



Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h

Tzvi Gershon ben Yoel (Harvey Felsen) o”h

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

Entering his House

The *Gemora* cites a *braisa*: *You shall not enter into his house to take a security*: The *Gemora* infers from here that it is the borrower’s house that you may not enter, but you may enter the house of the guarantor. And similarly it is written: *Take his garment because he became a guarantor for a stranger*. It also states: *My son, if you have become a guarantor for your friend; if you have stuck out your palms for a stranger; you are snared with the words of your mouth, caught with the words of your mouth; Do this now, my son, and deliver yourself: when you come into the hand of your neighbor, go, humble yourself and treat your neighbor as a ruler*. The *Gemora* explains the last verse: If he has money in your hand (*for you are a guarantor*), untie the palm of your hand to him (*by paying him*). If not (*you are not a guarantor, but you embarrassed him*), bring many of your friends around him (*and beg him for forgiveness*).

We also derive from this verse: The house of the borrower you may not enter, but you may enter to take a security for porter’s fees, payment for donkey driving, hotel bills, or painting fees (*other types of debts*). I might think that this is the law even if it (*the debt for these wages*) was converted into a loan; therefore the Torah writes: When you lend your

brother anything (*all loans are included in the prohibition*). (115a)

Mishna

We do not take a security from a widow, whether she is poor or rich, for it is written: *You shall not take a garment of a widow as a security*. (115a)

Expounding the Reasons of the Torah

The *Gemora* cites a *braisa*: We do not take a security from a widow, whether she is poor or rich; these are the words of Rabbi Yehudah. Rabbi Shimon said: One may take a security from a wealthy widow, but not from a poor one, for the security must be returned to her, and you will cause her to have a bad name among her neighbors (*for they will see a man come to her house in the morning and in the evening*).

The *Gemora* asks: Shall we say that Rabbi Yehudah does not expound the reason behind the Torah’s laws. (*and therefore does not distinguish between a wealthy widow and a poor one*), while Rabbi Shimon does? But we know that their opinions are exactly the opposite! For we learned in a *braisa*: *And he (a king) shall not multiply wives to himself (so that his heart shall not turn away from Hashem)*. Rabbi



Yehudah said: He may marry more wives, provided they do not turn his heart away. Rabbi Shimon said: He may not take as a wife even a single one who will likely turn his heart away from Hashem. Why then does the Torah write: *And he shall not multiply wives to himself?* Even such as Avigayil (*as righteous as her, he still cannot take her*).?

The *Gemora* answers: In truth, Rabbi Yehudah does not expound the reason behind the Torah's laws; but here, it is different, because the Torah itself states the reason: *And he shall not multiply wives to himself, and his heart shall not turn away from Hashem*. This is the meaning of the verse: Why shall he not multiply wives to himself? It is so in order that his heart will not turn away from Hashem.

And Rabbi Shimon explains as follows: Let us see. As a general rule, we do expound the reason behind the Torah's laws. Accordingly, the Torah should have written here: *And he shall not multiply wives to himself, and it would not be necessary to write: and his heart shall not turn away from Hashem*, for I would know myself that the reason why he must not marry many wives is that his heart may not turn away from Hashem. Why then does the Torah explicitly state: *and his heart shall not turn away from Hashem?* It must be to teach us that he must not marry even a single one who may turn away his heart. (115a)

Mishna

One who takes a millstone as a security violates a negative commandment, and he is liable for two utensils, for it is written: *He shall not take a lower*

millstone or an upper millstone as a security. And the prohibition does not only apply to millstones; but rather, any utensil that one uses for food preparations, for it is written: *for he is taking a life as security*. (115a)

The Amount of Transgressions

Rav Huna said: If a man takes the lower millstone as a security, he has violated two transgressions, once on account of the "*lower millstone*," and once on account of "*for he is taking a life as security*." If he takes the lower and the upper millstones, he has violated three transgressions, twice on account of "*lower millstone or an upper millstone*," and once on account of "*for he is taking a life as security*."

Rav Yehudah disagrees: If a man takes the lower millstone as a security, he has violated only one transgression. If he takes the upper millstone, he has violated only one transgression. If he takes them both, he has violated two transgressions. And the commandment of "*for he is taking a life as security*," only applies for other utensils involved in food preparation.

The *Gemora* asks: Shall we say that Abaye and Rava disagree over the same issue as Rav Huna and Rav Yehudah? For Rava said: If one ate the *korban pesach* when it is half roasted, he has violated two transgressions, once on account of (*the prohibition against eating it when it is*) "*partially roasted*," and again because of the verse: "*It shall be eaten only if it is roasted over fire*." If he ate it when it was boiled, he has violated two transgressions, once on account of (*the prohibition against eating it when it is*)

“boiled,” and again because of the verse: “*It shall be eaten only if it is roasted over fire.*” If he eats some of it when it is half roasted and some of it when it is boiled, he has violated three transgressions; once on account of (the prohibition against eating it when it is) “partially roasted,” once on account of (the prohibition against eating it when it is) “boiled,” and again because of the verse: “*It shall be eaten only if it is roasted over fire.*”

Abaye said: One does not receive lashes on account of a generalized prohibition. [A *lav sheb’chlolus* - generalized prohibition is one that incorporates several prohibitions. Abaye maintains that one cannot receive lashes on account of the verse, “*It shall be eaten only if it is roasted over fire,*” for that verse covers “partially roasted” and “boiled.”]

The *Gemora* concludes its question: Shall we assume that Abaye agrees with Rav Yehudah, and Rava with Rav Huna?

The *Gemora* demonstrates how the two disputes are independent of each other. Rava can answer you that his ruling agrees even with Rav Yehudah’s. It is only there that Rav Yehudah maintains his opinion, because, “*for he is taking a life as security*” does not imply the lower and the upper millstones. Therefore, it must refer to other things. But here, what is the purpose of “*It shall be eaten only if it is roasted over fire*”? [All the other ways to prepare the *pesach* are already mentioned!] It must therefore be for an addition of a negative prohibition. Abaye can answer you that his ruling agrees even with Rav Huna’s. It is only there that Rav Huna maintains his opinion, because “*for he is taking a life as security*” is

completely extra. Since it is extra, we will apply it to the lower and upper millstones. But here, “*It shall be eaten only if it is roasted over fire*” is not extra at all, for it is needed for what has been taught in the following *braisa*: At the same time that there is a *mitzvah* to eat the *korban pesach* roasted, there is a prohibition against eating it when it is “*na*” (partially roasted). When there is no *mitzvah* to eat the *korban pesach* roasted, there is no prohibition against eating it *na*. (115b - 116a)

INSIGHTS TO THE DAF

Transgressions

The *Gemora* has a principal that one does not receive lashes for a transgression that can be fixed up through the performance of a positive commandment.

Tosfos understands the *Mishna* to be saying that one would receive lashes for taking a millstone as a security, since the millstone contains two components, which are considered separate and independent parts regarding the violation.

Tosfos asks: Why should one receive lashes at all since the rationale behind the prohibition is that these are *ochel nefesh* type items (meaning they are needed for his livelihood), so it can potentially be fixed by returning them, so that there should not be lashes associated with this violation at all?

The proof that Tosfos cites for this being a “*la’av hanitek l’aseh*” (a transgression that can be fixed up through the performance of a positive



commandment) and that one doesn't receive lashes for such a transgression, is the story quoted on 116a where a person took a slaughtering knife as collateral and Abaye commanded him to return it. Tosfos at first understands that the only rationale for returning the item would be that it is a "*la'av hanitek l'aseh*". Ultimately, Tosfos concludes that it is not a "*la'av hanitek l'aseh*," and the only reason that Abaye demanded that it be returned is that the lender didn't realize when he took it that it was forbidden, so that he never acquired it as a security, and therefore it had to be returned.

Regarding taking *ochel nefesh* type items as a security, there is an argument amongst the Rishonim. Tosfos 113a (d.h. v'es), holds that any item that is needed for livelihood may not be taken at all as collateral. However, the Maharsha quotes many Rishonim who disagree with Tosfos and hold that it may be taken as collateral, but must be returned when the borrower needs them to use for his livelihood. See also Hagahos HaGra on Tosfos who quotes that the Ramban and Rashba hold that it may be taken, but must be returned when needed, whereas the Rambam agrees with Tosfos that it may not be taken at all.

Now, the entire assumption of Tosfos that the reason Abaye must have insisted on returning the *ochel nefesh* collateral was because it is a "*la'av hanitek l'aseh*", is following his own line of reasoning. Had Tosfos held like the Ramban and Rashba, there would be no proof at all from the story of Abaye because Abaye was merely telling the person that the standard rules of this type of security is that it must be returned when the borrower needs it.

Tosfos also assumes that if we would say "Whenever the Torah says not to do something, and one goes ahead and does it anyway, it is not effective," then it would make sense that Abaye would demand returning the security, since he wasn't allowed to take it, the taking was ineffective.

There is a big discussion in the Achronim (Chavos Da'as and R' Akiva Eiger in Hilchos Shechita) whether "Whenever the Torah says not to do something, and one goes ahead and does it anyway, it is not effective," applies when the prohibition will anyway not be fixed. Meaning that "if one goes ahead and does it anyway, it is not effective" may only apply when we say that by not taking effect, the prohibition will not have been violated. Based on that principal, it is a big novelty for Tosfos to assume that "if one goes ahead and does it anyway, it is not effective" would apply here. Even if the *kinyan* doesn't take effect, there is certainly some transgression violated by taking an item of the borrower that should not be taken - if not for the prohibition of "do not take," there would be a prohibition against stealing. Yet, Tosfos assumes that since "if one goes ahead and does it anyway, it is not effective" would help avoid "do not take as a security," even though it will cause a prohibition of stealing, we can still apply this principal to prevent the lender from acquiring the collateral.