



Daf In Review – Weekly Chazarah

Maseches Bava Metzia, Daf קי"ד – Daf קק"ג

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

-----Daf קק"ג---108-----

- **R' Yehuda** said, everyone must contribute for the expense of putting up gates around the city. We even collect from orphans for this. However, we do not collect for this from the **Rabanan**, because they don't need this protection. With regard to the expense of digging a well, we even collect from the **Rabanan** for that. This is only when they hire workers to dig the well. If the people of the city all take turns digging, the **Rabanan** do not have to join the rotation, because they are not people who do manual labor.
- **R' Yehuda** said, with regard to digging a river (to clear an obstruction), the people downstream must help the people upstream, but the people upstream need not help the people downstream (if the obstruction is downstream from them). The reverse is true with regard to clearing the ditches for the overflow water. A Braisa supports both of these halachos.
- **Shmuel** said, if someone takes possession of land along a riverbank, it is considered to be a chutzpah, but we do not remove him from that land. However, today, when the Persians have given that land to people, we can even remove someone who seizes land along the banks.
- **R' Yehuda in the name of Rav** said, if someone buys land between the land of two brothers, or of two partners, it is considered to be a chutzpah, but we don't remove him from the land. **R' Nachman** said that we can even remove him from the land. However, if the neighboring landowner wants him out solely based on a claim of "bar metzra", we would not remove him based on that. **Nehardai** said, that even for reasons of bar metzra we would remove the person, based on the pasuk of "v'asisa hayashar v'hatov".
 - **Q:** If the buyer asked permission from the neighbor to buy the land, and he granted the permission, is that sufficient, or does he have to be koneh this right from him? **A: Ravina** said, he does not need to make a kinyan, and **Nehardai** said that he does. The Gemara paskens that a kinyan must be done. Therefore, if no kinyan is made, any price fluctuation is not considered to take place in the hands of the buyer (the sale is considered ineffective).
 - If the buyer paid 100 for the field that was truly worth 200, and the adjoining neighbor now demands to buy the field from the buyer, we make a determination – if the original seller would have given this discount to anybody, the neighbor must only pay 100, but if this discount was given specifically for this buyer, the neighbor must pay 200.
 - If the buyer paid 200 for a field that was truly worth 100, and the neighbor then wants to buy the field, the talmidim thought to say that in effect the buyer was acting as a shaliach for the neighbor, and the neighbor could therefore make the transaction batel (based on the overpayment). However, **Mar Kashisha the son of R' Chisda** said to **R' Ashi**, **Nehardai in the name of R' Nachman** said that there is no "ona'ah" on land, and therefore the sale is considered to be effective.
 - If a buyer buys a small piece of land within the seller's land, we must make a determination. If the land that is bought is different than the rest of his land – either it is superior or inferior – then the sale is deemed effective. If it is the same as the rest of the land, we assume that the buyer is purchasing this as a trick, so that he can then be considered the "adjoining neighbor" and purchase the adjoining land.
 - If one gives away his land as a gift, it is not subject to a claim of bar metzra. **Ameimar** said, if the giver of the gift makes himself responsible to replace that field if anything happens to it, then it would be subject to bar metzra.
 - If a seller sells all his fields (in different locations) to one buyer, it is not subject to bar metzra. If a buyer sells a field back to the original owner, it is not subject to bar metzra. If a person bought land from a goy (the buyer can tell the neighbor that he should be happy for having removed "a lion" from his border), or sold land to a goy (a goy is not subject to "v'asisa hayashar v'hatov",

Daf In Review – Weekly Chazarah

but the seller would have to accept responsibility for any loss the goy causes the neighbor), it is not subject to bar metzra.

- If land is collateral on a loan, it is not subject to bar metzra (and the owner may sell it to the holder of the collateral).
 - If an owner wants to sell a piece of land to generate money for better land, or for land closer to his other land, the sale would not be subject to bar metzra.
 - If he is selling to pay for taxes, or for food for his wife and children, or to pay for burial expenses, the sale would not be subject to bar metzra.
 - If he sells to a woman, to orphans, or to his partners, the sale would not be subject to bar metzra.
- If a seller has a choice to sell a field to a (non-adjointing) neighbor in the town of the field, or to a neighbor of his in another town, he should sell to the neighbor in the town of the land being sold. If the choice is between a neighbor and a talmid chochom, the talmid chochom comes first. If the choice is between a talmid chochom and a relative, the talmid chochom comes first.
 - **Q:** What if the choice is between a relative and a neighbor? **A:** A pasuk says “a close neighbor is better than a distant brother”, which teaches that the neighbor comes first.
 - If the buyer is offering better coins than the neighbor, the sale is not subject to bar metzra. The same would be if the buyer is offering loose coins and the neighbor is offering coins in a bundle (which leads to potential argument regarding how many coins were actually in the bundle). If the neighbor says “I will go and find money to buy the land”, the seller need not wait for him. If he says “I will go bring money”, then we make a determination – if he is someone who has that type of money, he must wait for him. If not, he need not wait for him.
 - If a house belongs to one person and the land which it is on belongs to another, the landowner can stop the homeowner from selling the house to someone other than him, but the homeowner cannot stop the landowner from selling the land to someone else.
 - If a tree belongs to one person and the land which it is on belongs to another, the landowner can stop the tree owner from selling the tree to someone other than him, but the tree owner cannot stop the landowner from selling the land to someone else.
 - If the buyer wants to buy the land to build a house on it, and the neighbor wants to buy it to plant it, the settling of the land (building the house) is more important and comes first, and the sale is therefore not subject to bar metzra.
 - If the bordering fields are separated by rocks or trees, we must make a determination – if he would be able to plant even one row from his field into the neighboring field, it is subject to bar metzra. If not, it is not subject to bar metzra.
 - If one of the 4 surrounding neighbors bought the field in the middle before any of the others could do so, the purchase is valid. If all the 4 neighbors come together and want to buy the field, it is split by splitting the field diagonally in both directions, and the adjacent piece going to the adjoining field owner.

-----Daf װך---109-----

MISHNA

- If one rents a field for less than 7 years, he may not plant flax, and he has no right to take any of the beams (the thick branches) of the fruitless sycamore tree. If he rents a field for 7 years, he may plant flax there during the first year, and he may take these beams during the first year.

GEMARA

- **Abaye** said, although he may not cut off these branches of the sycamore tree, he does get payment for the amount that these branches grew during the years of his tenancy. **Rava** said he does not get that either.

Daf In Review – Weekly Chazarah

- **Q:** A Braisa says, if someone rents a field and the rental term comes to an end, we assess the field for him. Now, presumably this refers to assessing the growth of the sycamore tree, and refutes **Rava!**? **A:** The Braisa means that we assess the value of the vegetables and the beets for the tenant, not the growth of the sycamore tree.
 - **Q:** Why do we need to assess vegetables and beets for him? Why can't he just uproot them and take them? **A:** The case is that the market day has not yet arrived. Therefore, he rather leave them in the ground (so that they stay fresh) and get paid for them by the owner.
- **Q:** A Braisa says, if someone rents a field and shmitta comes, we assess the field for him. Now, shmitta does not remove the field from his possession, so why do we assess it for him? Rather, it must be that the Braisa said that when *Yovel* arrives we assess the field for him. Still, the question becomes that Yovel only removes a bought field from the buyer, not a rented field which has a term!? Rather, we must say that the Braisa means, if someone *bought* a field and Yovel arrives, we assess the field for him. Presumably this means that we assess the growth of the sycamore trees for him, and the same would hold true for a tenant who is returning the rented field!? You can't answer that this refers to the vegetables (as we said earlier), because vegetables become hefker when Yovel arrives! **A: Abaye** said, **Rava** could say that Yovel is different, based on a pasuk that says that the sold item must be returned, which suggests that only what was sold must be returned, but the improvement or growth need not be returned. However, in the case of a rental, it may be that we would not assess it for him.
 - **Q:** Why wouldn't we learn the case of a rental from the case of a sale at Yovel? **A:** Yovel is a decree of Hashem, and that only applies to true sales.
- **R' Pappa** rented a field to plant aspasta. During the rental there were palm trees that grew in the land. When the rental term ended, he asked to be paid for the improvement to the land (for the value of the trees). **R' Shisha the son of R' Idi** told him, just as if you had rented a tree you would not ask for the improvement if it grew thicker during that time, the same is true now, and you are not entitled to the value of the trees. **R' Pappa** said that case is different. When one rents a tree he does so only for its fruit. However, when one rents a field, he does so for all improvement to the field, and therefore should be entitled to the improvement of a tree!
 - **Q:** Presumably this only follows **Abaye**, who says the tenant gets paid for the growth of the tree? **A:** He may even follow **Rava**. In that case he does not get the improvement, because the tree caused him no loss. In the case of **R' Pappa**, the newly grown trees prevented him from planting and plowing that part of the field. Therefore, he deserves to get paid.
 - **R' Shisha** said to **R' Pappa**, the only loss you had was not being able to plant aspasta in that area, so you only deserve the value of aspasta for that area!? **R' Pappa** said, "I could have planted expensive saffron there, so my loss is much greater than that". **R' Shisha** told him, "your answer tells me that you intended to take all your plantings with you. If so, you only deserve the value of the wood of the tree, not the value of an actual, live tree."
- **R' Bibi bar Abaye** rented a field. Over time, the soil eroded and rocks formed at the borders. Then trees grew through the rocks. When the rental term was over, he asked for payment for this improvement to the field. **R' Pappi** told him, even **R' Pappa** only felt that payment was deserved when the tenant suffered a loss due to the improvement. You have not suffered a loss (you can't plant in the area of the rocks, so the trees didn't prevent any planting), and therefore don't deserve to be paid for the improvement.
- **R' Yosef** had someone who planted vines for him and would forever work the vine and receive half the produce from them. This man died and left 5 sons-in-law, who wanted to take the place of their father in law. **R' Yosef** said, until now there was one person, now there will be 5!? Until now the one person knew that if he didn't do the work, it would not get done, but now, with 5 workers, each one will rely on the other, and the work will not get done and will cause me a loss! Therefore, he did not accept them to take the place of their father in law. He told them, if you want, I will pay you for the improvement and you then leave. If you don't agree to that, I will get rid of you without even paying you, because **R'**

Daf In Review – Weekly Chazarah

Yehuda has said that when the planter dies, his heirs can be sent away without giving them any payment.

- The Gemara says, in truth **R' Yehuda** never said that.
- There was a planter who said to the owner, “if I cause you a loss, I will leave”. He then caused a loss. **R' Yehuda** said, he leaves without getting paid for the improvements. **R' Kahana** said he does get paid for the improvements. **R' Kahana** would agree that if the planter said, “if I cause you a loss, I will leave without getting paid”, then he does not get paid. **Rava** said, such a statement would have been said as an *asmachta*, which is not *koneh*, and therefore he would still have to get paid.
 - **Q:** According to **Rava**, why is this different than the Mishna, where a farmer said “if I don't cultivate the field I will pay you”, in which case he must pay? **A:** In that case he is paying for the loss that he caused. In this case too, he would pay for the loss he caused by deducting that amount from the payment for the improvement.
- Runya was the planter for **Ravina**, and caused a loss. **Ravina** removed him. Runya complained to **Rava**, who told him that **Ravina** had every right to do so. Runya complained that he was never warned. **Rava** said, he can get rid of you even if he never warned you.
 - **Rava** follows his own view, because he says that a rebbi of children, a planter, a butcher, a mohel (or blood letter), and a town sofer, are all considered to have been warned and can therefore be told to leave without getting a warning. The general rule is, any position that causes an irreversible loss is considered to have already been warned.
- There was a planter that told the owner of the field, “Pay me for the improvement, because I want to move to EY”. **R' Pappa bar Shmuel** told the owner to pay him for the improvements. **Rava** asked, why is he entitled to the full value of the improvements? Is it only he who made the improvements, but the land had nothing to do with the improvements? **R' Pappa bar Shmuel** said, I meant that he should pay him half the value of the improvements. **Rava** asked, until now the planter worked the vines and they each got half the produce. Now, the planter will leave and the owner will have to hire another sharecropper, who will take from the owner's produce. In effect, the planter has gotten his full half, but the owner must share his half with another sharecropper!? **R' Pappa bar Shmuel** said, I meant that the planter gets paid $\frac{1}{4}$ of the value of the improvements.
 - **R' Ashi** thought to say that this means that he gets $\frac{1}{4}$ of the owner's share after he hires another sharecropper, which is actually only $\frac{1}{6}$ of the value of the improvements. This is based on **R' Manyumei the son of R' Nechumei**, who said that in a place where the planter divides equally with the owner, and where a sharecropper takes $\frac{1}{3}$, if the planter wants to leave, he gets a share of the improvement in a way that the owner should not lose anything from the amount that he was getting until then. **R' Acha the son of R' Yosef** explained that mathematically, if the planter takes a full $\frac{1}{4}$ of the improvements, and the owner then pays a new sharecropper $\frac{1}{3}$, the owner will be left with $\frac{1}{2}$ of the original amount, just as he was originally, before the planter left! **R' Ashi** complimented his sharp thinking.
 - **R' Manyumei the son of R' Nechumei** also said, an old vine that is cut off is divided equally between the planter and the owner. However, if the river washed away a vine, the planter would only get $\frac{1}{4}$ of the value.
 - There was a lender who took a vineyard as collateral for 10 years, with the plan to consume the produce each year and deduct from the loan. After 5 years the vineyard stopped producing. **Abaye** said the creditor may treat the wood as produce and take it. **Rava** said the wood is principal, and the wood should therefore be sold, and the proceeds used to purchase land from which the creditor can eat the produce for the remaining 5 years.
 - **Q:** A Braisa says, if a tree is given to a lender as collateral (and the lender ate the fruit in exchange for some decrease of the loan), and the tree died or was chopped down, neither the lender nor the borrower may benefit from the tree by burning the wood (because whichever one would do so would be consuming

Daf In Review – Weekly Chazarah

the principal of the other). Rather, they should sell the tree, use the proceeds to buy land, and the lender can eat the produce of that land. Now, presumably a vine that stopped producing is the same as if it was chopped down, because it is likely that it was chopped down only after it stopped producing, and we see that the branches are considered to be principal!? **A:** The Braisa is talking about a tree that was chopped down while still bearing fruit. However, when it is chopped after it stops bearing fruit, it itself would be considered as produce.

- **Q:** A Mishna says, if a married woman inherits old olive trees or grapevines, they should be sold and the proceeds should be used to buy a piece of land, and the husband eats the produce of that property. We see that the trees that don't produce are considered to be principal, not produce!? **A:** We should read the Mishna as saying that if they stopped producing suddenly, when it really should have still been producing, in that case it is considered to be principal. **A2:** We said that that Mishna is talking about where the trees were in a field that didn't belong to her, and that is why if the husband would use the wood it would be using her principal.

-----Daf י"א-----110-----

- 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 3rd 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 3rd 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.

Daf In Review – Weekly Chazarah

- 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.

Daf In Review – Weekly Chazarah

- 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.

-----Daf א"ק ---111-----

S’CHIR SHA’OS GOVEH KOL HALAYLA V’CHOL HAYOM

- **Rav** said, an hourly worker hired to work during the day must be paid that day. An hourly worker hired to work at night must be paid that night. **Shmuel** said an hourly worker hired to work during the day must be paid that day. An hourly worker hired to work at night must be paid that night or the following day.
 - **Q:** The Mishna said that an hourly worker hired to work at night must be paid that night or the following day. This refutes **Rav**!? **A: Rav** could say that the Mishna is covering two separate rulings - an hourly worker hired to work during the day must be paid that day, and an hourly worker hired to work at night must be paid that night.
 - **Q:** The Mishna said, a worker hired for the week, the month, the year, or the shmitta cycle, if he completes the work by day he must be paid by day and if he completes the work at night he must be paid that night or the following day. This seems to refute **Rav**!? **A: Rav** could say that it is actually a machlokes among Tanna’im. A Braisa says, **R’ Yehuda** says, an hourly worker hired to work during the day must be paid that day, and an hourly worker hired to work at night must be paid that night. **R’ Shimon** says, an hourly worker hired to work during the day must be paid that day, and an hourly worker hired to work at night must be paid that night or the following day. The Braisa says, from here we see that anyone who withholds a worker’s wages is oiver on 5 lavim and one assei – “baal taashok es rei’acha”, “baal tizol”, “baal taashok sachir ani”, “baal talin”, “b’yomo titein s’charo”, and “lo savo alav hashemesh”.
 - **Q:** Some of these only apply for day workers and some only for night workers, so how can one situation make the employer be oiver for them all? **A: R’ Chisda** said, the Braisa was just listing all the different prohibitions, but not saying that they would all apply to one person.
- **Q:** What is considered “oshek” (holding back wages) and what is considered “gezel” (robbery of wages)? **A: R’ Chisda** said, if the employer keeps telling the worker “go and come back, go and come back”, that would be “oshek”, but if he tells him “I have your wages, but I will not give it to you”, that would be “gezel”.
 - **Q: R’ Sheishes** asked, we know that if someone swears falsely regarding oshek of holding back of wages he would be chayuv to bring a korbon. The case that this would be, is a case like that of a deposit – meaning that he totally denies the claim. This means that oshek is not a case of where he postpones the worker, but rather one of where he denies!? **A: R’ Sheishes** therefore said, oshek is where the employer claims to have already paid the wages, whereas gezel is where he says “I have your wages, but I will not give it to you”.

Daf In Review – Weekly Chazarah

- **Q: Abaye** asked, we know that if someone swears falsely regarding gezel of wages he would be chayuv to bring a korbon. The case that this would be, is a case like that of a deposit – meaning that he totally denies the claim. This means that gezel is not a case of where he admits that he owes the wages, but rather one of where he denies!? **A: Abaye** therefore said, oshek would be where the employer says “I never hired you”. Gezel would be where he says “I already paid you”.
- **Q: Why did R’ Sheishes** only have the question regarding oshek, and not regarding gezel? **A: R’ Sheishes** would say, the case of gezel is talking about a case where the employer stole from his employee by refusing to pay, and when he was later brought to Beis Din, he denied ever owing the money. This answer can’t be given for the case of oshek, because the verbiage of the pasuk does not fit for that case of oshek, only for that case of gezel.
- **Rava** said, that oshek and gezel are truly one and the same. The reason they are listed as separate cases is to make the employer oiver for two laavim.

MISHNA

- Whether it is the wages of a worker, or the wages for renting an animal or keilim, the payment is subject to the requirement of “b’yomo titein secharo” and of “lo salin pe’ulas sachir”.
- When is one chayuv for the laavim? Only when the worker demanded the money and it wasn’t then given. However, if payment was not demanded, he is not oiver. If the employer told the worker to go to a storekeeper and take merchandise from him as his payment, or told him to go to a moneychanger to get payment, but the worker never ended up being paid, he is not oiver.
- If a worker makes a claim for his wages at the time they are due, he is believed to swear that he is owed the money and then get paid. If that time has passed, he would no longer be believed to swear and get paid. However, if there are witnesses that he demanded payment at the time it was due, he is then believed to swear and get paid even at a later time.
- The wages due to a “ger toshav” (a goy who has accepted upon himself not to worship avodah zarah) are subject to “b’yomo titein secharo” (which applies to a night worker), but not to “lo salin pe’ulas sachir...” (which applies to a day worker).

GEMARA

- **Q:** Our Mishna seems not to follow any shita of the following Braisa. The Braisa says, the pasuk regarding withholding wages says “mei’achecha”, which excludes a goy; “geircha”, includes a full-fledged ger; “bisharecha”, includes a ger toshav; “b’artzicha” comes to include wages for animals and keilim. From here they said, whether it is wages for workers, for animals, or for keilim, it is subject to “b’yomo titein secharo” and to “lo salin pe’ulas sachir...”. **R’ Yose the son of R’ Yehuda** says, the wages for a “ger toshav” are subject to “b’yomo titein secharo”, but not to “lo salin pe’ulas sachir...”, and with regard to wages for animals and keilim, they are only subject to “baal taashok”. Now, our Mishna doesn’t follow the **T”K**, based on his view regarding a ger toshav, and it doesn’t follow **R’ Yose**, based on his view of animals and keilim!? **A: Rava** said, our Mishna follows the Tanna of the yeshiva of **R’ Yishmael**, who taught that wages for animals and keilim are subject to “b’yomo” and to “lo salin”, whereas wages for a ger toshav are only subject to “b’yomo” and not to “lo salin”.
 - **Q:** What is the basis for the view of the **T”K** of the Braisa (that all laavim apply to all situations)? **A:** He has a gezeira shava of “sachir” “sachir”, which teaches that all apply to all cases. **R’ Yose the son of R’ Yehuda** does not darshen this gezeira shava, which is why the laavim that apply to a day worker (lo salin) do not apply to a ger toshav, to animals, or to keilim (because they are only included in the other pasuk).
 - **Q:** The pasuk that includes animals and kielim is immediately before the pasuk of “b’yomo”, so even without a gezeira shava, that pasuk should apply!? **A: R’ Chananya** taught a Braisa that says, the pasuk says one cannot allow the sun to set before wages “because the worker is poor”. This teaches that only those who can be in a situation of being wealthy or poor are included in these halachos. Therefore, animals and keilim are not included.

Daf In Review – Weekly Chazarah

- **Q:** What does the **T”K** do with this pasuk of “because he is poor”? **A:** He uses it to teach that if one has two workers to pay, preference is given to paying a poor worker over a wealthy worker.
 - **R’ Yose** will learn this from the pasuk of “lo saashok sachir ani v’evyon”.
 - The **T”K** will say one pasuk is needed to give preference to a poor person over a wealthy person, and the other pasuk is needed to give preference to a poor person over an absolutely destitute person. Both are needed. If we would only have the second pasuk we would say that the destitute person is not embarrassed to demand his money, and that may be why he comes after a regular person, but the poor person doesn’t come before a wealthy person, because the wealthy person is even more ashamed to demand his money. If we would only have the first pasuk, we would say that a poor person is given preference because he needs the money more than the rich person, and therefore we would say that the totally destitute person comes before a poor person.
- **Q:** With regard to the Tanna of our Mishna, if he holds of the gezeira shava of “sachir” then a ger toshav should be included in all the laavim, and if he does not darshen the gezeira shava, how does he know to include the payment for animals and keilim in the laavim!? **A:** He does not darshen the gezeirah shava. He learns animals and keilim from the word “itcha” in the pasuk.
 - **Q:** Why doesn’t he also learn from there to include a ger toshav? **A:** The word “rei’acha” comes to exclude a ger toshav.
 - **Q:** Why doesn’t this exclude animals and keilim as well? **A:** “Itcha” is an inclusion and “rei’acha” is an exclusion. It makes sense to include animals and keilim, because they are the money of Yidden, and to exclude a ger toshav, because that is not the money of a Yid.
 - **Q:** What does the **T”K** of the Braisa use the word “rei’acha” for? **A:** He uses it to teach that the lav regarding a day worker does not apply to a goy.
 - **Q:** We already learned that exclusion from “mei’achecha”!? **A:** One pasuk is needed to allow holding the wages of a goy, and one is needed to allow gezel of a goy. If we only were taught regarding gezel, we would say that is mutar because he may have not worked for the money. If we would only have the pasuk regarding wages, we would say it is mutar because it has not yet entered his hands.
 - **Q:** What does **R’ Yose** do with the pasuk of “itcha” (since he says that rental payments are not subject to the lav of “lo salin”)? **A:** He darshens it like **R’ Assi**, to teach that even if the worker was only hired to pick one cluster of grapes, his wages would be subject to the lav of lo salin.
 - The Tanna of our Mishna would learn this from the pasuk of “v’eilav hu nosei es nafsho”.
 - **R’ Yose** will use this pasuk to teach that a worker risks his life for his wages, and it must therefore be treated very carefully. Or, it can teach that one who withholds wages is considered as if he took a life.
 - **R’ Huna and R’ Chisda** argue – one says this refers to the life of the one who withheld the wages (he gets punished with his life), and the other says this refers to the life of the victim (he needs his wages to live). They each base their view on a pasuk.

-----Daf ק”ב-----112-----

EIMASAI BIZMAN SHETAVO...

- A Braisa says, we would think that the lav of “lo salin pe’ulas sachir” applies even when the money wasn’t demanded by the worker. The pasuk therefore adds “itcha”, which means “with your will”, which teaches that he is over if the delayed payment is based on his will, but is against the will of the worker. We would think he

Daf In Review – Weekly Chazarah

would be oiver even if he didn't have money with which to pay. The pasuk therefore adds the word "itcha" which teaches that he is only oiver if he has the money "with him". We would think he would be oiver even if he told the worker to go to a storekeeper or moneychanger to get paid. The word "itcha" teaches that he would not be oiver in that case.

HIMCHAHU EITZEL CHENVANI V'EITZEL SHULCHANI EINO OIVER

- **Q:** If the storekeeper never ended up paying the worker, may the worker go back to the employer to get paid? **A: R' Sheishes** said he may not, and **Rabbah** said that he may, as can be learned from the Mishna which says that by sending the worker to the storekeeper "he is not oiver", which suggests that he is not oiver if the worker isn't paid, but is still obligated to see that he gets paid. **R' Sheishes** said, the Mishna means he is no longer even subject to being oiver, because once he sends him to the storekeeper to get paid, he is not obligated to see that he gets paid anymore.
- **Q:** They asked **R' Sheishes**, does the lav of lo salin apply to a worker who is paid for a particular job (like a craftsman, as opposed to a worker paid based on time)? Do we say that the craftsman is koneh the improvement he makes to the keili, which makes the money owed to him considered to be a loan, and as such is not subject to lo salin, or do we say that he is not koneh the improvement to the keili, and he is owed a wage, which is therefore subject to lo salin? **A: R' Sheishes** said, the employer would be oiver for lo salin.
 - **Q:** A Braisa says he would not be oiver!? **A:** That Braisa is referring to a case where he sent the craftsman to a storekeeper or moneychanger to be paid. That is why he is not oiver.
 - **Q:** Maybe we can bring a proof to **R' Sheishes** from a Braisa. The Braisa says, if someone gives a garment to a craftsman to make, and when it is completed he picks up the garment and does not pay the craftsman before sundown, he has transgressed the lav of "lo salin". Now, if the craftsman is considered to be koneh the improvement, he is not being paid as a worker, but is rather selling the improvement, and his money would therefore not be subject to the lav of "lo salin"! **A: R' Mari the son of R' Kahana** said, the case in the Braisa is where the craftsman was doing a service of raising the hairs on the garment, which provides no improvement, and as such he is a worker rather than a person who is providing improvement.
 - **Q:** Raising the hairs softens the garment, and that softening is considered to be an improvement!? **A:** The case is that the craftsman was hired to stamp down on the cloth, where there is typically a set price for every series of stamping. That is why he is considered to be earning a wage.

SACHIR BIZMANO NISHBAH V'NOTEL...

- **Q:** Why is it that the **Rabanan** instituted that a worker can swear and take the wages from the employer? **A: R' Yehuda in the name of Shmuel** said, (this is one of the) major halachos were taught here.
 - **Q:** This is a Rabbinic takanah, not a halacha D'Oraisa, so why does **R' Yehuda** say it is a "halacha"? **A:** Rather, read it as saying that **R' Yehuda in the name of Shmuel** said, (this is one of the) major takanos were taught here.
 - **Q:** What is meant by "major"? Are we to say that there are also "minor" takanos here? **A:** Rather, **R' Nachman in the name of Shmuel** said, these are lasting takanos that were taught here (even though they uproot a halacha D'Oraisa, these takanos were made). In truth, it is the employer who should have to swear and free himself from paying. The **Rabanan** uprooted this oath and placed it on the worker, because it is the livelihood of the worker.
 - **Q:** Just because it is his livelihood we make the employer suffer a loss? **A:** The employer is happy with this takanah, because it helps him attract workers to come and work for him.
 - **Q:** Maybe we should say that the worker is happy to have the employer swear, so that more people would be willing to hire workers!? **A:** Someone who needs workers has no choice but to hire workers, and they therefore don't need to be incentivized to do so.
 - **Q:** A worker who needs work also has no choice but to hire himself out, so why do we need to incentivize them to do so? **A:** Rather, the reason we have the worker swear is because the employer is busy and may mistakenly swear falsely (unintentionally). Therefore, we put the oath on the worker.

Daf In Review – Weekly Chazarah

- **Q:** If so, why didn't they just give the wages to the worker upon demand, without the need to swear? **A:** This was done to calm the employer, who feels that he already paid.
- **Q:** Why didn't the **Rabanan** instead institute that the wages should be given to a worker only in the presence of witnesses? **A:** That would be a bother.
- **Q:** Why didn't they instead institute that the worker get paid before he begins working (and before the employer is busy)? Then there would be no reason for an oath!? **A:** They both rather wait until after the work is done (the employer doesn't always have money before then, and the worker doesn't want to worry about losing the money during the work).
- **Q:** If the **Rabanan** took the oath away from him because he is busy, why is it that when there is an argument as to the amount of money that was supposed to be paid, a Braisa says that the employer is believed? **A:** People definitely remember how much the deal was for. They can sometimes forget whether or not the amount was yet paid.
- **Q:** If this is the reason for the takanah, why is it that the worker is only believed with an oath during the time that he is supposed to get paid, but not after, which is what our Mishna says? **A:** We have a chazaka that an employer will not be oiver the lav of lo salin. Therefore, the worker is not believed to say that the employer was oiver the lav.
 - **Q:** We said that an employer is busy, so how can we assume that he paid on time? **A:** He is busy and forgets only before his obligation to pay sets in. Once it does, he focuses and remembers to pay.
 - **Q:** Are we saying that we are concerned that the worker is trying to steal? **A:** The employer has two chazakos – that he will not be oiver on lo salin, and that a worker does not delay in collecting his wages. The worker has only one chazaka – he would not steal. Therefore, the employer is believed even without having to swear.

IHM YEISH EIDIM SHETAVO HAREI ZEH NISHBAH V'NOTEL

- **Q:** Why is it better when he has witnesses that he asked for the money after it was already due? Right now he is in Beis Din asking for the money after it was due!? **A:** **R' Assi** said, the Mishna means he has witnesses that he asked for the money when it was due (not after that time). In that case, even later on he is believed to swear and take his wages.
 - **Q:** Maybe the employer paid after he was asked for the money? **A:** **Abaye** said, the case is that the worker asked for the money at the end of the time that it was due, which shows that the employer did not pay during the time it was due.
 - **Q:** Does this mean that the worker will be believed forever? **A:** **R' Chama bar Ukva** said, he is believed for an additional day.

-----Daf ל"ג-----113-----

MISHNA

- If a lender wishes to take collateral on a loan (that is due and has not been paid), he must do so in Beis Din. He may not enter the borrower's house to take the collateral, because the pasuk says "bachutz taamad". If the borrower had 2 keilim that together equaled the value of the loan, he may take one and leave the other one (which is needed at that time by the borrower). For example (if he took a pillow and a plow), he returns the pillow at night and the plow by day. If the borrower dies, he need not return the items to the heirs. **R' Shimon ben Gamliel** says, even to the borrower himself, the items only need to be returned for 30 days. From 30 days and on, he may sell them in front of Beis Din and use the money to pay off his loan.

GEMARA

- **Shmuel** said, a shaliach of Beis Din may grab something from the borrower in the street and give it to the lender as collateral, but he may not enter the house of the borrower to take collateral for the lender.
 - **Q:** Our Mishna said that the lender may not take collateral, which suggests that Beis Din would even be allowed to take from the borrower's house!? **A:** **Shmuel** would say, the Mishna should read as saying

Daf In Review – Weekly Chazarah

that the lender may not even take something from the borrower in the street, except in front of Beis Din (as opposed to Beis Din, who may do that, but neither of them may enter the borrower's house to take collateral).

- This reading of the Mishna makes sense as well, because the Mishna then says that “he may not enter the borrower's house to take collateral”. Who is the “he”? It can't refer to the lender, because the earlier part of the Mishna says he can't even take on the street!?! Rather, it must refer to the shaliach of Beis Din, and we see that he also may not enter the borrower's house.
 - This is no proof. The Mishna may mean that the lender may not even take from the borrower in the street, only in Beis Din, so that he not come to enter into his house to take collateral. However, Beis Din may send a shaliach even into the borrower's house to take collateral.
- **Q: R' Yosef** asked, the pasuk says that one may not take a millstone as collateral, which suggests that other items could be taken from the borrower's house. The pasuk also says that one may not take the garment of a widow as security. This suggests that he may take another borrower's garment (even from the house) as collateral. Now, this can't permit the lender to enter the borrower's house, because the pasuk says that he may not. Rather, it must refer to the shaliach of Beis Din, and we see that he may enter the borrower's house!?! **A: R' Pappa the son of R' Nachman** (or of **R' Yosef**) explained, it may be that both pesukim refer to the lender, and the pesukim are making him be over two laavim if he goes into the house and takes collateral.
- **Q:** A Braisa says, from the fact that the pasuk says “bachutz taamod” we would know that we would instead have to wait for the borrower to bring the collateral outside. Why does the pasuk then have to say that the borrower should bring it out? It is to include a shaliach of Beis Din in this halacha. Now, presumably this means that the shaliach of Beis Din is treated like the borrower, and may therefore enter the house as well!?! **A:** The Braisa means that the shaliach is treated like the lender, and he may therefore *not* enter the borrower's house.
- **Q:** A Braisa says that the pasuk that says “if you shall take the garment of your friend as collateral” is referring to a shaliach of Beis Din, who may even enter the borrower's house to take collateral!?! **A:** It is actually a matter of machlokes among Tanna'im. There is one Braisa that says that a shaliach of Beis Din may not enter the house of the borrower to take collateral, and there is another Braisa that says that a shaliach of Beis Din may enter the house of the borrower to take collateral, but should not take items needed for food preparation. We see that the statement of **Shmuel** is actually a machlokes among the Braisos.
 - The second Braisa continues and says, when taking collateral, the lender must leave over a bed and another bed with a felt covering if the borrower is a wealthy person, and he must leave over a bed and another bed with a mat if the borrower is a poor person. He must only leave these things for the borrower himself, and need not worry about his wife and children. The same way we make this arrangement for a borrower, we make the same arrangement in the case of one who is chayuv to pay for an eirechin vow.
 - **Q:** The case of eirechin is actually where we are taught to make an arrangement for the one who made the vow. If anything, we learn the case of a borrower from the case of eirechin!?! **A:** Read the Braisa as saying, that just as we make an arrangement for eirechin, we also make an arrangement for a borrower as well.
 - **Q:** The Braisa said we must leave 2 beds for the borrower. Who is this second bed for? It can't be for his wife or children, because the Braisa said that he does not need to leave anything for them!?! It must be for him, but why does he need two beds? **A:** One bed on which to eat, and one on which to sleep. We learn that this is necessary from **Shmuel**, who said it is absolutely necessary (for health reasons) for someone to walk 4 amos between eating bread and going to sleep. Having 2 beds will force the person to do this.
 - A Braisa was taught before **R' Nachman**, that said that just as we make an arrangement for eirechin, we also make an arrangement for a borrower as well. **R' Nachman** said, if we can sell

Daf In Review – Weekly Chazarah

the borrower's items to pay for the loan, do you think we would have to make an arrangement for him!?

- The one who taught the Braisa made the statement according to **R' Shimon ben Gamliel**, who said that we sell the items of the borrower. That was the basis of **R' Nachman's** question.
- **Q:** Maybe even according to **R' Shimon ben Gamliel** we may only sell the items that are not suitable for his status (they are luxuries), but may not sell the essential items? **A:** He cannot hold of that logic, because we find elsewhere that **Abaye** says that he holds that all Yidden are given the status of princes. If so, everything they have would be considered suitable for them (and would not be unnecessary luxuries). We see this when **Abaye** said, **R' Shimon ben Gamliel, R' Shimon, R' Yishmael and R' Akiva** all say the same concept that all Yidden are considered to be "princes". **R' Shimon ben Gamliel** said that raw beans are not muktzeh for anyone even though only the wealthy and royal families keep ravens (who eat this) as pets. **R' Shimon** says that all Yidden may smear rose oil on their wounds on Shabbos since princes use it even during the week and even not on their wounds. **R' Yishmael and R' Akiva** say that no Yid may be forced to sell his expensive coat and to wear a cheaper one to be able to pay back his creditors, because all Yidden are considered fit to wear such an expensive coat.
- **Q: R' Chaga** asked, why can't the lender tell the borrower "I do not have to support you (and leave you over items to live with)"? **A: Abaye** said, the pasuk says "ulecha tihyeh tzedaka", which makes it the responsibility of the lender.

-----Daf 717-----114-----

- **Q:** What is the halacha with regard to leaving over for a borrower the items that he needs? Do we have a gezeirah shava from eirechin, and just as by eirechin we leave over for the one who owes the money, the same would be for a borrower, or do we not darshen this gezeira shava? **A:** We find that **Ravin** asked the question whether one who promised money to hekdesch (not with eirechin) is left over the items he needs to live. **R' Yaakov in the name of Bar Pada, and R' Yirmiya in the name of Ilfa** said that we have a kal v'chomer from the case of a borrower – if a borrower, who is given back the collateral when he needs it, is still not left over the items that he needs, then in the case of one owing money to hekdesch, where he is not given the collateral back, for sure he does not get left over with the items that he needs. (Clearly they hold that a borrower is not left over with what he needs). **R' Yochanan** said, the pasuk of "neder b'erkicha" teaches that the one who owes money to hekdesch is treated like the one who promised with eirechin.
 - **Q:** Why don't we say that we do make an arrangement for a borrower (and leave him over what he needs) based on a kal v'chomer from eirechin – with eirechin the collateral need not be returned and yet we make an arrangement for him, so with a borrower, where the collateral must be returned, for sure we would make an arrangement for him!? **A:** The pasuk regarding eirechin says "v'ihm mach hu mei'erkecha", which comes to exclude a borrower from this halacha.
 - **Q:** Why don't we reverse the kal v'chomer and say, if we must return the collateral to the borrower even though we don't make an arrangement for him, then we should definitely have to return it by eirechin, where we do make an arrangement!? **A:** The pasuk regarding returning the collateral to the borrower says "he will sleep with his garment and he will bless you". This excludes hekdesch, which doesn't need to be blessed (Hashem doesn't need our bracha).
 - **Q:** The pasuk tells us to bentch after we eat, which shows that we should bless Hashem!? **A:** Rather, the pasuk says "ulecha tihyeh tzedaka", which teaches that only one who may need tzedaka is required to return the collateral. This excludes hekdesch.
 - **Rabbah bar Avuha** found Eliyahu when he was in a non-Jewish cemetery, and asked him whether we make an arrangement for a borrower. Eliyahu said we darshen a gezeira shava from eirechin, which teaches that we do make an arrangement for a borrower. He then asked Eliyahu how, as a Kohen, he

Daf In Review – Weekly Chazarah

was in a cemetery. Eliyahu said, do you not learn Seder Taharos? There is a Braisa there in which **R' Shimon ben Yochai** darshens a pasuk to teach that non-Jewish corpses do not give off tumas ohel. **Rabbah bar Avuha** answered, "I can't master the 4 common Sedarim, and you expect me to master all six!?" Eliyahu asked, "why can't you master them?" **Rabbah** said, "I have financial difficulties". Eliyahu took him to Gan Eden and told him to take off his coat and take some of the leaves that were there. When they were leaving he heard someone saying "who is using his reward of Olam Habbah like **Rabbah bar Avuha**?" Hearing that, he threw the leaves away. Still, his coat had the smell of Gan Eden. He sold the coat for 12,000 dinars and gave the money to his sons-in-law.

- A Braisa says, the pasuk says "if he (the borrower) is a poor person, do not lie down with his collateral". This suggests, that if the borrower was wealthy, it would be permitted to do so.
 - **R' Sheishes** explained, this does not mean that the lender may use the collateral of a rich borrower. Rather, it means that if the borrower is wealthy, the lender need not return the collateral to him at night.
- A Braisa says, if someone lends money, he may not take collateral from the borrower, and he does not need to return the collateral to the borrower, and he is oiver on all the laavim on this subject.
 - **R' Sheishes** explains, the Braisa means that a lender may not go into the house of a borrower to take collateral. If he did, he must return the collateral. If he does not return it, he will be oiver on all the laavim on this subject.
 - **Rava** explains, the Braisa means that a lender may not go into the house of a borrower to take collateral. If he did, he must return the collateral. This is referring to taking collateral not at the time that the loan was given. However, with regard to taking collateral at the time of the loan, he would not be required to return it. The Braisa then refers back to the first case and says that the lender would be oiver on all the laavim.
- **R' Shizbi** said a Braisa in front of **Rava** that says, when the pasuk says that the collateral should be returned "until the sun goes down", that is referring to collateral that is pajamas. When the pasuk says it should be returned to him "as the sun goes down" that is referring to daytime clothing. **Rava** asked, this seems to be reversed!?! Why would he need pajamas during the day ("until the sun goes down") and daytime clothing at night ("as the sun goes down")? **R' Shizbi** asked, should I delete this Braisa? **Rava** said, no. Rather, say that when the pasuk says that the collateral should be returned "until the sun goes down", that is referring to collateral that is daytime clothing. When the pasuk says it should be returned to him "as the sun goes down" that is referring to nighttime clothing.
- **R' Yochanan** said, if the lender got collateral and gave it back to the borrower for him to use, and the borrower then died, the lender may take it away from the heirs.
 - **Q:** A Braisa says, **R' Meir** said, if we must return the collateral, why does it even pay to take it back after returning it to the borrower? It is so that the loan should not be cancelled at shmitta, and so that it not be treated as moveable property in the hands of the heirs. Now, it seems that he may keep it from the heirs only because he took it back as collateral. This seems to refute what **R' Yochanan** said!?! **A:** **R' Ada bar Masna** said, the Braisa should be understood as follows. **R' Meir** asked, since he must return the collateral to the borrower, why should he even bother taking it in the first place? The answer is, so that the loan should not be cancelled at shmitta, and so that it not be treated as moveable property in the hands of the heirs.