

OVERVIEW of the Daf

1) Recovering stolen property

Rav in the name of R' Chiya and R' Yochanan in the name of R' Yannai disagree whether the owner of stolen items should pursue the robber or the one who purchased the objects from the robber.

R' Yosef asserts that there is no dispute and one opinion refers to where the owner despaired and the other opinion refers to where the owner did not despair.

Abaye unsuccessfully challenges this explanation.

Abaye, R' Zevid and R' Pappa offer different explanations of the point of dispute between Rav and R' Yochanan.

R' Pappa's explanation is unsuccessfully challenged.

2) The remedy of the marketplace – תקנת השוק

Rava states that "the remedy of the marketplace" does not apply to something purchased from a known thief.

The Gemara presents different cases and discusses whether תקנת השוק applies but according to the Gemara's final conclusion it works in all cases except two.

Two related incidents are presented and their rulings analyzed.

3) **MISHNAH:** The Mishnah discusses the halacha of one who suffers a loss in order to save a friend's property.

4) The one who pours out his wine

The Mishnah's ruling that the owner of the wine receives only compensation is challenged from a Baraisa.

The exact circumstance in which the Mishnah's ruling applies is explained.

Another Baraisa is cited that contradicts the previously-cited Baraisa that ruled that one cannot declare produce that is about to be lost terumah or maaser for other produce.

The contradiction is resolved.

A contradiction between Baraisos is noted whether one is

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Distinctive INSIGHT

Water, wine or milk that was exposed

מים שנתגלו הרי זה לא ישפכם ברשות הרבים ולא יגבל בהם את הטיט ולא ירבץ בהן את הבית

The Gemara taught that whenever there is a possibility of an imminent loss, a person should not declare the item at risk as consecrated. If the wine or honey in a barrel is about to be lost due to the barrel's breaking, the owner should not declare the contents of the barrel as terumah or ma'aser for other commodities in his possession. If a person has money in his hand as he is traveling, and he realizes that he is about to be accosted by bandits, he should not declare ma'aser fruit in his house to be redeemed with these coins. The Gemara concludes that if the loss is inevitable, the person's statement to consecrate the money is meaningless. However, if the risk is just probable, but might be avoided, the person should still not declare the threatened item consecrated, but if he does, his words are valid.

The Gemara questions this premise from a Baraisa where if a levi had ten barrels of ma'aser wine and he sees that one barrel was breaking or had become uncovered, he may declare it to be terumas ma'aser for the kohen. We see, therefore, that it is permitted to declare something consecrated even in the face of a loss. The Gemara answers that this barrel was wrapped with a net, and the leak was arrested.

As far as being uncovered, this wine is prohibited due to the danger of a snake's having deposited its venom into the barrel. The Gemara explains that the opinion of R' Nechemiah is that such wine may be strained and filtered.

When the Gemara considers the danger of wine that was exposed, it notes that the not only should not one not drink it, but it is also prohibited to sprinkle it on the floor of a room to spread a pleasant aroma. The Baraisa states that water that was exposed may not be drunk, and it may not be poured in the street. Rashi explains that the danger here is that a barefoot person might walk by, and the poisonous water might enter in a wound on his foot, and he might die as a result. This is also why it is prohibited to sprinkle water on a floor to settle the dust in the room, as the infected waters might end up on someone's foot and endanger him (see Rashi, Avoda Zara 30a).

The Gemara (ibid.) also prohibits washing one's face with water that was exposed. There are two opinions regarding this matter. Acheirim only limit this to where there is a fold or crack in the skin. Tanna Kamma prohibits washing with this water in all cases. Rambam נפש ושמירת נפש (רוצח ושמירת נפש) and Tur (Y.D. 116) rule according to Tanna Kamma. ■

REVIEW and Remember

1. What are the three possible explanations for the dispute between Rav and R' Yochanan?
2. Explain תקנת השוק.
3. Why is the owner of the wine not permitted to keep the spilling honey for himself?
4. What is the benefit of sprinkling wine?

HALACHAH Highlight

Using another's property to save oneself from a loss

ושפך זה את יינו והציל את הדבש

And this one spilled his wine to save his friend's honey

Shimon needed to travel to a distant location to recover a large debt that was owed to him. Being that time was of essence he decided that he would take Reuven's horse to speed up the journey. Since Shimon was aware that he was taking Reuven's most expensive horse, he decided that he would pay the normal rental fee and additionally cover the additional loss that Reuven would suffer by not having use of his horse for the time Shimon had it. Terumas Hadeshen¹ considered whether Shimon is categorized as an authorized renter (שוכר מדעת) and thus exempt from אונסין or is he an unauthorized renter (שוכר שלא מדעת) who is liable even for an אונס. He suggests that the matter is subject to a debate between Rif and Rosh². Regarding the case of the Gemara where one person spills out his wine to save his friend's honey, Rif maintains that although the wine owner is compensated if he spills out his wine to save his friend's honey, he is not obligated to spill out his wine to save his friend's honey. Accordingly, in our case since Reuven is not obligated to give his horse to Shimon so that Shimon could collect his money, Shimon is considered an unauthorized renter who is liable for אונסין. Rosh, on the other hand, maintains that the wine owner is obligated to spill out his wine to save the honey; consequently, in our case Shimon is considered to be an authorized renter of Reuven's horse and is therefore exempt from אונסין.

Rema³ simply writes that Shimon is considered an authorized renter and Sema⁴ questions why Rema did not mention the dissenting opinion of Rif. He thus suggests that Rif and Rosh disagree only where the wine owner explicitly states that he does

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permitted to consecrate property when there is a likelihood of loss.

R' Yirmiyah resolves this contradiction.

A challenge to this explanation is presented.

To resolve this challenge the Gemara relates that the difficult Baraisa follows the position of R' Nechemiah that uncovered wine may be strained and then used.

The assertion that the Baraisa follows R' Nechemiah is unsuccessfully challenged.

5) The difference between wine and oil

Earlier a Baraisa was cited that taught that a Levi could declare as terumas maaser tamei wine that is about to be lost, but he is not permitted to do so for tamei oil, and the Gemara now inquires why.

After an exchange about the matter the Gemara reaches an acceptable resolution.

6) Unwitting transgression

As a continuation of the previous discussion the Gemara suggests that there is a dispute between Tannaim whether there is a concern for an unwitting transgression. ■

not want to spill out his wine. If, however, he was not present when the honey began to spill, the honey owner has the right to assume that the wine owner would allow his wine to be spilled out to salvage his friend's honey. Accordingly, in our case if Reuven is not available for Shimon to obtain authorization to use Reuven's horse, Shimon has the right to assume that Reuven would agree and thus is categorized as an authorized renter who is exempt from אונסין. ■

1. שו"ע תרומת הדשן סי' שט"ז
2. ע' טור חו"מ סי' רע"ד
3. רמ"א חו"מ סי' ש"ח סע' ז
4. סמ"ע שם ס"ק י"ד ■

STORIES Off the Daf

The Kohen's privilege

מפני הפסד כהן

On today's daf we find that the sages prohibited causing loss to kohanim.

Although in the diaspora birkas kohanim is a rare event among Ashkenazim, in Israel it is recited each morning. A certain kohen enjoyed his morning coffee but also woke up a bit late for davening. His solution was to rush to shul and then get a coffee after kedushah. Unfortunately, this often caused him to miss birkas kohanim. Since he was often the only kohein

in the minyan, this upset the gabbai and other mispallelim. They wished to teach this kohen a lesson that he would not soon forget. Of course, before they acted on their impulse, they first wanted to ensure that their plans were halachically acceptable. As the shul's representative, the gabbai went to Rav Vosner, zt"l, and asked if he could refuse this kohen the first aliyah.

The man argued, "After all, if he doesn't do his job as a kohen, is the kahal responsible to give him the special mark of respect due to a kohen? I heard that the Chasan Sofer, zt"l, refused to give a kohen who neglected to do birkas kohanim the first aliyah. If this is true, then there is a

good precedent for using this privilege to teach the man a lesson..."

Rav Vosner disagreed. "Although you should definitely tell this man off since he doesn't do birkas kohanim regularly, you may not withhold rishon from him. He admits that he is a kohen and does not actually violate the positive commandment and has not violated his kehunah.

He concluded, "It is true that that the Chasam Sofer fined a kohen in this manner, but that was a special case. He did not mean to rule that one should halachically nullify a kohen's right to honor in every case!"¹ ■

1. שו"ת שבט הלוי חלק ט' סימן כ"ז