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Bava Metzia Daf 116

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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

The *Gemora* cites a *braisa* to support Rav Yehudah (*who maintains that one who took a millstone as a security does not violate the general prohibition of taking utensils involved in food preparation*). If one takes a pair of barber’s scissors (*and according to other Rishonim - a scissors used to cut vegetables*) or a yoke of oxen as a security, he is liable twice (*the scissors and the yoke were divisible, and therefore are regarded as two distinct objects, thus involving a double penalty*). But if he takes each part separately (*one blade of the scissors, or half of the yoke*), he is liable only once.

And another *braisa* taught: If one takes a pair of barber’s scissors or a yoke of oxen as a security, I might have thought that he is liable only once; therefore the Torah teaches: *He shall not take a lower millstone or an upper millstone as a security*. Just as the lower and the upper millstones are distinguished in that they are two objects which together perform one function, and one is liable for each stone separately, so all things which are two objects used together to perform one function, one would be liable for each one separately.

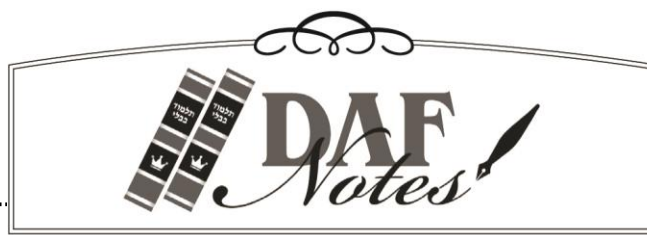
A certain man took a slaughterer’s knife as a security. Abaye told him: Go and return it, because it is a utensil used in the preparation of food, and then come to stand at judgment for the purpose of recovering the debt.

Rava said: He need not stand at judgment for it, but can claim the debt up to its value (*for if he wanted, he could have claimed that he had purchased the knife; he is therefore believed that he is owed that amount of money*).

The *Gemora* asks: Does Abaye not accept that logic? Why would it differ from the case of the goats which ate some husked barley in Nehardea, whereupon the barley owner came and seized the goats, and claimed a substantial amount of damages? Shmuel’s father ruled that he can claim up to the value of the goats (*because if he wanted to lie, he could have said that he purchased the goats and they belong to him*).

The *Gemora* answers: In that case, it (*the goats*) was not an object that is generally lent out or rented (*and therefore his claim that he purchased them would be a valid one*), whereas in this case, it is (*and he is therefore not believed on the amount of the claim*). For Rav Huna bar Avin said: With respect to objects that are generally lent out or rented, if a man claims, “I have purchased them,” he is not believed.

The *Gemora* asks: And does Rava disagree with this reasoning? But Rava himself seized a garment scissors and a book of *aggadah* from orphans (*and returned it to the original owners*), for these are objects that are generally lent out or rented!?



The *Gemora* answers: These too (*the slaughtering knife*), since they could become nicked, people are particular not to loan them out. (116a)

WE SHALL RETURN TO YOU, HAMEKABEL

Mishna

A house (*on the ground floor*) and an upper story belonging to two people collapsed (*and it is uncertain which part of the ruins belongs to the owner of the house, and which part belongs to the owner of the upper story*), the two of them divide the wood, the stones, and the earth (*in proportion to the amount which they owned*). And they see which stones were likely to break (*and that person receives the broken stones*). If one of them recognizes some of his stones, he takes them, but they count for him towards his total. (116a)

How did it Fall?

The *Gemora* asks: Since the *Mishna* stated: They see which stones were likely to break, it follows that it is possible to determine whether it fell through pressure (*from the upper stones causing the lower stones to break*) or from a push (*due to a wind*). If so, in the first case, why do they divide all the stones? Let us consider how the wall fell. If it fell through a push, then it should be assumed that the stones of the upper story were those that broke (*for they probably fell down at a considerable distance away*). If it happened through pressure, then it should be assumed that the stones of the lower story were those that broke!?

The *Gemora* answers: The *Mishna* is dealing with a case where it collapsed at night (*and nobody saw it fall*).

The *Gemora* asks: Then let us examine it in the morning (*for if it fell through pressure, the stones will all be in a pile on its site*), whereas if a shock overthrew it, the stones will be scattered outward!?

The *Gemora* answers: The *Mishna* is dealing with a case where all the debris had been cleared away.

The *Gemora* asks: Then let us see who had cleared it away, and ask them!?

The *Gemora* answers: People who were walking in the street had cleared it away, and departed (*before we could ask them*).

The *Gemora* asks: Then let us see in whose possession they are now located, so that the other becomes the claimant, upon whom the onus of proof will lie! For the principle is: Whoever is trying to exact money from his fellow must bring the proof!

The *Gemora* answers: The materials are now in a courtyard belonging to both, or they are in the street.

Alternatively, partners in such matters are not particular with each other (*and they allow the other one to keep things in their own property*). (116a)

Identifying the Stones

The *Mishna* had stated: If one of them recognizes some of his stones, he takes them, but they count for him towards his total.

The *Gemora* clarifies the case: Now, what does the other one claim? If he agrees, then it is obvious. If not,



why should this one take them? It must therefore be referring to a case where he replied, "I do not know."

The *Gemora* asks: Shall we say that this refutes Rav Nachman? For it has been stated: If one person says to another person: A *maneh* of mine is in your hand, and the latter responds by saying: I do not know. Rav Yehudah and Rav Huna say: He is obligated to pay. Rav Nachman and Rabbi Yochanan say: He is exempt from paying. [*The Gemora elsewhere explains the dispute: Rav Huna and Rav Yehudah say: He is obligated to pay because they hold that in the case of "a certainty and a doubt" (one person has a certain claim and the other is uncertain), the judgment is given to the litigant who is certain. Rav Nachman and Rabbi Yochanan say: He is exempt from paying because they by the following principle: Leave the money in the possession of its present owner (since he is presumed to be the rightful owner).*]

The *Gemora* answers that Rav Nachman would explain our *Mishna* to be referring to a case where there is an existing oath interaction between them.

The *Gemora* asks: What is meant by a dispute involving an oath?

The *Gemora* quotes a statement of Rava to explain this case. Rava says that if one claims that someone owes him 100 *zuz*, and the defendant responds that he is sure he owes 50, but doesn't know about the other 50, he must pay the full 100. [*If he had denied the other 50, he would have to swear, but since he is claiming that he doesn't know, he cannot swear, and therefore must pay. Similarly, our Mishna would be referring to a case where the fellow admits that some of those identified stones belong to the other person, but he does not*

know regarding the others. Since he cannot take an oath, he is obligated to pay.] (116b)

Counts Toward his Total

The *Mishna* had stated: If one of them recognizes some of his stones, he takes them, but they count for him towards his total.

Rava thought this meant that they count towards his total in his share of broken stones (*he receives these whole stones in place of broken ones*). It would seem that since he says, "I do not know," his position is considerably weaker than if he would have identified some of the stones.

Abaye asked him: On the contrary! The position of one who identifies some of the stones should be much weaker, for since he knows only of these, but of no more, he should be entitled to no more, and the other should receive all the rest!?

Rather, Abaye said, it means that they count towards his total in his share of the whole stones.

The *Gemora* asks: If so, what did he benefit by identifying some of the stones?

The *Gemora* answers: In respect of extra wide bricks, or well processed clay. [*If he identified those, he would receive them, while the other fellow would get the same amount of bricks, but he would not get from this particular type (unless there were others of those, in which case, they would split the remainder).*] (116b)

Mishna



If there was a house and an upper story (*belonging to one person; the landlord lives in the lower story and the tenant rents the upstairs*) and the floor of the upper story was broken through. If the owner of the house does not want to repair it, the tenant may come down and dwell below until he repairs the upper story for him. Rabbi Yosi says: The lower one provides the ceiling, and the one above provides the plaster. (116b)

Floor Collapsing

The *Gemora* asks: How much of the floor was broken through?

Rav said: A majority of it. Shmuel said: Four *tefachim*. Rav holds that the *Mishna's halachah* only applies if a majority of the floor broke through, but not if it broke only four *tefachim*. This is because one can dwell partly below and partly above. Shmuel said that the *Mishna's halachah* applies even if it broke only four *tefachim*, because one cannot be expected to dwell partly below and partly above. (116b)

INSIGHTS TO THE DAF

Splitting the Stones

The *Mishna* says that when the collapsed house belonged to Reuven and the collapsed attic belonged to Shimon, we have to do our best to determine who most likely deserves the whole bricks and who deserves the broken bricks.

Rashi in the *Mishna* explains that if the house collapsed due to a faulty foundation, so that the bottom brick broke and the upper bricks came down on top of them,

we can assume that the broken bricks belong to Reuven who lived on the bottom, and the whole bricks belong to Shimon who lived on the top. But if the wall of the house fell like a stick, so that the upper bricks came crashing down, we can assume that the broken bricks are from Shimon's attic, whereas the whole bricks belong to Reuven.

However, Rashi in the *Gemora* (d.h. reisha) explains differently than he does in the *Mishna*. Rashi in the *Gemora* says that if the foundation gives way, the upper bricks belong to Shimon who lives on the top (*regardless of whether they are broken or whole*).

It emerges that when the foundation gives way, Rashi in the *Mishna* implies that Reuven who lives on the bottom would get the broken stones, whereas Rashi in the *Gemora* implies that he would get the lower stones even if they are whole!?