



OVERVIEW of the Daf

1) Doing business with a friend's cow (cont.)

R' Yehudah confirmed that R' Yosi disagreed with rulings in earlier Mishnayos and halacha follows his opinion in those cases.

A dispute regarding R' Yosi's position concerning the earlier Mishnayos is presented.

It is noted that R' Yochanan contradicted himself. The Gemara resolves the contradiction.

2) **MISHNAH:** The Mishnah presents three cases, one involving theft and two involving deposits, of a person who does not know how much he is supposed to pay another person.

3) Clarifying the Mishnah

The Gemara unsuccessfully challenges the inference from the Mishnah that we would force someone to pay even if there is a doubt.

A contradiction between our Mishnah and another concerning deposits is noted.

Rava resolves the contradiction.

A contradiction between our Mishnah and another concerning a thief is noted.

The Gemara resolves the contradiction.

4) Stealing from one of five people

Tangentially, the Gemara wonders what the defendant responds when five people claim to be the victim of his theft. R' Yehudah in the name of Rav asserts that the thief's response is silence whereas R' Masna in the name of Rav asserts that he protests their claim.

The two positions are explained.

Rav Safra explains that the Mishnah's ruling that the thief places the stolen object between them means that he places it before them in Beis Din and leaves it to be sorted out with

(Continued on page 2)

REVIEW and Remember

1. What seems to be the principle that underlies the halachos of the Mishnah?

2. When is a custodian required to pay particular attention?

3. According to R' Safra, what is done when five people claim to be the victim of a theft?

4. Why is it necessary for a Mishnah to discuss two cases of utensils?

Distinctive INSIGHT

R' Akiva requires that payment be made to each party

מי אמר רבי עקיבא לא זו הדרך מוציאתו מידי עבירה עד שישלם גוילה לכל חד וחד

The source for the opinion of R' Akiva is a Mishnah in Yevamos (118b). The case is where someone offered kiddushin to one of five women, but he now does not know which one is his wife. Each woman claims to be the wife. R' Tarfon holds that the man may give a **ט** to each woman, which ensures that the one true wife is now divorced, and he may place the money for the kesubah among them, and he may leave, having fulfilled his responsibility to pay. R' Akiva rules that the man must give a **ט** and a full kesubah to each woman. The Gemara (ibid.) also brings the case of a person who stole from one person who was among a group of five people, and he does not know which is the one person from whom he stole, and each one claims he was the victim. The same two opinions of R' Tarfon and R' Akiva dispute the halacha in that case, as well.

The Gemara in Yevamos cites a Baraisa in which R' Shimon b. Elazar explains that R' Akiva only requires payment to all parties where the person was negligent or where he acted irresponsibly in causing the confusion regarding to whom he owes the money. This is why the man must pay each woman a full kesubah, and why he must return the stolen money to each possible victim. However, R' Shimon b. Elazar claims that R' Akiva would admit that in a case where a person bought an item from one of five stores, and he does not know to which he must now pay, that he need not pay more than once. Surprisingly, the Gemara in Bava Kamma (103b) brings a Baraisa with a story about a pious man who bought an item from one of two people. When he came to R' Akiva, he ruled that the man had to pay both the possible sellers. Rashi (ibid.) notes that the Baraisa and the ruling of R' Akiva does not agree with R' Shimon b. Elazar's explanation of R' Akiva in Yevamos. Tosafos, however, explains that when someone buys from one of two stores, the buyer is expected to notice from whom he acquired the item, and he is considered irresponsible for him to be unaware of whom to pay. This case, therefore, conforms to the pattern of the case of betrothing one of several women or stealing from one of several people, where R' Akiva rules that all parties must be paid.

Rambam (Hilchos Mechira 20:2) explains that R' Akiva, in fact, holds that in the case of the pious man who bought from one of several sources that it was only necessary to pay once. The ruling to pay each seller was only issued to this pious man, as he sought to fulfill the law לצאת ידי שמים. ■

HALACHAH Highlight

Keeping track of items taken into one's possession for safe-keeping

שנים שהפקידו אצל אחד זה מנה וזה מאתיים וכו'

Two people deposited money by a friend, one deposited one hundred and the other deposited two hundred etc.

The Mishnah discusses the case of a custodian who was given two bags of money, one with one hundred zuz and the other with two hundred zuz and the custodian lost track of which bag belonged to which depositor. The Gemara explains that the custodian is accountable for the mix-up because he should have exercised greater caution to segregate the two bags from one another. Rambam¹ further writes that the custodian should have written the name of each depositor on his bag. Haghos Ashri² explains that the benefit of writing the name of the depositor on his bag is that it serves as an identifying mark (סימן) for each person to positively identify which bag is his.

S"ma³ notes that Rambam requires the custodian to write the name of each depositor on his bag and it is not sufficient to only write the name of the one who deposited two hundred zuz on his bag. The reason this is necessary is that even if the custodian took only one bag of money he should write the name of the depositor on that bag because he has a responsibility to know exactly who deposited this money so that someone else should not step forward and claim the money as his. Taz⁴ suggests a different reason why it is important for the custodian to

(Overview. Continued from page 1)

Beis Din.

A contradiction is noted concerning R' Akiva's ruling that the thief must pay each of the five possible victims.

Rava offers a resolution to this contradiction.

Rava's resolution is unsuccessfully challenged.

5) A custodian of two objects

Ravina questions whether Rava ruled that when a custodian is given two packages it is his responsibility to keep track of the bags.

R' Ashi resolves this challenge.

6) Clarifying the Mishnah

The Gemara explains why it was necessary for the Mishnah to present two cases of deposits, one involving a lesser amount of money and the second involving a greater amount of money. ■

have the name of each depositor on his bag. He is concerned that the custodian may lose the bag that contains two hundred zuz through negligence. If this were to occur he would not know which of the two depositors gave him the two hundred zuz and which gave him the bag with one hundred zuz. Therefore, it is in the best interest of the custodian to write the name of each depositor on his bag so that he will know whose bag was lost and whose bag remains. ■

1. רמב"ם פ"ה מהל' שאלה ופקדון ה"ד.
2. הגהות אשרי סימן ח' ד"ה כתב.
3. סמ"ע סק"ב.
4. ט"ז שם. ■

STORIES Off the Daf

A Question of Merit

"שנים שהפקידו אצל אחד..."

Efraim Bitrik was truly a brilliant child, but he was the son of a tailor. What that meant practically was that Efraim's brilliance and vast potential was not even noticed in his Talmud Torah, even though his deep acumen and great love of Torah were very impressive. But one person noticed—Rav Meir Shaprio of Lublin, zt"l. He decided to wait for the right moment to bring this to the attention of others.

When Rav Meir was asked to publicly test the cheder children in front of the notables of the city, he decided that the time had come. In the middle of the test

he asked young Efraim to recite the Mishnah in Bava Metiza 37 by heart.

The boy easily recited: "If two people left money by a third party—one left one hundred and the other two hundred, and both claim that he left the higher sum—we give each a hundred and leave the other hundred until Eliyahu comes. Similarly, if two people left a vessel with a third party—one vessel was worth one hundred and the third was worth one thousand and each claimed the expensive object..."

When he finished reciting Rav Meir asked him a very difficult question. "Why does the Mishnah use the example of one hundred and two hundred when it comes to money, but when it comes to vessels the example is one hundred and one thousand?"

Efraim replied instantly, "Because

with money Chazal said that if he has one hundred he wants two. But when it comes to vessels we find that people naturally prefer their own. As it says, 'אדם רוצה בקב שלו.' It therefore uses as an example a much larger differential."

Rav Meir replied, "Just one more question that really troubles me: Why is a brilliant child like yourself in such a low class?"

Once again Efraim replied immediately, "It is because the parnasim of this city ignore the statement of the sages that one should be careful with the children of the poor since Torah will emerge from them."

From that day, on people started to take notice of the young prodigy and under Rav Meir's guidance he grew to true greatness!¹ ■

1. מובא באור המאיר, עי"מ"ח