



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

### Bava Metzia Daf Kuf Tes Zayin

- There is a Braisa that supports **R' Yehuda's** view that one who takes a millstone as collateral is only oiver for that lav, and not also for the general lav of taking items used in food preparation. The Braisa says that if one takes a barber's scissors as collateral, or the yoke of a cow as collateral, he will be oiver 2 lavim (because each is made of two pieces), and just as the pasuk teaches regarding millstones, that each millstone will make him oiver on a separate lav, the same will be for these. Now, we see there is no mention of the third, general lav. This supports **R' Yehuda's** view.
- There was a person who took a shechita knife as collateral. **Abaye** told him that the knife must be returned, because it is a keili used for food preparation, and he can then litigate to collect the debt. **Rava** said, he would not have to prove the debt for anything up to the value of the knife, because he could have claimed that he owned the knife and kept it.
  - **Q:** Why does **Abaye** treat this case differently than the case of where a person seized goats for having eaten his barley, and **Shmuel's** father said he can collect up the value of the goats, because he could have claimed that he owned them? **A:** Goats are not typically lent or rented out. Therefore, he would be believed to say that he owned that. Knives are rented and lent out, and that is why he would not have been believed to say that. This difference was stated by **R' Huna bar Avin**.
  - **Q:** We find that **Rava** held in an actual case that possession of scissors and seforim are not indicative of ownership, because they are often rented or lent out, so why did he say different in the case of the knife? **A:** **Rava** would say that people don't lend out a shechita knife, because it becomes too easily nicked, which makes it unfit to shecht with.

**HADRAN ALACH PEREK HAMEKABEL!!!**

**PEREK HABAYIS V'HA'ALIYA -- PEREK ASIRI**

#### MISHNA

- If the ground floor and the upper floor of a building, each floor belonging to different people, that fell down, they divide the wood, the stones, and the earth. If some of the stones are broken (and both people say they want the unbroken stones), we determine which stones are more likely to have broken (the ground floor or the upper floor) and that person gets the broken stones. If one of them recognizes some of his stones, he takes them, and that counts towards the total number of stones that he is entitled to get.

#### GEMARA

- **Q:** Since the Mishna says we make a determination as to which stones are more likely to have broken, that means that we are able to determine whether the collapse happened by the stones falling directly downward (in which case it is because the lower stones broke) or from the stones falling outward (in which case it would be the upper stones that broke). If so, why in the beginning of the Mishna do we say to divide the stones evenly? **A:** The case is where the wall fell at night, so we don't know how it fell.
  - **Q:** Why can't we look in the morning? **A:** The stones were cleared away before we had a chance to see how they fell.
  - **Q:** Why can't we ask the person who cleared it away? **A:** Passersby cleared them, and they are no longer present to ask.

- **Q:** Why don't we look into whose property the stones were cleared into (whether that part of the chatzer belonged to the owner of the ground floor or the upper floor) and the other person would be a "motzi meichaveiro" and would have to bring proof to take it from him!? **A:** The stones were cleared into an area that is owned by both of them, or into the reshus harabim. We can also answer that partners like this usually are not particular when one puts their stuff in the other's place, and therefore presence in one's chatzer does not prove ownership.

#### IHM HAYA ECHAD MEIHEN MAKIR...

- **Q:** When one person says he recognizes his stones, what is the other person claiming? If he agrees that it is of the other person, what is the chiddush of the Mishna? If he does not agree, then why could the claiming person just take them without providing proof? **A:** The case is where the second person says "I don't know".
  - **Q:** Should we say that our Mishna refutes **R' Nachman**? For we learned that if someone tells a second person "You owe me a maneh" and the second person says "I do not know", **R' Huna and R' Yehuda** say he is chayuv and **R' Nachman and R' Yochanan** say he is patur!? **A:** We can answer as **R' Nachman** says elsewhere, that the case is that there was a claim that required the second person to swear, and because he cannot swear (because he truly does not know) he must pay.
    - **Q:** What would be the case of a claim requiring an oath to be taken, which therefore results in the party unable to make the oath being required to pay? **A:** It is like **Rava** said, that if someone said to another person "you owe me 100" and the other person responds "I owe you 50, and don't know about the other 50", since the second person can't swear that he doesn't owe him the other 50, he must pay.

#### V'OLOS LO MIN HACHESHBON

- **Rava** thought to say that he takes these stones toward his count of the broken stones. This would mean that the person who recognizes his whole stones is in a better position than the one who doesn't.
  - **Q: Abaye** asked, the opposite should be true!? Since he recognizes some of the stones, and not more, we should say that is because the other unbroken stones are not his, and he should not even get a share of them at all!? **A:** Rather, **Abaye** said, he takes the stones he recognizes as his share of the unbroken stones.
    - **Q:** If so, what does he gain by recognizing these stones? **A:** He is able to take the larger bricks, or better quality bricks.

#### MISHNA

- Where there is a house with a ground floor and an upper floor (both owned by one person), and the floor of the upper level fell in and the owner refuses to fix it, the upstairs tenant may go downstairs and live in the downstairs apartment until the owner fixes the upper level. **R' Yose** says the one living downstairs (the landlord) must provide the ceiling, and the upstairs tenant must provide the plaster that goes over that.

#### GEMARA

- **Q:** How much of the floor has to have fallen in for the Mishna's ruling to apply? **A: Rav** says the majority, and **Shmuel** says even an area of 4 tefachim.
  - **Rav** says that if it is only an area of 4 tefachim, the owner would simply have to give him a space of 4 tefachim downstairs to use, because a person can be expected to live partially upstairs and partially downstairs. **Shmuel** says a person can't be expected to do so.
- **Q:** What is the case in the Mishna? If the owner said he is renting him "this upper floor", since the upper floor is no longer useable the rental agreement is over, and the owner need not give him another space to live!? Rather, he must have not specified a particular apartment. Still, why must he let him move into his own downstairs apartment? Why can't he just rent him another apartment somewhere else? **A: Rava** said, the case is where he said "I am renting you the upper apartment for as long as it is there, and if it is no longer there, I will rent the lower apartment to you".

- **Q:** If so, the case is obvious!? **A: R' Ashi** said, the case is that the owner said "I am renting you this upper floor that is on top of this lower floor". The lower apartment thereby becomes pledged to the upper apartment, and that is why he moves in there when the upper apartment is no longer inhabitable.
- **Q: R' Abba bar Mamal** asked, when the tenant moves down into the landlord's apartment, can he force the landlord to move out, or is he only entitled to live together with the landlord? **Q2:** If they must live there together, is the tenant allowed to enter with the regular doors, or must he go upstairs and then enter through the hole in the ceiling? **Q3:** If you say that he cannot force him to climb up and then come down through the ceiling, what about if there is a 3 floor house and the middle floor apartment had its floor fall in? can he still move into the lower apartment, or can the owner tell him that he must move into the third floor apartment? **TEIKU.**