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# DAF YOMI DIGEST
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בבא מציעא קט״ז
CHICAGO CENTER FOR Torah & Chesed
בס״ד

## OVERVIEW of the Daf

**1) Prohibitions violated for taking a millstone as security (cont.)**

Abaye concludes demonstrating how his opinion is also consistent with both R' Huna and R' Yehudah.

A Baraisa is cited that supports R' Yehudah's position that one who takes a borrower's millstone does not violate the general prohibition against taking objects used for food preparation.

An incident is recorded in which a lender took a slaughtering knife from a borrower as security and Abaye and Rava disagreed whether the lender could keep the knife to assure repayment of the loan.

Abaye's opinion is unsuccessfully challenged.

The resolution to the challenge against Abaye becomes the basis for an unsuccessful challenge to Rava's position.

**הדרן עלך המקבל**

**2) MISHNAH:** The Mishnah presents the guidelines for dividing the rubble of a two-story dwelling that collapsed hat was owned by two separate people.

**3) Clarifying the Mishnah**

The Gemara elaborates on the exact circumstances when the two people will equally divide the rubble.

The circumstances are clarified rearding the Mishnah's next ruling that permits one of the two people to claim a stone as his own.

It is noted that the Mishnah's ruling permitting one of the parties to collect the stones he claims are his seems to refute the position of R' Nachman who maintains that when one person makes a claim against another and the defendant responds that he does not know he is not permitted to collect his claim.

The Gemara offers an explanation that defends R' Nachman's position.

Rava and Abaye disagree whether the one who does not recognize stones is relegated to a weaker position or whether the one who does recognize some stones is relegated to a weaker position.

Abaye's approach in unsuccessfully challenged.

**4) MISHNAH:** The Mishnah discusses the responsibility of the owner of a two flat who dwells on the bottom floor to repair the upper floor apartment.

**5) Caved-in floor**

Rav and Shmuel disagree how much of the floor has to cave in for the halacha of the Mishnah to apply.

Each Amora explains the rationale behind his position.

Rava clarifies the exact agreement between the owner and the tenant concerning the lease of this apartment.

This explanation is challenged and R' Ashi offers an alternative explanation.

Support for this explanation is cited. ■

## Distinctive INSIGHT

***Partners are not particular with each other in this regard***
שותפין בכי האי גוונא לא קפדי אהדדי

The Mishnah taught that if a house and upper level dwelling which was owned by partners collapsed, the two owners divide evenly the materials of the demolished building. The Gemara analyzes this ruling, and it points out that if there is any definitive way of determining which bricks, stones or beams came from the lower level or the upper level, those identifiable materials would be awarded to their owner. It is only the items whose original position cannot be identified that are divided evenly.

The Gemara then questions this ruling from a different angle. We should view the one currently in possession of the materials as being their owner, and the other partner should be in the legal offensive position of being a מוציא מחבירו, with the burden of proof placed upon him. Why are the materials to be divided equally?

The first answer of the Gemara is that the case is where the materials are situated in an area which is owned by both of them, so its position is not a factor. The second answer of the Gemara is that the materials are in the possession of only one of them, but this is inconsequential because partners are known not to be particular with each other regarding who is currently in possession of any mutually-owned objects.

Rabeinu Chananel determines from our Gemara that anything that we knew belonged to partners is understood to remain owned by both partners until we know otherwise. Even if one of the partners is now is full possession of the item, and he claims with certainty that he bought it from his partner, he is not believed. Partners regularly allow one another to take possession of the mutually-owned item, and its being in his possession is not any proof that he is now the exclusive owner.

Ra'aved (cited in Nimukei Yosef) learns that not only is the one partner not believed that he is now the exclusive owner, but he is also not believed that he is now a majority owner, unless we have proof. This is indicated from our Mishnah, where the halacha is that the two partners divide the materials equally, and the one who is in possession of the objects has no legal advantage due to his being in possession of the items.

Ramban asks that perhaps possession is a factor of ownership, if the partner presents a claim of ברי. The reason the partner in possession of the materials in our Gemara has no advantage is that here he is claiming שמא. The one holding the bricks admits that they were placed there by passers-by. In this case we do not recognize his possessing them as significant, especially because partners are not particular with one another. ■

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**מרת שפרה בת ר׳ משה אהרן הלוי, ע״ה**

# HALACHAH Highlight

***Utensils that are lent or rented***

דברים העשויין להשאיל ולהשכיר ואמר לקוחין הן בידי אינו נאמן

*Objects that are lent or rented and someone claims to have purchased them is not believed*

The Gemara makes reference to utensils העשויין להשאיל ולהשכיר. According to most Rishonim[1] the phrase refers to those utensils that are commonly borrowed and rented and the halacha teaches that one is not believed that he bought a utensil that falls into this category. According to these opinions the term העשויין – lit. "which are made to" should be understood to mean "that are fit to." Rambam[2] translates this term more literally based on the fact that the Gemara used the term העשויין rather than the term שדרכן. This is because any utensil could be rented or loaned to another person. The Gemara would not rule that a person is not believed to claim something was purchased merely because it is an object that could be rented or borrowed. Only regarding those utensils that are עשויין – made to be loaned or borrowed – does this halacha apply. Examples of this would be industrial size pots that people would rent when hosting a party or certain types of jewelry that was worn by brides at their wedding. Since these utensils are generally not purchased and people who need them rent or borrow them, the Gemara's ruling applies that someone who has possession of these items is not believed to claim that he purchased that item.

This explanation of Rambam at first glance seems difficult to support from our Gemara. A slaughtering knife is a utensil that people use for themselves and do not lend to others. Why then does Abaye categorize slaughtering knives as a type of utensil that was made to lend or rent to others? It is suggested[3] that Rambam would assume that the case in our Gemara refers to where there are witnesses who testify that this person commonly rents his knife to others and it thus falls into the category of utensils that are made to be rented or borrowed. Rava who disagrees with Abaye asserts that even if this person rents out his slaughtering knife since most people are not willing to lend or rent their knives to others, in all cases the status of the knife will be determined objectively and thus it is not categorized as a knife that is made to lend or rent. ■

1. ע' ריטב"א ד"ה ואין.
2. רמב"ם פ"ח מהל' טוען ונטען ה"ט.
3. ע' מגיד משנה שם. ■

# REVIEW and Remember

1. What prohibitions are violated when a lender takes a pair of barber's scissors?

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2. What is the point of dispute between Rava and Abaye concerning one who took a slaughtering knife as security for a loan?

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3. What conditions are necessary for the stones of a collapsed building to be divided?

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4. What happens when the owner of the lower apartment isn't interested in rebuilding his part of the two-flat?

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# STORIES Off the Daf

***A complex maneuver***

"ההוא גברא דחבל סכינא..."

Today's daf continues to discuss the halachos of securities taken for a loan.

A certain man wished to borrow a hundred gold coins from his friend and offered to leave a valuable security to ensure that he repay the loan, but the wealthy man refused to lend him such a huge sum of money unless he would make some kind of profit from the deal. The borrower did not wish to rely on a heter iska, so he decided to sell the expensive piece of jewelry to the wealthy man at a discount price in return for the sum he required.

"But if I wish to redeem it for a larger price then what you bought it for, I can do so if you allow..."

The wealthy man agreed and he paid the bargain price for the jewelry.

After several weeks, the seller of the jewelry wished to redeem it for the higher price he had quoted when he sold it but the wealthy man refused. "We explicitly agreed that whether the jewelry would be resold depends entirely on my wishes and I do not want to sell it back."

But the man who had sold the jewelry rejected this reasoning. "It is true that we made this agreement but that was only to avoid a halachic problem with interest, not to limit my rights to redeem what was originally my property. This was the entire point of setting a price for redemption, 'if you want,' in the first place."

When this question was brought before the Tzemach Tzedek, zt"l, he ruled that the wealthy man was required to sell back the jewelry for the price they had agreed upon and this was not ribis since there had been a sale after all. The buyer had merely received a bargain price and agreed to sell it back for closer to its value at a later time.[1]

But the Taz, zt"l, and the Eliyahu Rabbah, zt"l, both argued that if the buyer could not refuse to resell the object, there was no true sale here to begin with.[2] In that case, their transaction is nothing less than forbidden ribis![3] ■

1. שו"ת צמח צדק, ס' כ'
2. או"ח, ס' רמ"ו, ס"ק ה' ט"ז,
3. א"ר, ס"ק י"ב ■

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