

OVERVIEW of the Daf

1) The sanctity of Shemittah (cont.)

Rava resolves the challenge to his position.

R' Kahana points out that the question of whether Shemittah applies to wood that is designated for use as fuel for a fire is subject to a Tannaic dispute.

The exchange between Rabanan and R' Yosi on this matter is presented.

A Baraisa is cited that the Gemara explains follows the opinion of R' Yosi.

2) The dispute between R' Yehudah and R' Meir in the Mishnah

R' Huna once ruled that the halacha follows R' Yehoshua ben Korcha and R' Yehudah, from our Mishnah, and R' Yosef was angered by this ruling.

The Gemara explains that the need to rule in accordance with R' Yehoshua ben Korcha is understood since he disagrees with the majority (The Gemara cites the relevant ruling of R' Yehoshua ben Korcha) but why was it necessary to rule like R' Yehudah since the anonymous Mishnah that follows is consistent with his opinion?

The subsequent exchange regarding this matter between R' Huna and R' Yosef is recorded.

3) An agent that makes an error

Two conflicting Baraisos are cited regarding the consequence of an agent who purchases the wrong item.

R' Yochanan resolves the contradiction by suggesting the Baraisos reflect the opinions of R' Yehudah and R' Meir.

R' Elazar challenges this explanation and suggests an alternative resolution to the contradictory Baraisos.

It is reported that there were those in Eretz Yisroel who mocked R' Yochanan's position.

R' Shmuel bar Sasrati objects to this challenge but R' Ava-

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REVIEW and Remember

1. What is the point of dispute between Rabanan and R' Yosi?

2. What is the significance that all of נזיקין is considered one massechta?

3. What issue is debated by R' Meir and R' Yehudah concerning an agent who deviates from the instructions he was given?

4. How does R' Sheishes explain the difficult Baraisa?

Distinctive INSIGHT

A joint investment

הנותן מעות לשלוחו ליקח לו חטין וכו'

An investor gave funds to an agent to buy wheat and to sell it for a profit. Rashi and Tosafos explain that this deal was arranged as a joint venture of the investor and the messenger (עיסקא). If they would realize a profit or loss, the gains or losses would be divided equally. The understanding also included a stipulation that if the agent would deviate from the instructions he was given, he would thereby acquire the money as his own, and he would be in line to collect all profits or suffer all losses.

The messenger, in fact, did not follow instructions, and he purchased barley instead of wheat. One Baraisa rules that if there are profits, the agent takes all gains for himself, while a second Baraisa rules that all profits from this venture must be divided equally between the investor and the agent. The Gemara resolves these two rulings and notes that the ruling that the agent collects all benefits reflects the opinion of R' Meir of our Mishnah, who holds that an agent acquires the barley as his own with his deviating from the instructions of the investor. The second Baraisa where the profits are split reflects the opinion of R' Yehuda of our Mishnah, who holds שניו אינו קונה - the messenger does not acquire the commodity by doing differently than he was told.

The Baraisa (Bava Metzia 70a) explains that it is prohibited for an investor to provide funds if he and the agent will divide the profits and losses equally. In essence, this would mean that half of the money he provides is an outright loan, from which the agent will gain or lose, and the other half is a deposit, from which the investor will realize his profit or loss. The reason this is prohibited is that the agent toils and works for the entire sum, including the money of the investor which was deposited with him. The effort he expends while working on the behalf of the investor's funds is considered as a form of reward or payment for having received the loan. We consider this to be interest (רבית). This can be alleviated, however, if the lender either assumes full risk in case of a loss, or if he guarantees the borrower the advantage of two-thirds of any gain, rather than just half. Why, then, is our case allowed, where the deal seems to have been a 50-50 split of the gain or the loss?

בעל העיטור writes that perhaps our case is not a classic case of עיסקא, as the case is introduced with a person giving money לשלוחו, which means that he is an agent, and not a partner. Once the agent deviates from his instructions, he assumes all risk. Had he not deviated, and the loss been due to the investment performing poorly, the two parties would have shared in the loss equally. ■

HALACHAH Highlight

Making a purchase on behalf of another

וכי מי הודיעו לבעל חטין שיקנה חטין לבעל מעות

And who informed the wheat owner that he should transfer the wheat to the owner of the money?

Rabbeinu Yerucham¹ writes that when Reuven purchases an item for Shimon using his own money the object will belong to Reuven even if Reuven informed witnesses that he intended to make the purchase on behalf of Shimon. The reason is that the seller must be aware of the identity of the buyer, and thus when it is hidden from him the transaction is completed with the one who presents himself, i.e. Reuven. Beis Yosef² explains that Rabbeinu Yerucham derived his position from the question of those from Eretz Yisroel who expressed this position in our Gemara.

Tur³ cites the opinion of Ramah who writes that when Reuven makes a purchase on behalf of Shimon using his own money Shimon become the owner of that object. The rationale behind this position is that we consider it as if Reuven loaned the purchase money to Shimon and thus Reuven is merely an agent of Shimon for this purchase.

Darkei Moshe⁴ asserts that Ramah's ruling is in conflict with the ruling of Rabbeinu Yerucham. Maharashdam⁵, however, rejects the notion that there is a disagreement here and suggests that they are addressing different circumstances. Rabbeinu Yerucham is referring to a case where Shimon sent Reuven to purchase wheat and Reuven went ahead and purchased barley. Since in this circumstance the seller is unaware of the identity of the buyer and the buyer did not want to purchase barley and, addi-

hu defends its validity.

Proof to R' Avahu is suggested but rejected by R' Abba.

R' Zeira challenges R' Abba's understanding but it is resolved by Abaye.

R' Hoshaya puts forward another challenge to R' Abba which forces R' Abba to offer an alternative explanation.

4) An agent who deviates from the investor's instructions

A Baraisa is cited and R' Sheishes offers an interpretation of that Baraisa.

An unsuccessful challenge to this interpretation is presented.

The explanation of R' Sheishes is successfully challenged and Abaye offers an alternative explanation. ■

tionally, Reuven used his own money it is logical to conclude that Reuven will be the owner of the barley. Ramah, however, refers to where Reuven is purchasing something on behalf of Shimon and did not deviate from his instructions. In such a case, even if Reuven used his own money it is logical to conclude that the item will belong to Shimon. Shach⁶ suggests a different distinction. He writes that Ramah was referring to a case where Shimon appointed Reuven to act as his agent but Rabbeinu Yerucham referred to a case where Reuven decided, without instruction from Shimon, to make the purchase and thus since Reuven is using his own funds the item will become his. ■

1. רבינו ירוחם נתיב כ"ח ח"א

2. בית יוסף ח"מ סי' קפ"ג

3. טור שם

4. דרכי משה שם סק"ב

5. שו"ת מהרשד"ם ח"מ סי' קמ"ח

6. ש"ך שם סק"ב ■

STORIES Off the Daf

The foundation of Shalom Bayis

משום איבה

On today's daf we find that one should avoid doing something that will cause conflict with his wife.

A couple once came before the Apter Rav, zt"l. The husband had decided to divorce his wife. He explained, "She fed me gebrochts on Pesach!"

The Rav called in his rebbetzin and said, "Tell me the truth and don't worry about my reaction. What matzos did you give me for the seder?"

The rebbetzin replied that she had given him regular matzos and not the ex-

pensive mehudar matzos that had been prepared expressly for his use during the seder. She explained, "A gabbai tzeddakah came to the door on erev Pesach soliciting for poor families who did not have sufficient matzah. I was very busy and one of those who help in the kitchen answered the door and accidentally gave him matzah from the wrong place. Instead of giving him the regular matzah, the person gave the special shmurah matzah prepared for your seder."

The Apter Rav turned to the husband and said, "You see, my son? I ate matzos of a much lower level than I usually eat for the seder but acted as though I did not notice in order to ensure that there not be any kind of altercation or hakpada with my wife, chas v'shalom. And you are

considering divorce because your wife inadvertently gave you gebrochts?!"

When the Belzer Rebbe told over this story he added, "Everyone knows that there are a thousand and one reasons why things can turn stormy in the home. However, when sh'lom bayis is based on a relationship of respect and admiration for the efforts each partner makes to help the other in any way he or she can, the house is run in a tranquil and contented manner. And whoever puts out more effort to give more will be rewarded with more. Woe to the house where each partner focuses on his or her rights and the other's obligations. Happy is the home in which each spouse considers his or her obligations and the other's rights!"¹ ■

1. בינת המידות ע' 35-32