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DAF YOMI DIGEST
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בבא קמא קי״ב
The Chicago Center

OVERVIEW of the Daf

1) The domain of an heir (cont.)

According to a second version Rami bar Chama drew his position from a Baraisa rather than a Mishnah.

Rava rejects this inference.

The Gemara analyzes the difference between the two versions of Rami bar Chama's inferences.

A Baraisa is cited that discusses the obligations of children who receive property that their father stole.

Rava clarifies a point in the Baraisa.

Another related Baraisa is cited and clarified by R' Pappa.

2) Inheriting borrowed property

Rava presents rulings related to children who inherit property that their father borrowed before he died.

It is noted that there are two ways to understand Rava's last statement.

3) Consuming stolen property

A Baraisa presents a dispute regarding the liability of someone who consumes property stolen by another.

A related incident is presented.

4) Accepting testimony when the litigant is not present

R' Ashi in the name of R' Shabtai rules that witnesses may testify even when the litigant is not present.

R' Yochanan questions this ruling which leads the Gemara to qualify its application.

R' Yehudah in the name of Shmuel also rules that witnesses may testify even when the litigant is not present.

Mar Ukva qualifies this ruling.

(Continued on page 2)

REVIEW and Remember

1. Explain רשות יורש כרשות לוקח דמי.

2. What is the point of dispute between Tanna Kamma and Sumchus regarding stolen property that children inherit from their father?

3. Under what conditions can testimony be submitted without the presence of the litigant?

4. Concerning what matter is an agent of Beis Din assigned the credibility of two witnesses?

Distinctive INSIGHT

The children pay at a discounted rate of דמי בשר בזול

כסבורים של אביהם היא וטבחוה ואכלוה משלמין דמי בשר בזול

Rav Chisda taught earlier (111b) that if a man stole an animal, and someone else steals it from the first thief, if the original owner had not yet given up hope of retrieving his animal, he may collect from either culprit .

In our Gemara, Rava presents a ruling regarding a man who borrowed an animal from a friend, and when he died, his children collected the animal as part of his estate. If the children slaughtered the animal while being unaware that the animal was borrowed and that it did not belong to their father, they have to pay the owner of the animal for having taken his property, but they only need to pay back at a discounted rate. The rate used is called דמי בשר בזול, and it reflects the price someone would pay if he did not actually want to purchase meat, but if he saw it at a cheap price he would buy it and eat it. This amount is generally set at two-thirds of full price, and it is the value of the benefit they derived from the meat.

The Rishonim discuss in what way the case of Rava differs from the earlier case of Rav Chisda. Why is it that the children of the borrower do not pay full price for the animal they slaughtered?

Ra'aved (cited in Shitta Mikubetzes) and Ramban (to Kesuvos 34b) explain that the children in this case did not realize that they were doing anything wrong, as they thought the animal belonged to their father. They were mistaken in eating the animal which belonged to the neighbor, so they only have to pay for that which they benefited. In the earlier case of Rav Chisda, the second thief knew that the animal was being taken illicitly, so he must pay for his criminal act. In fact, Rav Chisda would agree that in his case, if the children of the first thief would have mistakenly eaten the animal which their father stole, they would only pay its owner at the discounted rate of דמי בשר בזול (2/3 of its value).

Tosafos asks why we do not consider the children of this borrower to have caused damage to the animal, which would have obligated them to pay full price? As a damager, man is liable in all cases, whether his actions are a result of being negligent or accidental. Tosafos answers that when the damage is as a result of a complete accident (אונס גמור), even man is exempt from paying for damage. The children do, however, pay for that which they benefited, which is appropriate even if they are not liable for damages. ■

HALACHAH Highlight

Submitting testimony without the presence of the defendant

וכי מקבלין עדים שלא בפני בעל דין

Do we accept witnesses [to testify] without the presence of the litigant?

Beis Yosef[1] cites numerous Rishonim who maintain that testimony that was submitted without the presence of the litigants is invalid and may not be used by the judges to reach their final verdict. This is in contrast with other authorities who maintain that, after the fact, the testimony can be submitted. An added dimension to this halacha is mentioned in Teshuvas Rashbash[2]. He writes that although testimony is not acceptable if it is not given in the presence of the litigant, nevertheless, it is common practice to accept testimony regarding matters related to gittin and kiddushin when not in the presence of the relevant parties. The reason is that when it comes to matters of עריות everyone is considered an interested party since every person is prohibited from marrying an ערוה.

There was once a school teacher who was accused of committing very serious transgressions. People with knowledge of these transgressions came to Beis Din to testify against him to have him removed from his position and the testimony was submitted without the presence of the teacher. Teshuvas Shoel U'Meishiv[3] was asked whether the testimony was valid since it was submitted without the defendant in Beis Din. In his response he bemoans that such a person was teaching young children Torah and wrote that the teacher should be immediately relieved of his responsibilities as a teacher and should not be permitted to return to teaching until he repents completely and included in his repentance is a full confession of his sins. Regarding the issue of the testimony that was submitted without the presence of the teacher, he wrote that it is not an issue in this case. Since the testimony is needed to prevent further transgressions it may be submitted even without the presence of the defendant. Furthermore, the reason testimony may not be submitted without the presence of the defendant is that people have a presumption of being reliable and trustworthy (חזקת כשרות) and the defendant has the right to be present when someone is undermining that presumption. In this case the defendant's presumption of reliability and trustworthiness is not being undermined; rather they are asserting that he does not meet the higher standard necessary for a teacher. When that is the intent the testimony may be submitted without the presence of the defendant. ■

1. בית יוסף חו"מ סי' כ"ח
2. שו"ת רשב"ש סי' מ"ו
3. שו"ת שואל ומשיב מהדו"ק ח"א סי' קפ"ה ■

(Overview. Continued from page 1)

Rav and R' Yochanan disagree whether a contract can be confirmed when not in the presence of one of the litigants.

The rationale behind R' Yochanan's strict ruling is explained.

Rava issues a final ruling on this matter as well as the procedure for dealing with a borrower who is not responsive to Beis Din.

5) Beis Din's involvement in collecting a debt

The Gemara continues to elaborate on the procedures Beis Din takes to assure collection of a debt.

Ravina states that an agent of Beis Din is assigned the credibility of two witnesses.

This ruling is qualified.

Ravina rules that a summons may be delivered by a woman or a neighbor.

This ruling is qualified. ■

STORIES Off the Daf

The borrowed cow

הניח להם אביהם פרה שאולה

A certain woman unknowingly confused her chicken with her neighbor's and brought it to the shochet to shecht.

After shechitah it became clear that there was a serious halachic question and that she needed a rav to determine whether the chicken was treif. She didn't really have energy to go through this so she sold the chicken to a non-Jew at a significantly reduced price.

When the true owner of the chicken finally tracked her down and demanded her chicken, the woman who had made the error explained what had happened and offered to recompense her with the money the non-Jew had paid for the chicken.

The other woman protested, "Since you didn't bother to find out if it was treif, you should repay me the entire value of the chicken!"

The rav didn't know what to do. On the one hand, it seemed to him similar to Bava Kamma 112. There we find that orphans who slaughtered and ate a cow that did not belong to their father need not repay the full value of the animal. Perhaps here too she was not obligated to give more than she had received for the chicken since she had not known? On the other hand, perhaps the fact that she didn't check made her like a person who undervalued the animal knowingly. If that was the case, she would surely be required to repay the entire value of the chicken. Things were even more complicated, since the animal may have been treif and there was no longer any way to determine this with certainty.

The rav decided to consult with the Maharsham, zt"l. He answered, "The owner of the chicken is muchzekes and must be recompensed the full value of a kosher chicken. This is similar to a purchaser who damaged an item before discovering that there was already a blemish. Although if this man had not made a second blemish he would have had the right to return the object, he loses this right after having caused damage of his own. The Nesivos explains that since the purchaser did not check for damage before causing further damage to the item, he is taking responsibility for his actions even if it turns out later that the object came to him damaged to begin with.

"Here, too, by failing to ensure that the chicken was hers, she is responsible!"[1] ■

1. שו"ת מהרש"ם ח"א ס' ע"ה

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