

## OVERVIEW of the Daf

### 1) A dissenting view from Ben Nanas

R' Abba bar Mamal in the name of Rav teaches that other Tannaim disagree with Ben Nanas's ruling in the Mishnah and maintain that in cases of doubt the buyer and seller will split the portion that is under dispute.

The Gemara explains the necessity for R' Abba bar Mamal in the name of Rav to teach us this fact when, seemingly, it is known from other contexts that this is a disputed issue.

R' Yehudah in the name of Shmuel writes that according to Chachamim the buyer will always receive the smaller amount.

The Gemara states that Shmuel's statement indicates that he follows the position of Ben Nanas.

The premise that Shmuel follows the position of Ben Nanas is successfully challenged.

The Gemara concludes that Shmuel does not follow the position of Ben Nanas.

R' Huna quotes a ruling in the name of the Yeshiva of Rav that indicates that he follows the view of Ben Nanas.

The novelty of this teaching is explained. ■

## REVIEW and Remember

1. What is the point of dispute between Ben Nanas and his colleagues?  
 -----
2. Does the term וַי mean that one subscribes to that position or not?  
 -----
3. What is Rav's position concerning two contradictory statements?  
 -----
4. Why was it necessary for R' Huna to repeat Rav's position on these matters?  
 -----

## Distinctive INSIGHT

### *The Chachamim disagree with Ban Nannas*

מאי קא משמע לן תנינא

In the Mishnah (104b-105a) the opinion of Ben Nannas is cited, where he rules that when two mutually-exclusive expressions are pronounced by someone, we always follow the intent expressed by the last expression. The Gemara begins with Rebbe Abba bar Mamal who quotes Rav who says that the Chachamim disagree with Ben Nannas, as we find in a Mishnah (Bava Metzia 102a) regarding a landlord who rents a bathhouse saying, "Twelve gold pieces for the year, one gold piece per month." The year became a leap year, with thirteen months, and the question was whether the rental was for the year, or whether it was per month. The ruling in the Mishnah is that the landlord and the renter were to split the cost of the extra month. The Chachamim contend that when two expressions are pronounced, we have a doubt what the actual intent is, and the money is to be split among the contenders. We see that the Chachamim do not agree with Ben Nannas that the second expression is the one which is correct.

The תומים (קיצור תקפו כהן מד-מה) notes that the Gemara in Bava Metzia analyzes the conclusion of the Mishnah regarding the bathhouse from different perspectives. One is that the Chachamim are in doubt regarding which of the two expressions to honor. However, Shmuel learns that the only case where the rental fee for the thirteenth month is divided between the renter and the tenant is where the dispute erupted in the middle of the thirteenth month. Shmuel says that by not coming to collect the rent until the middle of the month, the landlord is admitting that the tenant need not pay for the extra month until then, but that he does expect to get paid for the rest of the month. According to Shmuel, the ruling in the Mishnah in Bava Metzia does not indicate any conflict with the opinion of Ben Nannas in our Mishnah. How, then, does Rav know that the Chachamim disagree with Ben Nannas at all?

תומים answers that the explanation of Shmuel was only said in a case where two people have made an agreement, and the terms of the agreement are unclear due to the two conflicting expressions which were used. Furthermore, by coming in the middle of the undefined

## HALACHAH Highlight

### Leasing property for a year that turns out to be a leap year

בסוף החודש כולו לשוכר

*If he comes at the end of the month - the benefit belongs to the tenant*

Our Gemara discusses the halacha when two parties enter into a lease for a year and the year turns out to be a leap year. The Gemara teaches that in the event the thirteenth month has passed the landlord will not be able to collect rent for the thirteenth month since the tenant claims that he rented the space for the year and the additional month is part of that year. This ruling is recorded in Shulchan Aruch<sup>1</sup> as well.

Teshuvos Shoel U'meishiv<sup>2</sup> questions whether this ruling applies in our days. The original ruling appears in a Mishnah in Bava Metzia (102a) and during those times the new month was declared by Beis Din. As such, there was no way for the landlord or the tenant to know whether the coming year would contain twelve or thirteen months. Therefore, it could be said that it was the tenant's good fortune (מזל) that during his one-year lease Beis Din decided to make the year into a leap year. In our times, however, there is a fixed calendar and it is known whether the year will contain twelve or thirteen months. Since the additional month cannot be credited to the good fortune of the tenant we should require the tenant to pay for the

*(Insight...continued from page 1)*

timeframe (the thirteenth month) the landlord demonstrates that he admits that he does not expect to be paid for the full month. Now, if the ruling of the Mishnah accepts the opinion of Ben Nannas, the landlord's coming in the middle of the month would not be interpreted at all as a confession, as the second expression would be binding no matter when he came to collect the rent, and the first expression of twelve gold pieces for the year would be null and void. It must be, concludes the תומים, that the Mishnah in Bava Metzia does not reckon with the opinion of Ben Nannas. ■

additional month.

His conclusion, however, is that the halacha has not changed during our times. The strongest evidence he brings for this is that the Poskim cite this ruling and none of them assert that the halacha should change now that we have a fixed calendar. Therefore, when there is a leap year it is to the benefit of the tenant. Pischei Choshen<sup>3</sup> suggests that in our times there is even more of a reason the additional month should be to the benefit of the tenant. Since the landlord could have checked the calendar to see whether the year would be a leap year and he didn't, it is assumed that his intent was to lease the property for a year, regardless of how many months that year would contain. ■

1. שו"ת שואל ומשיב מהדו"ת חו"מ סי' כ"ט.

2. שו"ת חו"מ סי' ש"יב סעי' ט"ו.

3. פתחי חושן הלכות שכירות פ"ה הע"נ. ■

## STORIES Off the Daf

### Renter beware

"למשכיר..."

Today's daf discusses determining the halachos of rent payments.

Before signing any document that is binding, one must ensure that he is not making life difficult for himself. Unfortunately, many people learn this only the hard way. They commit themselves to bad contracts and hopefully learn from the experience.

A certain man rented a house

shortly before Elul for a large price, which he paid in advance. In the contract it said that the house was being rented for "this year," which the renter figured was the same as "a year."

Unfortunately, the miserable man was shocked when the landlord demanded that he vacate the premises by the first of Tishrei. The renter was infuriated. "How can you ask me to leave when I just entered the house?" he remonstrated. "Isn't it obvious from the sum I paid that I meant to stay for a full year?"

But the landlord was completely inflexible on this point and the two

went to the Shvus Yaakov, zt"l, to decide who was right. "Unfortunately, the buyer signed a document obligating him to pay that sum for 'this year' which obviously means the rest of the year, unless there is a clear custom otherwise. As far as the claim that the money shows us his clear intention, I am afraid that this is not really enough in our case, since the owner of the land could claim this is a gift or a deposit.

"In addition, since we hold that there is no ona'ah on land, the renter sadly loses in this instance."<sup>1</sup> ■

1. ח"א, סי' קע"ה שו"ת שבות יעקב, ■