

## OVERVIEW of the Daf

### 1) The acquisition of different items (cont.)

R' Yehoshua ben Levi rules that handing over the keys to a house completes the sale of the house.

The Gemara elaborates on this ruling.

Reish Lakish in the name of R' Yannai rules that the transfer of the **משכוכית** completes the sale of a flock.

The Gemara elaborates on this ruling.

Two definitions of the term **משכוכית** are presented.

An example of one of the definitions is presented.

2) **MISHNAH:** The Mishnah begins with a continued discussion of a **בור** that is jointly owned. The Mishnah goes on to discuss different aspects of the liability of **בור**.

### 3) Liability of the first **בור**

The Gemara inquires until when the first partner is exempt when it was the second partner who left the **בור** uncovered.

Rav, Shmuel and R' Yochanan offer different opinions about the matter.

### 4) Covering a **בור** properly

The Gemara explains that an animal can fall into a pit that was covered properly if it became wormy.

The Gemara inquires about liability in a case of a cover that could withstand oxen but as a result of camels walking on the cover it weakened and an ox fell in.

The exact inquiry is clarified.

Two unsuccessful attempts to resolve the inquiry are presented.

A second version of the inquiry is presented.

Two unsuccessful attempts are made to resolve this version of the inquiry.

A final proof is cited that demonstrates that one is not liable unless his negligence is related to the damage that occurred.

### 5) Falling "forward" and "backward"

Rav offers one definition of the terms "forward" and "backward." ■

Today's Daf Digest is dedicated  
 לע"נ הרב אברהם מרדכי בן ר' חנוך זאב ז"ל  
 Rabbi Dr. Milton Kanter  
 By his children  
 The Kanter family

## Distinctive INSIGHT

### *How to secure the lid of a pit in the public domain*

איבעיא להו כסהו כיסוי שיכול לעמוד בפני שוורים ואין יכול לעמוד בפני גמלים ואתו גמלים וארעוה ואתו שוורים ונפלו בני מהו?

The Gemara poses an inquiry regarding a pit in the public domain which was covered with a lid which was strong enough to support oxen, but not strong enough to hold camels. When camels tread upon it, the lid became weakened to the extent that later, when oxen walked on it, the lid failed and an ox fell in.

Rashi explains that the question is only in regard to an ox that fell into the pit, but if a camel fell in there would certainly be an obligation to pay, as the pit cover was never built securely and safely for camels. Tosafos add that even if there are no camels in that area, and the one who secured the pit thought that he had built the lid to withstand the animals in that city, the one who dug the pit is still considered negligent if camels later come and fall in. He must build the cover to support all animals, and he should have anticipated that even camels may come. He is only considered to have done his job when he secures the lid to withstand all animals. R' Elchonon Wasserman (קובץ ביאורים) explains that **אונס** is an exemption when the pit itself is not capable of causing death (if it is less than ten tefachim), and an animal falls in and dies. In this case, we do not attribute the effect to the "shallow" pit. However, if the pit is unsafe, we do not consider this an **אונס** just because a camel is not expected to come its way.

If the pit cover is not strong enough to support camels, and it is situated where camels frequent, the owner of the

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## REVIEW and Remember

1. How does one transfer a flock to his friend?

2. Why is the owner of a **בור** exempt from paying for a child that fell into his **בור**?

3. Is one considered negligent if he ignores an occurrence that happens only occasionally?

4. How does Rav define the terms "forward" and "backward"?

# HALACHAH Highlight

## Is property transferred when the keys are handed over?

וכיון שמסר לו מפתח כמאן דאמר ליה לך חזק וקני דמי

And once he handed over the keys it is as if he said, "Go, make a chazakah and acquire the land."

According to the Gemara's conclusion handing keys to a buyer does not effect the transfer of a house. In order to effect a transfer of a house it is necessary for the buyer to perform a chazakah on the house upon the instructions of the seller. The only role that handing over the keys could play is that it is the same as the statement "Go and make a chazakah and acquire the property." A difficulty with this conclusion is that the Gemara in Pesachim (4a) seems to maintain that handing over keys does transfer the property. The Gemara there discusses the question of who is responsible to do bedikas chometz when a house is leased right before Pesach. The determining factor is whether the keys were transferred before the beginning of the night of the fourteenth. In other words, if the owner handed the keys to the tenant before the night of the fourteenth, it is the tenant's obligation to do bedikas chometz even if he didn't perform any chazakah. This seemingly implies that just giving the keys is sufficient to transfer the house to the tenant. Tosafos<sup>1</sup> answers that the Gemara in Pesachim is not teaching that handing the keys to the tenant makes a kinyan; rather it is addressing a more practical point. Once the owner gave the keys to the tenant it is the tenant's responsibility to do bedikas chometz since he is the one with access to the house.

The fact that handing over keys does not make a kinyan on the property is relevant for other matters. Reuven and Shimon were sharing an apartment and Shimon decided that

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pit is negligent, and he is responsible even if a ox falls in, although it should have been able to support an ox. Ra'aved contrasts our Mishnah with the earlier halacha of a dog which found a smoldering biscuit. It took the biscuit and ate it, and the smoldering ember attached to it was placed on a haystack which was destroyed by fire. The owner of the dog pays fully for his dog's having eaten the biscuit, and he pays half for the damage to the haystack. The owner of the biscuit is totally exempt, as the Gemara explains, as he guarded his smoldering biscuit. Nevertheless, the owner of the dog should have realized that typical walls do not prevent dogs from penetrating through to get food. Ra'aved points out that the cover of the pit is inadequate even for oxen, as its owner should realize that camels might come and weaken the lid. Why, then, is the biscuit owner not expected to anticipate that a dog may come and take his smoldering cookie?

Ra'aved answers that a pit in the public domain is not secure as long as a camel might come. A smoldering biscuit in a private domain, however, is not defined as a nuisance. ■

he didn't want to continue sharing the apartment with Reuven so he gave Reuven his set of keys and left. When the next month's rent came due the landlord tracked down Shimon and asked him to pay his share of the rent. Shimon refused, claiming that it was now Reuven's responsibility since he gave the keys to Reuven and Reuven was now the only tenant in the apartment. Based on our discussion it is clear that Shimon's claim is not valid since handing over the keys does not constitute a kinyan of any sort, consequently, since Shimon never legally transferred his share of the apartment to Reuven he remains obligated for his share of the rent. ■

1. תוס' לסוגייתנו ד"ה כיון דמסר לו ■

# STORIES Off the Daf

## Secondary damage

כי יפול לבור

A certain man in Israel used to make his living by purchasing scrap metal for a nominal fee. One time he picked up some particularly jagged metal which he piled in the back of his pickup truck. Unfortunately, when he went over a new and particularly rough speed bump, some metal flew out of his truck. Before

he had a chance to do anything, another car rode over the metal and punctured a tire. At times a puncture can be patched, but this particular flat was so pronounced that the entire tire needed to be replaced. The scrap-metal dealer was very apologetic regarding his mistake and willingly left his number.

The next day the owner of the car called him and said, "I asked my rav and he said you must pay the price of a new tire since אדם מועד לעולם."

"I am very sorry about the problem," he replied, "but I will not pay a cent un-

til we go to a din Torah or at least before a qualified dayan. Not every rabbi is an expert in the complex laws of Choshen Mishpat."

When this came before Rav Yaakov Yeshayah Blau, he said, "The Mishnah rules in Bava Kamma 52 that one is not obligated to pay for vessels damaged by his בור. It is true that one must do his utmost to avoid making a בור that can damage another person's property. But if his בור damaged another's vessels he is not obligated to pay." ■

1. פתחי חושן חלק ו' פ"ח ס"ק ס"ב

