



Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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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

Upper Floor

Rabbi Abba bar Mamal inquired: When the Mishna states that the renter living on the upper floor can reside in the bottom until the owner fixes the upper floor, does this mean that the owner must leave the bottom floor to his tenant? Or perhaps it means that the tenant lives together with the owner on the bottom floor until the upper floor is fixed!? This second possibility could be supported by the owner claiming that he never included in the rental the possibility that he would be kicked out of his house if the upper floor became broken.

Another inquiry: If you will say that indeed they live together on the bottom floor, is the upstairs tenant allowed to go through the front door, or does he have to go up the ladder to his upstairs apartment, and only then climb down to the bottom floor? Do we say that his entrance is the same as before? Just as he previously climbed a ladder to enter, so too now he must do so. Or do we say that he can claim that he accepted climbing a ladder into his house, but he did not accept climbing a ladder and then having to do down a floor to get into his house?

Another inquiry: If you will say that he can indeed claim that he did not accept having to go up and then down, what is the case when there are two upper floors, one higher than the other (there are three floors

altogether)? If he rented the upper one (the third story), it is clear that the owner can tell him to live in the lower one (the middle one). If he rented the lower one (the middle one), can the owner tell him to go live in the higher one, as he accepted living in an attic (and this too is an attic)? Or can the renter claim that he accepted living one floor up, but not two floors up? The Gemora does not resolve these questions. (116b - 117a)

Fixing the Floor/Ceiling

The Mishna quoted Rabbi Yosi as stating that the renter of the lower floor must supply the ceiling etc.

The Gemora asks: What entails a ceiling?

Rabbi Yosi the son of Rabbi Chanina says: Making mats from reeds and thorns is considered a ceiling.

Ustini says in the name of Rish Lakish: Putting planks down that form a ceiling is considered a ceiling.

The Gemora says: They are not arguing. Each one stated the type of ceiling used in his area.

Two people lived together, one upstairs and one downstairs. The plaster coating of the roof (i.e. the floor of the upper floor, which serves as the ceiling of the bottom floor) wore away. When the upper person



was drawing water, it would drip down and damage the bottom floor of the apartment. Who is responsible to fix the roof?

Rabbi Chiya bar Avin says: The person living on the upper floor must fix it. Rabbi Ilai in the name of Rabbi Chiya the son of Rabbi Yosi says: The person living on the bottom floor must fix it. The siman (way to remember who says what in this argument) is the verse, "And Yosef went down (b'Rabbi Yosi says the bottom floor) to Egypt."

The Gemora asks: Let us say that the argument between Rabbi Chiya bar Abba and Rabbi Ilai is the same as that between Rabbi Yosi and the Rabbis. The one who says that the one living on the upper must fix it holds that it is incumbent on the one damaging to take the source of the damage away so it cannot damage. The one who says that the one living on the bottom must fix it holds that it is incumbent on the one being damaged to distance himself from the damage. [Whether or not it is incumbent on the one damaging or one being damaged is the argument between Rabbi Yosi and the Rabbis.]

The Gemora asks: Is the source of the argument in our Mishna between Rabbi Yosi and the Rabbis their previous argument regarding whether or not this obligation is incumbent on the one damaging or the one being damaged? We find that they hold the opposite. The Mishna states: One must distance a tree from a well twenty-five cubits, and if it is a carob or sycamore tree, he must distance it fifty cubits (as their roots draw water even from a large distance). It does not matter whether the tree is higher than the well or on the side of the well. If the well was there first, the owner of the tree must cut his tree down, but he is compensated by the owner of the well (this is only

because it does not cause damage immediately). If the tree was there first, he does not have to cut his tree down. If it is unclear which was there first, he does not have to cut his tree down. Rabbi Yosi says: Even if the well was there before the tree, he does not have to cut the tree down, as the one who dug the well did so in his domain, and the one who planted the tree did so in his domain. This implies that Rabbi Yosi holds it is incumbent on the one who is being damaged to move away (so long as the one damaging has the right to be there and act as he is currently acting). The Rabbis seem to hold that the one damaging must remove himself (i.e. whatever belongs to him that is damaging from damaging).

The Gemora therefore states: If they (Rabbi Chiya and Rabbi Ilai) are arguing, they are arguing regarding the argument between Rabbi Yosi and the Rabbis in this Mishna (not the one in our Mishna).

The Gemora asks: What, then, is the crux of the argument between Rabbi Yosi and the Rabbis in our Mishna?

The Gemora answers: They argue regarding the strength of the ceiling. The Rabbis hold that the plaster holds together the ceiling, and therefore is upon the dweller of the bottom floor to maintain. Rabbi Yosi looks at the plaster as smoothing out the floor, and therefore it is upon the dweller of the upper floor to maintain.

The Gemora asks: Is this so? Didn't Rav Ashi say that when he was by Rav Kahana's (study) house, they used to say that Rabbi Yosi admits regarding his arrows (where a person is doing the damage by his actions, unlike a tree that grows by itself) that the one who damages is liable?

The Gemora answers: The case is where the water does not directly go into the bottom floor, but rather it suppers, and then eventually makes its way to the bottom floor. (117a)

#### Mishna

Two people owned a house with an upper and bottom floor, and it fell in. If the owner of the upper floor asks the owner of the bottom floor to rebuild and he does not want to, the owner of the upper floor can rebuild the bottom floor and live there until the owner of the bottom floor pays him for his expenses for rebuilding the bottom floor. [He can then move out and build the upper floor.] Rabbi Yehudah says: The owner of the upper floor must pay rent to the owner of the bottom floor, as he is living in his dwelling and benefiting by having a place to live!

Rather (to avoid having to pay rent), the owner of the upper floor should rebuild both floors, including making the roof of the upper floor. He then can sit and live in the bottom floor until he receives the expenses from the owner. [Being that his upper floor is ready for living, it is not considered that he is benefiting by living in the bottom floor. He therefore does have to pay rent according to Rabbi Yehudah.] (117a)

#### No Benefit Without Pay

Rabbi Yochanan says: In three places, Rabbi Yehudah taught that it is forbidden to benefit from another person's money (without compensating them). One of these places is our Mishna. What other place is there?

The Mishna states: If wool was handed over to a dyer to dye it red but he dyed it black, or to dye it black and he dyed it red, Rabbi Meir says that he would have to

pay the owner for the value of his wool. Rabbi Yehudah says: If the appreciation to the wool is more than the expenditure of the dyeing, he (the owner) gives him (the dyer) the expenditure (but not his fee); and if the expenditure is more than the appreciation, he (the owner) gives him (the dyer) the appreciation.

What is the third case? The Mishna states: A borrower paid back part of his loan, and the loan document was then deposited by a third party. The borrower then stated to the third party: "If I do not pay back the loan by a certain time, give the document back to the lender (and he will collect the entire amount of the original debt)." If the time came and he did not pay, Rabbi Yosi says the third party should indeed give the document back to the lender, while Rabbi Yehudah says he should not.

The Gemora asks: Why is it clear that these three cases are based on the same reasoning? Perhaps the reason Rabbi Yehudah does not allow the person on the upper floor to live on the bottom floor without paying rent is because the owner of the bottom floor can claim that I paid for new walls, and you darkened them by living there. Additionally, the reasoning for paying for either improvement or expenses for the dying of the wool is because the worker changed the wool he was given. Another Mishna states that whoever changes from what they were supposed to do has the lower hand (which is why the worker gets the least of either expenses or improvement). Additionally, someone who pays part of his loan and says that if he doesn't pay etc. is essentially making an *asmachta* (arrangement with a condition that he thinks will work in his favor), and Rabbi Yehudah holds that such a condition is invalid. [Accordingly, it is unclear that these cases are based on a position that a person cannot benefit from someone



else's money. We therefore do not have a clear source for the statement of Rabbi Yochanan.] (117b)

### A Time to Build

Rav Acha bar Ada says in the name of Ula: If the owner of the bottom floor wants to change his walls and rebuild them with unhewn stones, he is permitted to do so. However, if he wants to replace the unhewn stone with sanded stone, he is not allowed to do so. [The unhewn stone is thicker, and provides better support.] If he wants to replace the wall with half bricks instead of whole bricks, we listen to him. He cannot replace half bricks with whole bricks. [This is because the same amount of half bricks ends up being stronger than the whole bricks, as more mortar is used and makes it thicker and stronger.] If he wants to put cedar planks on the roof instead of sycamore, we allow him to do so. If he wants to put sycamore instead of cedar, he is not allowed to do so. [Cedar is stronger and lasts longer.] If he wants to put in less windows, we allow him to do so. If he wants to put in more windows (which makes the structure less solid), we do not allow him to do so. If he wants to make the building higher, we do not allow him to do so (as this makes the upper floor climb more steps). If he wants to make it lower, we do allow him to do so.

If the owner of the upper floor wants to change his walls and rebuild them with sanded stone, he is permitted to do so. However, if he wants to replace the sanded stone with unhewn stone, he is not allowed to do so. If he wants to replace the wall with whole bricks instead of half bricks, we listen to him. He cannot replace whole bricks with half bricks. If he wants to put cedar planks on the roof instead of sycamore, we do not allow him to do so. If he wants to put sycamore instead of cedar, he is allowed to do so. If he wants to

put in more windows, we allow him to do so. If he wants to put in less windows, we do not allow him to do so. If he wants to make the building higher, we do not allow him to do so. If he wants to make it lower, we do allow him to do so. [The reason for all of these laws is that we do not allow a heavier structure, but do allow a lighter structure.]

The Gemora asks: What happens if both the owners of the upper and bottom floors have no money to rebuild, and the owner of the property (i.e. the owner of the bottom floor) wants to sell the land? [Does the owner of the upper floor also own the land?]

The braisa says: Rabbi Nassan says that the owner of the bottom floor owns two thirds of the land, while the owner of the upper floor owns one third. Others say: The owner of the bottom floor owns three quarters, while the owner of the upper floor owns one quarter. Rabbah says: Take Rabbi Nassan's opinion in your hand, as he was a judge who always understood the full depth of every judgment. He understood that an upper floor causes one third of the structural strain on a building. The owner of the upper floor is therefore entitled to a third of the land. (117b)

### INSIGHTS TO THE DAF

#### Tenant Living in the Lower Story

The Mishna describes a situation where Reuven and Shimon share a house, Reuven lives on the lower floor and Shimon lives on the upper floor. If the house falls down and Reuven refuses to contribute toward reconstructing the ground floor, so that Shimon cannot rebuild the upper floor, the Tanna Kamma says that Shimon can rebuild the ground floor and live there until Reuven compensates him for the expense. Rabbi



Yehudah argues and holds that Shimon can rebuild the entire house and then live in the upper floor (according to Tosfos) not allowing Reuven into the ground floor until he compensates him for the expense.

Rashi explains that Rabbi Yehudah doesn't allow Shimon to live in the ground floor because it is considered interest. This means that we view it as if Shimon lent money to Reuven by reconstructing his house. Eventually, Reuven will compensate Shimon for expenses, so if Shimon also benefits by being able to live in Reuven's house, he is essentially taking interest from Reuven.

Tosfos disagrees because this is not at all considered a loan from Reuven to Shimon. Tosfos holds that if a fire were to break out in the lower house, it would be Shimon's loss, not Reuven's.

However, R' Shlomo Vilna in the Cheshek Shlomo cites from Bava Kamma (20b) that the house is in fact the responsibility of Reuven, so that Reuven would suffer a loss if the house were to burn down. Based on this, when Shimon rebuilds the house for Reuven, it should be viewed as a loan, so that when Shimon would receive compensation in addition to living there, it should be an interest violation.

Why then does the Tanna Kamma allow Shimon to just rebuild the ground floor and live there until Reuven fully compensates him?

The Cheshek Shlomo holds that the opinion of the Tanna Kamma in the Mishna is a strong proof to the Rif in Teshuvos cited by Ba'al Ha'terumos that any loan that is given as a benefit to the lender rather than the borrower is not considered a loan in the context of interest violations. Even though it is technically a loan

and Reuven would suffer the loss in case of fire, Reuven is not interested in borrowing, rather Shimon was interested in lending - there wouldn't be any interest violation with this type of loan. He then concludes that the Gr"a in Shulchan Aruch 166 actually cites our Mishna as the source of the Rif's opinion.

## DAILY MASHAL

### The Wolves, the Blood and the Snow

The Gemora advises someone who has hurt or insulted another that he should never be stubborn but rather send friends to that person to beg his forgiveness (see Rashi, s.v. 'Aseh). In his Michtav MeEliyahu (I, p. 40), HaGaon Rav Eliyahu Dessler relates that once, traveling in the far North, he was stranded in a vast snowfield inhabited by ravenous wolves. The predators suddenly found the carrion of a small animal on the road and, in their maniacal hunger, pounced on it together, scratching and biting each other till most of them relinquished the fight without a morsel of meat. The remaining wolves continued their fierce battle over the carcass till they fell, wounded and exhausted, in the snow. At the end of the commotion, a huge wolf limped away with the carrion in its mouth. I observed, writes Rav Dessler, a trail of blood behind it in the snow. A pathetic victory. There can be no real victory without some yielding or appeasement: everyone loses and bleeds.