

OVERVIEW of the Daf

1) Clarifying the Mishnah (cont.)

The explanation offered for the Mishnah presenting two cases of utensils is successfully challenged and the Gemara offers an alternative explanation.

2) **MISHNAH:** The Mishnah presents a dispute whether one should sell fruit deposited in his possession that is about to spoil.

3) Clarifying the dispute

R' Kahana and R' Nachman bar Yitzchok offer different explanations for Rabanan's position that a custodian may not sell the produce.

R' Nachman's explanation that the depositor may have designated this produce as terumah or ma'aser for other produce is unsuccessfully challenged.

Rabbah bar bar Chana in the name of R' Yochanan limits the extent of the dispute.

The Gemara states that this qualification is not compatible with R' Nachman bar Yitzchok but could be compatible with R' Kahana's statement.

R' Yochanan's assertion that all opinions agree that if the produce is rotting at an accelerated rate the produce should be sold is unsuccessfully challenged.

R' Yochanan's defense leads the Gemara to question R' Nachman bar Yitzchok's earlier explanation of the position of Rabanan in the Mishnah.

The dispute between R' Yochanan and Rabbah bar bar Chana is explained.

R' Yochanan's explanation is unsuccessfully challenged.

4) Spoiled oil and honey

The benefit of selling spoiled oil and honey is explained.

Additionally, R' Ashi explains that there is a benefit to sell the spoiled honey and oil since it will save the vessels from becoming ruined.

The point of dispute between R' Meir and Chachamim in the Baraisa is explained.

5) Clarifying the dispute (cont.)

R' Yochanan is cited as ruling in accordance with R' Shimon ben Gamliel that the spoiling produce should be sold whereas R' Nachman is cited as ruling like Chachamim that the produce should not be sold.

The Gemara questions whether it was necessary for R' Abba the son of R' Yaakov to relate R' Yochanan's position since it could have been inferred from another ruling of his.

It is suggested that the dispute between R' Shimon ben Gamliel and Rabanan could be applied to the question of whether a relative could be put into a captive's land.

This inference is challenged and the Gemara concludes that there are two separate issues at work.

6) Caring for a captive's property

Rav and Shmuel disagree whether a relative is put into the

(Continued on page 2)

Distinctive INSIGHT

When the absent land owner is thought to be dead

בששמעו בו שמת כולי עלמא לא פליגי דמורידין

Rav and Shmuel argue regarding a situation where someone was taken captive. Does Beis din allow a relative (one who stands to inherit the land if the captive never returns) to enter into the land of the captive to maintain it in his absence? Rav says we do not allow a relative to enter the land, as there is a danger that the relative will exploit the land and over-capitalize on the opportunity to benefit from land that is not his. Shmuel allows the relative to enter the land. The risk is mitigated, as the relative is compensated as a sharecropper, and if the land is abused, he would stand to lose according to the percentage he receives.

The Gemara clarifies that in a case where we heard that the person taken captive had died, all opinions agree that the court may allow his relative to enter the land. Tosafos explains that the Gemara is not speaking about a case where we received solid testimony from two witnesses regarding the death of the captive, as in this case it would be obvious that the heir could enter into the land that is now his. Rather, we are speaking about a case where there was a rumor that he died, and a single witness came and confirmed that he saw that he died. Tosafos HaRosh explains that the case is not where a rumor was present, but simply where a single witness alone came and testified that he knew that the captive was now dead. Although the Gemara in Yevamos (117a) rules that based upon the testimony of a single witness we do not allow a relative to enter a land abandoned by his kin, the extent of that statement is that we do not allow the relative to enter and then sell the land, but to simply allow him to occupy the land; to cultivate it would be permitted. Alternatively, the Gemara in Yevamos which rules that we do not allow the surviving relative to enter the land is speaking about a case where a single witness testifies that the absent owner died. A single witness is not legal

(Continued on page 2)

REVIEW and Remember

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

2. Why are tzedakah collectors not permitted to exchange smaller coins for larger coins?

3. What is the point of dispute between R' Meir and Chachamim?

4. How does the Gemara qualify the dispute between Rav and Shmuel?

HALACHAH Highlight

Returning an insured object

אמר ר' כהנא אדם רוצה בקב שלו מתשעה קבים של חבירו

R' Kahana said: A person prefers one kav of his own produce more than nine kavs of his friend's produce

Reuven once found a lost object that he knew belonged to Shimon. Reuven decided that he did not have to return the lost object since the object was insured and Shimon would not suffer a loss. Teshuvos Chelkas Yaakov¹ wrote that there is no doubt that when a person finds a lost object he is obligated to return that object to its legal owner even if the object is insured and the owner will not suffer a monetary loss. The reason is based on R' Kahana's statement that a person prefers a single kav of his own produce more than nine kav of his friend's produce. Accordingly, since the insurance company will only pay the value of the object but will not return the object itself it is Reuven's responsibility to return Shimon's object to him.

Chelkas Yaakov proceeds to address an obvious question that arises from his approach. If Reuven found Shimon's money rather than an object, there should be no obligation for Reuven to return the money since the principle that a person prefers his own produce does not apply to cash. Accordingly, Reuven should be permitted to keep Shimon's money as long as he knows that Shimon will be compensated by his insurance company. In response to this

(Insight. Continued from page 1)

credible. When our Gemara allows the relative to enter the land it is dealing with a case where a rumor is present, which is a stronger indication than testimony of a single witness.

Rambam (Hilchos Nachlos 7:4) rules that when we hear that the captive is now dead, if the relatives enter the land and cultivate it and divide its yield, we do not take it away from them. Ra'aved notes that we rule according to Shmuel, and that we allow the relatives to enter even without hearing that the captive died. Why, then, does Rambam suggest that even after hearing that he died we merely tolerate the relative's entry into the land? Magid Mishne explains that we certainly allow the relative to enter, but not as a full heir to sell the land. ■

claim, Teshuvos Chelkas Yaakov wrote that if Reuven were to keep the money for himself he would be categorized as a thief. The fact that Shimon will be reimbursed for his loss does not permit Reuven to take money that he knows belongs to Shimon. As proof to this assertion he cites the ruling in Shulchan Aruch² that if a lost object loses value after being lost and is no longer worth a perutah the obligation to return the object continues. The fact that the finder must return an object that is no longer worth a perutah indicates that even though the owner of the object will not lose as a result of the object not being returned, since it is no longer worth a perutah, nevertheless, the obligation to return the object remains in force. ■

1. שו"ת חלקת יעקב חו"מ סי' כ"ב.

2. שו"ת חו"מ סי' רס"ב סעי' א. ■

STORIES Off the Daf

The forgotten fruit

"המפקיד פירות אצל חבירו..."

A certain grocer in Yerushalayim was in a quandary. One Friday, well after mid-day, he discovered a large bag filled with grapes in his store. Since grapes were costly and these would surely spoil in the hot weather, he was unsure what to do.

He decided to go ask Rav Elyashiv, ז"ל, if he could sell them and repay the owner when he was found. But Rav Elyashiv explained that this was forbidden. "You may not sell them since you must keep them for the owner."

"But they will be spoiled by tomorrow," protested the grocer.

"Put them in a refrigerator," Rav Elyashiv replied.

"But so late on erev Shabbos, people do not have much space in their refrigerators..."

The gadol was clearly unimpressed. "Distribute them in several, then."

As the grocer was walking home a certain man stopped him and asked if he had any delicacies to sell. "We just had a boy and I must make a shalom zachor this very night," he explained.

The grocer decided to ignore Rav Elyashiv and sell the grapes. After all, wasn't this a clear sign from heaven—especially since the father was a very wealthy man and could afford to pay an exorbitant price for the grapes?

The grocer took five times the value of the fruit and reasoned that the owner would certainly be pleased.

That night the grocer heard a knock at his door. It was the shamash of the Rebbe of Toldos Aharon. He explained that he had finally recalled leaving the grapes that he had purchased for the rebbe in the grocery and had come to pick them up. The matter was urgent, since he needed them for his health.

The foolish grocer had tremendous anguish as he explained his error.

When this story was recounted to Rav Elyashiv, he said, "There is no doubt that he had no right to sell the grapes. In Bava Metzia 38 we find a dispute regarding leaving a deposit of fruit with a fellow Jew. The dispute, however, only concerns a situation if the fruit will certainly spoil. If one can keep them without spoiling, everyone admits that they may not be sold."

He concluded, "Even for five times their value, they may not be sold!"¹ ■

1. עלינו לשבח, ח"ו, עי תפי"ב-תפי"ג

(Overview...Continued from page 1)

land of someone who was taken captive.

The point of dispute is identified.

Shmuel's position that we do put a relative into the land of a captive is unsuccessfully challenged.

A related incident is presented.

A Baraisa is cited that presents the issue of placing a relative on a captive's property as a dispute between Tannaim.

The terms נטושים and נטושים are explained. ■