

## OVERVIEW of the Daf

### 1) Paying an employee when there is no work to perform (cont.)

Three additional rulings of Rava related to paying an employee when there is no work to perform are recorded.

The last ruling regarding giving a worker additional work if he finished his initial task in the middle of the day is presented.

### 2) Clarifying the earlier-cited (76b) Baraisa

The Gemara explains the rationale behind the different opinions quoted in the earlier-cited Baraisa and explains the novelty of many of its rulings.

Rav states that the halacha follows R' Dosa who ruled that a craftsman who quits in the middle of his employment has the "lower hand."

A contradictory ruling of Rav is cited from its analysis of a Baraisa.

R' Nachman bar Yitzchok resolves the contradiction.

The Gemara challenges its assumption that R' Dosa does not penalize day workers for quitting in the middle of their employment.

One resolution is to assume that R' Dosa issued two rulings and Rav follows only one of those rulings.

According to a second explanation the phrase of the Mishnah, "Whoever backs out has the lower hand" refers to a case of someone backing out of an agreement to sell land.

The ruling of the Baraisa related to the seller reimbursing the buyer from his best land is challenged.

Two possible explanations of the Baraisa are recorded.

Another Baraisa is cited that contains a ruling contradictory to the position that R' Shimon ben Gamliel adopted in the previous Baraisa.

A resolution is offered and supported from a statement of Rava.

### 3) Partial payment

Rava issues a ruling regarding a borrower who repaid his loan one zuz at a time.

Rava is cited as ruling that when a purchaser is one zuz short of full payment the merchandise is not sold.

According to a second version, Rava ruled that the merchandise is sold.

R' Ashi asserts that the second ruling referred to a case where the land is sold because of its poor quality. ■

## Distinctive INSIGHT

### *The muscle-men of Mechuza*

כי קאמר רבא באכלושי דמחוזא דאי לא עבדי חלשי

Rava taught a halacha regarding a hired worker who was hired for a day in order to do a specific job, and the task was completed in the middle of the day. If the one who hired the worker has another job for him to do which is easier than the original job for which he was hired, the worker is expected to continue and do the second job as well. If the only work to do is a task which is more difficult than the original job for which he was hired, the worker cannot be expected to do the second job. In this case, even though the worker is idle for part of the day, he must be paid full wages as originally agreed.

The Gemara asks why Rava rules that the workers receive their full wages for the part of the day when they do not work, when they should only receive a discounted wage of פועל בטל.

The Gemara answers that generally, payment would only be as an idled worker, but Rava's ruling was issued in a case of the muscle-men of Mechuza (the city of Rava), who were used to carry heavy loads. They were used to doing heavy work, and they suffered when they were idle.

Rosh, as well as many of the Rishonim, apply this halacha to a case of a tutor who was hired to teach Torah to someone's son, and the son was not feeling well and could not attend the session. If the child was not prone to becoming ill with that particular illness, or if he was and the tutor was from the same city and he was aware that the child regularly missed days due to illness, the tutor cannot demand payment for the session which was missed. If, however, the child missed days regularly due to illness, and the tutor was legitimately unaware of this, the tutor must be paid despite the fact the session was missed. The reason is that a Torah teacher is similar to the muscle-men of Mechuza in regard to missing work. Just as the workers suffered when they did not use their muscles, so too does a Torah teacher suffer when he is not actively teaching. When a Torah scholar is idled, he forgets his learning and he becomes physically weary. Therefore, the teacher must be paid his full wages, and not only as a פועל בטל.

הגהות בפלוגא חריפתא, in response to a comment of אשר"י, explains that the father of the ill child cannot simply tell the teacher to go learn on his own or to teach another student in order not to be idle. As far as learning by oneself, this is not strenuous or demanding enough to keep the teacher occupied. The claim to learn with a different student is also not accepted, as we do not find that the employer in our Gemara can expect the muscle-men to find other hauling jobs and thereby pay only at a discounted rate. ■

# HALACHAH Highlight

## May an employee quit one job for another?

והאמר רב פועל יכול לחזור בו אפילו בחצי היום

Didn't Rav teach that a worker can quit even in the middle of the day

Rav states in the Gemara that an employee has the right to quit in the middle of his employment. Chochmas Shlomo<sup>1</sup> asserts that an employee may not quit his job by one employer in order to accept employment by another employer. The reason an employee is permitted to quit in the midst of his employment is based on the exposition of the verse (Vayikra 25:55) **כי לי בני ישראל עבדים עבדי הם** – For the children of Israel are slaves to Me they are My slaves. Rav infers from this verse that we are to be slaves to Hashem and not to others; therefore we can quit in order to relieve ourselves from servitude. If, however, an employee seeks to quit only to become a slave to another employer he is not looking to release himself from servitude, therefore it is prohibited. Pischei Teshuvah<sup>2</sup> cites Chavos Yair who disagrees and allows an employee to quit his job by one employer and immediately begin to work for a second employer.

Pischei Teshuvah challenges the position of Chavos Yair from a ruling of Tur. Tur<sup>3</sup> rules that an employee may not quit because the value of his employment increased and he wants to receive a higher salary. Bach<sup>4</sup> explains that when the employee seeks to quit because he wants a higher salary it is evident that he is not opposed to being someone's slave, as long as he will be paid a higher amount. Since it is clear that he is not opposed to being a slave he is not permitted to quit from his present employer. Similarly, it should be prohibited for an employee to quit from one employer to immediately take a position by another. Pischei

# REVIEW and Remember

1. What is the right of an employer concerning his day workers who complete their job in the middle of the day?

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2. What is the rationale behind Rav's ruling that an employee can quit in the middle of the day?

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3. Which of R' Dosa's two rulings does Rav follow?

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4. Is a purchase complete if the buyer is one zuz short?

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Teshuvah then quotes Sefer Mayim Chayim who offers a resolution to the challenge against Chavos Yair. The exposition that Jews are to be servants of Hashem rather than to others teaches that one should not be subservient to another person. There is no problem for a person to work for one employer after another; the focus of the exposition is subservience to a single person. Therefore if an employee wants to quit so that he can work for another employer it is permitted since he is removing his subservience from his previous "master." On the other hand, if he quits so that he can earn a higher salary he is demonstrating that it is not the subservience that bothers him, it is a higher salary that he seeks, and that appears as though he is continuing the same subservience. ■

1. חכמת שלמה בהגהות השו"ע סי' של"ג.
2. פתיש חו"מ סי' של"ג סק"ד.
3. טור חו"מ סי' של"ג.
4. בי"ח שם. ■

# STORIES Off the Daf

## "Anyone who does not fulfill his obligation to the letter..."

"כל המשנה ידו על התחתונה..."

Today's daf discusses a worker or employer who went back on his word.

It is quite common for people to slander a worker or employer who failed to fulfill his commitments. These people figure that this type of slander must be a mitzvah to help others avoid a business connection with a person who does not fulfill his obligations. Yet the Chofetz Chaim did not think this was a simple matter at all.

He said, "One must be very vigilant

not to give himself license to recount to others how when he did business with so-and-so, the person robbed or cheated him, or publicly shamed him. Even though he knows that he is telling only the absolute truth, he cannot do it unless he needs assistance catching the thief to retrieve his stolen property.

"Clearly he is not telling this story to others to protect them from being cheated or stolen from. His motivation stems from a desire to embarrass the person who did him wrong. The more this person's words are accepted by others, the happier he will be.<sup>1</sup> The reason why this is prohibited is because one can only tell another l'shon hara to benefit the hearer if he is not doing it out of hatred or spite."<sup>2</sup>

The Chofetz Chaim continued on

this topic, "One must be exceedingly careful even when asking others to help him apprehend the thief, since if he does not take great care he will easily stumble on this heter into the trap of his yetzer hara and transgress the Torah prohibition of l'shon hara.

"In addition, he must be absolutely sure that he was robbed and that his friend is certainly not entitled to what he took. This detail is exceedingly difficult to verify since no person sees his own faults. But if he is mistaken and then goes around to others ostensibly for aid to apprehend a thief, he is actually violating the prohibition of **מוציא שם רע**"<sup>3</sup> ■

1. ספר ח"ח, לשון הרע, כלל י', סעיף י"א
2. באר מים חיים, שם
3. ספר ח"ח, כלל יוד ■