



Daf In Review – Weekly Chazarah

Maseches Bava Metzia, Daf ק"ט – Daf קטו

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

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- A Braisa says, the pasuk says that the lender may not enter “his house” (of the borrower) to take a collateral. This teaches that he may take collateral from the house of the guarantor of the loan. Another drasha with this pasuk is that a *lender* cannot enter the house of a *borrower* to take collateral. However, if someone is owed money for having worked for him, or for having hosted him, or painted for him, the creditor may enter the house of the one who owes him money to take collateral. However, if this debt was then established into a loan, he can no longer go into the house to take collateral, based on the pasuk that says “mashas me’umah”.

MISHNA

- One may not take collateral from a borrower who is a widow – whether she is poor or wealthy, because the pasuk says “you shall not take as security the garment of a widow”.

GEMARA

- A Braisa says, **R' Yehuda** says one may not take collateral from a borrower who is a widow – whether she is poor or wealthy. **R' Shimon** says, if she is wealthy, the lender may take collateral from her. If she is poor, he may not, because he would have to return it to her every day, and this would give her a bad name with her neighbors, who will see a man going into her house every day.
 - **Q:** Does this mean to say that **R' Yehuda** does not darshen the reason behind the pasuk whereas **R' Shimon** does? We find a Braisa where they say exactly the opposite!? A Braisa says, based on the pasuk that says “v'lo yarbeh lo nashim”, **R' Yehuda** says a king may have many wives as long as they don't turn him away from Hashem. **R' Shimon** says, that if a woman will turn him away from Hashem he may not marry her even if she would be his only wife! Rather, the pasuk means, that even if they are all as good as Avigayil, he may not marry many wives. In this Braisa the shitos are reversed!? **A:** In truth **R' Yehuda** does not darshen the reason for the pesukim. The reason he does so regarding a king's wives is because the pasuk says “he may not have many wives *and shall not turn away from Hashem*”. The Torah itself is giving the reason. **R' Shimon** says we always darshen the reason for the pasuk. From the fact that the pasuk here gives the reason explicitly, it must be coming to teach that even one wife who turns him away from Hashem would not be allowed.

MISHNA

- If a lender takes a mill as collateral, he is oiver on the lav and is chayuv for taking two keilim, based on the pasuk of “lo yachavol reichayim varachev”. This is not limited to millstones, rather a lender would be chayuv for taking anything that is used in food preparation, based on the pasuk of “ki nefesh hu choveil”.

GEMARA

- **R' Huna** said, if one takes only the lower millstone as collateral, he will get two sets of malkus – one for the fact that he took a “reichayim” and one for “ki nefesh hu choveil”. If he takes the lower and the upper millstones he would get 3 sets of malkus – for “reichayim”, for “rachev”, and for “ki nefesh hu choveil”. **R' Yehuda** says, if he takes only the lower stone he is chayuv for one, and if he takes only the upper stone he is chayuv for one. If he takes both, he would be chayuv two sets of malkus. He would not be chayuv for “ki nefesh hu choveil”, because that is an issur for other keilim of food preparation.
 - **Q:** Maybe we can say that **Abaye and Rava** argue in this machlokes of **R' Huna and R' Yehuda**. We have learned that **Rava** said, if one ate from a Korbon Pesach: partially roasted, *or* cooked, he gets 2 sets of

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malkus (one for the general lav of “only roasted over fire”, and one for the specific lav against eating it partially roasted or cooked). If one eats a piece that is only partially roasted, *and* a piece that is cooked, he is chayuv 3 sets of malkus. **Abaye** said, one does not get malkus for the lav of “only roasted over fire”, because it is a “general lav”. Maybe we can say that **Abaye** holds like **R’ Yehuda** and that **Rava** holds like **R’ Huna**? **A: Rava** would say that he can even hold like **R’ Yehuda**, because **R’ Yehuda** holds that way in that case only because the pasuk of “ki nefesh hu choveil” is needed to teach regarding other items of food preparation. However, regarding Korbon Pesach, the pasuk of “ki ihm tzli eish” is clearly referring to the other issurim of partially roasted or cooked, and therefore it must be coming to give an additional lav. **Abaye** would say that he can even hold like **R’ Huna**, because **R’ Huna** holds that way there, because the pasuk of “ki nefesh” is extra, and therefore applies to millstones as well as everything else. However, regarding Korbon Pesach, the pasuk of “ki ihm tzli eish” is not extra, because it is needed for the drasha of a Braisa that one is only assur for eating partially roasted at a time when there is a mitzvah to eat it roasted.

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- 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

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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.

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- **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.**

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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

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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

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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.

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MISHNA

- If there is an olive press built into a rock and there is a garden above it, and the garden fell into the press, the owner of the garden may go and plant seeds on the floor of the press until the owner of the press makes a dome over his olive press.
- If a wall or tree fell into the reshus harabim and caused damage, the owner is patur from paying for the damage.
 - If the owner was given a time within which to cut down his tree or knock down his wall and they fell down during the time period, he is patur, but if it fell after the time period, he is chayuv.
- If a wall fell into a neighboring garden, and the owner of the garden asked the owner of the wall to remove the stones of the wall from his garden, and the owner of the wall said "you can keep them", the owner of the garden need not accept that. If the owner of the garden did accept the gift of the stones and the owner of the wall then said "I will pay for the expenses of removing the stones and will take them back", we do not listen to him.
- If a person hired a worker to gather straw for him, and when the worker asked for his wages the employer said "keep the straw as your wages", we do not listen to him. If the worker accepted the straw as his wages and the employer then said "here is money for your wages and I will take the straw", we do not listen to him.

GEMARA

- **Q:** How much of the roof of the press has to have fallen down for the Mishna's ruling to apply? **A: Rav** said, only if the majority fell down, and **Shmuel** said, even if only 4 tefachim fell down.
 - **Rav** said, if only 4 tefachim fell, he would only be allowed to plant an area that size in the press, because a person can be expected to plant part of the garden above and part below. **Shmuel** said, a person is not expected to do that.
 - This machlokes between **Rav and Shmuel** seems to be the same as the machlokes they had on the previous Mishna. The Gemara says that both of the machlokes were necessary to be taught. If we would only have the case of the upper floor apartment and lower floor apartment, we would say that only there **Shmuel** said even a 4 tefachim piece is big enough to allow him to move downstairs, because a person can't be expected to *live* in two places, but he could be expected to plant in two places. Therefore he had to say that he argues with **Rav** regarding the garden as well. For the reverse reason we would think that **Rav** would agree with **Shmuel** in the case of the house. That is why **Rav** has to say that he argues in the case of the house as well.

NASNU LO ZMAN

- **Q:** How much time does Beis Din give a person to cut down a tree or knock down a wall? **A:** Thirty days.

MI SHEHAYA KOSLO...

- **Q:** Since the Mishna gives the case of where the owner of the wall offers to pay for the expenses of removal of the stones in exchange for taking back the stones, we are obviously talking about a case where the stones were already removed. This suggests that if the stones were not yet removed, the owner of the garden would not be allowed to keep the stones. Why is that so? Why isn't his field koneh for him, based on the statement of **R' Yose the son of R' Chanina**, who said that a person's chatzer is koneh for him even without his knowledge!? **A:** That

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statement is only true when the person giving the item intends for it to be given. However, in the case of the Mishna, where the owner of the stones originally told the owner of the field to keep them, he didn't truly mean to give them to him, rather he intended to stall having to remove the stones from the field.

HASOCHER LAASOS IMO B'TEVEN...

- This case seems to be essentially the same as the case of the stones in the garden. The Gemara says, that both cases are necessary to be taught. If we would only say the case with the stones in the garden, we would say in that case when the owner of the stones says he is giving the stones to the owner of the garden we do not have to listen to him, because the owner of the garden need not accept a gift. However, in the case of the worker who is owed his wages we would think we must listen to the employer who wants to pay with straw instead of money. That is why we have to give the second case. If we would only have the second case, we would say that only in this case once the worker accepted the straw we would not let the employer back out, because he owes him wages. However, in the case of the stones in the garden, since no money is owed, maybe we would allow the owner of the stones to change his mind. That is why we need to give the first case as well.

EIN SHOMIN LO

- **Q:** A Braisa says that the worker does have to accept the straw as payment!? **A: R' Nachman** said, the Mishna is discussing where the worker gathered the straw in the employer's property, and the Braisa is discussing where he did so in someone else's property.
 - **Q: Rava** asked **R' Nachman**, in either case the one who hired him is responsible to pay him, so why would the halacha be different? **A: R' Nachman** answered, the Braisa is discussing where the employer told him to gather straw of hefker, which he was to then bring to the employer to be koneh. In that case he can tell him to keep the straw as his wages.
 - **Q: Rava** asked **R' Nachman**, a Braisa says if a worker was hired for a specific task and during his work he found a lost item and picked it up, it is his to keep. However, if he was hired for the day and found an item and picked it up, the item would belong to the one who hired him. This would suggest that the employer is certainly koneh the straw in this case and he should therefore have to pay with money!?!? **A:** Rather, **R' Nachman** said, the Mishna is discussing where the worker was hired to pick up the straw and be koneh it for the employer, whereas the Braisa is discussing where the worker was hired to watch straw of hefker on behalf of the employer, but not to be koneh it for him.
 - **Rabbah** said, it is actually a machlokes among Tanna'im whether watching items of hefker effectuate a kinyan. A Mishna says, the people who were hired to watch over the sefichin (produce that grew on its own without any intentional planting) of barley and wheat during Shmitta that was needed to assure there would be barley for the Omer and wheat for the Shte Halechem, would get paid from the withdrawals of the shekalim as well. **R' Yose** says, if one wanted to, he was allowed to volunteer to be this watchman without getting paid (because even if they are koneh the produce, they will give it over to the tzibbur wholeheartedly). The **Chachomim** said to him, you agree that these korbanos must come from the tzibbur, so we cannot accept an individual's donation of time for them (we are concerned that they may take the wheat and barley to prevent others from taking them on shmitta, and through that act will be koneh them, in which case it will not belong to the tzibbur, however, if they were employees of the tzibbur, their act of acquisition would be a direct acquisition of the tzibbur, not themselves personally). Now, presumably the machlokes is that the **T"K** holds that watching items of hefker effectuate a kinyan, and therefore, if the people are paid the produce will be considered to belong to the tzibbur and if not, not, whereas **R' Yose** holds that simply watching does not create a kinyan, and therefore when the tzibbur goes and brings the produce it then becomes theirs, and there is no kinyan before then.
 - **Rava** said, this is not the explanation of the machlokes. Rather, it may be that all agree that watching does create a kinyan, and the machlokes is that the **Rabanan** hold that if we don't pay him we are concerned that he will not give it over wholeheartedly to the tzibbur, whereas **R' Yose** is not concerned about that.

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- **Others** say that **Rava** said, it may be that all agree that watching hefker does *not* create a kinyan. The **Rabanan** holds we must pay the person so that people then believe it belong to hekdesch and not come and try and take it by force, whereas **R' Yose** holds that we are not concerned for that.
 - **Ravin in the name of R' Yochanan** gave this explanation as well.

MISHNA

- With regard to one who puts animal waste out into the reshus harabim, as soon as the person puts it out, another person must be ready to take it and use it for fertilizer (it may not be left out in the reshus harabim).
- One may not soak clay or make bricks in the reshus harabim, but one may knead clay in the reshus harabim (to be used for immediate building), but not to be used to make bricks.
- Regarding one who builds in the reshus harabim, as soon as one person brings the bricks to be used, the other person should be ready to take them and build with them.
- In all these cases, if he caused damage, he must pay for the damage he caused. **R' Shimon ben Gamliel** said, a person may even prepare for work in the reshus harabim for 30 days in advance (and he would not be chayuv for any damage that he may cause).

GEMARA

- **Q:** Should we say that the Mishna does not follow **R' Yehuda**? Because **R' Yehuda** says in a Braisa that in the fertilizing season a person is allowed to put his fertilizer out in the reshus harabim for people to trample, and he may even leave it there for 30 days!? **A:** The Mishna may follow **R' Yehuda**. Although he says a person is allowed to do that, he would agree that if it did damage, the person would be chayuv.
 - **Q:** We find that **R' Yehuda** says a person is patur if his “Ner Chanukah” started a fire, because he had permission to put it at the entrance to his house or store. Presumably this means he had permission from Beis Din, and we see that **R' Yehuda** says that if a person has permission he would be patur from any damage he causes!? **A:** In that case he is patur because he has permission to put it there based on a *mitzvah*, not just permission from Beis Din.
 - **Q:** A Braisa says, if the Chachomim gave permission for someone to put something into the reshus harabim and that thing caused damage, he would be chayuv. **R' Yehuda** says he would be patur. We see that **R' Yehuda** says a person would be patur in such a case!? **A:** It must be that our Mishna does not follow **R' Yehuda**.
 - **Abaye** said, **R' Yehuda, R' Shimon ben Gamliel, and R' Shimon** all hold that whenever someone does something with the permission of the **Rabanan**, and doing so caused damage, he will be patur.
 - We see **R' Yehuda** holds this way based on the Braisa just quoted.
 - We see that **R' Shimon ben Gamliel** holds this way based on our Mishna where he says that one may keep his building materials in the reshus harabim for 30 days and would be patur for any damage that it causes.
 - We see that **R' Shimon** holds this way based on a Mishna in which he says that if someone follows the guidelines of the **Rabanan** when he sets up an oven (with the required amount of plaster to prevent damage from the heat) and it causes damage, he would be patur.
- A Braisa says, if the person who mines the stone from the mountain gives it to the one who will smooth it, the smoother will be chayuv for any damage. Once he gives it to the donkey driver to transport, the donkey driver becomes chayuv. Once he gives it to the one who will carry it, the carrier becomes chayuv. Once he gives it to the builder, the builder becomes chayuv. Once the builder gives it to the one who lays the bricks, the one who lays the bricks becomes chayuv. However, if the stone was set in place in the building, and it then fell and caused damage, all the people become chayuv.
 - **Q:** Another Braisa says that only the last one is chayuv!? **A:** The first Braisa is where all these people accepted together to get the job done. Therefore, they are all chayuv together. The second Braisa is discussing where they were all hired separately.

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MISHNA

- When there are 2 neighboring gardens, with one garden elevated at a higher level than the other, and there are vegetables that grow out of the vertical ground between them, **R' Meir** says they belong to the upper garden (they are growing from its earth) and **R' Yehuda** says they belong to the lower garden (they grow in its airspace).
 - **R' Meir** explains, if the upper garden takes its earth away, there cannot be any vegetables growing! **R' Yehuda** said, if the lower garden fills up his garden with earth (to the height of the other garden) there also cannot be any vegetables! **R' Meir** said, since both of them can prevent them from growing, we look to see where they get their nourishment from (and therefore they belong to the upper garden).
 - **R' Shimon** says, any vegetables that can be reached by the hand from the upper garden belong to the upper garden. The rest belong to the lower garden.

GEMARA

- **Rava** said, with regard to the roots of the vegetables all would agree that they belong to the upper garden. The machlokes is with the leaves that grow out of the earth. **R' Meir** says the leaves follow the roots, whereas **R' Yehuda** says that is not an automatic rule, rather each part of the plant is determined separately.
 - There is this machlokes in a Braisa as well. The Braisa says, if something grows from the trunk or roots, **R' Meir** says it belongs to the owner of the land, not to the owner of the tree. **R' Yehuda** says, if it grows from the trunk it belongs to the owner of the tree and if it grows from the roots it belongs to the owner of the land. .
 - They argue about this regarding orlah as well. **R' Meir** says that when it grows from the trunk or the roots it is subject to orlah, whereas **R' Yehuda** says it is not subject to orlah unless it grows from the roots.
 - These 2 cases are necessary. If we would only have the first case, we would say that **R' Yehuda** holds that way regarding monetary questions, but for questions of issur (like orlah) maybe he follows **R' Meir**. If we would only have the second case, we would say that **R' Meir** only holds that way there, but would agree with **R' Yehuda** in monetary cases.

AMAR R' SHIMON KOL SHEHA'ELYON YACHOL LIFSHOT...

- In the yeshiva of **R' Yannai** they said, this is as long as he does not need to stretch to reach the vegetables.
- **Q: R' Anan** (or **R' Yirmiya**) asked, what if he can reach the leaves, but not the roots, or visa-versa? Who would they belong to? **TEIKU**.
- **Efraim** the sofer, the talmid of **Reish Lakish** said in the name of **Reish Lakish**, that the halacha follows **R' Shimon**. When **R' Shimon's** halacha was reported to Shvor Malka, he praised **R' Shimon**.

HADRAN ALACH PEREK HABAYIS V'HA'ALIYAH!!!

HADRAN ALACH MESECHTA BAVA METZIA!!!

MAZAL TOV!!!



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Maseches Bava Basra, Daf ב – Daf ג

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

-----Daf 2---ב-----
MESECHTA BAVA BASRA

PEREK HASHUTFIN -- PEREK RISHON

MISHNA

- Partners who want to make a division in their chatzer (that they own in partnership), they must place the wall in middle of the chatzer (leaving each partner equal space). In a place where the custom is to build such walls using rough stones, or smoothed stones, or half bricks, or whole bricks, the custom should be followed. All should follow the local custom.
 - If rough stones are used, each person must give 3 tefachim of space for the wall, from his side. If smooth stones are used, each must give 2.5 tefachim. If half bricks are used, each must give 2 tefachim. If full bricks are used, each must give 1.5 tefachim. Therefore, if the wall falls down, the area underneath the wall and the stones belong equally to both partners.
- Similarly, with regard to a garden (where the partners have agreed to divide it), in a place where the custom is to put up a divider, they can force the second partner to pay his share of building this divider.
- However, in a valley (in a grain field), in a place where the custom is not to put up a divider, we cannot force the other partner to pay for the building of a divider. Rather, if one partner is insistent on building a wall, he must build it entirely on his property, and he makes an indication on the outside to show that it is his own wall. Therefore, if the wall falls down, the area underneath the wall and the stones belong only to him. However, if they both agreed to put up a wall, they put the wall in middle of the field and make an indication on both sides of the wall, to show that it belongs to them both. Therefore, if the wall falls down, the area underneath the wall and the stones belong equally to both of them.

GEMARA

- The Mishna's term for "division" in the first case was "mechitza". The talmidim felt that "mechitza" means a full wall. As we see in a Braisa regarding klayim, that mechitza refers to a proper wall. Still, the Mishna seems that a proper wall is built only because they both have agreed to it, but if only one wanted it, he could not force the other to pay for half the wall. We see from here that "hezek re'iyah" (loss of privacy) is not considered to be true damage (because if it was, the other partner could be forced to pay for the wall).
 - The Gemara says, it may be that the word mechitza refers to a division of the chatzer (not any type of physical wall), as we find this word to be used with this meaning in a pasuk, and the Mishna can be saying that once they have agreed to this division, the other partner can be forced to pay his share of erecting a wall, because hezek re'iyah is considered to be a true damage.
 - **Q:** This can't be what the Mishna meant, because then it should have said "Partners who want to divide", not "Partners who want to make a mechitza"!?
 - **Q:** Even according to the first understanding, if mechitza means a wall, why does the Mishna then say "they place a wall..."? It should say "they place *it*"!? **A:** The Mishna didn't want to say "they place it", because that may have suggested that a simple marker would be enough. The Mishna therefore says "wall" to teach that a proper wall must be built.

BONIN ES HAKOSEL B'EMTZA...

- **Q:** Since they both agreed to this, it seems obvious that they are to build the wall in the middle!? **A:** The case is where one partner convinced the other to divide the chatzer. We would think that the second partner can then

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claim that he agreed to divide for purposes of privacy, and therefore only agreed to a thin partition being put up, or for a wall to be put up, but only a small piece of the wall to be put on his property. The Mishna therefore teaches that he cannot claim that, and must give land for half the wall.

- **Q:** Can there be a view that hezek re'iyah is not a true damage? Our Mishna says that a wall must even be built in a garden, which shows that hezek re'iyah is true damage!? **A:** A garden is different than a chatzer, based on the statement of **R' Abba in the name of R' Huna in the name of Rav**, who said that one may not stand in a field of grown produce, because it makes it subject to ayin harah. It may be that that is the reason a wall can be forced to be built there, but in a chatzer it could not be, because hezek re'iyah is not true damage.
 - **Q:** The Mishna begins the part with the garden by saying “similarly”, which seems to make the reason for a wall in a garden and in a chatzer to be one and the same!? **A:** The “similarly” was meant to refer to the statement that the building material used for the wall should follow local custom.
 - **Q:** A Mishna says, if a wall between chatzeiros collapsed, we force the owner of each chatzer to rebuild the wall to a height of 4 amos. Since this is forced upon them, it must be because hezek re'iyah is considered to be a true damage!? **A:** This case may be different, because given that there was previously a wall there, it shows that they had already agreed to have a wall.
 - **Q:** What was the thought of the one who asked the question? This difference seems obvious!? **A:** He held that the Mishna's reason for giving the case of a wall that collapsed was for the next case of the Mishna, which says that they cannot be forced to build the wall higher than 4 amos, even if the wall was originally higher than 4 amos.
 - **Q:** A Mishna says that we force all the residents of a chatzer to chip in for the cost of a gatehouse and door for the chatzer. Now, this was done for hezek re'iyah, and we therefore see that hezek re'iyah is considered to be a true damage!? **A:** This would be loss of privacy to the public, which is definitely considered to be a true damage.
 - **Q:** A Mishna says, we cannot force the dividing of a chatzer unless each partner will be left with a minimum of 4 amos. Now, this suggests that if there will be 4 amos for each, we could force a division, which would presumably have to be done with a wall, which shows that hezek re'iyah even of one individual is considered to be a true damage!? **A:** The division is done with boundary markers, and not a wall, which therefore doesn't prove that hezek re'iyah is a real damage.
 - **Q:** A Mishna says, if someone builds a wall opposite his neighbor's window, he must make it 4 amos higher than the window (so that he not crouch down from the top of the wall and look into the window), or 4 amos lower than the window (so that he not stand on it and look into the window), and 4 amos away from the window (so that it not block the light coming into the window). From the first two cases we see that hezek re'iyah is a true damage!? **A:** With regard to loss of privacy in a house, it is clear that hezek re'iyah is a true damage. The question we have is regarding hezek re'iyah in a chatzer.
 - **Q:** **R' Nachman in the name of Shmuel** said, if a person's roof borders his neighbor's chatzer, he must make a fence 4 amos high around the roof. Now, the purpose of this would be to prevent hezek re'iyah, and this shows that it is a true damage!? **A:** That case is different, because the owner of the chatzer will say “a chatzer is used at set times, whereas a roof is not, and I therefore do not know when to expect you and to try and hide from you if I don't want to be seen”. That is why a fence is needed in that case.

-----Daf λ---3-----

- The Gemara presents another version of the previous Gemara. The Gemara says, the talmidim felt that “mechitza” refers to a division of the chatzer (not any type of physical wall), as this word is used to mean this way in a pasuk, and the Mishna can be saying that once they have agreed to this division, the other partner can be forced to pay his share of erecting a wall. We can learn from here that hezek re'iyah is considered to be a true damage.
 - The Gemara says, it may be that the word mechitza refers to a proper wall as we see in a Braisa regarding klayim. This would mean that the Mishna is saying that a proper wall is built only because they both have agreed to it, but if only one wanted it, he could not force the other to pay for half the wall.

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We see from here that “hezek re’iya” (loss of privacy) is not considered to be true damage (because if it was, the other partner could be forced to pay for the wall).

- **Q:** If mechitza means a wall, why does the Mishna then say “they place a wall...”? It should say “they place *it*”!?
- **Q:** Even according to the first understanding, if mechitza means a division, why does the Mishna then say, “Partners who want to make a mechitza”, and not “Partners who want to divide”, which would be a clearer use of words!? **A:** This is not a question. The reason the Tanna used this verbiage is because it is used when people speak.
- **Q:** If hezek re’iyah is considered to be a true damage, then why does the Mishna give the case of where the partners “agreed” to divide the chatzer? Even if they didn’t agree, one partner should be able to force the other to divide and a build a wall for privacy!? **A: R’ Assi in the name of R’ Yochanan** said, our Mishna is discussing a chatzer that does not meet the minimum size requirements that would allow for one partner to force a division of the chatzer. That is why it says that they “agreed” to divide the chatzer.
 - **Q:** What is the Mishna teaching with that case? There is a Mishna that teaches that if both partners agree, even a smaller chatzer can be divided!? **A:** From that Mishna we would say that if an agreement was made to divide such a small chatzer, one could not force the other to build a wall, rather a dividing marker would have to suffice. Our Mishna teaches that he can even be forced to build a proper wall.
 - **Q:** If so, why do we need the other Mishna at all? **A:** That Mishna is needed for the later case, that says that seforim may not be divided.
 - **Q:** If the Mishna is talking about a case where the chatzer is smaller than the required amount to allow for forcing a division, then even if they agreed, why can’t they always go back on the agreement? What binds them? **A: R’ Assi in the name of R’ Yochanan** said, the case is where a kinyan was made to obligate them to stick to the agreement.
 - **Q:** Even so, it is a simply kinyan on words, which is not koneh!? **A:** They made a kinyan chalipin to be koneh their respective side, so the kinyan is effective. **R’ Ashi** said, the case is where they each made a chazaka on their side, and thereby made a kinyan.

MAKOM SHENAHAGU LIVNOS...

- “Gvil” are unsmoothed stones, “gazis” are smoothed stones, “kfsin” are half-bricks, and “liveinin” are full bricks.
 - **Q: Rabbah the son of Rava** asked **R’ Ashi**, why do you assume that gvil is unsmoothed stones, and the extra tefach of space that they need (as is seen in the Mishna) is to allow for the rough protrusions? Maybe it is half of a smooth stone, and the extra tefach is for the cement that is put in between these two halves, just like the difference between kfsin and liveinin!? **A: R’ Ashi** said, how do you know that kfsin are half bricks? It is based on a kabbalah that you have. We know that gvil is unsmoothed stones based on a kabbalah as well.
 - **Another version** of this conversation was similar, only that the question was posed that maybe kfsin are unsmoothed bricks. The same answer is given.
 - **Abaye** said, we can learn from the Mishna that the cement in between half bricks must be a tefach. Now, this is only if it is made of pure mud. However, if there are pebbles mixed into the mud, more space is needed.
 - **Another version** is that a tefach is only needed if there are pebbles in the mud. If there are no pebbles, less than a tefach is needed.
 - **Q:** Does the Mishna mean to give a ratio of width to height? For example, does the Mishna mean to say that smoothed stones need 5 tefachim of width for every 4 amos of height for the integrity of the wall? This can’t be, because we know that the wall separating the Kodshim from the Kodshim was made of such stones, and was 6 tefachim wide and 30 amos tall!? **A:** The extra tefach of width allowed it to stand even at so great a height.
 - **Q:** Why was it that during the second Beis Hamikdash they did not build this wall (and a curtain was used instead)? **A:** A wall with a width of 6 tefachim can stand at 30 amos tall, but not taller,

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and in the second Beis Hamikdash the walls were 40 amos tall. We see this from a pasuk which is darshened to teach that the second Beis Hamikdash was greater than the first Beis Hamikdash.

- **Q:** Why didn't they build a 30 amah wall and leave the rest with a curtain? **A:** A wall of that thickness and height of 30 amos can only stand if it is plastered into the ceiling.
- **Q:** Why didn't they build a wall as high as such a thickness would allow, and hang a curtain for the rest of the height? **A: Abaye** said, we have a kabbalah that the separation must be either entirely of a wall (like the first Beis Hamikdash) or entirely of a curtain (like the Mishkan), but not a combination of the two.
- **Q:** Do the thicknesses of the various walls that are given in the Mishna include the measurement after plastering, or is that the width before plastering? **A: R' Nachman bar Yitzchak** said, it makes sense to say it is including the plaster, because if not, the Mishna should have given the thickness of the plaster needed as well.
 - **Q:** It may be that the measurement is without the plaster, and the reason the thickness of the plaster is not given is because it is less than a tefach, and we don't teach measurements that are less than a tefach? **A:** That is not true, because we see that the Mishna does give half-tefach measurement regarding the thickness of some of the walls.
 - That is no proof, because there is a half-tefach on each side, which combines to a full tefach, and that may be why it is mentioned.
 - **Q:** A Mishna says that a "korah" (used to make a doorway for purposes of Shabbos) must be wide enough to hold a half-brick, which is half of a 3 tefach brick. This is certainly not talking about having plaster on it, and we see that these are the measurements without the plaster!? **A:** The Mishna there states that it is referring to large bricks. That means that average bricks are of smaller size, which means that when our Mishna says 3 tefachim, it is including the thickness of the plaster.
- **R' Chisda** said, one may not destroy a shul until a replacement is built. Some say this is out of concern that a new one will not be built, and some say it is out of concern that people should always have a place to daven. The difference between the reasons would be if there is another shul in which people can daven in the meantime.
 - **Mareimar and Mar Zutra** would build a new summer shul in the winter and a new winter shul in the summer (following the second reason given).
 - **Q: Ravina** asked **R' Ashi**, what if all the money for the new shul was already collected and given to the shul officers? **A: R' Ashi** said, we have to be concerned that a pressing need for the money (like ransoming a captured person) will come about and the money will be used for that.
 - **Q:** What if the bricks and beams are already delivered? **A:** We have to be concerned that a pressing need for the money (like ransoming a captured person) will come about and they will sell the materials and use the money for that.
 - **Q:** If we are so concerned, we should be concerned that the new shul itself will be sold to raise money for a pressing need like this? **A:** People would not sell the shul.
 - This is only if we don't see cracks in the building. If we do, it can be demolished immediately. **R' Ashi** did this to the shul in Mata Mechasya and then moved into the construction site so that the people feel pressured to see it completed.
 - **Q:** Based on **R' Chisda's** halacha, how could **Bava ben Buta** have advised Hurdus to demolish the Beis Hamikdash and then rebuild it? **A:** Either we can say that there were cracks in the old one, or we can say that Hurdus was a king, and a king will not go back on his word (so we can be sure that it will be built).