A RUBEN SHAS KOLLEL PUBLICATION
DAF YOMI DIGEST
THE DAILY RESOURCE FOR THOUSANDS OF DAF YOMI LEARNERS WORLDWIDE
Monday, May 29 2017 ■ ד׳ סיון תשע״ז
בבא בתרא קכ״ז
CHICAGO CENTER FOR Torah & Chesed
בס״ד

OVERVIEW of the Daf

1) A טומטום (cont.)

Three additional rules concerning a טומטום who is discovered to be male are presented.

R' Sheravya's ruling related to the mother of the טומטום being טמאה is successfully challenged.

The Gemara successfully attempts to refute R' Shizvi's ruling related to giving a טומטום a bris on the eighth day.

Rava cites a Baraisa that supports R' Ami's ruling that a טומטום does not receive a double portion.

The Gemara explains the meaning of the Baraisa.

Rava's related ruling of two children from separate mothers that become intermingled is discussed.

2) Identifying one's firstborn

Shmuel was asked about the halacha of a case where one child was assumed to be the firstborn and then the father identifies another one of his sons as the firstborn.

Shmuel ruled that they can write a הרשאה for one another and collect the double portion between them.

The basis of Shmuel's ruling, the Gemara explains, is his uncertainty regarding the halacha of a dispute between R' Yehudah and Rabanan.

A Baraisa is cited that presents the dispute between R' Yehudah and Rabanan.

The position of Rabanan is unsuccessfully challenged.

Another Baraisa is cited whose first part follows R' Yehuah and whose second part follows Rabanan.

R' Yochanan issues rulings related to identifying someone as their firstborn.

R' Yochanan explains his last ruling.

This ruling is unsuccessfully challenged.

3) Discussions between R' Abba and R' Yosef bar Chama

R' Abba begins to formulate an inquiry related to someone who accuses his friend of stealing his slave. ■

REVIEW and Remember

1. What is the reason a טומטום who is discovered to be a male does not receive his milah on the eighth day?
____
2. What was Rava's ruling related to two children who become intermingled?
____
3. What is derived from the word יכיר?
____
4. What is the halacha of one who identifies another as his son and then says that he is his slave?
____

Distinctive INSIGHT

When is the father believed regarding the status of his son?

יכיר יכירנו לאחרים. מכאן אמר רבי יהודה נאמן אדם לומר זה בני בכור, וכשם שנאמן לומר זה בני בכור כך נאמן אדם לומר זה בן גרושה...

The Baraisa presents a dispute between R' Yehuda and the Chachamim regarding a father's legal credibility in declaring someone as being his son. R' Yehuda holds that a man is believed to state which of his sons is the firstborn, and he is also believed to establish that one of his sons is the son of a divorcée, thus disqualifying that son from kehuna rights. Chachamim say that the father is not believed.

Rashbam explains that the Chachamim disagree with R' Yehuda in both points which he made. They hold that in a case where one of the sons was known to be the firstborn, the father is not believed to say that a different one of his sons is the firstborn. In addition, a father is not believed to disqualify any of his son's status as being a legitimate kohen. The Gemara later clarifies that the Chachamim agree with the basic concept of a father being the one to inform us which of his sons is the firstborn, as this right is established by the Torah with the word "יכיר". The Chachamim say, however, that the father's power is only in effect when his declaration is not against a set understanding (חזקה) that a different son is the firstborn.

Ketzos HaChoshen (279, #1) notes that we find that R' Yehuda and Chachamim disagree regarding two distinct issues in a case where a son is already assumed to be a firstborn or a kohen. First, they disagree whether a father can testify about a different son to be his firstborn in a case where we have a חזקה that a different son was the firstborn. R' Yehuda holds that the father is believed, and the Chachamim hold that the father is not believed.

We also find that R' Yehuda and Chachamim disagree regarding the legal power of a father to disqualify his son from being a functional kohen. R' Yehuda holds that a father is believed to discredit his son's standing, even where the son has a חזקה to be a functional kohen, whereas Chachamim hold that a father has no credibility to discredit his son's reputation.

Rashi in Kiddushin (74a, ד״ה וחכמים) explains the disagreement differently than Rashbam. He writes that R' Yehuda learns the legal power of the father from the verse "יכיר" extends to believe the father in all cases, both "to recognize" and to identify the firstborn, as well as to disqualify a son from kehuna. Chachamim, however, disagree in regard to the power of a father to disqualify a son. They agree, however, that "יכיר" does allow a father to identify who is his firstborn.

(Continued on page 2)

HALACHAH Highlight

Writing a last will and testament

אילו בעי למיתבא ליה במתנה מי לא יהיב ליה

If he wanted to give part of his estate away as a gift could he not give it to him?

Pischei Choshen[1] addresses the ideal way for a father to distribute his estate when he would like to deviate from the order established by the Torah and Chazal. He writes that if a person has children who are G-d fearing, walk in the path of the Torah, and he is confidant that they will not fight about monetary matters he should not draw up a last will and testament. For example, if a man chooses to bequeath property to his daughters he should explain to his children why he wants to deviate from the proscribed method of distributing assets and then give clear instructions regarding who should receive property and how much they should receive. In this way the Biblical laws of inheritance are followed exactly and the money that will be given to the daughters will be given as a gift from the sons out of the property that they inherited from their father. This is the preferred method when he is confident that his sons will follow his wishes and it will not lead to any disputes.

He also writes[2] that when one seeks to deviate from the Torah's method of distributing assets, it is not sufficient for the person to merely make an oral declaration of his intent, a document should be drawn up to make binding his intent to distribute property away as a gift. The person making this declaration must be of clear mind and ideally he should clearly detail his intent. Furthermore, since he does not want to give away his property while yet alive and there are other properties that he cannot yet give away as a gift, e.g. property that he has not yet acquired – דברים שלא באו לעולם, he must be careful to word the document in a way that takes all of these delicate issues into account. Authorities also add that even if one chooses to distribute his estate in a manner that is different than the Torah some property should be excluded from these gifts so that at least in some way the Biblical laws of inheritances could be followed. ■

1. פתחי חושן ח"ח כללי עריכת צוואה עמ' קס"ח.
2. פתחי חושן שם פ"ד סע' כ"ח. ■

(Insight...continued from page 1)

Tosafos HaRosh and Tosafos Ri"d in Kiddushin both note that Rashi's explanation seems to be difficult based upon our Gemara where the disagreement of R' Yehuda and Chachamim is presented in both areas of a father's testimony about his son. ■

STORIES Off the Daf

False accusations

"עבדי גנבת..."

A certain person was shocked to find his property suddenly expropriated by the government. He felt certain that a friend of his had informed on him falsely, although when confronted, the man denied it. The victim refused to believe him unless he would swear in front of the non-Jewish authorities that he was not guilty of what they accused him. Of course, if he had been the informant the government would return his property and punish the informant since he admitted under oath to having lied. The second man immediately did as he was asked, but then demanded that his friend be punished for publicly shaming him for no reason. His friend explained that he had not intended to embarrass him at all, but this did not satisfy him.

The alleged informer said, "You need to receive the proper punishment for having shamed another Jew for no reason. After it is administered you will think twice before publicly accuse another person of wrongdoing."

Interestingly, the Terumas Hadeshen, zt"l, ruled in this case that no punishment was warranted. "He is not obligated for embarrassing his friend since one is only obligated for embarrassing another if he intended to do so. Since this person only meant for his benefit and to show the government that he is innocent of all charges, he is not considered to have shamed the other man by design.

"The proof to this is from Bava Basra 127. There we find that if two people had an altercation regarding the ownership of a slave and one tells the other that if he swears he will be allowed to keep him, he cannot change his mind. Obviously, if he was obligated to pay him damages for embarrassing him by causing him to swear in public the gemara would have said so."[1]

But the Maharshal, zt"l, points out that he must ask his forgiveness in front of those who were present during their dispute in the following manner: "Gentlemen, I accused this man because I thought he was guilty but I was mistaken. Now that he has been vindicated I request forgiveness from Hashem and from him."

The Yam Shel Shlomo writes that he must say this nusach, no more and no less.

He concludes, "Of course, this is only true regarding an innocent error during a fight that took place in the heat of the moment. However, if a person calls his friend a thief or an informant to insult him, he receives lashes!"[2] ■

1. תרומת הדשן, פסקים וכתבים, ס' רס"ה
2. ים של שלמה, ב"ק, פ"ח, ס' מ"ה ■

Daf Digest is published by the Chicago Center for Torah and Chesed, under the leadership of HaRav Yehoshua Eichenstein, shlit"a
HaRav Pinchas Eichenstein, Nasi; HoRav Zalmen L. Eichenstein, Rov ;Rabbi Tzvi Bider, Executive Director, edited by Rabbi Ben-Zion Rand.
Daf Yomi Digest has been made possible through the generosity of Mr. & Mrs. Dennis Ruben.