

OVERVIEW of the Daf

1) Identifying the author of the Mishnah (cont.)

Rava asserts that the case of the Mishnah is not related to the dispute between R' Akiva and R' Tarfon.

2) An agent appointed in the presence of witnesses

R' Chisda and Rabbah disagree whether an agent appointed by the creditor in front of witnesses is a legal agent or not.

Each Amora explains the rationale behind his position.

Two unsuccessful challenges to R' Chisda are presented.

The Gemara explains how the current explanation of the Mishnah is at odds with another Tanna.

It is noted that R' Yochanan and R' Elazar agree with R' Chisda that an agent appointed by the creditor in front of witnesses is a legal agent.

3) Returning money to a depositor

R' Yehudah in the name of Shmuel rules that one should not return money to a depositor with someone who bears the symbol of the depositor even if there are witnesses that are signed on it whereas R' Yochanan maintains that if witnesses are signed on it it is allowed.

The Gemara cites an incident that explains how, according to Shmuel, money could be returned to the depositor. Another related incident is presented.

4) One-fifth surcharge

The Gemara infers from the Mishnah that the one-fifth surcharge is a monetary obligation that could be be-

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REVIEW and Remember

1. What is the point of dispute between R' Chisda and Rabbah?
2. What is דיוקני?
3. How does the Gemara demonstrate from the Mishnah that the one-fifth surcharge is a monetary payment?
4. When is a son obligated to pay the one-fifth surcharge for money his father stole?

Distinctive INSIGHT

Transferring funds using אגב

כי הא דר' פפא הוה מסיק תריסר אלפי זוזי בי חוזאי אוקנינהו ניהלי לרב שמואל בר אבא אגב אסיפא דביתא

The Gemara tells us that R' Shmuel bar Abba was going to the town of Chozai, and R' Pappa asked him to assist in finishing some old business he had with some of the people of that town. R' Pappa used the קנין of אגב to empower R' Shmuel to represent him and be a party in paying back funds that were owed. The word "מסיק" suggests that R' Pappa was the borrower, and that he owed money to someone in the town of Chozai. Accordingly, he took the money to be returned and transferred it to R' Shmuel bar Abba using the method of אגב for him to take and repay the loan. The Rishonim note that this is difficult, as the Gemara in Bava Basra (148a) implies that the method to transfer money to repay a loan is only מעמד שלשתן - when the arrangements are made in the presence of all the parties involved. This is the only way money can be designated to go from the original borrower to his lender via a third party. Why, then, does our Gemara allow the קנין of אגב?

Rashba explains that the word "מסיק" should not appear in the text of our Gemara. R' Pappa did not owe money to someone in Chozai, but instead he owed an item. When he wished to transfer this item to R' Shmuel bar Abba on the behalf of its owner, he used the קנין of אגב, which works for movable objects.

Tosafos in Bava Basra (ibid. ה' שכ"ב מרע) answers that the sages determined that if an arrangement of הרשאה is made, even money for repayment of a loan can be transferred using אגב. A הרשאה is a form of power of attorney, where the agent is empowered to represent the sender.

Nimukei Yosef writes that the correct text should include the word "מסיק" indicating that R' Pappa owed money. Yet, the sum given to the people in Chozai was not just a loan, which cannot be transferred with אגב, but it was a combination of a loan and a deposit, and it was originally given to R' Pappa for a joint business deal (עיסקה). Because half of the sum was a deposit, it was able to be transferred using אגב, and it is in reference to this amount that R' Pappa used this method. ■

HALACHAH Highlight

A Rabbinic kinyan to avoid owning a bechor

אקנינהו ניהליה לר' שמואל בר אבא אגב אסיפא דביתיה

He transferred the money to R' Shmuel bar Abba agav the threshold of his house

A cattle farmer had a cow that give birth to a firstborn calf (בכור) which would leave him with the tremendous burden and expense of raising a בכור. As he considered his predicament he recalled that he sold his land, animals and movable objects to a gentile each year in order to avoid issues related to Shabbos. It happened to be that the mother cow was included in that sale. He thus inquired whether that sale was valid so that the calf was born while owned by the gentile and its offspring would not have the sanctity of a בכור.

Teshuvos Kol Mevasser¹ answered that regarding the methods of acquisition that were used in this sale, it is clear that they were effective even as it would affect the status of the firstborn calf. It could be argued, he notes, that since the gentile never pulled the cow (משיכה) the only transaction he made was with the money that was put towards the down payment. Accordingly, the firstborn should be considered a בכור ספק since there is a dispute amongst authorities whether an acquisition with a gentile performed only with cash is an effective means of transferring ownership. In this case, however, it is a moot point since the cattle farmer and the gentile shook hands on the deal and a hand shake is an effective method of transferring the cow².

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queathed to one's heirs.

A Mishnah and a Baraisa echo this same position.

Another Baraisa is cited that seemingly maintains an alternative position.

R' Nachman resolves the contradiction.

The Gemara presents two challenges to R' Nachman's interpretation thus forcing R' Nachman to revise his explanation.

The Gemara challenges this revised explanation. ■

Another factor that indicates that the firstborn calf is not a בכור is that the seller wrote in the contract that everything was done with a valid and binding kinyan. Such a declaration is called a קנין אודיתא (an acquisition by means of admission) and Ketzos Hachoshen³ writes that this method of kinyan is effective even for matters pertaining to prohibitions like a בכור. Although Tosafos⁴ in our Gemara maintains that קנין אודיתא is only effective on Rabbinic matters it may still be effective to prevent the firstborn calf from becoming a בכור. The reason is that the Rabbinic kinyan will at least make the animal ownerless, הפקר, on a Biblical level and the firstborn offspring of an ownerless animal does not acquire the sanctity of בכור. Consequently, the animal would not have the status of a בכור even according to Tosafos. ■

1. שו"ת קול מבשר ח"א סי' ס"ב

2. ע' שו"ת חת"ס יו"ד סי' שנ"ד ודלא כמקור חיים או"ח סי' תמ"ח

3. קצות החושן סי' קצ"ד סק"ג

4. תוס' ד"ה אגב אסיפא דביתיה

STORIES Off the Daf

Absolute integrity

אשר גזל

Today's daf discusses theft. The gedolim were always exceedingly careful to avoid even the accusation of theft.

It is well known that bureaucracies can often make laughable errors, especially those bureaucracies with an abundance of red tape and many responsibilities. This was all the more true before the advent of computers. Sometimes ridiculous accusations could be leveled.

One of the biggest such bureaucracies used to be the Israeli "Ministry of Communications," (also known as "the

Do'ar" since mail delivery was one of its purviews.) It was also responsible for domestic phone service. Although today it is no longer the case, it used to be a very big deal to get a home phone line installed in Israel. Even making calls from public phones was a hassle since one needed to constantly feed them "asimonim," special phone tokens. The errors made by this ministry in the old days are legendary.

One time, a delegation came from the Do'ar to Yeshivas Ponevezh and claimed that a large number of phone tokens had been stolen from the yeshiva's phones. Rav Eliezer Kahanamen, zt"l, the manager of the yeshiva's finances, asked for proof of this but no clear proof was forthcoming.

Predictably, this developed into an argument where each party felt certain that the other was absolutely mistaken. Rav Shach, zt"l, walked into the office in the middle of this and was astounded. He asked Rav Kahanamen what the altercation was about.

The moment Rav Shach heard the officials' claim he immediately took out his wallet and paid the entire sum. "We must ensure that there is no chilul Hashem," he explained.

Rav Kahanamen was amazed at this. "The entire matter had nothing to do with Rav Shach, yet in order to avoid a chilul Hashem he paid the entire sum out of pocket, without even bothering to ascertain if the claim was in any way true!"¹ ■

1. תורתך שעשועי ע' רל"ט