



OVERVIEW of the Daf

1) Power of attorney

Nehardea rules that power of attorney may not be written

on movable property.

Ameimar explained the rationale behind this ruling.

A second version of Ameimar's statement is presented.

Nehardea gives another ruling related to formulating a proper power of attorney.

Abaye qualifies this ruling.

Ameimar rules that if the power of attorney was properly drawn up the agent can seize the proceeds and keep them for himself.

Two versions of R' Ashi's response to this ruling are presented.

The Gemara identifies the practical difference between these two versions and issues a final ruling on the matter.

2) MISHNAH: The Mishnah discusses different circumstances where the thief will pay 'נה' 'ד even though there is reason to think that he should be exempt.

3) Testifying to half a matter

It is noted that the Mishnah that allows one set of witnesses to testify about the theft and a second set of witnesses to testify about the sale or slaughter is inconsistent with R' Akiva who maintains that witnesses must testify about a complete matter.

Abaye explains how the Mishnah could even follow the opinion of R' Akiva since it is possible to consider each testimony a complete matter.

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REVIEW and Remember

1. What is the reason we do not write a power of attorney for moveable property?

2. What cases are disputed by Tanna Kamma and R' Shimon?

3. How does Abaye explain the position of R' Akiva regarding the exposition of the word דבר?

4. Explain קלוטה כמי שהונחה דמיה

Distinctive INSIGHT

How can the sale on Shabbos exempt the thief from his penalty?

גנב ומכר בשבת וכו' משלם תשלומי ארבעה וחמשה... והתניא פטור

Sefer פנים מאירות notes that the halacha of the Mishnah is reasonable, in that stealing and selling an animal on Shabbos does not subject the offender to capital punishment, so the monetary fine of four-fold is applicable. The halacha as presented in the Baraisa which exempts the thief in this very case is difficult in and of itself. There is apparently no need to cite the Mishnah in order to question the reason for the ruling of the Baraisa.

שמעון חידושי רבי שמעון explains that without a reference to the Mishnah, we might have said that any time a person attempts to perform an action which is prohibited by the halacha, even if it is only prohibited rabbinically, the action is considered void. For example, in our case we might have thought that any attempt to sell an item on Shabbos is to be halachically meaningless. Accordingly, we would have said that the sale is nullified, and the thief would not have to pay the four-fold payment. However, once we find that the Mishnah rules that the thief does, in fact, have to pay this fine, we see that the rule of nullifying an action which is otherwise prohibited is not applied in regard to Shabbos. The sale is valid, the payment of the fine must be made, and we are therefore confronted with the problem of the ruling in the Baraisa which exempts the thief in this case.

The Achronim, however, deal with why, in fact, the sale on Shabbos is valid. The halacha follows Rava who says (Temura 4b), "Any action which the Torah says not to do, if a person does it, the action is not valid." ש"ך (C.M. 208:#2) explains that when an action can only be done by violating a prohibition, we say that the action is not recognized as being valid. However, the sale of the stolen animal could have been done legally, for example had the thief waited until after Shabbos to sell it. In this instance, we say that the sale is not invalidated just because the thief decided to sell it on Shabbos in violation of the halacha.

Minchas Chinuch explains that the rule of Rava that we invalidate one's actions when they are in violation of halacha is itself a penalty. Therefore, it is only appropriate to use this nullification when the only one affected is the one who violated the halacha. If by selling something a person has violated the halacha, but the buyer has not done anything wrong with his acquiring the object, we do not apply the penalty, and the sale is valid. Similarly here, with the thief's action on Shabbos, the original owner would receive a four-fold payment. Here, we do not penalize the thief by nullifying his action at the expense of causing the owner the loss of the four-fold payment. ■

HALACHAH Highlight

Transactions that involve violating a prohibition

גנב ומכר בשבת וכי משלם תשלומי ארבעה וחמשה

Someone who stole and sold an animal on Shabbos... must pay 'ד' וה'

It is evident from the Mishnah that a transaction that is made on Shabbos is valid even though it involved a violation of a prohibition. This is based on the Mishnah's ruling that a thief who stole and sold an animal on Shabbos must pay 'ד' וה'. The obligation to pay 'ד' וה' applies only if the sale is valid; perforce the sale on Shabbos that triggers an obligation to pay 'ד' וה' must be a valid and recognized sale. This ruling is echoed in Shulchan Aruch¹ where he rules that transactions that are performed by violating some sort of prohibition, for example a transaction involving interest, are valid and the part of the transaction that involves a prohibition is disregarded.

Rema², however, seems to contradict this ruling. Citing a Gemara in Temurah (4b) that states that when a person performs an action in violation of the Torah the action is invalid, Rema rules that if a person took an oath that he would not sell something and sold the item in violation of the oath the transaction is invalid. Why doesn't the principle of our Gemara that transactions performed in violation of a prohibition are valid apply even in that case? Shach³ suggests that the difference relates to whether it is possible to perform the transaction without violating a prohibition. In the case of a transaction involving interest, it is possible to make the same transaction without including an interest

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Rabanan explain the intent of the term דבר from their perspective.

4) Stealing and selling on Shabbos

The Mishnah's ruling that a thief pays 'ד' וה' for stealing and selling on Shabbos is contradicted by a Baraisa that rules that he is exempt.

Rami bar Chama suggests an explanation for the Baraisa's lenient ruling.

This explanation is rejected and R' Pappa offers an alternative explanation.

It is initially thought that this explanation is limited to the opinion of R' Akiva regarding objects contained in the airspace of a domain but the Gemara demonstrates that the Baraisa could refer to a case that incorporates the position of Rabanan as well.

Rava returns to Rami bar Chama's explanation and resolves the original objection. ■

payment. Similarly, in the case of our Mishnah it is possible for the thief to sell the stolen animal on a day other than Shabbos, thus the transaction is valid even when it was done in a prohibited fashion. In contrast, when a person takes an oath that he will not sell a particular item, there is no way for him to sell the item without violating a prohibition. It is specifically under such conditions that the rule applies that an action performed in violation of the Torah is invalid. ■

1. שו"ע חו"מ סי' ר"ח סע' א'
2. רמ"א יו"ד סי' ר"ל סע' א'
3. ש"ך חו"מ שם סק"ב ■

STORIES Off the Daf

A half-word

דבר ולא חצי דבר

The importance of marriage cannot be overstated. The Shem Mishmuel, zt"l, once said, "Torah is compared to a wife since Torah learning also brings one to completion."¹

Once, at an engagement party, someone commented that presumably the reason why many call an engagement party a "vort," is because the groom gives a d'var Torah which is of-

ten interrupted.

But another guest brought a different rationale in the name of Rav Simcha Bunim Lieberman. "He explains that the name signifies that a person has finally come to completion, since a vort or dibur must be complete. We can extrapolate this from the Gemara in Bava Kamma 70. The Gemara brings the verse, 'על פי שלשה עדים' - through the testimony of [two or] three witnesses will the matter [davar] be established...' It then explains that witnesses must testify regarding a 'davar,' a full matter, but not a 'half davar.' In this sense, calling it

the Yiddish word for davar can allude to completion. It is well known that the Zohar teaches that until a man is married he is likened to half a body. It is his task to search for his basheret, as we find in Kiddushin²: 'This is comparable to one who loses an object. Just as he must work to find it, so must a man must seek out his match.' "

He concluded, "Now that the chasan is finally becoming a davar, a complete person, it is fitting to call this celebration a vort!" ■

1. שם משמואל תחילת תרומה
2. חכו ממתקים ח"א ע' קמ"ה
3. פאר השמחה