



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

### Bava Metzia Daf Kuf Yud

- There was a collateral contract (where the lender was to consume the produce and reduce the amount of the loan) which didn't specify the length of time for the lender to keep the collateral. The lender said it was to be for 3 years and the borrower said it was to be for 2 years, and the lender went and consumed the 3<sup>rd</sup> year produce. **R' Yehuda** said that land is presumed to be in the possession of its owner, and therefore the borrower can collect for the 3<sup>rd</sup> year produce that was eaten. **R' Kahana** said that the produce is presumed to be in the possession of the one who ate it, and therefore the lender need not pay for what he ate. The Gemara paskens like **R' Kahana**.
  - **Q:** We pasken like **R' Nachman** in monetary matters, and he said that land is presumed to be in the possession of the owner (in a case of a rented bathhouse and a dispute as to the rental payment)!? **A:** In that case, the question was based on whether we follow the first statement or last statement of the landlord, and it will never be decided with certainty, so we favor the owner of the land. In our case it is possible that the lender will find witnesses who will say like he claims. If we make him pay now, he would then have to go back to Beis Din to reverse their earlier judgement. We don't want to cause Beis Din to reverse their judgements, and therefore, we don't make him pay now.
- If a lender says he has collateral rights to a field for 5 years and the borrower says it was only for 3 years (and the lender already ate for the last 3 years), and when asked to produce the document giving him the right, the lender says that he lost the document, **R' Yehuda** says the lender is believed, because if he was lying he could have said that he purchased the field (and had 3 years of chazakah to prove that he did). **R' Pappa** told **R' Ashi** that **R' Zvid** and **R' Avira** don't hold like **R' Yehuda**, because since the contract was only needed for a finite amount of time, he is lying when he says that he lost it. Therefore, he is not believed with a miguy.
  - **Q:** **Ravina** said to **R' Ashi**, this would mean that every collateral like that done in Sura (where the lender eats the produce and reduces the loan) is at risk of having the lender hide the document and claiming after 3 years that it was purchased!? It cannot be that the **Rabanan** instituted such a thing that can lead to such a loss!? **A:** **R' Ashi** said, the **Rabanan** said that the owner should continue to pay the tax and dig ditches around the borders so all know that the land belongs to him.
    - **Q:** What about a field that does not have ditches to dig or taxes to pay? **A:** The owner should make an official protest as to his ownership before 3 years pass.
    - **Q:** What about a case where he didn't protest!? **A:** In such a case, he brought the loss upon himself.
- If a sharecropper says the deal was that he gets ½ the produce and the landlord says he was to only get 1/3 of the produce, **R' Yehuda** says the landlord is believed, and **R' Nachman** says we follow the local custom.
  - The talmidim thought to say that they don't argue and are talking about different circumstances. However, **R' Mari**, the grandson of **Shmuel** said that **Abaye** said, **R' Yehuda** holds that the landlord is believed even where it goes against the local custom, because of a miguy that he could have said the sharecropper was actually a hired worker and is not entitled to any share at all.
- If a lender wants to collect land of his debtor who has died, and the heirs say that they are the ones who improved the land (and must be paid for the improvements), but the lender says it was their father (the debtor) who improved the land (and it is therefore subject to his collection), **R' Chanina** thought to say that the land is in the chazaka of the heirs, and the lender must therefore bring proof to his claim. A certain elder said to them, **R' Yochanan** said that the

heirs must bring proof to their claim. The reason is that land is there to be collected, and is therefore considered as if it is already collected and in the possession of the lender.

- **Abaye** said, we see this from a Mishna as well. The Mishna says, if there is a safek whether a tree that was right near a city (in which case it must be cut down) was there before the city was built (in which case the people of the city must pay the owner for the tree) or not, the tree must be cut down, and the people do not have to pay. We see the concept, that since it stands to be cut down, it is considered as if it is already cut down, and therefore it is on the owner to prove that he should get paid.
- The Gemara continues the story, and says that the heirs came and brought proof that it was they who improved the field. **R' Chanina** thought to say that the lender must pay them with a piece of the land (not with money). The Gemara says, this is not correct. He can simply pay them with money, based on a statement of **R' Nachman in the name of Shmuel**.
  - **Q: R' Nachman in the name of Shmuel** said that when a lender takes land from his borrower's purchaser, he also can pay for his improvements with money, and need not leave him land. However, we learned that **Shmuel** says that a lender need not even pay for the improvement at all!? We find that **Shmuel** even said this when the improvement was produce that was just about ready to be harvested!? **A:** When the amount of the debt is equal to the land plus the improvement, he need not pay for the improvement. When the debt is only equal to the land without the improvement, he must pay for the improvement.
    - **Q:** That makes sense according to the view that the buyer of the land cannot give money to the creditor instead of the land. However, according to the view that he can do that, why can't he tell the creditor, if I would have money I can take the whole field back, now that I don't, I should at least keep a piece of the field for the value of the improvements that you are taking from me, instead of you giving me money!? **A:** The case would be that the debtor had made that field an "apotiki", in which case all agree that the buyer cannot give money to the creditor in place of the field.

#### MISHNA

- If someone rents a field for one shmitta cycle for 700 zuz, the shmitta year is part of the count of years. However, if he rented it "for 7 years for 700 zuz", the shmitta year is not part of the count.
- If a worker was hired for the day, he is to collect his wages at any point that following night. If he was hired for the night, he is to collect his wages at any point that following day. If someone is hired for a number of hours, he is to collect all night and all day. If someone is hired for the week, for the month, for the year, or for the shmitta cycle, if he leaves by day (if the employment ends during the day) he must be paid during that day. If he leaves at night, he must be paid that night or the following day.

#### GEMARA

- A Braisa says, how do we know that a day worker must be paid by night? The pasuk says "lo salin pe'ulas sachir itcha ahd boker". How do we know that a night worker must be paid the next day? The pasuk says "b'yomo titein s'charo".
  - **Q:** Maybe the reverse is true (a day worker must be paid that day and a night worker that night)? **A:** Wages are only due at the end of the employment period.
- A Braisa says, when the pasuk says "you may not keep the wages of a worker overnight", I know that means until morning, so why does the pasuk say "until morning"? This teaches that he is oiver this lav only when he doesn't pay that first morning, but if he delays more than that, he would not be oiver another lav.
  - **Q:** What is he oiver if he continues to delay? **A: Rav** said, he is oiver on an issur D'Rabanan not to delay payment. **R' Yosef** said, this issur has a basis in a pasuk.
- A Braisa says, if one had a friend hire workers on his behalf and then delayed paying them, neither of them would be oiver the lav – the employer is not, because he did not hire them, and the shaliach is not, because he is not chayuv to pay them any wages.

- **Q:** What is the case? If he told the workers that he would pay them, then he *is* obligated to pay them, as we learned in a Braisa!? **A:** The case is that when he hired them he told them that they will be paid by the employer.
  - The Gemara says that **Yehuda bar Mareimar** and **Mareimar and Mar Zutra** would have others hire workers for them, so that they should never be oiver the lav.
- **Rabbah bar R' Huna** said, the people who trade in the market of Sura and hire workers are not oiver the lav if they don't pay immediately, because the workers know that the people will not have money to pay them until after the market day. However, after the market day, they will be oiver the issur D'Rabanan if they don't pay promptly.