



## OVERVIEW of the Daf

### 1) Selling an animal after יאוש (cont.)

The Gemara concludes its unsuccessful attempt to refute Reish Lakish's position that 'וה' ד' is not paid if the animal was sold after the owner had יאוש.

### 2) Sanctifying a stolen animal

R' Yochanan ruled that if the owner of a stolen animal did not have יאוש neither the owner nor the thief has the ability to consecrate the animal.

The Gemara notes a contradiction to R' Yochanan's position on this matter.

A possible resolution is suggested and rejected.

A more authoritative resolution is presented.

This resolution is challenged from another statement of R' Yochanan.

The Gemara answers that the names in the Baraisa should be reversed.

The Gemara wonders why the names in the Baraisa are reversed when one could just as easily emend R' Yochanan's statement.

The reason R' Yochanan's statement could not be reversed is explained.

This explanation is successfully challenged and the Gemara reverts back to its original explanations and explains that R' Yochanan's position is not refuted from the anonymous Mishnah that was cited since there is another anonymous Mishnah that is consistent with R' Yochanan's position.

The reason R' Yochanan follows the second anonymous Mishnah rather than the first is explained.

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## REVIEW and Remember

1. What prevents someone from sanctifying his property that was stolen?  
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2. What are the three cases where we do not follow R' Shimon ben Gamliel's opinion?  
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3. What leads R' Yochanan to follow one anonymous Mishnah rather than another?  
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4. According to Abaye, why would R' Dosa reject the position of the צנועין?  
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## Distinctive INSIGHT

### The noble actions of the צנועין

והצנועין מניחין המעות ואומרים כל הנלקט מזה מחולל על המעות הללו

Rav Yochanan stated that in order to consecrate an object, it must belong to him and it must also be in his possession. Therefore, if an item is stolen from its owner, and the owner had not yet given up hope of retrieving his object, neither the thief nor the owner is able to consecrate the object. The thief cannot declare the object הקדש, because the object is not yet his, and the owner may not do so because the object is currently not in his possession.

The Gemara questions this statement from a Mishnah (Ma'aser Sheni 5:1) which describes how fields in Eretz Yisroel used to be marked so that passersby would know the status of the produce growing therein. A vineyard with fourth year fruit was marked with clods of dirt around its perimeter, while a field with ערלה was identified with pieces of broken pottery. Graves were demarcated with white lime. The reasons each particular type of field was marked with a particular material is explained in the Gemara. In any case, there was a class of pious and righteous people (צנועין) who set aside money earmarked to redeem fourth year fruit which might be taken by a passerby. This seems to indicate that just as redemption may be done by the owner even after his fruit is taken by someone, so too may consecration take place even if the item has been stolen from the owner.

Rabbi Yochanan answers that the צנועין did not set aside their money for fruit that was already taken (נלקט), because that fruit was no longer in their possession. Rather, they set the money aside for fruit that was yet to be taken (מתלקט). Accordingly, there is no longer any indication that one may redeem or consecrate an item that is not in his possession.

Ketzos Hachoshen (61:3) asks about the Gemara's initial question against R' Yochanan from the actions of the צנועין. Why did the Gemara not simply answer that the ones who collected did so in the seventh year (Shemitta), whereby their actions did not constitute theft? The collectors took ownerless fruit of the Shemitta year, but because it was fruit in its fourth year of growth (רבעי) its status must be redeemed, and the original צנועין owners can perform this redemption on the behalf of the collectors as a form of merit.

Rambam (Ma'aser Sheni 9:7) rules according to our Gemara and the actions of the צנועין, and that the owner of the field may redeem the רבעי fruit taken by others, but he writes that it is dealing with collectors who take during the Shemitta year. ■

# HALACHAH Highlight

## Reciting Birkas Ha'ilanos on an orlah tree

אבל בשאר שני שבוע הלעיטהו לרשע וימות

But during the rest of the years of the shemittah cycle, stuff the wicked and let them die.

**T**eshuvus Rav Pealim<sup>1</sup> ruled that it is permitted to make Birkas Ha'ilanos on an orlah tree even though the fruit is prohibited from benefit. Even though the beracha expresses the sentiment that Hashem creates trees from which people are able to benefit and one is not permitted to benefit from an orlah tree, the beracha is still appropriate since it will be permitted to benefit from this tree once it is no longer orlah. Teshuvus Divrei Yaakov<sup>2</sup> also writes that it is permitted to make Birkas Ha'ilanos on an orlah tree and the explanation he offers is that the beracha is not on the specific tree that is in front of the one making the beracha; rather the beracha is that there are fruit trees in the world.

Teshuvus Dovev Meisharim<sup>3</sup> proves from our Gemara that it is permitted to make Birkas Ha'ilanos on an orlah tree. The Gemara relates that in the shemittah year they marked off orlah trees. The rationale is that during the shemittah year fields are ownerless and there was a concern that people would walk into a field to eat the fruit and would not realize that the fruit is prohibited due to orlah. The other years of the shemittah cycle they did not mark the orlah trees because they felt no responsibility to protect a thief from committing the additional transgression of eating orlah. If, however, it was not permitted to make Birkas Ha'ilanos on an orlah tree it would be appropriate to mark off orlah trees even during non-shemittah

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Abaye explains how he would understand the positions of the צנועין and R' Dosa, had R' Yochanan not taught that they subscribe to the same position.

Rava explains that had R' Yochanan not taught that the צנועין and R' Dosa maintain the same position he would have thought that the צנועין follow the opinion of R' Meir who holds that ma'aser sheni is sacred property but nonetheless once redeemed it becomes mundane property.

Ravina explains how he would have understood the statements of the צנועין and R' Dosa had R' Yochanan not taught that they express the same position. ■

years to prevent people from mistakenly making a beracha on an orlah tree. The fact that trees were not marked during non-shemittah years is a clear indication that it is permitted to make Birkas Ha'ilanos on orlah trees.

Teshuvus Tzitz Eliezer<sup>4</sup> takes note that R' Akiva Eiger and Teshuvus Divrei Malkiel lean towards the opinion that it is not permitted to make Birkas Ha'ilanos on an orlah tree and yet they would still maintain that it is not necessary to mark off the orlah trees during non-shemittah years. He suggests that it is unnecessary to mark the orlah trees for a number of reasons. One reason is that it is not clear that people will even approach the orlah tree to make the beracha and even if they do approach the tree one could assume that the person who wishes to make the beracha will confirm that this is a tree upon which one could make the beracha. ■

1. שו"ת רב פעלים ח"ג סע' ט'

2. שו"ת דברי יעקב מהדור"ת סי' ג'

3. שו"ת דובב מישרים ח"ג סי' ג'

4. שו"ת ציץ אליעזר חלק ט"ו סע' ט"ו ■

# STORIES Off the Daf

"Let him eat it and die..."

הלעיטהו לרשע וימות

**T**he Chazon Ish, zt"l, was very careful to avoid causing even the slightest embarrassment to any person. As the Ramak, zt"l, writes, "One must respect all of Hashem's creatures since they are formed with great understanding. Every creature should be very honored in his eyes, since if he embarrasses a creature this is disrespectful to their Creator."<sup>1</sup>

Yet there were some exceptions. There are times when someone acts in

such a despicable manner that one is obligated to publicly shame him. At other times, one may not actively shame him but one may set a trap so that the person humiliates himself. This is similar to today's daf where we find that one need not mark orlah and the like for a thief since he may, "give it to the wicked one and let him die."

Since embarrassing another is compared to killing him in the opinion of the poskim,<sup>2</sup> one must be very vigilant to never embarrass another without first asking a posek; this prohibition is a matter of life and death.

The Chazon Ish, zt"l, once noticed that money kept disappearing from his

wallet which was not kept on his person. It could only be one of those who were very close to him, but who? He certainly could not accuse anyone of this crime.

He ordered someone to smear his wallet with ink so that whoever touched his wallet would be easily discernible. This was done and the young man who stole suddenly had very black hands. He was exceedingly shamed when he saw those who he knew from the Rav's household staring at his hands, which were very obviously black—but he never stole again!<sup>3</sup> ■

1. תומר דבורה

2. עיין מנחת שלמה קמ"א א

3. כך שמעתי