

## OVERVIEW of the Daf

### 1) Mere words (cont.)

R' Ashi challenges Ameimar's ruling in favor of the seller in the incident involving a seller assuring the buyer that he would repay him if the land was taken.

Ameimar responds to this challenge.

Another incident involving mere words is presented.

R' Acha of Difti unsuccessfully challenges R' Zevid's ruling in this incident.

### 2) Asmachta - אסמכתא

R' Huna and R' Nachman disagree whether the stipulation to take a borrower's land if he does not repay the loan in three years applies only when the stipulation was made at the time of the loan or even if it was made later.

There was an incident in which R' Nachman ruled according to his position that the stipulation could be made even after the loan was given, but R' Yehudah disagreed with that ruling.

Subsequently, R' Nachman ruled that the stipulation is never binding since it constitutes an אסמכתא.

Rava challenges R' Nachman's new position.

R' Nachman deflects the question to Minyomi and the Gemara offers two resolutions on his behalf.

A ruling of R' Nachman related to אסמכתא is cited.

R' Ashi challenged the understanding of R' Nachman of those who presented his opinions and offered his own interpretation of R' Nachman's ruling.

This ruling is rejected.

R' Pappa gives an example of an אסמכתא that is binding and an example when it is not binding.

R' Acha of Difti challenges this ruling.

Ravina suggests another action that indicates the borrower's willingness to give up his land.

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## Distinctive INSIGHT

### An agreement not meant seriously

הדר אמר רב נחמן אפילו שלא בשעת מתן מעות לא קנה ולא כלום וכו' אמר ליה אני אומר אסמכתא קניא וכו'

The Mishnah (65b) taught a case where Reuven lent money to Shimon, and Shimon gave his field to Reuven as collateral. Reuven told Shimon that if the loan would not be paid by the end of three years, he would keep the field, even though it was worth more than the value of the loan. Shimon agreed. The Mishnah rules that this condition is valid, and if the loan is not paid at the end of three years, the field reverts to Reuven's ownership. The Gemara brings a dispute between two Amoraim. Rav Huna holds that this ruling applies only if the stipulation was made when the money was being lent. If the condition was introduced at a later time, Reuven can only keep a part of the field equal to the loan. Rav Nachman holds that Reuven can keep the entire field whether the condition was agreed upon at the origination of the loan or even if it was agreed upon later. R' Nachman holds אסמכתא קניא - a condition agreed upon by the borrower is valid even if he never believed he would have to relinquish his field, and he obviously relied upon the certainty that he would pay the entire loan before the three years was over.

As the discussion in the Gemara progresses, R' Nachman reverses his stance, and he holds that אסמכתא לא קניא - a condition made under these circumstances is not binding.

The source for the halacha of אסמכתא is a Mishnah in Bava Basra (168a). A borrower paid back fifty dollars out of a loan of \$100. The lender released the document to a third party when the borrower assured that if he did not pay the balance by a specified date the third party should return the document to the lender, and he, the borrower, would pay the entire loan from the first penny. The borrower only agreed to this condition because he relied completely on his ability to repay on time. If he nevertheless defaults, R' Yose holds that the document should be given to the lender (אסמכתא קניא), while R' Yehuda rules that the document should not be given to the lender (אסמכתא לא קניא). The Gemara rules according to R' Yehuda. Rambam (Mechira 11:2) explains that the commitment of the borrower was not complete and sincere, and he never agreed in his heart to pay any amount twice for no reason.

Ramban explains that we say אסמכתא לא קניא where a person relies completely upon his own ability to uphold his word. No external factors are involved, and when he fails he is surprised with an unexpected situation. When a condition is set relying upon others, if the condition is not fulfilled the deal is final, as the person knew that the events were beyond his control. ■

## REVIEW and Remember

1. Explain פטומי מילי בעלמא.
2. What is the point of dispute between R' Huna and R' Nachman?
3. According to R' Pappa, when is an אסמכתא permitted and when is it prohibited?
4. What is R' Nachman's position concerning מחילה בטעות?

# HALACHAH Highlight

## Wine and other intoxicating beverages

דלמא לפכוחי פחדיה קא שתי

Perhaps he is attempting to dispel his fear by drinking

Regarding the obligation to drink wine on Yom Tov as an expression of the joy of the day, Sefer Gilyonei Hashas<sup>1</sup> asserts that liquor may also be used to fulfill this obligation and cites our Gemara as proof to this assertion. The Gemara discusses how to understand the meaning of a borrower who is seen drinking beer on the day his loan comes due. One opinion suggests that he was drinking to dispel his stress and should be his actions interpreted as an indication that an *asmachta* is binding. Although the Gemara mentions that he was drinking beer, nevertheless, Rashi<sup>2</sup> cites the verse (Tehillim 104:15) **וחי יין ישמח** that wine brings a person joy. Clearly, drinking beer or other forms of liquor have the same qualities of bringing a person to a state of joy as wine.

The Gemara in Megillah (7b) relates that a person is obligated to drink on Purim until he cannot distinguish between "cursed is Haman" and "blessed is Mordechai." Rashi<sup>3</sup> explains that the Gemara refers to the obligation to drink wine on Purim. Teshuvos Hisorurus Teshuvah<sup>4</sup> deduces from this that the obligation of drinking on Purim is fulfilled specifically with wine, to the exclusion of other intoxicating beverages. Rambam<sup>5</sup> also writes, in reference to the Purim celebration, that one should drink wine until he becomes intoxicated and falls asleep. Gilyonei Hashas expresses astonishment at these

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R' Acha of Difti challenges this criterion and R' Pappa offers an alternative explanation.

R' Pappa rules that an אפותיקי is a binding form of אסמכתא.

This ruling is unsuccessfully challenged.

Two incidents are presented in which R' Pappa issued a ruling that was challenged by R' Acha of Difti.

### 3) Mistaken waiver – מחילה בטעות

R' Nachman makes a statement that follows the Gemara's conclusion that an אסמכתא is not binding.

The Gemara unsuccessfully challenges the implication of R' Nachman's ruling. ■

rulings. Why should the obligation be limited to wine when all intoxicating beverages should be acceptable to fulfill the obligation to become intoxicated on Purim?

It is told<sup>6</sup> that Rav Avrohom Dovid Wahrman, the Eishel Avrohom Butchach, sat at his Purim seudah until past midnight and he would then send out his attendant to see if the residents in town were sleeping. Once it was confirmed that the residents were sleeping and no one would come to ask him halachic questions he began to drink some kind of honey liquor to fulfill the obligation to become intoxicated on Purim. ■

1. ספר גליוני הש"ס פסחים קי"ז.

2. רש"י ד"ה לפכוחי פחדיה.

3. רש"י שם ד"ה לאסבומי.

4. שו"ת התעוררות תשובה ח"ג או"ח סי' תצ"א.

5. רמב"ם פ"ב מהל' מגילה הט"ו.

6. דעת קדושים בוטשאטש ח"ב תולדותיו עמ' פ"ח. ■

# STORIES Off the Daf

## I Stopped Counting!

דכולי עלמא לגבי דידי בדינא דרדקי נינהו

We find on today's daf that in regard to the halachos of Choshen Mishpat, all other great luminaries of the Talmud were like children as compared with Rav Nachman. Similarly, most great scholars felt like children when discussing halachah with Rav Yitzchak Elchonon Spector, zt"l. One erudite talmid chacham decided that he wanted to change this at any cost.

He said to himself, "If I am like an ignorant child compared to him after having been through Choshen Mishpat

and its commentaries a dozen times, it just means that I will have to spend the time and review these halachos one hundred and one times. Then we shall see if I have not reached his level!"

It took this rav quite a number of years but, finally, he managed to accomplish his goal. Now anyone he spoke to about financial matters could not hold a candle to his wonderful breadth and depth. Many people commented that his labors had borne fruit and that it was just possible that he was already one of the most accomplished scholars in this very difficult discipline.

Now he felt that he was finally ready to confront Rav Yitzchak Elchonon, known far and wide as the posek hador. But when the two met, the younger rav

was dismayed to find that there was absolutely no difference between what he had been originally and what he had become. From their conversation it seemed that he was once again glaringly inferior to the all-encompassing understanding of Rav Yitzchak Elchonon.

The rav could not hold back. "I cannot understand! Why is your mastery of this area so much greater than mine? I just spent many years only on this area of Torah and learned all of the material through one hundred and one times!"

Rav Yitzchak Elchonon smiled kindly as he said, "Oh, I reached one hundred and one times many years ago...and continued learning. The only difference is that I stopped counting!"<sup>1</sup> ■

<sup>1</sup> כן שמעתי מדודי רב שמחה גולשבסקי ז"ל