

OVERVIEW of the Daf

1) Liability for a בור that is less than ten tefachim deep (cont.)

R' Nachman defends his position, of liability for the death of an animal in a pit less than ten tefachim, from Rava's challenge.

Two more challenges to R' Nachman are presented and the second challenge is successful.

R' Nachman's explanation is adjusted in a way that is consistent with the position that liability for the death of the animal is when the בור is ten tefachim deep.

The Mishnah is explained in light of R' Nachman's new position.

2) **MISHNAH:** The Mishnah discusses liability for a בור that is jointly owned.

3) Clarifying the Mishnah

The Gemara looks for circumstances in which there can be partners who share liability for a בור.

A Baraisa is cited that presents the dispute between Rabbi and Rabanan concerning liability when one person digs a בור nine tefachim and a second person digs an additional tefach, referenced in the previous discussion.

The Gemara explores the rationale behind Rabanan's position and presents the exchange between Rabbi and Rabanan regarding that source.

4) Two people involved in digging a בור

Two contradictory Beraisos are cited regarding the liability of a person who makes the בור more dangerous after someone else digs a בור ten tefachim.

It is suggested that the contradiction could be resolved by attributing one Baraisa to Rabbi and the other to Rabanan.

R' Zevid explains how both Beraisos could follow the opinion of Rabanan.

This explanation is unsuccessfully challenged.

A second version of R' Zevid's explanation is presented in which he explains how both Beraisos follow the opinion of Rabbi.

Rava suggests that one who puts a stone next to a pit increasing its size to ten tefachim is subject to the dispute between Rabbi and Rabanan.

The novelty of this application is explained.

Rava presents a related inquiry that is unresolved.

5) Different size pits

Rabbah bar bar Chanah in the name of Shmuel bar Marta asserts that one who digs a בור that is eight tefachim, but two of those tefachim are filled with water, is liable.

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Distinctive INSIGHT

The ten-tefach fall into a pit

מכריסא דתורה לארעא כמה הוי ארבעה אריתא, דדלאי כמה הוי שיתא, הא עשרה, אישתכח דכי קא מחבט מעשרה הוא דקא מחבט

The Gemara had established that a fall from a height of ten tefachim can cause death. Furthermore, we find that Rav Nachman ruled that an animal which fell into an irrigation ditch which was six tefachim high was a tereifa due to the injuries it must have sustained in such a fall (50b). The Gemara's first impression was that Rav Nachman disagrees with the premise of our Gemara that only a fall of ten tefachim causes fatal injuries. The Gemara then reconciles the statement of Rav Nachman with the definition of a fatal fall being ten tefachim. The body of the cow is actually raised above the surface of the ground by the height of the legs of the animal, which is four tefachim. Therefore, even when an animal falls into a pit of six tefachim depth, the body of the animal actually falls that six tefachim plus the additional four tefachim of the body's distance above the surface of the ground, for a total of ten tefachim.

Tosafos Rabeinu Peretz notes that according to this Gemara, we could ask why the height of a roof which requires a מעקה is set at ten tefachim? We find that the fall of an animal into a pit of six tefachim is combined with the four tefach height of the body of the animal above the ground. Accordingly, a roof of six tefachim height should be considered dangerous for a person, as it should be measured and combined with the height of the person's legs for a total of ten tefachim to the cavity of the person's body. He answers that perhaps because people use a roof for many purposes, it would not be common for a person to stand at the edge of such a roof, but rather to sit. Therefore, we cannot add the height of the legs to the height of the roof.

Maharsha explains that it is only regarding an animal that we add the height of the legs and that we consider the cavity of the body to be off the ground. In regard to humans, there is no space between his legs and the cavity of the body. The only time we measure the void directly to the body is if the person leans over and falls on his head. This is why the height of a roof which requires a מעקה is set at ten tefachim. ■

REVIEW and Remember

1. According to R' Nachman's final position, at what depth is one liable for בור?
2. What is the dispute between Rabbi and Rabanan?
3. Why was it necessary for Rava to rule about a case where someone put a stone on the edge of a בור?
4. How does a בור transfer from one owner to another?

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 In gratitude to HaShem on the anniversary of our children
 Eli and Marissa Lieberman
 by Frank and Beverly Lieberman

HALACHAH Highlight

Constructing a fence around a pit in the yard of a Beis Haknesses

כי יפול הנופל ממנו—ממנו ולא בתוכו

"When a victim will fall from it" the term "from it" means from the roof and not onto the roof

There was a Beis Haknesses that had a pit in its yard and the question arose whether there was an obligation to construct a fence around the pit. One rav¹ cited our Gemara as evidence that there is no obligation to construct the fence. The Gemara cites the verse that states, **כי יפול הנופל ממנו**—"When the victim will fall from it," which indicates that the obligation to construct a fence applies only when there is a concern that a person may fall from a roof to the public domain below but there is no obligation to construct a fence when the concern is that a person will fall from the public domain onto one's roof. Accordingly, when it comes to a **בור** there would only be an obligation to construct a fence if there was a concern that someone may fall from the pit onto the street but there is no obligation to construct a fence when the concern is falling from the street into a pit.

Dvar Avrohom² disagreed with this conclusion and cites Rambam³ who rules explicitly that there is an obligation to construct a fence around a pit. He also makes a point of interpreting the Gemara differently than the other rav which leads to the opposite conclusion. The Gemara is wondering who bears the obligation of constructing the fence, is it the roof owner or the owner of the property where the impact occurs? In response to this inquiry the Gemara cites the verse that teaches that responsibility rests upon the owner of the roof from where the victim falls. Consequently, if the public domain is higher than someone's roof there is no obligation for the homeowner to construct a

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The Gemara inquires whether this principle could be applied to a **בור** that is nine or seven tefachim.

R' Shizvi asked Rabbah whether one who widens a **בור** is liable.

Rabbah responded that he should be exempt.

R' Shizvi challenges this ruling and R' Ashi presents a compromise position on the matter.

A second version of R' Ashi's position is presented.

Rabbah and R' Yosef disagree about the dimensions of a pit that will contain dangerous **הבל**.

6) The first partner's exemption

Rabbah and R' Yosef disagree about the point at which the first partner is exempt from liability.

The Gemara suggests that this dispute is also disputed by R' Elazar ben Yaakov and Rabanan.

Ravina cites a parallel dispute between those same Tannaim.

7) Selling a **בור**

R' Elazar rules that handing the cover of a **בור** completes the sale of that **בור**.

The Gemara clarifies the circumstances of this ruling ■

fence since no one is falling from his property, the only concern is someone falling onto his property. In light of this analysis it is obvious that there is an obligation to construct a fence around the pit in the yard of the Beis Haknesses since both the yard and the pit belong to the same owner and since people walk through the yard it is necessary to take precautions so that someone should not become injured or worse. ■

1. מובא דברי"ו בדבר אברהם דלקמן
2. דבר אברהם ח"א סי' ל"ז
3. רמב"ם פי"א מהל' רוצח ה"ד ■

STORIES Off the Daf

Two partners

בור של שני שותפין

The importance of putting away seforim in order to save another's time cannot be overestimated. We say every day, **ותלמוד כולם** – that Torah study is equal to all of the mitzvos. Clearly one should minimize bittul Torah as much as possible. At the very least, each person should be sensitive enough to put away whatever seforim he used at the end of seder. It is preferable for one to return any sefer used immediately, especially if it is likely that

someone else needs it and the one who took it is finished using it.

Very often, important seforim are in high demand in a beis midrash. People know who is using them and wait their turn, or ask those presently using the needed seforim to tell them when they are finished so that they can use them in turn. In a certain yeshiva, the library was upstairs and there were disputes about who was required to return a sefer that had been in use. Very often when two people used a certain work, each would claim that the other was required to put it back. The one who took it first would claim that he had done his share since he had brought the sefer to the beis midrash. It was the second

party's turn to replace it. The second user would quote the Gemara, that we say to all who start a mitzvah to finish it.

Once this question came up before Rav Chaim Kanievsky, shlit"u, and he didn't agree with either rationale. "This is a clear Mishnah in Bava Kamma 51. There we find regarding an uncovered **בור** belonging to two partners: if one used it and left it uncovered and then the second partner used it and left it uncovered, the second partner is obligated in any damage caused. The same is true regarding our case. The last one to use the sefer must replace it to its proper place!" ■

1. דרך שיחה ע' תקי"ב

