

## OVERVIEW of the Daf

### 1) A down payment (cont.)

The Gemara completes presenting the suggestion that the dispute between Rav and R' Yochanan could be traced to a dispute between Tannaim.

An alternative explanation of the dispute is presented.

A related incident is recorded which presents another dispute between Rav and R' Yochanan whether backing out of a verbal commitment is a display of a lack of trustworthiness (מחוסר אמנה).

Rav's position that backing out of a verbal commitment is not a display of a lack of trustworthiness is unsuccessfully challenged.

Another challenge to Rav's position forces the Gemara to recognize that there is a dispute between Tannaim on this matter.

Another explanation of the Baraisa is offered.

This explanation is unsuccessfully challenged.

The Gemara notes a contradiction between two rulings of R' Yochanan.

R' Pappa resolves the contradiction and suggests a proof that supports his distinction.

An unsuccessful attempt is made to reject this proof.

Different versions of a related incident are presented.

### 2) Clarifying R' Shimon's position

A Baraisa is cited and clarified that elaborates on R' Shimon's position.

A related incident is presented.

3) **MISHNAH:** The Mishnah presents two disagreements concerning the laws over exploiting others (אונאה).

### 4) אונאה

Rav and Shmuel disagree whether the calculation of a

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## Distinctive INSIGHT

*What is the status of the money when the seller backs out?*  
 לדידי אמר לי ההוא מרבנן... דאי הווי יהבי ליה כל חללא דעלמא לא  
 הוי קא משני בדיבוריה וכו' ואמר לי לא היו דברים מעולם

The Gemara brings a story of a failed sale of sesame seeds, and a retelling of the same story with significant changes. The original version was that a sale of sesame was agreed upon, but the price of sesame rose before delivery. The seller wanted to back out. He claimed that he had no product to deliver, and he offered to return the money which the buyer had given, as he declared, "Here is your money." The buyer refused to take the money, and it was subsequently stolen. Rava ruled that the seller had absolved himself totally of any responsibility, but the seller had to choose either to supply the sesame as he had originally agreed to do, or to accept upon himself the consequences of the **מי שפרע**.

The version told to Ravina by "the truthful rabbi" was that a buyer approached him on late erev Shabbos afternoon and asked if he had sesame he could buy. The rabbi said that he had none, and the buyer asked if he could leave his money with him as a deposit, as Shabbos was approaching. The rabbi said, "Here is the house, put it where you please." The money was stolen, and Rava ruled that the rabbi had not accepted any responsibility to guard the money. In this version of the story, the issue of the curse of **מי שפרע** was not mentioned, as there was no sale offered.

ר"ן, citing Tosafos, explains that the two versions of the story are not in disagreement, and the point of the second story is that the rabbi did not indicate acceptance of responsibility by offering his house in which to place the money. Also, the lesson of the first version remains intact, that a seller can return the money he receives by declaring, "Here is your money."

Ri"ף writes that the second version of the story reveals that Rava's ruling was made in that case and not in the circumstances originally stated. Therefore, we have no clear ruling whether a seller can absolve himself by offering the purchase money back to the buyer. Ri"ף then cites a Teshuva of Rav Hai Gaon: "If a seller accepts money as cash to use as he wishes, the money is considered a loan. At this point, even if he offers the money back to the buyer, if anything happens to the money he is still responsible for it. If the seller wants to back out of the deal, he is subject to the **מי שפרע** curse." Ri"ף concurs and emphasizes that even if the same money is still intact in the possession of the seller, the seller is fully responsible for the cash until the point he acknowledges that by renegeing on the deal he will be subject to the curse of **מי שפרע**. ■

## REVIEW and Remember

1. What is a מחוסר אמנה?
2. Is one permitted to back out of a commitment to give a friend a gift?
3. According to R' Shimon, when is a seller permitted to back out of an agreement to sell merchandise?
4. What is the point of dispute between Rav and Shmuel concerning the calculation of אונאה?

# HALACHAH Highlight

## Backing out of an agreement to use one mohel in favor of a second mohel

ומודה ר' יוחנן במתנה מועטת דסמכא דעתייהו

R' Yochanan agrees regarding a small gift that one should not recant since the recipient believed him

**R**ema<sup>1</sup> writes that a father should look for a mohel who is the best qualified and most righteous. He adds that once a father has chosen someone to be his son's mohel he may not retract that commitment but if he does take back his offer it is considered retracted. Vilna Gaon<sup>2</sup> cites our Gemara as the source for this ruling. The Gemara states that once a person tells his friend that he will give a small gift he is not permitted to rescind that pledge, so too, once a father contracted with someone to be his son's mohel he is not permitted to back out of that agreement.

Taz<sup>3</sup> suggests that if a father contracts with a mohel and a second mohel comes along who is closer with the father or more righteous than the first mohel and it is clear that if the father knew he would be available he would have chosen the second mohel, it is not a problem for the father to rescind his original agreement and ask the second mohel to perform the bris on his son. Chasam Sofer<sup>4</sup> explains that the allowance for the father to switch mohalim is based on the principle of תרי תרעי – two markets. There is an allowance for someone who agreed on a sale of merchandise to back out of that agreement if the market changed from the time of the original agree-

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sixth is measured by the value of the item or the money that was paid.

The exact case under dispute is clarified.

Two unsuccessful attempts are made to support Shmuel's ruling that a sixth is also calculated based on the money that was paid.

A Baraisa is cited that supports Shmuel's position. ■

ment.

Teshuvos Atzei Chaim<sup>5</sup> challenges the explanation of Chasam Sofer since Rema mentions two opinions whether one is permitted to back out of an agreement when there is a change in the market price. According to the opinion which maintains that one is not permitted to retract an agreement even when there was a change in market value, another explanation is necessary for the ruling of Taz who allowed the father to back out of his original agreement. He suggests that since the rationale for binding the father to his original commitment is that it is similar to the Gemara's comment concerning a commitment to give a small gift one could say that when a dear friend or righteous mohel becomes available the circumstance becomes similar to a commitment to give a large gift that one is not obligated to honor since there was no expectation of that commitment's being fulfilled. ■

1. רמ"א יו"ד סי' רס"ד סעי' א'.
2. ביאור הגר"א שם ס"ק י"ב.
3. ט"ז שם סק"ה.
4. שו"ת חת"ס יו"ד סי' רמ"ו.
5. שו"ת עצי חיים יו"ד סי' כ"ט. ■

# STORIES Off the Daf

## Going back on a promise

"ומודה רבי יוחנן במתנה מועטת..."

**R**av Shlomo Eiger, ז"ל, was accepted as the Rav of Kalish three years before his illustrious father, Rav Akiva Eiger, ז"ל, passed away. Once, Rav Shlomo received a letter from his father that he wished to come and have a short rest at his son's house in Kalish, since his never-ending responsibilities gave him hardly a moment's rest.

Rav Shlomo realized that if his father stayed in his house, this would not provide much rest since the entire town would try to spend time with the visiting gadol hador. Rav Shlomo wished to afford his father a significant time of convales-

cence and so, after some consideration, he came up with a simple plan. He would house his father in a place that only a select few would know about so as to ensure that he was not swamped with questioners. One very wealthy congregant didn't live in the Jewish section of town—an ideal location for hiding his father's lodging. The wealthy man clearly felt privileged to host this most distinguished guest and prepared an entire apartment expressly for his use.

But when the Rosh Hakahal heard about this he was furious. Why should the wealthy man have the guest the entire time just because he lived in a remote location?

On the day that Rav Akiva Eiger arrived in the city, this Rosh Hakahal decided to ensure that the Rav would stay at his son's house only. As the wagon was pre-

pared to drive away from the reception, the Rosh Hakahal forced the driver to drive to Rav Shlomo Eiger's home.

As he disembarked from the carriage, Rav Akiva Eiger turned to the disappointed man who was to have been his host and said, "I promised to stay by your honor's house. The Gemara on Bava Metzia 49 says that one who goes back on his word is not considered faithful. But the halachah is that one who fails to fulfill his promise to give a big gift has not violated this prohibition at all. Now, for you it seems clear that you considered my staying in your home a big gift and so I did not violate the prohibition. But from my perspective it is a small gift and I must pacify you. Please accept my apology and my promise to come to your honor's house for a visit and a cup of coffee..."<sup>1</sup> ■

1. מגדולי התורה והחסידות, חייג, ע' מ"ב