

This month's Daf Digest is dedicated in memory of  
 Mr. Israel Gotlib of Antwerp and Petach Tikva and Yisrael Tzvi ben Zev.  
 By Mr. and Mrs. Manny Weiss

## OVERVIEW of the Daf

### 1) Witnesses after admitting to a fine (cont.)

It is suggested that there is a dispute between Tannaim whether one is obligated to pay a fine if witnesses come after the litigant admitted to his transgression.

This suggestion is rejected.

Rav and Shmuel disagree whether one is obligated to pay a fine if witnesses come after the litigant admitted to his transgression.

The source for Rav's lenient opinion is identified.

Shmuel's response to Rav's source is presented.

Shmuel's position is challenged and from the ensuing discussion

it emerges that according to Shmuel there is a dispute between Tannaim on the matter but Rav could maintain that all Tannaim agree with his position.

R' Hamnuna limits the application of Rav's position.

Rava rejects this qualification.

Different proofs for R' Hamnuna's qualification of Rav's ruling are recorded.

The proof that R' Ashi suggested from the Baraisa is rejected.

It is suggested that R' Hamnuna's qualification is subject to a dispute between Tannaim.

R' Acha the son of R' Ika rejects this assertion.

This refutation is unsuccessfully challenged.

### 2) Clarifying Sumchus's position

The Gemara clarifies the position of Sumchus presented in the earlier cited Baraisa. ■

Today's Daf Digest is dedicated  
 By the Geller family  
 In loving memory of their grandfather  
 ר' אליעזר בן ר' משה הכהן, ע"ה

Today's Daf Digest is dedicated  
 In loving memory of their husband and father  
 ר' שמואל בן ר' לוי, ע"ה  
 Sherwood Perman  
 ולרפואה שלמה  
 אסתר שרון בת חנה רייזל  
 Perman, Dennis, and Askotsky Families

## Distinctive INSIGHT

*Payment of four or five, not payment of three or four*  
 תשלומי (ארבע) חמשה אמר רחמנא ולא תשלומי ארבעה ולא  
 תשלומי שלשה

**M**idrash Mechilta (Mishpatim 12) explains that the multiple payments of four-fold and five-fold are inclusive of the principal and doubling (כפל). Therefore, in a case where the thief is exempt from either the principal or כפל he would not pay the balance of the four or five-fold payment. As illustrated in our Gemara, if the thief admits that he stole, in which case he is exempt from כפל, and witnesses come and testify that this thief slaughtered or sold the animal, the thief would pay only the principal. Once he does not pay the כפל, the balance of the four-fold (in a case of selling the animal) would only be three times the value of the animal. The Torah does not speak of a threefold payment, so the thief would not pay any multiple at all.

Similarly, we learned earlier (69b) that a second thief who steals from the possession of a first thief does not pay כפל. The Torah states that the prerequisite for כפל is (Shemos 22:6) "וגונב מבית האיש"—where the theft is from the house of the owner," and not when the item is snatched from a first thief. If the second thief then sells or slaughters the animal he stole, he would not pay four or five-fold. Once he is exempt from paying the the remaining multiple of four or five is lowered to three or four times the value of the item, and this is not the penalty about which the Torah speaks.

Another example of this application is where the theft and slaughter of the animal was done on Shabbos (see Mishnah 74b), where the theft was done in a manner such that Shabbos was violated. The thief is subject to capital punishment which exempts him from repaying for the principal amount of the theft (קם ליה בדרכה מיניה). This would then result in his being exempt from the four or five-fold payment, because the amount without the principal remains at only three or four times the amount.

Yet another example of this law is found in Kesuvos (34b) regarding a person who is tunneling into someone's home to steal (בא במחורת). The law is that the homeowner may act in self-defense and kill the offender. If the intruder steals and slaughters an ox, he is exempt from payment of the principal amount of the theft, as he has forfeited his life by subjecting himself to the pre-emptive strike of the house owner. Without the payment for the principal, there is no longer a payment of four or five, either, as we have seen. ■

# HALACHAH Highlight

## Accepting testimony outside of Beis Din

שלא בבית דין הוה קאי

He was standing outside of Beis Din

Teshuvos Mabit<sup>1</sup> wrote regarding testimony that if the judges are not in the place that Beis Din convenes, e.g. they are in the marketplace or on the road, and are standing when witnesses give their testimony, the testimony is invalid. The rationale he gives is that the judges have to be in the proper frame of mind when hearing testimony and standing in the marketplace or on the road is not conducive for that. Shach<sup>2</sup> cites Teshuvos Rivash who rules that it is acceptable for testimony to be presented before judges who are standing and cites a Yerushalmi to support this assertion. While discussing the trial of a blasphemer, Yerushalmi states that when the judges hear the name of Hashem pronounced by the defendant in his blasphemy they must stand to give honor to the recitation of Hashem's name. This indicates that testimony can be given to judges even when they are standing.

Sha'ar Mishpat<sup>3</sup> suggests that our Gemara is a proof to the position of Mabit. Just as our Gemara teaches that an admission to a fine is not valid unless it was made in the presence of Beis Din, so too testimony given when the judges are not in Beis Din is not valid testimony. A second explanation he offers is that Mabit did not intend to disqualify the testimony because the judges weren't sitting; rather the disqualification was due to the fact that the judges had not con-

# REVIEW and Remember

1. What is the issue disputed by Rav and Shmuel?

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2. What qualification does R' Hamnuna add to Rav's ruling?

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3. What is the issue disputed by R' Hamnuna and R' Yochanan?

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4. Explain שאי אתה יכול להזימה.

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vened for the purpose of constituting a Beis Din. Accordingly, it could be said that Mabit is not at odds with Teshuvos Rivash since he was addressing the case of accepting testimony while the judges are standing where they had convened for the purpose of constituting a Beis Din.

Teshuvos Masais Binyomin<sup>4</sup> writes that the wording of Mabit implies that he would not have rejected the testimony of the witnesses given to the judges outside of Beis Din if they were seated when the testimony was given. However, since it is evident from our Gemara that any testimony given outside of Beis Din is invalid it must be assumed that this was what Mabit intended to express. ■

1. שו"ת מבי"ט ח"ב סי' קט"ז
2. ש"ך חו"מ סי' כ"ח ס"ק י"א
3. שער משפט סי' כ"ח סק"ו
4. שו"ת משאת בנימין סי' ק"ו ■

# STORIES Off the Daf

## The greatest issur

אם המצא תמצא

Today's daf discusses theft and mentions the verse, אם המצא תמצא—If it shall be found out... On this phrase, the Mechilta remarks that there are many ways to steal. The first it lists is geneivas da'as, misleading another person.

All sorts of people came to Rav Shach, זת"ל, with questions and requests for advice. He always exerted himself to provide each person with the correct answer according to his understanding and level. He was truly a master of the "fifth

Shulchan Aruch"—common sense. As Rav Yechezkel Abramsky, זת"ל, was wont to say: "Before you examine the sources to find an answer to a halachic query you must first know the measure of the mensch asking the question!"<sup>1</sup>

Many yeshivos in Israel require their students to learn gemara rigorously and give arduous tests to ensure that the students are truly mastering the subject matter. A certain student in such a yeshiva was brilliant, studied hard, and always knew the material very well. He was shocked when his friends began to beg him to help them by allowing them to cheat from his test. After they petitioned him with all sorts of claims, he decided to settle the problem by asking Rav

Shach. If he said that the boy was not to help his friends cheat, it would be clear that any halachic basis that the boys claimed allowed their cheating was false.

When he asked this question, Rav Shach immediately said, "What do you mean? Why don't they learn for the test themselves?" The young man began to give his friends' excuses and proofs that cheating is permitted in their case. "Do not allow them to copy your test," declared the Rosh Yeshiva.

"But what is the exact issur? Is it geneivas da'as or sheker?"

"It the greatest issur: a marked lack of ehrlichkiet—integrity!"<sup>2</sup> ■

1. כן שמעתי מאו"ם שליט"א
2. תורתך שעשועי שמות כ"ב ג'