive, he would not read the parsha!? **A:** He would read even if she didn’t die. The chiddush is, that **R' Yose the son of R' Chanina** says that one who sends bikkurim with a shaliach, and the shaliach dies on the way, and the owner then went to bring it on his own, the owner would not read the parsha, because the pasuk teaches that to read the parsha it must be one person having brought the bikkurim from start to finish. We would think that since this husband is changing status from melog holder to owner he should not read. The Braisa therefore teaches that he does.
  - **R' Yochanan and Reish Lakish** follow their own reasoning, because we have learned that if one sells his field in a time when Yovel is in force, **R' Yochanan** says the buyer brings bikkurim from that field and reads the parsha (although the field will be taken from him at yovel and he therefore only has an ownership of the produce, that “ownership” is the equivalent of having ownership of the field itself), and **Reish Lakish** says that he brings but does not read (because it is not as if he owns the actual field).
    - They needed to argue in this case (of yovel) and in the previous case (where the purchaser specifically only bought the rights to the produce). If we would have only said the previous case, we would say that it is there that **Reish Lakish** said that he is not considered to own the actual field, because he specifically said he is only buying the rights to the produce, but in the case of yovel, where he intended to own the actual field, maybe he would agree with **R' Yochanan**. If we would only have the case of yovel, we would say that it is only there that **R' Yochanan** says that he is considered to own the land, but where he specifically purchased only the rights to the produce, maybe he would agree with **Reish Lakish**. That is why both cases are needed.

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-----Daf פד--48-----

- The Gemara had stated the machlokes between **R' Yochanan** (that owning the right to a field's produce is considered owning the land itself) and **Reish Lakish** (that such a right is not like owning the land itself).
  - **Q:** A Mishna says that one who purchases a tree and its surrounding land brings bikkurim and reads the parsha. We see that although he doesn't own the land (since it must be returned at Yovel) he is considered to own it (since he reads the parsha at bikkurim). This is a proof for **R' Yochanan!**? **A:** The Mishna is discussing a time when Yovel is no longer in force, so the purchaser actually does own the land.
  - **Q:** A Mishna says that one who buys two trees in his friend's field brings bikkurim but does not read the parsha. This suggests that if he buys three trees he would even read the parsha and is a proof to **R' Yochanan** like the last Mishna!? **A:** This Mishna is also discussing a time when Yovel is no longer in force, so the purchaser actually does own the land. **A2: R' Chisda** said that the machlokes is only after the first Yovel of Klal Yisral had passed, so that everyone then realized what happens at Yovel. Based on this, **Reish Lakish** will say that the two Mishnayos are discussing the time before the first Yovel, whereas his shita was said after the first Yovel.
- **Q:** Maybe we can say that the machlokes is the same as a machlokes among Tanna'im. There is a Braisa which has the following machlokes. **R' Yehuda and R' Shimon** say that we need a pasuk to teach that if a son bought a field from his father (in which case the son only has rights to the produce, because at Yovel it goes back to the father), gave it to hekdesch, and then the father died (the field now becomes fully owned by the son), the field is treated as an inherited field given to hekdesch. **R' Meir** says, the pasuk is needed for a different case, for a case where the son bought the field, the father then died, and the son then gave it to hekdesch. The pasuk teaches that it is treated as an inherited field that was made hekdesch. We can say that the machlokes is based on the following. **R' Meir** holds that the son was considered as the owner of the field all along (the right to produce is equal to ownership of the field), and therefore when the father died nothing changes, and without the pasuk we would think to still look at the field as a purchased field instead of an inherited field. **R' Yehuda and R' Shimon** hold that he was never viewed as owning the field (the right to the produce is not ownership of the field), so when the father dies he then becomes the owner. It is certain that the field is therefore considered to be an inherited field and the pasuk is therefore only needed for the case where he gives it to hekdesch before the father dies. Based on this, they are arguing in the same machlokes as **R' Yochanan and Reish Lakish!** **A: R' Nachman bar Yitzchak** said, it may be that elsewhere **R' Yehuda and R' Shimon** hold that ownership of the produce is ownership of the field. It is only in this case that they hold differently because of the extra words of the pasuk.
- **R' Yosef** said, it must be that **R' Yochanan** holds as he does, that ownership of produce is ownership of the field. If not, another psak of **R' Yochanan** would be difficult to understand. **R' Assi in the name of R' Yochanan** said, when brothers split an inheritance, it is as if they purchased their half from the other brother (they bartered for whatever they end up with) and they return it to each other at Yovel and re-divide. Now, if that is true, every heir only owns a right to the produce and there should be no one who can bring bikkurim and read the parsha other than someone who comes from a straight line of being an only son, back to the original division of EY! Based on **R' Yochanan's** view however, we can say that they do read the parsha even though they only have rights to the produce.
- **Rava** said, the pasuk and a Braisa suggest like **Reish Lakish**. The pasuk says, when one sells a field it is done "according to the number of crop years" left to Yovel. We see that a field is sold for the produce. The Braisa is the one that says that a bechor gets a double portion in the land that will be returned to the estate at Yovel. Now, this is only true if the father had retained ownership to the land all along (a bechor only takes a double portion of things in the possession of the estate at the time of death). This is a proof to **Reish Lakish**.
- **Abaye** said, we have a kabbalah that a husband needs authorization from his wife to represent her field in Beis Din (because he is not deemed the owner). However, this is only if the court case does not involve his right to the produce. If it does, he can represent based on his own interest, and through a miguy then represent her interests as well.

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## HADRAN ALACH PEREK HASHOLE'ACH!!!

### PEREK HANIZAKIN -- PEREK CHAMISHI

#### MISHNA

- The payment to someone who was damaged is given from the “idis” (the highest quality land). The payment for a loan is given from “beinanis” (from the average quality land). The payment to a woman for her kesubah is given from the “ziburis” (from the inferior land). **R' Meir** says that the kesubah is also paid from the beinanis.
- A creditor does not collect for his debt from encumbered lands if the debtor still is in possession of unencumbered lands, even if those unencumbered lands are ziburis.
- When a creditor is collecting from orphans (i.e. from an estate for an obligation of the one who died) he only collects from the ziburis.
- If one purchased stolen land and the true owner then came and took it back, the purchaser has a right to collect from the seller the amount of produce that the seller took back with the field and for the amount that the purchaser increased the value of the field. However, these are not collected from the seller's encumbered properties. Also, the obligation of an estate to pay for the support of the deceased's wife and daughters is not taken from encumbered properties.
- One who returns a lost item need not swear (if the owner of the item claims that some of the item is missing).
- All these things were enacted for the benefit of the world.

#### GEMARA

- **Q:** The halacha that a damaged person collects from idis is not a takana of the **Rabanan**, it is D'Oraisa based on the pasuk of “meitav sadeihu...”!? **A:** According to **R' Yishmael** the pasuk teaches that the damaged party is paid according to the idis of his own fields, even if the damager has much higher quality fields. The **Rabanan** came along and were mesaken that the damager must pay from the idis of his own fields.
  - This view of **R' Yishmael** is in a Braisa, where he says the pasuk teaches that we must pay according to the idis of the damaged party. **R' Akiva** argues and says that the damager pays according to his own idis, and this is certainly true when Beis Din is collecting for hekdesch.
    - **Q:** Does **R' Yishmael** mean to say that even where the inferior field of the damaged party was damaged, he still gets paid with a field of the same size of idis? **A:** **R' Idi bar Avin** said, the case is that a row of produce was eaten by someone's ox and we don't know what quality of produce was eaten. Therefore, the owner of the ox must pay for a row of idis.
      - **Q:** **Rava** asked, how can that be? The burden of proof is always on the claimant to prove damages, so why would we give him idis when we don't know what was damaged? **A:** **R' Acha bar Yakov** therefore said, the machlokes is where we know how much was damaged. **R' Yishmael** says that amount must be paid using a field equal in quality to the damaged party's idis, even if the damager has higher quality fields. **R' Akiva** says the value is paid using the damager's idis.

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- **Q:** Why does **R' Yishmael** say that we pay idis based on the quality of the damaged party's fields? **A:** The pasuk says “sadeh” with regard to the payment, and says “sadeh” with regard to the damage. There is a gezeira shava that teaches that just as “sadeh” with regard to the damage refers to the damaged party's field, so too the payment refers to the damaged party's field.
  - **R' Akiva** holds the damager pays based on his own idis. This is based on the pasuk that says “meitav sadeihu...yishalem” – the one who is paying is where we look to when determining idis.

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- **R' Yishmael** says, this pasuk teaches that if the damager only has ziburis and idis, and his ziburis is not as good as the idis of the damaged party, he must pay with his own idis, even though his own idis is much better than the idis of the damaged party.
- **Q:** The Gemara earlier quoted a Braisa where **R' Akiva** said that the damager must pay with his own idis, and that will certainly be true when collecting for hekdesch. What is meant by this last statement regarding hekdesch? It can't be referring to where one's ox gored the ox of hekdesch, because we darshen a pasuk to teach that the damager would not pay in that case. **A:** It must be referring to the case where one promised money to hekdesch. **R' Akiva** is teaching that hekdesch will collect that promise from idis.
  - **Q:** Why would hekdesch be different than any other creditor, who gets paid with beinanis!? **A:** **R' Akiva** is referring to where a person's ox gored the ox of hekdesch, and he holds like **R' Shimon ben Menasya**, who says that in such a case the person would be chayuv to pay.
    - **Q:** If this is correct, why must we say that **R' Akiva** and **R' Yishmael** argue with regard to who we look at to determine idis? Maybe all agree that we look to the damaged party, and the machlokes in the Braisa is that **R' Akiva** holds like **R' Shimon ben Menasya** and **R' Yishmael** holds like the **Rabanan** (who argue on **R' Shimon**)!? **A:** First, the wording of **R' Akiva** suggests that he is coming to argue on the halacha of **R' Yishmael** regarding the determination of idis based on the damaged party. Second, if he agreed with **R' Yishmael** (that we are lenient and only require idis of the damaged party even if the damager has better land), how would he then say that we can make a kal v'chomer to hekdesch from that case to hekdesch, and say that the leniency should definitely apply there? Third, a Braisa clearly states that they argue regarding how we determine the idis.
- The Gemara earlier had asked, why does the Mishna say that a damager pays from idis "mipnei tikun ha'olam", when we learn it out from a pasuk!? **Ravina** now answers, the Mishna can follow the view of **R' Akiva**, who says that we actually do learn this out from a pasuk, and the Mishna is following the view of **R' Shimon** who darshens the reasons for pesukim. The Mishna is saying, the reason a damager must pay from idis is for the benefit of the world, to truly discourage people from damaging.
  - A Braisa says this as well. In the Braisa **R' Shimon** says, a damager pays idis to discourage people from damaging. A creditor collects from beinanis so that a person not see a nice field or house by someone and quickly lend the owner money so that he can then take the field or the house when the owner is later unable to pay. The reason we don't make them collect from ziburis is so as not to discourage people from lending money. **R' Meir** says a woman collects her kesubah from beinanis. **R' Yehuda** says a woman collects her kesubah from ziburis, and **R' Shimon** explains: 1) because a woman wants to get married more than a man, so we do not have to incentivize her to get married, and 2) a woman can be divorced even against her will, and a husband cannot.
    - **Q:** What is the second reason, and how does it explain why she only collects from ziburis? **A:** It doesn't explain why she collects from ziburis. It explains why only a woman gets a kesubah and a man does not. The reason is that a woman can be divorced against her will and a man cannot.

### KESUBAS ISHA B'ZIBURIS

- **Mar Zutra the son of R' Nachman** said, a woman only collects from ziburis when she is collecting from the orphans. However, if she is collecting from the husband (she is a divorcee) she can even collect from beinanis.
  - **Q:** Anyone who collects from orphans only collects from ziburis, so why would the Mishna single out the woman collecting her kesubah? Presumably it is because the Mishna is discussing where she collects directly from the husband and even then she only collects from ziburis, which is not like **Mar Zutra** said!? **A:** The Mishna is discussing where the woman was collecting from the orphans. The chiddush is, we would think that to incentivize women to marry we would let her collect from beinanis even from orphans. The Mishna teaches that she must collect from ziburis.
  - **Q:** **Rava** asked, in our Mishna **R' Meir** says that the woman collects from beinanis. Now, this can't be where she is collecting from the orphans, because even **R' Meir** would agree that she would only collect from ziburis in that case. If so, the **Rabanan** who argue are also talking about a case where she is not collecting from the orphans, and still they say that she collects from ziburis, not like **Mar Zutra**!? **A:** It

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may be discussing where she is collecting from the orphans. The reason **R' Meir** says she may collect from beinanis is that we try to incentivize women to marry.

- **Q: Abaye** asked, our Mishna says a damaged person collects from idis, a creditor from beinanis, and a kesubah from ziburis. If this is only true when she collects from orphans, then the entire Mishna must be discussing where the others are collecting from orphans as well. However, if that were true, they should all be collecting only from ziburis!? It must be that they are collecting from the person himself, and still the woman only collects ziburis, not like **Mar Zutra** said!? **A: R' Acha bar Yaakov** said, the Mishna is discussing a case where a father acted as a guarantor for his son's damages, for his son's debt, and for his son's kesubah obligation, and the son died. Therefore, the damaged party and the creditor, who would collect even if the son was still alive, now collect from the guarantor in the same way as they would have collected from the son if he were alive (and collect idis and beinanis, respectively). However, the wife, who only collects after the son's death (the most common reason for kesubah collection is death of the husband) now also collects from the guarantor, but in the way she would collect if there was no guarantor – which would only be from ziburis.
  - **Q:** The halacha is that a guarantor on a kesubah is not obligated to pay even if the husband defaults!? **A:** The Mishna is discussing a "kablan", which is a stronger guarantor and would have to pay on a kesubah obligation.
    - Although there is a view that even a kablan does not truly accept responsibility if the principle (in this case the son) did not have any assets at the time that he became a kablan, we can say that the son had assets at the time and lost them later, or we can say that when the kablan is the father, he accepts responsibility even if his son does not have any assets.
  - We have learned, all agree that a guarantor to a kesubah does not truly accept responsibility. All agree that a kablan for a debt does accept responsibility. With regard to a guarantor on a debt and a kablan on a kesubah, there is a machlokes.
    - The Gemara paskens that all types of guarantors accept responsibility except for the regular guarantor (not a kablan) of a kesubah, because he took the position to push the couple to get married, and not to accept true responsibility.
- **Ravina** said, we have learned that the reason a woman collects from the type of land that she does is because she wants to get married more than a man wants to get married. Now, if **Mar Zutra** is right, the reason she collects from ziburis when collecting from orphans is because she is collecting from orphans, not for any other reason!? **TEYUFTA** of **Mar Zutra**.

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- **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



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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

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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.

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- **Q: Ulla** had said that an unwritten loan or obligation may not be collected from the debtor's encumbered properties. **R' Huna bar Manoach** asks, a Mishna says that if a man promised to support his wife's daughter (his stepdaughter) and he then died, the stepdaughter may collect her support from encumbered properties, because she is like a creditor, whereas the man's own daughters from that same wife (who he has an obligation to support) may only collect from unencumbered properties. Now, this proves that one can collect a debt from encumbered properties without it being in writing (since the obligation to the stepdaughter was presumably not written)!? **A: The** case of the Mishna is that an actual kinyan was done to formalize the obligation to the stepdaughter, and that is why she may collect from encumbered properties.
  - **Q: That** means that the Mishna is discussing where there was a kinyan made to his own daughters for their obligation as well, so why must they collect from unencumbered properties? **A: The** case is where a kinyan was only made for the stepdaughter, and not for his daughters.
  - **Q: Why** would we say that the Mishna is inconsistent? **A: He** made a kinyan for both. However, at the time of his marriage to the mother, only the stepdaughter was around, and therefore the kinyan only helps for her.
  - **Q: Why** can't we say that the case is where the daughters are around at the time of marriage as well (the case would be where he was married to this woman who had a daughter from a previous marriage, and had a daughter with her and then divorced her, and then remarried her. At the time of the remarriage the daughter and the stepdaughter were both around)? **A: Although** a kinyan was made for each of them, since his own daughter must be supported by a condition of Beis Din, a kinyan doesn't help to further the obligation and is therefore ineffective. The stepdaughter's obligation is a new obligation and the kinyan is therefore effective in furthering it and allowing her to collect from encumbered properties.
    - **Q: Just** because the daughter's obligation is stronger, why would that prevent a kinyan from being effective!? **A: Since** his obligation to his daughters is set by Beis Din, we are concerned

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that he left a bundle of money somewhere for her to use for her support. Therefore, we do not allow her to collect from encumbered properties. We do not have this concern for his stepdaughter, and that is why she may collect from encumbered properties.

- **Q:** A Braisa says that when a purchaser is forced to return the purchased land because his seller had stolen it from the true owner, he may collect the purchase price from his seller's encumbered properties, but the amount that he spent to improve the land may only be collected from unencumbered properties. **R' Nossan** said, this is only true if the improvements were done after the other properties were sold and became encumbered. However, if the improvements were done first, he can collect this amount from encumbered properties of the seller. We see that unwritten obligations may be collected from encumbered properties! **A:** The Gemara says, this is actually a machlokes among Tanna'im. We find a Braisa where the **T"K** says that an unwritten obligation cannot be collected from encumbered properties, and **R' Yose** says that any obligation that is not for a set amount cannot be collected from encumbered property. We will say that **Ulla** holds like the **T"K** and **R' Chanina** holds like **R' Yose**.

### V'HAMOTZEH METZI'AH LO YISHAVA

- **R' Yitzchak** said, if someone tells his friend, "You found two wallets of mine that were tied together", and the friend says "I only found one wallet", he must swear that he only found one. If someone tells his friend, "You found two oxen of mine that were tied together", and the friend says "I only found one", he need not swear that he only found one. The difference between the cases is that oxen have a tendency to separate themselves, whereas wallets do not. If someone tells his friend, "You found two oxen of mine that were tied together", and the friend says "I found both, but I already returned one to you", he must swear that he already returned one.
  - **Q:** Does **R' Yitzchak** not hold of our Mishna that says that for the benefit of the world, one who finds something need not swear regarding the found item? **A:** He holds like **R' Eliezer ben Yaakov** who argues on our Mishna in a Braisa. In the Braisa he says, there are times when a person will have to swear on his own claim. For example, if a person tells an orphan "I owed your father a maneh, but already paid him half", he must swear to that claim. The **Chachomim** argue in the Braisa and say this person is "returning a lost object" and is therefore patur from swearing.
    - **Q:** Does **R' Eliezer ben Yaakov** not hold of the concept of the returner of a lost item being patur? **A:** **Rav** said, the Braisa is talking about where a minor made a claim against the debtor, and that is why he had to swear.
    - **Q:** A Mishna says that the claim of a minor has no bearing to make someone have to swear! **A:** In the Braisa there is an adult who is making the claim against the debtor. The reason **Rav** referred to him as a minor is because even an adult orphan is referred to as a minor in his father's affairs (because he is totally unfamiliar with them).
    - **Q:** If this is the case, why does the Braisa refer to it as swearing "on his own claim"? It is the claim of the orphan that is making him swear! **A:** The Braisa means that it is the claim of the orphan, but his own admission.
    - **Q:** Every case of swearing on an admission is based on a self-admission! **A:** The machlokes in the Braisa is based on the concept of **Rabbah**, as to why a partial admission must swear. He says it is because a person is embarrassed to lie and deny a claim completely, but does so partially so as to find more time to pay. The **Rabanan** say that a person would have no problem denying the claim of the son, since it was his father, and not him, who lent the money. Therefore, a partial admission is like the return of a lost item. **R' Eliezer ben Yaakov** says that a person would not have the chutzpah to fully deny the claim of the son either. That is why the partial admission is like the partial admission to the father himself, which requires the person to swear regarding the rest.

### MISHNA

- If orphans rely on a person to manage their affairs, or if their father had appointed an apitrapis for them, this person is chayuv to give maaser from the orphan's produce.

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- An apitrapis that was set up by the father must swear to the orphans that he has not kept any of their money for himself. An apitrapis that was appointed by Beis Din need not swear. **Abba Shaul** says the reverse is true.

### GEMARA

- **Q:** A Braisa learns from a pasuk that an apitrapis does not give maaser for the orphans!? **A:** Our Mishna is talking about produce that is needed to feed the orphans. The Braisa is discussing produce that will be put into storage.
  - In fact there is a Braisa that clearly makes this distinction. The Braisa says an apitrapis gives maaser for produce needed to feed the orphans, but not for produce that will be stored. The apitrapis may sell their animals, slaves, houses, fields or vineyards if the money is needed to feed the orphans, but not if the money is not needed. The apitrapis may sell their produce, wine, oil, or flour if the money is needed to feed them, but not if the money is not needed. The apitrapis can buy for them a lulav, aravah, succah, tzitzis, or anything with a time limit [which the Gemara says comes to include a shofar]. The apitrapis may buy for them a Sefer Torah, tefillin, mezuzah, or anything else that has a limit [the Gemara says this comes to include a megilla]. The apitrapis may not give tzedaka from their money, or use it to redeem captives, or to do anything that has no limit [the Gemara says this comes to include the mitzvah of nichum aveilim]. The apitrapis may not litigate matters of the orphans' property, whether to lose or to win [the Gemara explains that this means that if he does so anyway and wins, the judgement would stand]. The apitrapis may not sell their distant properties to redeem closer ones, or sell bad ones and buy better ones [the Gemara explains, because we are concerned that the new fields will become ruined]. The apitrapis may not sell fields to buy slaves, but may sell slaves to buy fields. **R' Shimon ben Gamliel** says he may also not sell slaves to buy fields [the Gemara explains, because we are concerned that there may be claims against the field which will have it taken from them]. The apitrapis may not let slaves go free, but he may sell them and the buyers can let them free. **Rebbi** says they may allow a slave to buy his freedom as well. After all transactions are done, the apitrapis must make a cheshbon with the orphans to show that all was done properly. **R' Shimon ben Gamliel** says this need not be done. We do not appoint a woman, a slave, or a minor as an apitrapis. However, if one of these people were appointed as an apitrapis by the father, it is effective.
  - There was an apitrapis in **R' Meir's** neighborhood who sold land to buy slaves, and **R' Meir** put a stop to it. **R' Meir** then had a dream where Hashem told him that he wanted the orphan's money to be lost, so he should not stop the apitrapis. **R' Meir** said we don't listen to dreams, and since it is wrong for the apitrapis to do what he was doing, he must be stopped.
    - There were two people who would always fight on Erev Shabbos. **R' Meir** went to them and worked on them for three such periods to make peace between them. When he accomplished his goal, he heard the Satan say "**R' Meir** has forced me to leave this house".
  - There was an apitrapis in **R' Yehoshua ben Levi's** neighborhood who sold land to buy oxen, and **R' Yehoshua ben Levi** did not stop him. This must be because he held like **R' Yose**, that an ox is equally as important as a field.
  - There were orphans who relied on an elderly woman to manage their affairs. This woman sold their cow. The relatives of the orphans went to **R' Nachman**, saying that this woman had no right to do so. **R' Nachman** told them, the Mishna says that if the orphans rely on someone to manage their affairs, the person has the rights of an apitrapis. The relatives said, the cow has increased in value since the sale, so the orphans should get the increase in value. **R' Nachman** said, it increased under the purchaser's ownership, so he gets the gain. The relatives said, but he has not yet paid for it!? **R' Nachman** said, if so, the sale is not yet final, because **R' Chanilai bar Idi in the name of Shmuel** said that buying from orphans is like buying from hekdesch, in that the sale is only finalized when money is given.
    - A similar story happened where **Rabana Ukva** the orphan sold wine that then went up in price. **R' Nachman** said, if money wasn't yet given, the sale is not final and the higher price must now be paid.

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- If orphans sell produce and the purchaser did meshicha but did not yet give money, if the price increases, the purchaser must now pay the higher price, based on **R' Chanilai bar Idi**. If the price decreases, the purchaser must bear the decrease since he has already made meshicha.
- If produce is bought for the orphans and they only did meshicha but did not yet pay, if the price then goes up, the orphans get the benefit of that increase. If the price goes down, although we would think to say that they should not bear the decrease, **R' Shisha the son of R' Idi** said, that saying so will discourage people from selling to orphans until they are able to give the money. Therefore, the orphans must bear that loss.
- If orphans gave money for produce but did not yet do meshicha, if the price then decreases the sale is not considered to be final, because no meshicha was done. If the price increased, although we would think to say that they should not bear the increase, **R' Shisha the son of R' Idi** said, that saying so will cause the seller to be unconcerned about saving this produce if there was a fire. Therefore, the sale is not considered to be final until the meshicha is done.
- If money was given to orphans to buy produce from them, if the price then goes up, the orphans benefit from this increase, because the sale is not final until meshicha is done. If the price goes down, although we would think to say that they should not bear the decrease, **R' Shisha the son of R' Idi** said, that saying so will cause people to be unwilling to give money to them until they can hand over the produce, and if they are in need of money that will put them in a bad situation. Therefore, the buyers may cancel the sale in this case.
- **R' Ashi** said, I and **R' Kahana** approved the sale of an orphan's land to pay for his head-tax, even though it was not done at a public sale, because a public sale is not needed if the sale is being done to pay the head-tax, for food for the wife or the children, or to pay from the burial of the parent or the orphans.
- Amram Tzaba'ah was an apitrapis. The relatives of the orphans complained to **R' Nachman** that Amram is using the orphans' money to buy himself clothing! **R' Nachman** said, he is doing this so that he appears more respectable and it is therefore in the best interests of the orphans for him to be well dressed. The relatives said, but we see him eating fancy foods and he is not wealthy enough to afford such food (so he must be taking from the orphans)! **R' Nachman** said, maybe he found a metzi'ah and is using that to afford the food. They then said, but he is damaging the property of the orphans! **R' Nachman** said, bring witnesses that he is damaging the property and I will remove him from the position, because **Rav** says that such an apitrapis should be removed, and we pasken like that as well.

### APITRAPIS SHEMINAHU AVI YESOMIM YISHAVA

- We are not concerned that making the apitrapis swear will discourage people from accepting the position, because if he agreed to accept the position when asked by the father, it must be that he had received some benefit from the father. The prospect of having to swear will not stop him from accepting.

### MINUHU BEIS DIN LO YISHAVA

- This apitrapis is doing a favor for Beis Din. If he is faced with having to swear, he will not do this favor for Beis Din.

### ABBA SHAUL OMER CHILUF HADEVARIM

- **Abba Shaul** holds that a man appointed by Beis Din benefits in that people now think he is a very trustworthy man. Therefore, the prospect of having to swear will not prevent him from accepting the position. When an apitrapis is appointed by the father, there is no such associated benefit, and therefore, if we make him swear he will not accept the position.
- **R' Chanab bar Ami in the name of Shmuel** paskens like **Abba Shaul**.
- A Braisa says, **R' Eliezer ben Yaakov** says both types of apitrapis must swear, and we pasken like that.
- **R' Tachlifa of EY** taught a Braisa in front of **R' Avahu**, that an apitrapis appointed by the father must swear, because he is paid for his services. He explained, this means that he must have received some benefit, and therefore it is as if he was paid. Therefore, making him swear will not deter him from accepting the position.