

## OVERVIEW of the Daf

### 1) Partners and craftsmen (cont.)

Shmuel's ruling that partners may testify for one another is challenged.

The Gemara discusses the steps a partner must take to no longer have an interest in the case to be allowed to testify.

The assertion that a partner can remove interest in the field to be able to testify is unsuccessfully challenged.

Two more unsuccessful challenges to Shmuel's ruling are presented.

Shmuel's statement that partners become watchmen for one another is unsuccessfully challenged.

### 2) Testifying about property one sold to a friend

A Baraisa states that one may not testify about land that one sold to a friend but one is permitted to testify about movable objects one sold to a friend.

R' Sheishes suggests an explanation why concerning land there is an assumption that it was sold with a guarantee but not when movable objects were sold.

The Gemara presents numerous challenges to this interpretation. ■

## REVIEW and Remember

1. Does one lose ownership of land by making a declaration relinquishing ownership of that land?  
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2. What do we consider a person who does not have access to a Sefer Torah?  
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3. How can a partnership be structured so that the principle of שמירה בבעלים does not apply?  
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4. How does R' Sheishes explain the difference between the two parts of the Baraisa?  
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 ל"נ ר' מרדכי בן ר' פסח  
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## Distinctive INSIGHT

*The benefit derived from a sefer Torah and other public items*

שאני ספר תורה דלשמיעה קאי

Shmuel had said (42b) that partners may testify one for the other. This refers to a case where a third party comes to challenge the ownership of a jointly-owned item, and Shmuel rules that if one partner needs assistance in verifying his ownership, the other partner may come and testify on his behalf. Yet, the partner who comes to testify certainly seems to have a direct interest in this testimony. As long as the partnership has not been dissolved, both partners are at risk if the land is taken away by this third party. Our Gemara questions this statement, and asks why, then, can this co-owner testify on behalf of his partner?

The Gemara answers that the partner may only testify once he terminates the partnership and makes a legal declaration to that effect by saying, "דין ודברים אין לי בשדה זו—I have no interest in this land."

The Gemara cites a Baraisa that discusses a sefer Torah is stolen from a city. The halacha is that no one from the city may judge the case or testify about it, as they are all considered as having a direct interest in the outcome of the case. Why, asks the Gemara, can anyone not make a declaration to disassociate himself from the case and thereby be able to testify? The Gemara answers that a sefer Torah is different, as everyone needs to hear from it when it is read.

Meiri explains that this rule applies specifically to a sefer Torah, as everyone needs to hear the reading of the Torah. However, this does not apply to any other communally-owned object, such as a bathhouse or public plaza. If there is any litigation necessary regarding these publicly-owned properties, any two or three citizens of the city could dismiss their ownership in them and be eligible to testify about them.

The poskim (see Beis Yosef C.M. 37), however, rule that just as we find that everyone needs to hear a sefer Torah when it is read, so, too, everyone needs to use the bathhouse and to use the public plaza. Therefore, any public facility or utility has the same halacha as does a sefer Torah, and if testimony is needed, no one from the city would be eligible to do so, even if they would offer to declare their no longer being an owner of that facility.

# HALACHAH Highlight

## Writing a Sefer Torah in partnership with others

בני עיר שנגנב ס"ת שלהן אין דנין בדייני אותה העיר וכו'

If a Sefer Torah was stolen from the residents of a city one of her citizens may not adjudicate the case etc.

The Gemara teaches that a resident of a city may not testify about or adjudicate a case involving a Sefer Torah that was stolen since he is biased due to the fact that he cannot separate himself from his relationship to the Torah. This ruling applies even if he does not have a share of ownership of the Torah since he derives benefit from it when it is read in shul.

Teshuvos Be'er Yitzchok<sup>1</sup> proves from this Gemara that one does not fulfill his obligation of writing a Sefer Torah if it is written in partnership with others. When the Gemara explained why citizens are biased the explanation given was that they benefit from listening to its being read. Why didn't the Gemara say that the witness or judge can not relinquish his ownership of the Sefer Torah since this would result in losing the mitzvah? The fact that this was not mentioned is an indication that one does not fulfill the mitzvah of writing a Sefer Torah if it is done in partnership with others. He notes, however, that this proof is not so strong since it is possible that once the Sefer Torah was stolen an individual could relinquish his rights. Precedent for this

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According to these poskim, the reason the Baraisa uses the example of a sefer Torah, even though this halacha applies to all public items, is that we might have thought that no physical benefit is derived from a sefer Torah, and that the citizens of the city might not be disqualified from testifying when the sefer Torah is at stake. It is only used when people listen to the reading. The lesson is that they are nevertheless considered as biased. ■

approach is found in the halachos of chometz. The Torah prohibits retaining chometz in one's possession and yet later authorities write that one does not violate the prohibition against owning chometz if it was stolen since it is not considered לך – yours. Similarly, since fulfillment of the mitzvah of having a Sefer Torah depends upon one's having possession of that Torah (כתבו לכם), once it was stolen the mitzvah is lost and a citizen would be able, at that time, to relinquish his rights to the Sefer Torah. His final conclusion is that one does not fulfill the mitzvah of writing a Sefer Torah if it is done in partnership with others. The basis of this is that regarding an esrog the Torah states ולקחתם לכם – "and you should take for yourself" which precludes the use of an esrog that was purchased by partners, so too the mitzvah of writing a Sefer Torah is not fulfilled if it is performed in partnership with others. ■

1. שו"ת באר יצחק יו"ד סי' י"ט. ■

# STORIES Off the Daf

## Save them for your sake

והתניא בני עיר שנגנבו ספר תורה שלהן

On today's daf we see how self-interest invalidates one's judgment.

One Hoshanah Rabbah, after the Yismach Moshe, ז"ל, recited, "Hoshanah l'maancha Elokeinu," he remarked in Yiddish, "Ribono Shel Olam! I am not davening that you deliver the Jewish people for my own personal benefit at all. On the contrary, I petition that You save them for Your sake even if I will not merit any part in the deliverance. This would also be perfectly acceptable to me, since my only wish is, 'Yisgadal v'yiskadash

shmei rabbah,'—that Your great Name be magnified and exalted!"

He continued in this vein, "I am not even asking for olam habah, a portion in the world to come. Even if it is my fate to descend to the netherworld, I would cheerfully accept this if only Your great Name will be magnified and exalted!"

When telling over this story of willing self-sacrifice, the Satmar Rav, ז"ל, remarked, "Now we can understand how my grandfather, the Yismach Moshe, explains the question of the Mishneh L'melech, ז"ל. He questions the Rambam who rules that one may not nullify a neder if he has a personal benefit from the negation of the vow. If so, how could Moshe Rabbeinu nullify Hashem's oath to wipe out the Jew-

ish people? After all, presumably, if Hashem bears their sins and allows Moshe to nullify His oath, then Moshe lives. If not, he too will die.

"The Yismach Moshe explains that this premise is incorrect. Moshe actually requested that Hashem wipe him out whether he agreed to bear Yisrael's sin or not. He did not expect to live in either case. So it made no difference to him personally whether Hashem's oath was nullified or not. For this reason he was permitted to nullify Hashem's vow!"

The Rav concluded, "Only my holy grandfather, who himself attained this level of holiness, could suggest such a radical answer to this question!"<sup>1</sup> ■

1. אגדות מהרי"ט, ע' ש"מ ■