

A בס"ד

Intro

Today we will Be"H learn דף קט"ז and begin פרק הבית והעלייה, the tenth and last Perek of מציעא, and begin the tenth and last Perek of מציעא, and begin the tenth and last Perek of מציעא, and begin the tenth and last Perek of מציעא. Some of the topics we will learn about include:

שני כלים שעושים מלאכה אחת

If one takes as collateral two utensils that function together as a single unit, he transgresses the prohibition כי כפי נפש הוא חובל twice.

עד כדי דמיהן

If one returns collateral he took unlawfully, he is then entitled to collect the value of the item and does not need to prove the outstanding debt, because he could have claimed ownership of the collateral.

מידי דעבדא לאושולי ולאוגורי

An item that is generally lent or rented out

הבית והעלייה שנפלו

How to divide the rubble of a house whose two stories were owned by two individuals;

This depends on several factors, including:

בחבטא נפיל, if it fell sideward, or

בחבסא נפיל, if it collapsed in its place; and

ברשותא דמאן נפיל, in whose property they are found.

B אם היה אחד מהן מכיר מקצת אבניו

נוטלן ועולות לו מן החשבון

If one of the owners recognizes some of the unbroken stones as his own, he takes them, and they count towards his portion of the stones.

The Gemara discusses whether

לפי חשבון שבורות

או לפי חשבון שלימות

The other fellow takes an equal number of broken or unbroken stones.

נפחתה העלייה

If someone rented out the upper story of his house and it collapsed, the tenant may live on the ground floor until it is repaired. The Gemara discusses

מאי קאמר ליה

What were the terms of their contract?

נפחתה בכמה

How large an area must collapse to entitle him to move downstairs? And

היכי דר בה

Whether he may live there alone, and whether he may use the main entrance?

A

שני כלים
שעושים
מלאכה אחת

עד כדי דמיהן

מידי דעבדא
לאושולי ולאוגורי

הבית והעלייה
שנפלו

B

אם היה אחד מהן
מכיר מקצת אבניו
נוטלן ועולות לו
מן החשבון

לפי חשבון שבורות
או לפי חשבון שלימות

נפחתה העלייה

1 So let's review...

The Gemara completes the Perek with the topic of משכון, collateral, and says that if one took a משכון unlawfully without witnesses and then returns it;

לא צריך למיקם בדינא עלה
ויכול לטעון עד כדי דמיהן

He can then collect the loan up to the value of the משכון and does not need to prove the outstanding debt; provided that the משכון is

לאו מידי דעבדא לאושולי ולאוגורי

An item that is generally not lent or rented out; therefore, as Rashi explains

הלכך יכול לטעון לקוחין הן בידי

He could have claimed that he bought it.

However,

מידי דעבדא לאושולי ולאוגורי

An item that is generally lent or rented out

צריך למיקם בדינא עלה

Because,

אינו יכול לטעון לקוחין הן בידי

He could not have claimed that he bought it.

הדרן עלך פרק המקבל שדה מחבירו

We have B"h completed the ninth Perek of בבא מסכת, מציעא, and we will now begin the tenth Perek, הבית והעלייה, B'ezras Hashem.

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1

The Gemara completes the Perek with the topic of

משכון

If one took a משכון unlawfully without witnesses and then returns it;

**לא צריך למיקם בדינא עלה
ויכול לטעון עד כדי דמיהן**

He can then collect the loan up to the value of the משכון and does not need to prove the outstanding debt; provided that the משכון is

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An item that is generally lent or rented out

צריך למיקם בדינא עלה

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**הדרן עלך המקבל שדה מחבירו**

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2

Zugt di Mishnah

הבית והעלייה של שנים שנפלו

If one person owns the ground floor of a house, a second person owns the second floor, and the house collapsed; שניהם חולקין

בעצים ובאבנים ובעפר

They divide the wood, stones, and earth proportionally, according to the relative heights of their section of the walls;

ורואין אלו אבנים

העשויות להשתבר

If some of the stones are broken, and they both claim the unbroken stones, we determine how the house collapsed,

as the Gemara explains

אי בחבטא נפיל

עלייתא איתבור

If the house fell sideward, we can assume the stones of the upper story broke, since they fell from a greater height;

אי בחבסא נפיל

תתייתא איתבור

If the house fell in its place, it is clear that the foundation collapsed, and the broken stones belong to the lower story.

The Gemara points out

מדקתני רואין

מכלל דאיכא למיקם עלייהו

The Mishnah clearly states that it is possible to determine how the house fell. Therefore,

רישא

דנפיל בליליא

ופנינהו בני רשות הרבים

ואזלו לעלמא

The first case in the Mishnah, which says to divide the stones proportionally, is discussing where the house fell during the night. Strangers then cleared away the stones by daybreak and left before we could question them, so we cannot determine how the house fell.

2

הבית והעלייה

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If one person owns the ground floor of a house, a second person owns the second floor, and the house collapsed,

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foundation collapsed,
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The first case in the Mishnah, which says to divide the stones proportionally, is discussing where the house fell during the night. Strangers then cleared away the stones by daybreak, and left before we could question them, so we cannot determine how the house fell.

3 However, the Gemara asks
 וליחזי ברשות דמאן יתבן
 וליהוי אידך
 המוציא מחבירו עליו הראיה
 Let us leave them in the possession of the owner of the present location of the stones, and place the burden of proof on the other owner?

The Gemara offers three scenarios:

1. דייתבן בחצר דתרוייהו
 The stones are dispersed equally on both of their properties.
2. ברשות הרבים
 The stones fell into a public area.
3. שותפין בכי האי גוונא
 לא קפדי אהדדי
 Partners allow each other to keep their belongings on their property, and so it is effectively in both of their possession.

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3

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**וליחזי ברשות דמאן יתבן
 וליהוי אידך
 המוציא מחבירו עליו הראיה**

Let us leave them in the possession of the owner of the present location of the stones, and place the burden of proof on the other owner?

<p>3</p> <p>שותפין בכי האי גוונא לא קפדי אהדדי</p> <p><i>Partners allow each other to keep their belongings on their property, and so it is effectively in both of their possession.</i></p>	<p>2</p> <p>ברשות הרבים</p> <p><i>The stones fell into a public area.</i></p>	<p>1</p> <p>דייתבן בחצר דתרוייהו</p> <p><i>The stones are dispersed equally on both of their properties.</i></p>
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4 The Mishnah concludes
 אם היה אחד מהן מכיר מקצת אבניו
 נוטלן ועולות לו מן החשבון
 If one of the owners recognizes some of the unbroken stones as his own, he takes them, and they count towards his portion of the stones, as the Gemara will explain.

The Gemara points out
 אי דקאמר אין פשיטא
 If the other fellow admits that the unbroken stones do not belong to him, obviously the other owner may keep them.
 ואי לא אמר אין למה נוטל
 If he disputes their ownership, why does the claimant get the stones?

4

▼

**אם היה אחד מהן מכיר מקצת אבניו
 נוטלן ועולות לו מן החשבון**

If one of the owners recognizes some of the unbroken stones as his own, he takes them, and they count towards his portion of the stones, as the Gemara will explain.

?

<p>ואי לא אמר אין למה נוטל</p> <p><i>If he disputes their ownership, why does the claimant get the stones?</i></p>	<p>אי דקאמר אין פשיטא</p> <p><i>If the other fellow admits that the unbroken stones do not belong to him, obviously the other owner may keep them.</i></p>
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5 The Gemara answers
 דא"ל איני יודע
 The Mishnah discusses where the other fellow does not know which stones are his. Therefore, the first fellow keeps them; either because
 מנה לי בידך
 והלה אומר איני יודע
 חייב
 A defendant who is uncertain whether a claim is correct is obligated to pay.
 Alternately, because
 כגון שיש עסק שבועה בנייה
 He is מודה במקצת, admitting that the claimant owned some of the unbroken stones. Therefore, he is obligated to swear regarding the rest, and so
 מתוך שאינו יכול לישבע ישלם
 Since he cannot swear, because he doesn't know who owns the rest of the stones, the claimant keeps all of the stones he recognizes.
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5

דא"ל איני יודע
The Mishnah discusses where the other fellow does not know which stones are his. Therefore, the other fellow keeps them, either because...

<p>כגון שיש עסק שבועה בנייה <i>He is מודה במקצת, admitting that the claimant owned some of the unbroken stones. Therefore, he is obligated to swear regarding the rest, מתוך שאינו יכול לישבע ישלם</i> <i>Since he cannot swear, because he doesn't know who owns the rest of the stones, the claimant keeps all of the stones he recognizes.</i></p>	<p>מנה לי בידך והלה אומר איני יודע חייב <i>A defendant who is uncertain whether a claim is correct is obligated to pay.</i></p>
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6 The Gemara now explains
 עולות לו מן החשבון
 How the claimed stones count towards his total:
 רבא suggested
 לפי חשבון שבורות
 He takes the unbroken stones he recognizes, and the other fellow takes an equal number of broken stones. They then divide the rest equally, because
 כיון דאמר איני יודע
 ריע טפי
 The one who cannot identify any stones has a weaker claim to the stones.
 However, אב"י argued
 אדרבה
 הא ריע טפי
 The one who DOES identify some stones has a weaker claim regarding the rest, because
 מדהני ידע טפי לא ידע
 תו לית ליה
 ואידך כולהו דהיאך ניהו
 Since he could not identify the remaining unbroken stones, it is more likely that they are NOT his!
 Therefore, אב"י explained
 לפי חשבון שלימות
 The other fellow takes an equal number of unbroken stones.
 Nevertheless, the claimant desires these particular items
 למלכבא רווחא
 Since they are wider, more useful bricks;
 Alternately,
 טינא דמעבדא
 They are of a better quality.
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6

עולות לו מן החשבון
How the claimed stones count towards his total

<p>אב"י לפי חשבון שלימות <i>He takes the unbroken stones he recognizes, and the other fellow takes an equal number of unbroken stones. Nevertheless, the claimant desires these particular items למלכבא רווחא</i> <i>Since they are wider, more useful bricks; Alternately, טינא דמעבדא</i> <i>They are of a better quality.</i></p>	<p>רבא לפי חשבון שבורות <i>He takes the unbroken stones he recognizes, and the other fellow takes an equal number of broken stones. They then divide the rest equally, because כיון דאמר איני יודע ריע טפי</i> <i>The one who cannot identify any stones has a weaker claim.</i></p>
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אדרבה – הא ריע טפי
The one who does identify some stones has a weaker claim regarding the rest, because מדהני ידע טפי לא ידע – תו לית ליה ואידך כולהו דהיאך ניהו
Since he did not identify the remaining unbroken stones, it is more likely that they are NOT his!



7

Zugt di Mishnah

הבית והעלייה

If someone owns a house, lives in the ground floor, and rents out the second floor,

נפחתה העלייה

ואין בעל הבית רוצה לתקן

If the second floor collapses and the landlord does not want to rebuild it,

הרי בעל העלייה יורד ודר למטה

עד שיתקן לו את העלייה

The tenant may live in the ground floor until the landlord repairs the second floor.

The Gemara explains:

If the landlord said

עלייה זו

I am renting to you "this second floor,"

אזדא

Since it is no longer livable, their contract expired.

If he said

עלייה סתם

I am renting to you "a second floor,"

לוגר ליה אחריתי

He can give him another place, and he is not obligated to let him live downstairs.

If he said

עלייה זו שאני משכיר לך

כי סלקא סליק בהדה

וכי נחית חות בהדה

I am renting to you this second floor, and if it falls, you are entitled to the ground floor, he obviously may move downstairs.

Rather, our Mishnah discusses where he said

עלייה זו שעל גבי בית זה

אני משכיר לך

I am renting to you the second story of this house;

שעביד בית לעלייה

He mentioned the house to obligate himself to provide a second floor as long as the house itself stands, or to use the lower floor in the interim.

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7

הבית והעלייה

If someone owns a house, lives in the ground floor, and rents out the second floor,

נפחתה העלייה

ואין בעל הבית רוצה לתקן

If the second floor collapses and the landlord does not want to rebuild it,

הרי בעל העלייה יורד

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עד שיתקן לו את העלייה

The tenant may live in the ground floor until the landlord repairs the second floor.

If the landlord said

עלייה זו

אזדא

I am renting to you "this second floor," since it is no longer livable, their contract expired.

If he said

עלייה סתם

לוגר ליה אחריתי

I am renting to you "a second floor," he can give him another in its place, and he is not obligated to let him live downstairs.

If he said

עלייה זו שאני משכיר לך

כי סלקא סליק בהדה

וכי נחית חות בהדה

"I am renting to you this second floor, and if it falls, you are entitled to the ground floor," he obviously may move downstairs.

Our Mishnah discusses where he said

עלייה זו שעל גבי בית זה

אני משכיר לך

I am renting to you the second story of this house,

שעביד בית לעלייה

He mentioned the house to obligate himself to provide a second floor as long as the house itself stands.



8 The Gemara cites a Machlokes in how extensive the damage must be in order to grant the tenant this right:

רב אמר
ברובה
He can only move downstairs if most of his floor collapsed. However,
בארבעה לא
If only a small area of four טפחים fell, he is not entitled to move downstairs, because
אדם דר
חציו למטה וחציו למעלה
It is normal to live on two stories, and he can simply use a section of the ground level to replace the unusable area.
However,
שמואל אמר
בארבעה
Even if an area of only four טפחים collapsed, he can move downstairs, because
אין אדם דר
חציו למטה וחציו למעלה
It is not normal to live on two stories, and he is entitled to have all his space on one story.

8

How extensive the damage must be.

אמאי אמר

בארבעה

Even if an area of four טפחים collapsed, he can move downstairs, because

אין אדם דר

חציו למטה וחציו למעלה

It is not normal to live on two stories, and he is entitled to have all his space on one story.

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He can only move downstairs if most of his floor collapsed.

However,

בארבעה לא

אדם דר

חציו למטה וחציו למעלה

If only a small area of four טפחים fell, he is not entitled to move downstairs, because it is normal to live on two stories.

9 The Gemara inquires:

כשהוא דר
לבדו הוא דר כדמעיקרא
Is he entitled to live downstairs alone, in the manner he was used to upstairs, and the landlord must move out? OR
שניהם דרין
דא"ל אדעתא לאפקינן לא אגרי לך
Can the landlord stay as well, because he certainly did not intend to relinquish his right to his own home?

Assuming the landlord may stay, the Gemara inquires further:

כשהוא משתמש
דרך גגין משתמש
כדמעיקרא
Must the tenant continue to climb to the upper story, as he has done until now, and from there descend into the ground floor? OR

דרך פתחים משתמש
May the tenant enter through the regular entrance downstairs, because he can claim עלייה קבילי עלאי
עלייה וירידה לא קבילי עלאי
Until now, I climbed to my entrance, but I am not accustomed to ascend and then descend?

Assuming he can use this argument, the Gemara inquires further:

שתי עליות זו על גב זו
If the building had three stories, איפחית עליונה
נחית ודר בתחתונה

If the uppermost story collapsed, obviously he can use the second story, and does not get the use of the ground floor, because it is more accessible than what he was accustomed to using. However,

איפחית תחתונה
If the floor of the second story collapsed, there's a question:

מוצי למיסלק לגמרי בעליונה
דשם עלייה קבילית עלך

May the landlord give the tenant the uppermost story, because he rented an upper story, and anyways needs to climb to enter? OR

חד עלייה קביל עליה
שתי עליות לא קביל עליה

He is only used to climbing one story, not two, and so the landlord must allow the tenant to live on the ground floor?

The Gemara says

תיקו
Leaving these questions unresolved.

9

כשהוא דר לבדו הוא דר כדמעיקרא
שניהם דרין דא"ל אדעתא לאפקינן לא אגרי לך
Can the landlord stay as well, because he certainly did not intend to relinquish his right to his own home?
Is he entitled to live downstairs alone, in the manner he was used to upstairs, and the landlord must move out?

כשהוא משתמש דרך גגין משתמש כדמעיקרא
דרך פתחים משתמש
May the tenant enter through the regular entrance downstairs, because he can claim עלייה קבילי עלאי
עלייה וירידה לא קבילי עלאי
Until now, I climbed to my entrance, but I am not accustomed to ascend and then descend?
Must the tenant continue to climb to the upper story, as he has done until now, and from there descend into the ground floor?

שתי עליות זו על גב זו
If the building had three stories, איפחית עליונה
נחית ודר בתחתונה
If the uppermost story collapsed, obviously he can use the second story, and does not get the use of the ground floor, because it is more accessible than what he was accustomed to using.
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If the floor of the second story collapsed, there's a question:

מוצי למיסלק לגמרי בעליונה
דשם עלייה קבילית עלך
May the landlord give the tenant the uppermost story, because he rented an upper story, and anyways needs to climb to enter?
חד עלייה קביל עליה
שתי עליות לא קביל עליה
He is only used to climbing one story, not two, and so the landlord must allow the tenant to live on the ground floor?

תיקו