

OVERVIEW of the Daf

1) Liability of a craftsman (cont.)

The Gemara cites the upcoming Mishnah as support for R' Assi's ruling that a craftsman is not liable if he was given wood to build something, which he did, and then broke that item since he acquired the improvement to the utensil (אומן קונה בשבח כלי).

Shmuel rejects this proof.

An inference from Shmuel's statement is drawn that indicates that he rejects R' Ashi's ruling.

This inference is rejected.

It is noted that Shmuel rejected the proof to R' Ashi from the Mishnah but not that he necessarily maintains that his interpretation of the Mishnah is incorrect.

R' Assi's ruling is unsuccessfully challenged.

2) Paying an employee on time

It is noted that the original understanding of the Baraisa supports the position of R' Sheishes that one violates the prohibition against paying an employee late even for contractors.

It is suggested that R' Sheishes and R' Assi disagree about this matter but this suggestion is rejected.

3) Liability of a craftsman (cont.)

It is suggested that R' Assi's position that a craftsman acquires the improvement to the utensil is subject to a debate amongst Tannaim.

This suggestion is rejected and three different interpretations of that Tannaitic dispute are presented.

The Gemara presents another Baraisa that presents the dispute related to Rava's explanation, namely, the Tannaitic dispute relates to whether a woman, who is given a perutah and a loan for kiddushin, has her mind on the perutah or the loan.

4) Liability of a slaughterer

Shmuel rules that a slaughterer who makes the animal a neveilah is liable. The wording of Shmuel's ruling is clarified.

Shmuel's ruling is unsuccessfully challenged.

Another Rabbi challenged Shmuel's ruling to which he responded that the Baraisa which was cited follows the opinion of R' Meir.

The Gemara searches for the relevant ruling of R' Meir that Shmuel referenced.

R' Yochanan is also cited as ruling that a slaughterer must pay if he makes the animal into a neveilah.

It is noted that R' Yochanan seemingly issued a contradictory ruling. A resolution to the contradiction is suggested.

Support for this is presented.

R' Yochanan and R' Zeira's ruling is unsuccessfully challenged.

A related incident is recorded.

5) Liability of a moneychanger

Two conflicting Baraisos are cited concerning a moneychanger who gives bad advice, according to one Baraisa only a non-

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Distinctive INSIGHT

The expert who has to prove his credentials

זיל אייתי ראיה דממחית לתרנגולים ואפטרך

Rabbi Yochanan was quoted as saying that an expert שוחט who ruins a particular שחיטה is liable to pay the owner of the animal for the financial loss he incurs. Yet the Gemara notes that this opinion of Rabbi Yochanan is opposed by an actual case which was brought before R' Yochanan in the synagogue of Maon, where an expert for slaughtering birds had ruined some birds with failed שחיטה and R' Yochanan himself told the שוחט that if he could prove his expert qualifications, he would exempt him from paying for his mistakes.

The Gemara answers that the case at the synagogue of Maon was where the שוחט was working for free. The rule that even an expert is responsible for any mishaps for which he creates governs a case where the expert is paid for his services.

Ra'aved and Meiri note that if we are not certain that the שוחט is an expert, the fellow would have to pay for the damage he caused. It is only where he can prove that he was qualified that he would be released from liability. The Achronim ask why the burden of proof is placed upon the שוחט to prove his level of competency, when the general rule is המוציא מחבירו עליו הראיה—the one who seeks to extract money is given the burden of proof. It should be the responsibility of the owner of the birds which were ruined to prove that this שוחט was not an expert, and thus be able to collect the appropriate compensation. Furthermore, Shulchan Aruch (Yoreh De'ah 1:1) rules that even if a person is not known to be an expert שוחט we can assume that he is competent and rely upon his שחיטה because the rule is "most people who are involved in שחיטה are experts." Therefore, why did R' Yochanan not rely upon this assumption that this person was from the רוב, the majority, and thereby conclude that he was an expert? Why did he place the burden of proof upon this paid שוחט to show that he was an expert?

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REVIEW and Remember

1. When does the prohibition against delaying payment of an employee begin for a contractor?
2. Explain ישנה לשכירות מתחילה ועד סוף.
3. Why did Shmuel state that a slaughterer who made the animal a neveilah is a damager and was negligent?
4. Is an expert financially liable for his expert opinion?

HALACHAH Highlight

Violating the prohibition of **בל תלין** for a day worker

נתנה לו בחצי היום וכו' עובר משום בל תלין

If he gives it to him in the middle of the day... he violates the prohibition of **בל תלין**

Kesef Mishnah¹ questions the Gemara's citation of the verse **בל תלין**. The prohibition that applies for paying an employee late who completed his term of employment during the day is **לא תבא עליו השמש**. The prohibition of **בל תלין** applies to a worker who completed his term of employment at night. Why then does the Gemara mention the prohibition of **בל תלין** when discussing someone who violates a prohibition by not paying his employee by sunset when that is not the relevant prohibition? He suggests that the Baraisa was not precise regarding the exact prohibition since the intent of the Baraisa was to teach that the obligation to pay a worker on time does not begin until the worker delivers the garment. This explanation, however, will only resolve the difficulty with the Baraisa but there is still a difficulty with those Poskim who cite the Baraisa and don't clarify this matter.

Lechem Mishnah² asserts that the Baraisa is proof to Rambam's position regarding the prohibition of not paying a worker on time. Rambam maintains that one violates both prohibitions, namely, **בל תלין** and **לא תבא עליו השמש** whether it is a day worker or whether it is a night worker. The reason the Baraisa chose to mention the prohibition of **בל תלין** is that it is more novel to

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expert is liable whereas according to a second Baraisa even an expert is liable.

R' Pappa suggests a resolution to this contradiction.

This explanation is unsuccessfully challenged.

A related incident is recorded.

R' Chiya's ruling in this incident is challenged.

The Gemara answers that R' Chiya was conducting himself beyond the letter of the law. ■

invoke, in the case of a day worker, the prohibition that seemingly applies to a night worker but the truth is that both prohibitions apply equally.

Derisha³ adopts the same approach as Lechem Mishnah and uses this explanation to justify Rambam and Tur who cite the Baraisa without any further elaboration. In his later work, S"ma⁴, he rejected this explanation because he maintains that according to Rambam one violates both prohibitions only when he has no intention of paying his worker altogether but someone who intends to pay but is merely stalling will only violate one of the prohibitions, depending on whether it is a day worker or a night worker. The reason the Baraisa and later Poskim cite the verse of **בל תלין** even though it is not accurate is that in most cases paying an employee late will violate this prohibition and the primary intent was to emphasize the law related to paying a worker after he delivers the completed item. ■

1. כסף משנה פי"א מהל' שכירות ה"ג
2. לחם משנה שם
3. דרישה חו"מ סי' של"ט ד"ה נתנו

STORIES Off the Daf

Buyer beware

המראה דינר לשולחני

The challenge to finding a completely honest contractor is well known. A certain man asked his friend about a contractor in the neighborhood. He explained that he wished to make some major repairs on his home and that he needed to have a reliable person for the job. "People mentioned so-and-so and I have even drawn up a contract with him but have not yet signed it. Do you know if he is reliable?"

The person asked had actually heard about several scandals that this contractor had purportedly been involved in, but he decided to avoid telling the questioner about them since he wanted a favor from the contractor. "He is certainly an excellent contractor and I recommend that you use him."

The man followed his friend's advice but was very dismayed when the contractor absconded when he received most of the money and the job was only half done. He was even more upset when he found that the materials used on the part of the work that was completed were of inferior quality.

He wondered if the man who had given bad advice was obligated to pay for the damages.

When Rav Zilberstein, shlit"a, was consulted regarding this question he said, "Presumably the man who gave the bad advice must pay. We see this from Bava Kamma 98. There we find that a money-changer who miscalculates a coin and causes someone a loss must pay. But if this contractor is on a known list of irresponsible contractors, it is possible that the one who gave the bad advice is not obligated to pay.

"Either way, the Chofetz Chaim, zt"l, writes that one must be very vigilant not to

give someone advice to become a business partner with a person who is not very trustworthy, and the same holds true here!"¹ ■

1. עלינו לשבח ח"ג ע' תרס"ה-תרס"ו

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Several answers are given to deal with this issue. Ra'aved explains that an expert **שוחרט** generally carries an established reputation, and the fact that this person is an unknown leads us to doubt his expertise. Only with this proof would we categorize his flawed **שחיטה** as an **אונס**. Rabbi Akiva Eiger answers that a **שוחרט** who wants to exempt himself from paying for an error he makes can do so only with an oath, just like a **שומר** who comes to exempt himself. Without proving that he is an expert, we would not accept his oath, as the assumption would be that his misdeed was certainly negligence, and not a freak accident for which he would be exempt. ■