

## OVERVIEW of the Daf

1) One who is incapable of establishing a chazakah (cont.)

After R' Ami could not find a solution R' Abba ruled that it is a case where the snatcher is obligated to take an oath but since he is incapable of doing so he must pay.

Abaye rejected the parallel between the case of the occupant who produced a single witness that he occupied the land for three years to the case of R' Abba and suggested another case that is similar to the case of R' Abba.

2) Seizing disputed property

There was an incident in which two people had a dispute concerning ownership of a boat and R' Huna and R' Yehudah disagreed whether Beis Din should seize the boat until the matter could be resolved.

In the incident Beis Din seized the boat and a disagreement arose whether Beis Din should release the boat when neither party could prove his claim.

The Gemara ruled that Beis Din should not seize the boat but in the event that they did they should not release it.

3) Let the stronger one prevail

R' Nachman ruled that when two parties claim that property belonged to their father Beis Din should withdraw and let the stronger one prevail.

The Gemara begins to challenge the ruling of R' Nachman. ■

## REVIEW and Remember

1. Explain וכל המחויב שבועה שאינו יכול לישבע משלם.
2. Why did Abaye reject the analogy to the case of R' Abba?
3. What was the point of dispute between R' Huna and R' Yehudah regarding תפיסה?
4. Explain the ruling of כל דאלימ גבר.

Today's Daf Digest is dedicated  
 ע"נ אהרן צבי בן יהודה דייטש, כ"ז שבט  
 ונפתלי צבי בן שאול אליעזר גאלדבוים, כ"ט שבט  
 by the Goldbaum family

## Distinctive INSIGHT

*When to contend and when to divide*

ההוא ארבא דהוו מינצי עלה בי תרי. האי אמר דידי היא והאי אמר דידי היא

The Gemara brings the case of two people arguing about ownership of a boat which was in the river, with each claiming that he was its owner. The conclusion of the discussion is that the halacha is **כל דאלימ גבר**, that the court allows the litigants to continue to fight for possession and ownership until one of them proves his assertion with evidence or by sheer determination. In the meantime, even if either one of the litigants requests that we temporarily impound the boat in order to give him time to find proof or witnesses, the court should not do so (לא תפסינן), and if the court does take control of the boat in the meantime, the boat cannot be released (לא מפקינן) unless it is given to its legal owner.

Tosafos here contrasts this case with the opening Mishnah in Bava Metzia, where two people dispute the ownership of a tallis they are holding as it is brought into court. The halacha there is **יחלוקו** – the tallis is formally divided between the two litigants. In the name of Rabeinu Tam, Tosafos explains that the case of a tallis is different than that of the boat in that by the virtue of both holding onto the edges of the tallis, we know that each owns part of the tallis. Therefore, we cannot say **כל דאלימ גבר** which would possibly give one of the litigants the opportunity to take the entire tallis from the other. In our case of the boat, the two people arguing in court are not holding on to the boat, so we are not obliged to say **יחלוקו**.

Tosafos (Bava Metzia 2a, ד"ה יחלוקו) considers each one's holding on to the edges of the tallis as if we are witness to his certainly owning half of the tallis. It seems as if the two comments of Tosafos are inconsistent. Rabeinu Tam sees **יחלוקו** as a defensive measure to prevent one party from forcefully taking away that which the other fellow is holding, while Tosafos in Bava Metzia expresses **יחלוקו** as a definitive and proactive division of each party's rightful ownership.

(טוען ונטען ט: to) אבן האזל, however, explains that the two comments of Tosafos complement each other. As the court confirms that each one is a legal owner of part of the tallis, we can no longer allow the law of **כל דאלימ גבר** to be

(Continued on page 2)

Today's Daf Digest is dedicated  
 as a zechus for gezunt and bracha for Mordechai ben Esther

# HALACHAH Highlight

## Visiting a non-religious doctor on Shabbos

וכיון דאמר דחטפה הוה ליה כגזלן

And since he said that he grabbed it he is treated like a thief

Regarding the incident of the silver of R' Abba, the Gemara relates that we suggest that the litigant take an oath denying that he grabbed the silver even though the witness knows that the litigant will lie in his oath. The significance of this ruling is that we do not consider it to be a transgression of לפני עור – placing a stumbling block before the blind – when we administer an oath to someone when we know that he will lie.

Rav Shlomo Zalman Auerbach<sup>1</sup> applies this principle to address a common medical question. Is it permitted for a person to be examined on Shabbos by a non-religious doctor who will likely perform an unnecessary melacha in the course of the examination? The principle established in our Gemara is that one is permitted to take steps to recover his own property without concern that the other party may commit a transgression. The rationale for this approach is that one is not compelling the other person to commit a transgression; he is doing it out of his free will. As long as the person himself is complying with halacha and not asking the other person to commit a transgression one is not responsible for what another person chooses to do. Accordingly, someone who is ill would be permitted to visit a non-religious doctor

(Insight...continued from page 1)

applied, as we cannot allow one to steal from the other. As a result, we can now say that the tallis should be divided.

Terumas HaDeshen (#314) notes that according to Rabeinu Tam, יחלוקו is an option to resolve the case when we do not have the risk of one stealing from the other. When both are holding onto the tallis we cannot say כל דאלים גבר. However, dividing the boat should be an option here. He therefore concludes that the approach of Tosafos in Bava Metzia is more reasonable. ■

on Shabbos, and if the doctor chooses to perform a melacha it is not the responsibility of the patient.

Teshuvos Divrei Chaim<sup>2</sup> also discusses how it is possible to administer an oath to someone who is going to lie. His explanation is that before the litigant lies we assign him the status of an upright individual (חוקת כשרות) who would not lie. Since at the moment he comes into court he still has a presumption of being honest, it is not a transgression of לפני עור to allow him to take an oath. According to this explanation it would not be permitted to have a non-religious doctor perform an examination on Shabbos since he does not have a presumption of being upright. Rav Auerbach, however, proves from our Gemara that even when we know he will lie and there is no presumption that he is upright it is permitted to administer the oath. ■

1. שו"ת מנחת שלמה ח"א סי' ז' אות ד'.

2. שו"ת דברי חיים חו"מ סי' ח'.

# STORIES Off the Daf

## Right makes might

"כל דאלים גבר..."

When the State of Israel was first established, the fledgling government passed a number of laws whose intention was to close yeshivos and "mainstream" the charedi community. Perhaps the most challenging of these was the law against maintaining any school that was not either "mamlachti" or "mamlachti dati" (regular public school, or public religious school). Of course this excluded virtually every legitimate yeshiva in the country.

But people wondered what they could do about it. Should they fold be-

neath the staggering pressure of the government, or should they fight the gezeira?

Since advocating either option is a big responsibility, some people went to the Chazon Ish, zt"l, to ask his opinion on the matter. He answered, "It is regarding just such a matter that our sages said, 'כל דאלים גבר' — 'might makes right.'" The questioners figured that he meant that they would just have to bow to the superior strength of the government.

But as they were getting up to go, the Chazon Ish called them back. "Do you think I have ruled that we must give in? I actually was alluding to the words of the Rosh in this sugya in Bava Basra 34. He explains that it seems strange for Chazal to have made a decree that two

people should be acrimonious about something their entire lives, so why declare that the stronger should prevail? After all, who said that the one who is right will win? And surely the one who was cheated will likely bear a grudge to the end of his life.

"We must say that in virtually all cases the one who is right will win, since Chazal knew that he who is in the right will fight with a much greater degree of self-sacrifice and will surely prevail so that he does not lose his rightful property. This is what I meant. You know that the truth is with us, so be moser nefesh! In this altercation as well, those who will be moser nefesh will win!"<sup>1</sup> ■

1. מעשה איש, ח"ד, ע' ל"ט