



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

### Bava Basra Daf Vuv

- **Q:** If a lender asks for payment after the due date, and the borrower answers that he already paid before the due date, is he believed? Do we say that if he was lying he could have simply said that he paid at the due date and would have been believed, so by saying that he paid before the due date he is also believed, or do we say that a miguy can't be said when it opposes a chazaka?
  - **Q:** Maybe we can answer based on the Mishna. The Mishna said, with regard to building a wall 4 amos high, there is a chazaka that the neighbors paid their share, unless there is proof that they did not. Now, this can't be talking about where the builder asked for payment after the time it was due and the second neighbor tells the neighbor who built the wall that he paid him when the wall was built and the money was due, because that would be obvious that he is believed (that payment would be at its proper time). Rather, it must be that he claims to have paid before the wall was completed, and we see that he is believed, because we do say a miguy even when it goes against a chazaka that people do not pay before the due date of a loan!? **A:** This case is different, because he becomes obligated to pay for each row of stones as it is built (and he is claiming that he paid for the part that was already built, not more), so it is never considered to be "before the due date".
  - **Q:** Maybe we can answer based on the Mishna. The Mishna said, with regard to the wall higher than 4 amos, there is a presumption that the neighbor did not pay, unless he brings proof that he did. Now, this can't be talking about where the builder demanded payment after it was built (which is after the time that payment was due) and the second neighbor tells the neighbor who built the wall that he paid him when the wall was built (i.e. at its proper time), because why wouldn't he be believed (that payment would be at its proper time)!? Rather, it must be that he claims to have paid before the wall was completed, and we see that he is not believed, because we do not say a miguy when it goes against a chazaka!? **A:** This case is different. It may be that he is not believed in this case because he says to himself "who says the **Rabanan** will make me pay for this part of the wall", and that is why he has likely not paid for it.
  - **Q: R' Acha the son of Rava** said to **R' Ashi**, maybe we can answer based on another Mishna. The Mishna says, if a person says to another "you owe me a maneh" and the other person says "yes I do", and the next day the lender said "pay me that maneh", if the borrower then says "I gave it to you after our conversation yesterday", he is believed. If he says "I don't owe you anything", he is not believed. Presumably the case of "I gave it to you" means he says he paid it back when it was due, and the case of "I don't owe you anything" is talking about where he says I paid you back before it was due, and we see that in this case he is chayuv, which means that we don't say a miguy when it goes against the chazakah!? **A:** The case of "I don't owe you anything" is where he says "I never owed you anything". In that case he cannot be believed to say that he paid, because when someone says he never owed something, he is clearly admitting that he never paid it either.

SAMACH LO KOSEL ACHEIR MIGALGILIN ALAV ES HAKOL...

- **R' Huna** said, if he placed a second wall next to only half of the first wall, he will anyway be chayuv for the entire wall. **R' Nachman** said, he would only be chayuv for the part of the wall that he placed a second wall next to.
  - **R' Huna** would agree that if the second wall is really just an extension of the corner of his house, that he only pays for the piece opposite that extension. **R' Nachman** would

- agree that if he placed big beams along the wall he would have to pay for the entire height of the wall, because we can be sure that he will eventually build on it.
- **R' Huna** said, the fact that a wall of more than 4 amos was built with sockets for beams facing the neighbor does not prove that the neighbor paid a share of that wall. This is true even if the builder of the wall lined the sockets with wood, for the protection of beams to be placed inside. This is so, because the builder can say "I made these sockets for him without ever being paid so that when he does pay I will not have to weaken the wall by drilling holes then".
  - **R' Nachman** said, if one has established a right to lay light beams on his neighbor's wall, that does not establish a right for heavy beams. However, if he has an established right for heavy beams, he also has an established right for light beams. **R' Yosef** said, that even in the first case he has established a right for heavy beams as well. **Others** say that **R' Nachman** said like **R' Yosef**.
    - **R' Nachman** said, if one has established a right to allow water to drip from his entire roof onto his neighbor's chatzer, he also has an established right to build a gutter which would make the water go onto only one area of the chatzer. However, if he has an established right to allow the water into one area, that does not establish a right to allow the water to drip off his entire roof onto the chatzer. **R' Yosef** said, that even in the second case he has established a right to allow for dripping off of the entire roof. **Others** say that **R' Nachman** said like **R' Yosef**, but says that he would not have established a right to allow the water from a roof made of willow branches. **R' Yosef** said, even this is an established right. In fact, **R' Yosef** paskened this way in practice.
    - **R' Nachman in the name of Rabbah bar Avuha** said, if someone rents an apartment in a large house to a tenant, the tenant may use the beams that stick out of the walls and the holes in the walls up to 4 amos from his apartment. In a place where the custom allows, he may also make use of the thickness of the top of the wall. However, he may not use the wall facing the garden at the entrance of the building. **R' Nachman** himself said, he may even use the wall facing the garden, but he may not use the yard behind the building. **Rava** said, even this yard may be used by the tenant.
    - **Ravina** said, with regard to a beam that was placed for a hut made for shade, and leans on a neighbor's wall, if it remains there for up to 30 days, it does not create a chazaka of a right to leave the beam there permanently. If it is there for longer than that, there is a chazaka. If the hut was for the mitzvah of succah, then if it is there for up to 7 days it does not create a chazaka. If it remains for more than 7 days, it does create a chazaka. If he attaches the beam to the wall with cement, it becomes a chazaka immediately.
  - **Abaye** said, if there are two houses facing each other from opposite sides of the reshus harabim, each of them builds a fence for half the roof (not opposite each other) and they extend it past the mid-point a little bit.
    - **Q:** Why is it that this is only when they are on opposite sides of the reshus harabim? Why wouldn't this apply if they were on opposite sides of the reshus hayachid? **A:** In the case of a reshus harabim, we would think that one homeowner can tell the second owner that since he must anyway erect a full fence on his roof to create privacy from the reshus harabim, the first owner should not have to erect any fence. He therefore teaches that the second owner can respond, that he only needs privacy from the reshus harabim during the day, but needs privacy from the house across the street at night as well. That is why he can force the owner across the street to erect a fence. Also, he can tell him that the public in the reshus harabim can only see him when he stands on his roof, not when he sits, whereas the roof across the street can see him even when he sits. Also, the public must make a conscious effort to see him on the roof, whereas from the roof across the street, there is an issue of privacy even if the other owner does not make a conscious effort to look.
    - **Q:** It seems obvious that each would have to build half the fence, so why does **Abaye** need to specify? **A:** The case is where one of them built the fence on half his roof before they went to Beis Din. Now the other owner tells him, "I will pay for the second half of the fence, but put it on your roof". We would think he can fulfill his obligation by doing that. **Abaye** is teaching that the first owner can say that he doesn't want to have the entire fence on his roof, because the weight can damage his building.

- **R' Nachman in the name of Shmuel** said, if there is a roof that overlooks another's chatzer, the owner of the roof must build a fence of 4 amos. However, between 2 roofs that are adjacent to each other, no fence is necessary. **R' Nachman** himself said, the adjacent roofs don't need a fence of 4 amos, but they do need a fence of 10 tefachim.
  - **Q:** What is the purpose of such a small fence? It doesn't help for privacy unless it is 4 amos, and if it is to mark the boundary, then a marker should be sufficient!? If it is to stop animals from going from one roof to another, a fence of less than 10 would be sufficient as well!? **A:** The purpose is to mark the boundary and prevent one owner from going onto the roof of the other. However, if only markers were used, the trespassing owner could always claim that he mistakenly stepped over the marker. With a fence of 10 tefachim, no such mistake can be claimed.
  - **Q:** A Braisa says, if a person's chatzer is higher than his neighbor's roof, he need not pay for a fence to prevent him from looking onto the roof. Now, this seems to say that no fence at all would be needed, even a fence of 10 tefachim, and therefore refutes **R' Nachman**!? **A:** The Braisa means that he need not pay for a fence of 4 amos, but he would certainly have to pay for a fence of 10 tefachim.
- If there are two adjacent chatzeiros, one higher than the other, **R' Huna** said, the owner of the lower chatzer must build a wall on his own up to the height of the higher chatzer, and from that point and higher, the other owner must share the cost. **R' Chisda** said both owners share the cost of the entire wall.
  - There is a Braisa that clearly says like **R' Chisda**.