

## OVERVIEW of the Daf

### 1) The oath taken by the watchman who pays for the stolen object (cont.)

The Gemara concludes articulating its challenge to R' Huna's statement that the watchman who agrees to pay take an oath that the object given to him is no longer in his possession.

Rava rejects the challenge on the grounds that the Mishnah refers to a specific case.

This explanation is rejected and R' Yosef offers an alternative explanation of the Mishnah.

R' Yosef's explanation is unsuccessfully challenged.

Abaye and R' Ashi offer additional explanations of the earlier-cited Mishnah.

R' Huna bar Tachlifa in the name of Rava asserts that the first case of the Mishnah refutes R' Huna's ruling.

R' Ashi resolves this challenge.

This explanation is unsuccessfully challenged.

A related incident is presented.

Rava further elaborates on R' Nachman's ruling in the incident.

### 2) Returning seized property

The Gemara wonders whether it could be inferred from R' Nachman's ruling that property seized by Beis Din must be returned if the borrower has the necessary money.

This suggestion is rejected.

Nehardai and Ameimar disagree about the timeframe in which the delinquent borrower may repossess the land taken by Beis Din.

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## REVIEW and Remember

1. Why does a borrower trust a lender but not vice versa?  
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2. Explain שומא הדר.  
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3. At what point does a lender have the right to eat the fruit from the borrower's land?  
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4. What is the rationale behind R' Acha of Difti's challenge to R' Zeira's novel ruling?  
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 In memory of  
 ר' בערל בן ר' יחיאל

## Distinctive INSIGHT

### The oath of the renter

ישבע השוכר שמתה כדרכה

The Mishnah describes a scenario of a renter who lends an animal to a third person to use during the term of his rental. While the animal was in the possession of the borrower, it died. The ruling of the Tanna Kamma is that the renter may take an oath that the animal died of natural causes, for which he is exempt from paying, and the borrower pays the value of the animal to the renter, who is the one who lent it to him.

Ritva explains that the original renter must take an oath to verify that the animal died, and it is not sufficient for him to summon the borrower to come to court and testify on his behalf that the animal died naturally. Although the rule is that a single witness can require that an oath be taken to counteract his testimony (עד אחד שכנגדו נשבע), we do not find that a single witness can exempt one from taking an oath. Here, the renter would have to take the oath of a watchman that the animal died, and the testimony of the borrower cannot exempt him from this requirement.

Rosh and Tosafos (2b) do mention that a single witness can relieve one of his obligation to take an oath, but it seems clear that their discussion revolves around an oath which is rabbinic.

Tosafos HaRosh writes that if, in fact, the borrower would testify that the animal died naturally, the renter would be exempt from his oath. Nevertheless, the ruling in the Mishnah is accurate, because the renter would be exempt from paying the original owner if and when he takes an oath, and the borrower would pay the renter. If the renter would rely upon the testimony of the borrower, he would thus not have to take the oath. The Mishnah did not illustrate the case in this manner, as it is not necessarily assumed that the borrower has full knowledge about the death of the animal.

Sometimes the renter was not present when the animal died, and he therefore has no first-hand knowledge about the circumstances of the animal's demise. In this case, Rabbi Akiiva Eiger writes that he is required to take an oath to exempt himself, but he cannot swear about something he does not know. Consequently, we would use the rule "if someone is required to take an oath, and he cannot do so, he must pay." On the other hand, Rambam (שאילה ופקדון ד:א) explains that the main oath of a watchman is to confirm that the object is not in his possession, and the other oaths (that he was not negligent and did not use the item for personal gain) are "rolled in" (via גלגול). Therefore, if the oath that he was not negligent is only issued through a גלגול, being unable to take it may not lead to the need to pay. ■

# HALACHAH Highlight

## The use of ma'aser money to purchase raffle tickets

כיצד הלה עושה סחורה בפרתו של חברו

How could this one do business (i.e. profit) from his friend's animal?

A common tzedaka question is whether a person is permitted to use ma'aser money to purchase a raffle ticket. Rav Moshe Feinstein<sup>1</sup> writes that the matter depends on the type of raffle under discussion. If the raffle is structured in such a way that there are a limited number of tickets that will be sold, one may not use ma'aser money to purchase a raffle ticket. The reason is that when there are a limited number of tickets each ticket has a specific monetary value which is set by the number of tickets that are sold and the value of the prize. Once we assign a monetary value to each ticket one does not have the right to use ma'aser money towards that purchase since that would result in a person's making a purchase from his ma'aser money. The second type of raffle does not limit the number of tickets that are sold and one is permitted to use ma'aser money to purchase these tickets. The reason is that it is not possible to assign value to the tickets. Even though the ticket provides the holder with the opportunity to win the prize, nonetheless that does not restrict him from using ma'aser money since the ticket does not have a market value. Additionally, Rav Feinstein rules that one who uses ma'aser money to purchase a raffle ticket that wins is permitted to keep the prize for himself and it is not considered as though ma'aser won the prize. The rationale behind this ruling is that we do not consider the ticket as a representative of a tangible right of the holder since there are an unlimited number of tickets that could be sold; rather the ticket is seen as a gift

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The Gemara rules that it is returned forever.

Additional cases related to seized property are presented.

R' Acha and Ravina disagree whether a borrower can take back his land if he voluntarily offered it to the lender.

The point of this dispute is explained.

Rabbah, Abaye and Rava dispute when the lender is permitted to eat the fruit from the seized land.

3) **MISHNAH:** The Mishnah presents a discussion of whether someone who rents a cow and then lends her to a friend could profit from these transactions.

### 4) Clarifying the Mishnah's ruling

Abaye explained to R' Idi bar Avin the rationale behind the Mishnah's ruling.

R' Zeira presents an interesting application of the Mishnah's case in which the owner will be obligated to pay a number of cows to the owner.

R' Acha from Difti unsuccessfully challenged this ruling.

Mar bar R' Ashi follows the opinion of R' Acha. ■

that the tzedaka organization provides for one of their donors and thus the holder is the recipient of a prize rather than one who made a purchase.

Teshuvah Even Yisroel<sup>2</sup> disagreed with Rav Feinstein and based on our Gemara rules that just as one is not permitted to do business with his friend's animal so too he is not permitted to use ma'aser money for his benefit. Therefore, if the winning ticket was purchased with ma'aser money the gift belongs to the ma'aser money. ■

1. שו"ת אג"מ או"ח ח"ד סי' ע"ו.

2. שו"ת אבן ישראל סי' ס"ד. ■

# STORIES Off the Daf

## "We Were Learning Perek Hamafkid..."

"...ופרקין המפקיד הוה..."

The Ponevezher Rav was a great visionary and never let public opinion dissuade him from taking the best spiritual path for himself and all of the many students under his care. One unusual aspect of Ponevezh in Eretz Yisrael was the shiur that was given on the daf. In those days, there were very few yeshivos in Eretz Yisrael, and they had developed a general method where talmidim spent most of the weekdays learning the sugya or dapim the yeshiva wished to cover largely on their own. The maggidei shiur would then give over a

weekly lecture on some of the more involved aspects of the material. However, many of the roshei yeshiva in Lithuania had believed that there was great value in hearing a shiur on the particulars of each and every daf. Rav Shmuel Rozovsky, zt"l, gave over just such a shiur in Ponevezh at the behest of Rav Kahanaman, despite its rarity in Eretz Yisrael.

Rav Rozovsky would bring three words from Bava Metzia 35 as a kind of siman to having a daf shiur: "ופרקין והמפקיד הוה" — "We were learning perek hamafkid." He was alluding to the story of a question regarding securities that was asked in Rav Nachman's beis midrash. Rava identified that it was by virtue of being immersed in perek hamafkid that he was able to analyze the issue. Rav Rozov-

sky meant to indicate that one can come to all the chiddushim and in-depth analysis that a less frequent but "deeper" shiur seems to offer just from learning the daf with great care.<sup>1</sup>

Rav Elchonon Wasserman, zt"l, learned a different message from this gemara. "If a Torah student is asked a question on a mesechta or topic over which he happens to have full mastery, he must have a care not to give his questioner a false impression. He should make clear that his ability to answer immediately does not reflect on encyclopedic knowledge of shas. Instead, he should declare as Rava did in our sugya: "We were holding in perek hamafkid..."<sup>2</sup> ■

1. הרב מפונוביץ, ח"יב, ע"ר"ה

2. אור אלחנן, ח"יא, ע"רפ"ד