

## OVERVIEW of the Daf

### 1) Moving into the landlord's ground-floor apartment

R' Abba bar Mamal begins a series of questions related to the right of a tenant to move into the landlord's ground-floor apartment.

### 2) Ceiling

R' Yosi bar Chanina and Stini in the name of Reish Lakish suggest different definitions of the reference to the ceiling mentioned in the Mishnah by R' Yosi.

The Gemara states that there is no disagreement between these opinions and each one refers to the custom of his place.

An incident concerning damaged plaster between two apartments is cited and R' Chiya bar Abba and R' Ilai in the name of R' Chiya the son of R' Yosi disagree who has to repair the plaster.

After suggesting a mnemonic it is suggested that this dispute parallels the dispute between Tanna Kamma and R' Yosi in our Mishnah.

This suggestion is rejected and instead it is suggested that the debate between Amoraim is parallel to a different debate between R' Yosi and Rabanan.

The Gemara clarifies the point of dispute between R' Yosi and Rabanan in our Mishnah.

The position of R' Chiya the son of Yosi is unsuccessfully challenged.

**3) MISHNAH:** Tanna Kamma and R' Yehudah disagree about the rights of the owner of the second-story apartment when the ground-floor owner refuses to rebuild his portion of the collapsed building.

### 4) Benefitting from a friend's property

R' Yochanan reports that R' Yehudah taught in three different contexts that one is prohibited from benefiting from a friend's property without permission.

The Gemara rejects R' Yochanan's assertion that these sources demonstrate that R' Yehudah prohibits one from benefiting from a friend's property without permission.

### 5) Changing the structure when rebuilding

R' Acha bar Ada in the name of Ulla presents the guidelines when one of the owners wants to change the structure from what it was before it collapsed.

### 6) Dividing the land

A Baraisa relates the dispute between R' Nosson and others whether the owner of the upper story has a right to the portion of the land in the event that neither party intends to rebuild the collapsed building.

Rabbah rules in accordance with R' Nosson's position.

**7) MISHNAH:** The Mishnah begins with a discussion of a garden that collapses on an olive press. The Mishnah moves on to discuss a wall or tree that collapses or is about to collapse into the public domain or onto a neighbor's property. ■

## Distinctive INSIGHT

### *Benefitting by living in someone else's dwelling*

אמר רבי יוחנן בשלשה מקומות שנה לנו רבי יהודה אסור לאדם שיהנה מממון חבירו

The Mishnah describes two partners who share a dwelling, one who owns and lives on the main level, and the other owns and lives on the upper level. If the building collapses, they both contribute to rebuilding it. If the owner of the lower level does not wish to cooperate in the reconstruction, the one who lived upstairs can rebuild the first floor of the house by himself, and live there, until the original owner of the first floor pays him for the expenses he incurred in building the first level. At that point, the upper-level occupant will vacate the main floor and build the second floor for himself. Rabbi Yehuda disagrees and says that now that he is finally getting paid, it would have been improper for the second-story resident to have lived in the lower level without paying rent to its owner. Rather, the house should be completely rebuilt, with its first and second floor, and the upper-floor owner can then live in the lower level until the first-floor owner reimburses him for expenses of rebuilding the first floor.

Rashi explains that the point of contention between Tanna Kamma and Rabbi Yehuda is in the law of **זה נהנה וזה לא חסר**. Tanna Kamma holds that when the upper-level owner benefits at no expense to the lower-level owner, he is exempt from paying for that benefit. Rabbi Yehuda holds that the upper-level owner is obliged to pay for any benefit he receives, even if the lower-level owner did not lose by it.

Rabbi Yochanan comments that we find three places where R' Yehuda is of the opinion that it is prohibited for someone to benefit from another's property (without paying for that benefit). Our Mishnah and its law is the first of the three cases listed. Although this seems to suggest that Tanna Kamma allows the second-floor owner to benefit without paying for it, **תלמיד רבינו תם** (to Bava Kamma 20b) writes that all opinions here agree that in general it is prohibited to benefit from another's property, but in this case Tanna Kamma allows it because the owner of the upper level has a direct interest in the lower level of the building, as it is part of the structure which holds up the upper floor.

**תלמיד רבינו תם** also writes that R' Yochanan himself holds that one who occupies someone else's dwelling without his knowledge does not have to pay for this benefit. The reason is that by living in an otherwise-abandoned dwelling, the occupant is providing the owner with a benefit as well. An unoccupied house is subject to **מוזיקין**, which are chased away when there is a resident. An occupied building is also kept in good repair. These benefits are described in Bava Kamma 20b. ■

## HALACHAH Highlight

### *The responsibility of the upstairs resident to prevent water damage*

דפסקי מיה והדר נפלי

*The water stopped and then fell*

The Gemara teaches that the reason we do not hold the resident of the upstairs apartment liable for the water that drips down is that we refer to a case in which the water stopped flowing after it left the hand of the upstairs resident and only then did it fall into the downstairs apartment. Since the flow was not direct it is not considered direct damage (גירי) caused by the upstairs resident. Rishonim<sup>1</sup> explain that the Gemara refers to where the upper resident only pours a small amount of water but if he pours a large quantity of water it is considered direct damage even if there is plaster between the two apartments. Maharam of Rottenberg<sup>2</sup> inferred this from the language of the Gemara. The phrase, "The water stopped and then fell," implies that the water stops flowing and is absorbed into the floor before the damage is caused but when there is a large quantity of water and it continues to flow until the damage is caused it is considered the direct damage of the resident of the upstairs resident.

Rosh<sup>3</sup> makes this inference from an earlier phrase in the Gemara and takes it a step further. The Gemara earlier referred to a person who washes his hands which requires only a small amount of water. On the other hand, if the resident of the upper apartment is using a large quantity of water which does not get absorbed into the plaster and then falls into the

## REVIEW and Remember

1. Who is obligated to repair a leak of water that falls from the upper apartment into the lower apartment?
2. What is the point of dispute between Tanna Kamma and R' Yehudah in the Mishnah?
3. According to R' Yochanan, what is the rationale behind R' Yehudah's position in the Mishnah?
4. Why did Rabbah advise following the ruling of R' Nosson?

lower apartment all opinions would agree that the resident of the upstairs apartment would be responsible to take the necessary steps to prevent the water from falling into the downstairs apartment. This is true even if the water stopped before it fell and caused damage.

Teshuvah Maharashdam<sup>4</sup> writes that the only time it is the responsibility of the upstairs resident to make the repair is when the damage is caused by the water that he is pouring to wash his hands. If it was rain water that was going through the upstairs apartment and then falling into the downstairs apartment all opinions would agree that it would not be the responsibility of the upstairs resident to make the repair. ■

1. ע' מרדכי בשם ראב"ה רמז תי"א
2. שו"ת מהר"ם מרוטנברג ח"ד סי' תת"ז
3. שו"ת הרא"ש כלל ק"ח סי' י'
4. שו"ת מהרשד"ם חו"מ סי' רס"ח ■

## STORIES Off the Daf

### *No tricks*

אסור לאדם שיהנה מממו חבירו

On today's daf we find that one should not derive benefit from his friend's money.

Many cities in Israel have a very well-developed system of public transportation. Although regular use of the buses can be fairly expensive, there is an option to purchase a monthly pass that allows unlimited travel for a set amount of money.

A certain student had purchased such a pass as he did every month, but he had lost his pass. Although on every document

that is issued there is a disclaimer explaining that the pass is not transferable for any reason, this young man figured his case was different. After all, he had paid for a pass. So he asked his friend if he could borrow his monthly pass to travel when the friend did not require it. The friend felt fairly certain that this was no problem, but since he knew that the halachos of financial matters are extremely complicated he decided to ask his rebbi, Rav Shlomo Zalman Auerbach, zt"l.

When the boys asked their question and explained why they felt it was halachically permitted for them both to use one bus pass, Rav Shlomo Zalman reacted in a very strong manner. He literally stood up from his chair and exclaimed, "But this is

a chilul Hashem!"

On another occasion, two cousins with the same name earned flight points with a certain non-Jewish airline. Although each one's points alone didn't amount to much, their combined points could earn them a free ticket. The two wondered if one of them could take all the points for himself and cash in on the reward. After all, the company was owned by non-Jews, and what difference did it make to them if the young men took advantage of their program?

But when they consulted with Rav Shlomo Zalman in this matter he absolutely forbade any such tricks. "That is gezet gamur!" he declared.<sup>1</sup> ■

1. חכו ממתקים, ח"י"א, ע' קפ"ב-קפ"ג