

OVERVIEW of the Daf

1) A craftsman (cont.)

The Gemara rejects Rava's attempt to support Rabbah and challenge Abaye.

Another unsuccessful challenge is presented to Rabbah's assertion that a craftsman may establish a chazakah if the object was not given to him in the presence of witnesses.

2) Utensils that are exchanged

A Baraisa teaches that when utensils were exchanged in a craftsman's shop it is permitted to use the utensil until the other person comes for his object but if utensils become exchanged in a mourner's house or at a feast the utensil may not be used.

Rav relates an explanation for the difference between the two cases in the name of R' Chiya.

R' Chiya the son of R' Nachman adds a qualification to the ruling of the Baraisa.

Tangentially, Abaye and Rava discuss the cheats of Pumbedisa.

R' Ashi suggests a trick to catch these cheats but R' Acha the son of R' Avya explained why it wouldn't work.

3) Sharecropper

The Gemara questions why a sharecropper should be incapable of establishing a chazakah.

R' Yochanan explains that the Mishnah refers to a specific category of sharecropper.

R' Nachman asserts that an ancestral sharecropper who hires another sharecropper to work the field for three years has established a valid chazakah.

R' Yochanan rules that an ancestral sharecropper who hires someone to work only part of the field does not establish a chazakah.

4) Valid witnesses

The Gemara presents a discussion whether a sharecropper is a valid witness to testify on behalf of his employer.

A Baraisa is cited that discusses whether a guarantor, a lender, a first buyer or a kablan can testify for the borrower or second buyer. ■

Distinctive INSIGHT

Retrieving an item inadvertently exchanged

עד שיבא הלה ויטול את שלו

The opening case of the Baraisa (Tosefta, Bava Kamma 10:11) discusses a case where Reuven dropped off a garment with a worker to be fixed, and when he picked it up he was (inadvertently) given someone else's garment instead. The Baraisa rules that Reuven may use the garment he was given until its owner comes and proves that the garment is his. R' Chiya explains the rationale in this ruling. We may assume that the worker was given instructions to sell a particular garment for someone, and he mistakenly sold the garment belonging to Reuven. The worker then knowingly gave Reuven a replacement garment until such time as he will be able to retrieve the garment he sold to someone else. Because we can assume that the worker knowingly gave his own garment to Reuven, Reuven may use it in the meantime. In the later case of the Baraisa, where a garment became exchanged with another at a public gathering (a wedding hall or house of mourning), we must assume that the garment which was exchanged actually belongs to someone else, and that person never asked the host to sell his coat. The one who now has it may not use it without permission.

Rabeinu Yona writes that in our case, when the owner of the object comes to retrieve his item, he will prove that the garment given to Reuven is actually his, and that he never gave instructions to the worker to sell his item. In other words, we will discover that this item never was that of the worker, and it belonged to this third person the entire time. Although we allowed Reuven to use it based upon the assumption that this item belonged to the worker, if this third person proves otherwise, we accept his assertion and his proof.

Terumas HaDeshen (1:391) writes that if the one currently holding the garment is relatively certain that the garment is his own, as long as he is somewhat doubtful, if the third party is able to present clear identification that it is his, he may collect the garment from the one holding it.

K'tzos HaChoshen (136:1) infers from the words of Terumas HaDeshen that if the one holding it is certain that the garment is actually his, the one who comes to challenge cannot retrieve it from him, even with providing specific identification. The power of possession is stronger than the one coming and providing identification. ■

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 כ"ק מרן הרה"צ
 רבי יהושע העשיל אייכענשטיין זצלה"ה
 האדמור מזידטשוב- שיקאגו
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HALACHAH Highlight

Using a garment that was left behind in shul

בבית האבל או בבית המשתה הרי זה לא ישתמש בהן

If the garment was exchanged in a mourner's house or a house of feasting the finder may not use the garment

Poskim discuss at great length the issue of Reuven who leaves his coat in shul and after davening when he goes to retrieve it realizes that someone else mistakenly took his coat and left his own coat behind. Is it permissible for Reuven to use the remaining coat just as someone is using his coat, or not? Our Gemara discusses the case of utensils that become exchanged in the possession of a craftsman, and it is evident from the Gemara that this ruling is limited to the case of a craftsman. Accordingly, Shulchan Aruch¹ rules that one may not use someone else's utensil even if his was taken. Therefore, it would seem that Reuven is not permitted to use the coat that remained in shul.

Aruch Hashulchan² writes that the custom in populated areas where many people gather is that people are not particular (מקפיד) in the event that their rubbers are exchanged with another's and there is no issue of theft since that is the custom. Rav Moshe Feinstein³ notes that from the language of Aruch Hashulchan, there is no reason to believe that this custom is limited to the place that Aruch Hashulchan lived. Rather it can be assumed that this is the custom in all places unless one knows that there is another custom. Furthermore, it is logical to assume that the custom described by Aruch HaShulchan is not limited to rubbers. The custom could be applied to any

REVIEW and Remember

1. Why is permitted to use another person's garment that was exchanged by the craftsman?

2. How did the craftsmen of Pumbadisa commit their fraud?

3. What is the arrangement for אריסי בתי אבות?

4. Under what condition may a guarantor testify for his borrower?

variety of garments where people are not particular if theirs is exchanged with their friend's.

Teshuvos Mishnah Halachos⁴ writes that if Reuven realizes that his talis was exchanged with another's and he has no way to find the other person, he may use the talis that he has in his possession. The rationale is that once he does not expect to recover his talis and both people need a talis for davening it could be assumed that they are willing to forgo their rights to their talis (מחילה) for the sake of the mitzvah. Furthermore, since this case involves an object used to perform a mitzvah we can invoke the principle that people want their friends to use their property for the fulfillment of a mitzvah even if they are not מוחלים one another. ■

1. שו"ע חו"מ סי' קל"ו סעי' ב'.

2. ערוה"ש שם.

3. אג"מ או"ח ח"ה סי' ט'.

4. שו"ת משנה הלכות ח"ה סי' רע"ו. ■

STORIES Off the Daf

An unintended exchange

"נתחלפו לו כלים בכלים..."

Acertain person who went to a large wedding placed his hat on one of the many hooks in the cloakroom. There was no attending clerk to look after the hats; everyone left his hat on whatever hook was available and retrieved it as he left.

Later, this man went to retrieve his hat and went home. Unfortunately, he confused his hat with that of the person next to his and he went home with the wrong hat. The next day, he called the wedding hall, but he found that no hat had been left and the owner had not

been informed that anyone else had taken the wrong hat.

"I took the wrong one, which is admittedly very similar to my own," the man confided to the owner. "I just wish I had had the foresight to write my name and number on my hat, since although I can tell this hat is not mine, I can not be certain that the man who has mine will even know about the switch. Even if he did, what would it help? After all, he had no idea whose hat he has and may not even discover the difference until long after this affair. It is more than likely that he will not know where the hats were switched. He might think that it happened in shul or someplace else."

But this man wondered if he was permitted to wear the hat that had been left.

He knew that the question was not simple so he decided to consult with Rav Wosner, zt"l, of Bnei Brak. "You may use the hat you found unless you find the owner who returns yours to you. Although we find in Bava Basra 46 that one who accidentally took another's garment from a mourner's house or an establishment where people go to drink, may not use it, the Aruch HaShulchan writes that the custom in big gatherings is that when people switch their galoshes, they may use the one they inadvertently took. The same is true regarding hats in our days. The reason this is permitted is that people are not particular with each other about this and there is no suspicion of theft since this is the prevalent custom."¹ ■

1. שו"ת שבט הלוי, ח"ו, סי' רל"ח. ■