

## OVERVIEW of the Daf

### 1) Consuming produce to reduce the loan (cont.)

The Gemara presents the rationale of those who would not eat produce of a borrower to reduce the loan.

### 2) Collateral

R' Ashi relates that the elders of Mechasya ruled that unspecified collateral is for a year and the practical ramification of this is explained.

R' Ashi relates that the elders of Mechasya explained the meaning of the word משכנתא and the practical ramification of this is explained.

Rava issues three rulings that relate to interest and collateral and elaborates on each of the three rulings.

Mar the son of Ameimar and R' Ash had a discussion related to Mechoza documents.

The issue of Narsha'ah leases is discussed and the Gemara analyzes the way this halacha was practiced.

**3) MISHNAH:** The Mishnah discusses different business arrangements and whether they violate the laws of interest.

### 4) The unemployed worker

A Baraisa rules that the wages a storekeeper must be paid is like an unemployed worker.

Abaye explains the meaning of this ruling.

### 5) Clarifying the Mishnah

The Gemara explains why it was necessary for the Mishnah to present two examples of businesses that sell produce.

### 6) Managing partner

A Baraisa discusses how much a managing partner must be paid to avoid violating the prohibition against interest.

Another Baraisa that discusses עיסקא partnerships is presented.

The point of dispute in the Baraisa is explained.

A third Baraisa related to עיסקא partnerships is presented.

R' Yehudah's opinion is explained.

A fourth Baraisa on the topic is recorded.

The point of dispute between R' Shimon ben Gamliel and Tanna Kamma is explained.

R' Nachman issues rulings related to the previous Baraisos.

An incident related to עיסקא partnerships is presented.

## Distinctive INSIGHT

### The terms of a business investment—עיסקא

אין מושיבין חנוני למחצית שבר

The Mishnah discusses a case of a supplier who gives a retailer a stock of fruit to be sold individually at retail with the understanding that payment will be made at the end, after the fruit has been sold. If the arrangement is that they will divide the profits (as planned) or the losses (either if the fruit goes bad or if the market price drops for these fruits), this deal is prohibited. The reason there is a problem is that we see the original shipment of fruit as being half on credit (a loan) and half as a deposit (still owned by the supplier). Because they stand to share any potential loss, the retailer has assumed risk for half of the fruits, which, by definition, constitutes a loan to him. The other half remains the property of the supplier, as he assumes his own risk, and, by definition, is a deposit entrusted to the store owner to sell on behalf of the supplier. As the store owner works daily to sell the entire stock, he is effectively providing a service for his supplier as he sells his product, and this effort is expended as courtesy in consideration for the first half of the stock, which was lent to him for himself to earn a profit. It is prohibited for the store owner to work for the supplier as payment for having been afforded a loan.

The simple solution to this is that the store owner must be paid a fee or wage for the work he does in selling the portion of the fruit for the supplier, as we cannot allow him to work for "free," which would be interpreted as a form of interest for having been advanced a portion of the fruits for his own profits.

The Gemara later (70a) teaches that if money is advanced to an investor, it cannot be done so that it is "close to profit and far from loss" for the investor. This means that it cannot be arranged so that if there will be a loss it will be absorbed by the receiver (borrower), while if there is a profit it will be divided equally. If it is done in this manner, the case is in the realm of rabbinic interest (אבק ריבית). The deal must be "close to a loss and far from gain," which is the way of pious people, or at least "near to gain or loss, or far from gain and loss," which is the manner of the average person.

The Gemara later (104b) also explains that the sages automatically interpret funds given by an investor to a businessman as half of the money as a loan, and the other half as a deposit. As stated above, the worker must be compensated for his efforts to earn a profit for the funds of the investor. This can be done either by his being furnished a fee, as mentioned above, or by the investor's assuming a two-thirds position in any potential risk of loss. ■

# HALACHAH Highlight

*The lender's legal claim to land given to him as security for a loan*

למאי נפקא מינה? לדינא דבר מצרא

What is the practical difference? For the laws of בר מצרא

The Gemara explains that the significance of the etymology of the word משכנתא is that it grants the lender the status of a בר מצרא. בר מצרא is an enactment of Chazal that a neighbor has the first right to purchase the land that is adjacent to his property. Rashi<sup>1</sup> explains that the lender is considered the closest neighbor and therefore he has a right that is stronger than the other neighbors. Authorities disagree about the extent of this halacha. One could assert that the intent of the Gemara was to rule that if the borrower sold the property to the lender the neighbors cannot invoke the rule of בר מצרא to take the property from him, but if the borrower were to ask who has first rights he would be told that it should be sold to a neighbor rather than the lender. Another possible explanation is that the lender is considered to have a stronger claim to the land than even those who have property that borders the borrower's property. According to this approach if the borrower sold the property to a neighbor the lender would be able to demand the neighbor to release the property. Ritva<sup>2</sup> writes that in his opinion the second approach is the primary explanation of the Gemara.

There is another dispute related to the opinion which

# REVIEW and Remember

1. What is the etymology of the word משכנתא?
2. How is a Narshean lease structured?
3. Why was it necessary for the Mishnah to present two cases of selling produce?
4. What is the point of dispute between Tanna Kamma and R' Yosi the son of R' Yehudah?

maintains that the lender can even take possession of the borrower's property that was sold to a neighbor. According to one opinion<sup>3</sup> the neighbors have the right to protest the borrower's putting his land up as security for the loan since that act could compromise their interest and this could undermine the law of בר מצרא altogether. A land owner who wants to sell his land to someone other than his neighbor will borrow money from that person and use the land as security for the loan. Once the lender has the land as security he has first rights to the land and preempts all the neighbors. Other authorities<sup>4</sup> disagree and maintain that the owner of the land may use his land as security as he chooses. ■

1. רש"י ד"ה דשכונה.
2. ריטב"א ד"ה דשכונה.
3. חידושים המיוחדים לריטבא ד"ה מאי.
4. רמב"ן לקמן ק"ח: ד"ה משכנתא. ■

# STORIES Off the Daf

## A Neighborly Loan

"איכא ביצים מזורות..."

On today's daf we find a dispute regarding whether one can pay another with eggs which have a blood spot.

A certain man borrowed some eggs from his neighbor, but was dismayed to find several with blood spots. He wondered if he was permitted to return the same number of eggs he had borrowed. After all, it was quite possible that such an exchange was rabbinic ribis, since he had received eggs with blood spots,

which are pretty rare. Presumably, he would return edible eggs without blood spots which were worth much more than he had received.

This got him thinking about when he purchased eggs at the local grocery. Why weren't the groceries obligated to give a refund for every bloody egg? After all, it seems obvious that there is no greater example of מקח טעות!

He decided to consult with Rav Shmuel Vosner, zt"l, regarding these two questions. "Your last question is explicit in Shulchan Aruch Choshen Mishpat, 232:19. There we find that you are absolutely correct. Since we do not eat eggs that have a blood spot<sup>1</sup>,

merchants should indeed refund money for every egg that has a blood spot. But the custom is that merchants do not refund for such eggs and minhag overrides the halacha in money matters.

"As far as your second question goes, it follows that you are not obligated to return bloody eggs, and that since you took them as a loan, if you returned good eggs in their stead you have certainly returned more than you received. This would be a violation of the prohibition of rabbinic ריבית."<sup>2</sup> ■

1. ע"ש בחו"מ שם, ועי' בש"ע יו"ד, סי' ס"ו, סעי' ז', וע"ע בחכ"א, כלל כ"ט, ודרכי תשובה סי' ס"ו, ס"ק נ"ה, וכה"ח שם
2. שו"ת שבט הלוי, ח"י, סי' קל"ג ■