

Bava Metzia – Simanim

דף קב – Daf 102

פרק ח – השואל את הפרה

1. Why the **חצרו של אדם קונה לו שלא מדעתו** of a house acquires the **זבל** in the courtyard, **חצרו של אדם קונה לו שלא מדעתו**

The Mishnah on the previous Daf taught that if one rents his house to another, the manure found in the courtyard belongs to the landlord. The Gemara asks that if the courtyard was also rented, or if the oxen belonged to the tenant, then the manure should belong to the tenant (in the former case, because his rented *chatzeir* acquires for him, and in the second, because the manure was produced by his cows).

The Gemara explains that the case is **בחצר דמשכיר** – *with the landlord's courtyard*, which he did not rent out (as Rashi explains), **ותורי דאתו מעלמא קמו בה** – *and cows which came from elsewhere were standing in it*. Since the cows' owners presumably were *mafkir* the manure, the landlord acquires it with his *chatzeir*. The Gemara notes that this supports the ruling of Rebbe Yose bar Chanina: **חצרו של אדם קונה לו שלא מדעתו** – *a person's chatzeir acquires for him without his knowledge*. The Gemara analyzes this principle at length.

2. **שליחו הקן** where the nest is in private property

Rebbe Yose bar Chanina's ruling is challenged from a Baraisa which teaches that doves of a dovecote are subject to the *mitzvah* of **שילוח הקן**, and are prohibited to be taken by others because of "דרכי שלום" (i.e., Rabbinically). According to Rebbe Yose, the eggs should be acquired by the *chatzeir*, and be exempt from **שילוח הקן**, because the *passuk* says: "כי יקרא" – *if a bird's nest happens etc.*, which *excludes* a nest which is "at hand"! Rava answers: **ביצה ביציאת רובה הוא דאיחיבה לה בשילוח** – *an egg becomes obligated in שילוח when its majority leaves the mother's body*, **ומיקנא לא קניא עד דנפלה לחצרו** – *but is not acquired (by one's chatzeir) until it falls into his courtyard*. It is during this interim that the Baraisa says the eggs are subject to **שילוח הקן**. Alternatively, the Gemara explains that since Rav says it is forbidden to acquire the eggs while the mother is roosting on them, they are subject to **שילוח** even after falling into his *chatzeir*, because **כל היכא דאיהו לא מצי זכי ליה** – *wherever he cannot acquire them* because of the prohibition, **חצרו נמי לא זכי ליה** – *his chatzeir also does not acquire them*.

[The Rabbinic prohibition against stealing is explained according to each interpretation.]

3. In a home rental of "twelve *dinars* per year, one *dinar* per month," the extra month's rent is divided

The next Mishnah states that if one rented out a house for a year, and a leap year was declared, adding a thirteenth month, the tenant does not pay extra. If it was rented per month, he must pay for the additional month. The Mishnah concludes with a story, which the Gemara explains to reflect a new case, **בשנים עשר זהב לחודש** – *of a rate of "twelve gold [dinars] for a year, one gold dinar per month,"* where Rabban Shimon ben Gamliel and Rebbe Yose ruled to divide the extra month's payment. Three opinions are recorded about this ruling: (1) Rav says that he would have awarded the entire month's rent to the landlord, because he holds **תפוס לשון אחרון** – *"grasp the final expression"* as primary (in this case, the "one *dinar* per month" phrase). The Tannaim divided the month because they were uncertain which phrase is primary. (2) Shmuel says the case is **בבא באמצע חדש** – *when [the landlord] came in the middle of the thirteenth month*. Because of the uncertainty, the tenant cannot be forced to pay time he already lived there but must pay to continue to remain in the house. (3) Rav Nachman says: **קרקע בחזקת בעליה קיימת** – *land always stands in the possession of its owner*. Thus, the burden of proof always rests on the tenant, even if the thirteenth month passed.

Siman – Cave

The landlord who was thrilled to acquire the **זבל** that was in his courtyard of the cave he rented out, since **חצרו של אדם קונה לו שלא מדעתו**, and happily noticed **eggs in the שובר** so he could do the *mitzvah* of **שילוח הקן**, had come to **collect half of the thirteenth month's rent**, since he had rented it at the rate of twelve *dinars* per year, one *dinar* per month.

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Cave



The landlord who was thrilled to acquire the זבל that was in his courtyard of the cave he rented out, since חצרו של אדם קונה לו שלא מדעתו, and happily noticed eggs in the dovecote so he could do the *mitzvah* of שילוח הקן, had come to collect the half of the thirteenth month's rent, since he had rented it at the rate of twelve dinars per year, one dinar per month.

3 things to remember

1. Why משכיר of house acquires זבל in the courtyard, חצרו של אדם קונה לו שלא מדעתו
2. שילוח הקן where the nest is in private property
3. In a home rental of twelve dinars per year, one dinar per month," the extra month's rent is divided

