

INTRODUCTION TO BAVA METZIA FROM SEFARIA

Introduction to Bava Metzia

Tractate Bava Metzia was originally part of a large tractate called tractate Nezikin, meaning damages, which comprised what are now the first three tractates in the order of Nezikin. Bava Metzia was the middle section of tractate Nezikin, and from this placement it derived its name, which means the middle gate. The remaining part of this super-tractate was divided into Bava Kamma, the first gate, which precedes Bava Metzia, and Bava Batra, the last gate. Each of these three parts has its own central topic.

Bava Metzia deals with issues relating to business, specifically those that the Torah mentions explicitly. The topics discussed in this tractate include the halakhot of lost and found items, the loading and unloading of animals, verbal mistreatment, exploitation, charging interest, feeding workers, depositing and borrowing items, withholding wages, and the prohibition against damaging collateral.

Bava Metzia expresses one of the unique aspects of Torah law, namely, that it does not distinguish between civil law and ritual law. Jewish civil law is based not on a social contract but on requirements defined by Torah law and rabbinic law. Accordingly, interpersonal relationships and civil laws are viewed as part of the relationship between the Jewish people and God. Although there are certain distinctions made by the Torah between civil and ritual law, in general they are interwoven in the Torah text, as can be seen, for example, in Exodus, chapters 21–23; Leviticus, chapter 19; and Deuteronomy, chapters 21–25.

A basic element in Jewish civil law is the integration of compassion with justice. To a large extent, the halakha goes beyond the requirements of justice. The obligation to relate to others with compassion and generosity is not merely a supererogatory addition to one's legal obligations; it is normative halakha that is derived from the conception of the Jewish people as one family. This is the reason for the distinction that one finds between general halakhot that structure economic life, which apply to all, and specific halakhot that apply only to interactions with fellow Jews. The general halakhot are as much a part of the Noahide mitzva to construct a fair legal system, which is incumbent upon all humanity, as they are aspects of Jewish law. By contrast, halakhot addressing interpersonal relationships, such as the obligation to return lost property and the prohibition against charging or paying interest, are not features of a legal system whose only purpose is justice. Rather, they reflect the requirement to have compassion on and care for one's fellow Jew.

The halakhot discussed in tractate Bava Metzia can be divided into four categories. The first category involves halakhot relating to transactions that are an essential part of any legal system. The second category includes halakhot that apply only to transactions between Jews, the rationale for which has been explained above. The third category describes acts that are not punishable by the courts but are discouraged by the Sages. An example of the court's response to one such act would be the curse administered by the court to one who does not keep his

word. Finally, the fourth category states halakhot of ethical behavior. These behaviors were practiced by people of high integrity, and they are based on the verse: "That you may walk in the way of good men, and keep the paths of the righteous" (Proverbs 2:20).

There is one concept that is common to all of these areas of halakha and is found throughout Bava Metzia, and that is the concept of ownership. Although an item is usually owned by the person in whose possession it is held, sometimes that is not the case, e.g., when an item is loaned or rented to another, or when it is deposited with another for safekeeping or as collateral for a loan. At other times, the item is not in the possession of its owner because it has been stolen or lost. In each of these cases, the tractate discusses who has halakhic ownership of the item, and who is responsible for safeguarding it and liable for damage caused to the item or by the item.

Ownership of movable property is transferred through specific modes of transaction, whose details are discussed mostly in this tractate. Even in cases where it is clear that someone performed a valid act of acquisition, it is necessary to determine the exact point in time when the ownership was transferred in order to resolve issues of multiple claims of ownership of the item. It is also necessary to determine the point after which neither party can withdraw from a transaction.

The tractate contains ten chapters.

Chapter One primarily discusses how to determine ownership of an item that is claimed by two individuals.

Chapter Two details the halakhot of returning lost items in general, and those of loading and unloading animals.

Chapter Three examines the halakhot of safeguarding a deposit, the responsibilities of bailees, and the halakhot of misappropriation.

Chapter Four discusses the definition of money and business transactions in which one party exploits the other.

Chapter Five contains the halakhot of interest.

Chapter Six addresses hiring craftsmen and their liability for damage.

Chapter Seven describes the halakhot of hiring workers and whether they may eat from the crops they are harvesting.

Chapter Eight contains the halakhot of bailees in general, including the responsibilities of a borrower, as well as the halakhot of renting houses.

Chapter Nine addresses the halakhot of sharecroppers and contractors working a field, as well as the prohibition against withholding wages and destroying an item given as collateral.

Chapter Ten discusses the halakhot relevant to shared ownership of a building or land.

Introduction to Perek I

This chapter deals primarily with cases of a lost item that was found and is claimed by two individuals. Whereas the fundamental halakhot concerning lost items are discussed in the second chapter, the discussions in this chapter focus on questions relating to ownership and methods of acquisition, in particular, how the court adjudicates conflicting claims to the same rights or property. The chapter addresses the process of clarifying these conflicting claims and the apportioning of rights and ownership.

In analyzing this topic, the chapter addresses many specific questions, both conceptual and practical: Does the fact that two people lay claim to the same item mean that one is deliberately lying? If so, how does the court act against the deceitful party? When is it appropriate for the court to use methods of clarification and coercion, such as requiring a litigant to take an oath, in the context of litigants who are suspect? How is the court to act if it is believed that both litigants may be somewhat justified in their claims and neither is actually lying? How does a court allocate rights to a contested property when it is not possible for the court to fully clarify the facts of the case?

Another issue that arises in this context is the question of how the court relates to the status and rights of people who are peripherally involved in a case. What is the status of one who is not a litigant but is impacted by the case? As an example, the conflict between a debtor and creditor will affect a broader circle of people, such as one who purchased a field from the debtor and may now be subject to a lien on his land.

Summary of Perek I

One of the key conclusions of this chapter is that, contrary to the opinion of Sumakhos, in the case of a dispute between litigants the burden of proof rests upon the claimant. Therefore, the chapter dealt at length with questions of how the court should rule when it is not clear which litigant has presumptive ownership of the property and which is considered the claimant.

The chapter established that merely sighting an ownerless item or declaring one's acquisition of it is ineffective. The intent to acquire it must be expressed through a valid act of acquisition. Acquisition can also be effected by placing the item in one's courtyard, or, by extension, in the four square cubits surrounding one's person, provided that one had intent to acquire the item in question and no one else had prior rights to it.

The court's basic presumption, to the degree that it is not contradicted by known facts, is that neither litigant is being deliberately deceitful. Furthermore, even when it is clear that the claim of one of the litigants must be false, the court assumes that he is not necessarily lying outright.

Rather, the assumption is that he is trying to avoid payment temporarily, and he does not lose his basic credibility as a result. Therefore, one who is suspect with regard to financial dishonesty is not consequently suspect with regard to oaths. This is the basis for the ability of an oath to provide final clarification of the validity of a litigant's claims.

Another matter discussed in the chapter is the rights of those who are indirectly affected by the litigation. Where their rights will be affected by a ruling of the court, and there is no way to ensure that they will not be harmed, the matter is frozen.

In a case where the claim of one of the parties is completely unreasonable, the claim of the other party is accepted, even without proof.