



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

Bava Metzia Daf Kuf Yud Ches

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 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.

- **Others** say that **Rava** said, it may be that all agree that watching hefker does *not* create a kinyan. The **Rabanan** hold 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.