



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 Zayin

R' YOSE OMER HATACHTON NOSEIN ES HATIKRA...

- **Q:** What is the "ceiling" that **R' Yose** says must be provided by the landlord? **A: R' Yose bar Chanina** said it is a mat of reeds and thorns. **Ustini in the name of Reish Lakish** said it is narrow planks of cedar wood. The Gemara says, they do not argue. Each was saying the custom where he lived.
- There were two people who lived one on top of the other (in a two story house), and the plaster of the floor in between them deteriorated, allowing water to flow from the upper apartment to the lower one, damaging his items. **R' Chiya bar Abba** said the upper apartment must repair the plaster, and **R' Illai in the name of R' Chiya the son of R' Yose** said the lower apartment must make the repair.
 - **Q:** Maybe we should say that they argue in the same machlokes as **R' Yose and the Rabanan** in our Mishna? **R' Chiya bar Abba** who holds that the upper one must do the repair of the plaster, holds that the mazik must distance himself from the nizik, like **R' Yose**, and **R' Illai** says it is the apartment on the bottom who must do so, because he holds that the nizik must distance himself from the mazik, like the **Rabanan** said? **A:** This is not correct. Saying this would mean that **R' Yose and the Rabanan** are arguing regarding the issue of damages. This cannot be, because with regard to damages we find that their views are exactly the opposite! A Mishna says that one may not plant a tree within a certain distance to a bor, and if one does plant a tree within that distance, the tree may be cut down by the owner of the bor. **R' Yose** says that it may not be cut down, because each was done in their own property. We see from here that **R' Yose** says the nizik must distance himself and it is the **Rabanan** who say that it is the mazik. This is the opposite of the views attributed to them above. Therefore, that cannot be their machlokes in our Mishna. Rather, if you want to correlate the machlokes of **R' Chiya bar Abba and R' Illai**, they can be said to be arguing in the machlokes between **R' Yose and the Rabanan** of that Mishna regarding the tree and the bor.
 - **Q:** So, what is the basis of the machlokes between **R' Yose and the Rabanan** in our Mishna? **A:** They argue regarding a case where the tenant who lives upstairs says that the lack of plaster causes the ceiling boards to be weak, and therefore wants the landlord to cover with more plaster. The **Rabanan** say that plaster is meant to strengthen the ceiling boards, and therefore it is the responsibility of the landlord, who lives on the lower level. **R' Yose** holds that plaster is meant to smooth the floor for the upstairs tenant, and therefore it is his responsibility.
 - **Q:** The Gemara earlier said that **R' Chiya the son of R' Yose** holds that when water drips from upstairs to downstairs, it is the downstairs person who must prevent the damage. However, **R' Ashi** said that even **R' Yose** agrees that when it is direct damage, it is the mazik that must prevent the damage, not the nizik!? **A:** The case is where the water flowed from the upstairs tenant's hands and stopped somewhere, and then continued flowing downstairs. This is not direct, and therefore becomes the responsibility of the nizik.

MISHNA

- If a ground floor and an upper floor are owned by two separate people and the house collapsed, and the owner of the upper story told the owner of the lower story to rebuild his floor so that he can then go and build an upper floor on top of it, and the owner of the lower floor refuses to rebuild, the owner of the upper floor can rebuild the lower floor and live in it, until he is paid for

all his expenses of rebuilding that floor. **R' Yehuda** says that doing so would be a case of living in someone else's property and he would therefore have to pay rent. Rather, the owner of the upper floor can rebuild the lower floor and the upper floor, even putting a roof over the upper floor, and he can then live in the lower floor until he is paid for his expenses of rebuilding the lower floor.

GEMARA

- **R' Yochanan** said, in 3 places **R' Yehuda** taught that it is assur for a person to benefit from the property of someone else without his consent.
 - One place is our Mishna.
 - Another place is the Mishna which says, if someone gave wool to a dyer to dye red, but he instead dyed it black, or if he gave him wool to dye black and he instead dyed it red, **R' Meir** says the dyer must pay for the value of the wool (he was koneh it with this change), and **R' Yehuda** says, if the improvement to the wool is more valuable than what it cost to get it to that state, the owner of the wool pays the dyer for his expenses. If the expenses were more than the improvement to the wool, he must pay him for the improvement, so as not to benefit from somebody else without consent.
 - The third place is another Mishna, which says that if someone partially pays off his loan and had the loan document then deposited with a third party and instructed him that if he does not bring the remaining money by a certain date, the document should be returned to the lender, and he in fact does not pay by that certain date, **R' Yose** says the document should be given to the lender, and **R' Yehuda** says it should not.
 - **Q:** Why are these places a proof that **R' Yehuda** holds that one may not benefit from another without consent? It may be that in our Mishna his living there causes an actual loss from the blackening of the walls, and that is why he may not live there for free!? It may be that he only holds that way in the case of the dyed wool, because the dyer did something other than he was supposed to do to the wool, and a Mishna says that when someone does different than he was told to do he has the lower hand when getting paid for his work!? It may be that he only holds that way in the case of the partially paid loan because he holds that it was given as an asmachta, and the lender is therefore not koneh!?
- **R' Acha bar Ada in the name of Ulla** said, if after the two story house (each floor being owned by a different person) fell down, the owner of the lower floor wants to rebuild with a change from the way it used to be, if he is looking to use rough stones (which are wider) instead of the smoothed stones that he used to have, we allow him to do that (it will make for a stronger building). However, if he wants to use smoothed stones instead of the rough stones that the building used to have, he may not do so (because it will make for a weaker building). If he wants to use half-bricks (which have cement in between them) instead of whole bricks, we allow that (it makes for a stronger building). We would not allow the reverse change. If he wants to change from sycamore beams to cedar beams, we allow that, but we would not allow the reverse change. If he wants to reduce the number or size of the windows, we would allow that, but we would not allow the reverse change. We would also not allow him to increase the height of his floor, but we would allow him to decrease the height. With regard to changes that the owner of the upper floor wants to make, we would allow him to change to smoothed stones, but not to rough stones. We would allow him to change to full bricks, but not to half-bricks. We would allow him to change to sycamore beams, but not to cedar beams. We would allow him to enlarge or increase the number of windows, but not to decrease them. We would allow him to decrease the height of his apartment, but not to increase it.
- If neither owner has the money to rebuild the building, a Braisa says that **R' Nosson** says the owner of the lower floor would get 2/3 of the proceeds of the sale of the land and the owner of the upper floor would get 1/3. **Others** say that the owner of the lower floor would get 3/4 of the proceeds of the sale of the land and the owner of the upper floor would get 1/4.
 - **Rabbah** said we pasken like **R' Nosson**, because he is a dayan and goes to the depths of the law. **R' Nosson's** logic is that a second floor reduces the useful life of a ground floor by 1/3. Therefore, he is entitled to 1/3 of the proceeds from the sale of the land.