

OVERVIEW of the Daf

1) **MISHNAH:** The Mishnah discusses numerous different cases where there is an uncertainty about who is the owner of an item that was sold.

2) Exchanging one animal for another

The Gemara wonders why the Mishnah, in the first case, rules that the claimants should split the disputed animal when it seems more reasonable to rule *המוציא מחבירו עליו הראיה* – the burden of proof is upon the one who seeks to collect.

Shmuel is cited as ruling that the Mishnah refers to a case where no one had physical possession of the disputed animal.

This explanation is unsuccessfully challenged.

3) Clarifying the position of Sumchus

Earlier Rabbah bar R' Huna stated that Sumchus maintains that money in doubt is divided without an oath even if both parties make claims of certainty.

This interpretation is unsuccessfully challenged.

Another unsuccessful challenge to Rabbah bar R' Huna's interpretation is recorded.

4) The disagreement concerning the large or small slave

The Gemara questions the Mishnah's ruling that when there is a disagreement whether a large or small slave was sold the seller takes an oath to support his claim.

Rav suggests the Mishnah refers to where the dispute was over the value of different size slaves but not the actual slaves.

Shmuel asserts that the Mishnah referred to where the dispute was over a garment for a large or small slave.

Shmuel's position is unsuccessfully challenged.

R' Hoshaya refutes Shmuel's explanation and offers his own.

This interpretation is successfully challenged.

R' Sheishes offers an alternative explanation.

Numerous challenges to R' Sheishes's interpretation are presented.

After sidestepping and revising R' Sheishes's explanation the Gemara finally decides to abandon that approach and resolves the earlier challenge against R' Hoshaya's explanation.

The Gemara quotes an earlier-cited Baraisa which seems to follow Sumchus but does not match the interpretation of Rabbah bar R' Huna.

The Gemara resolves this challenge.

5) **MISHNAH:** The Mishnah presents additional cases involving disputes over a purchase and rules in both cases that the disputed money should be divided.

6) Clarifying the first case

The Gemara clarifies the first case of the Mishnah.

R' Shimon ben Pazi asserts that the quarter-log is calculated after expenses. ■

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 By the Levee family in memory of
 אריה בן ישראל

Distinctive INSIGHT

How is possession of the calf an indication of ownership?

אמאי יחלוקו, וליחזי ברשות דמאן קיימא ולהוי אידך המוציא מחבירו עליו הראיה

The Mishnah presented the case where a cow was exchanged for a donkey using the legal method of *חליפין*. The effect of this *קנין* is that at the moment the owner of the cow pulls the donkey (*משיכה*) in order to acquire it, the former owner of the donkey immediately acquires the cow wherever it is, although he has not performed any form of *קנין*. With *חליפין*, as soon as one of the parties performs a valid *קנין*, the other party also becomes owner of the item he intended to acquire.

The problem is that with the cow's not needing to be present, we discover later that the cow has subsequently given birth at its remote location, and we have no way of determining whether the birth took place before or after the pulling of the donkey by the owner of the cow. If the birth took place before the *משיכה* the newborn calf is owned by the original owner of the cow. If the cow was still pregnant at the moment of the *משיכה*, the owner of the donkey acquired the cow in its pregnant state, and he now owns the newborn calf. The halacha in the Mishnah is that the calf, or its value, is divided by the two litigants.

The Gemara begins by questioning why we do not award the calf to whoever possesses it at this moment. Whoever has possession has control, and the other party cannot extract it from him without proving that it is his. The Gemara accepts this point, but notes possession is not a factor, as our Mishnah discusses a case where the calf is in a meadow and not in anyone's possession.

Tosafos wonders why the suggestion of the Gemara is reasonable. How would the calf's being situated in the possession of the buyer serve as proof that he is the true owner to the extent that the seller is now considered as if he is legally taking it away from him, with the burden of proof placed upon him? In fact, the Gemara in Bava Basra teaches that if someone is in possession of a sheep, this is no indication of his being its owner, as sheep tend to wander, and the current location of the animal may be coincidental rather than significant. Tosafos answers that our case here of the calf is a situation of *דרא דמונא*. Tosafos explains this term to mean that the circumstances of the case lead to a natural doubt, one where

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 By the Okner family
 In memory of their grandmother
 מרת שרה בת ר' בערל, ע"ה
 Mrs. Sarah Matthew

HALACHAH Highlight

Are long fingernails considered an interposition?

ענבים העומדות ליבצר איכה בינייהו

Grapes that stand to be harvested is the issue under dispute

The Gemara mentions the principle that something that stands to be harvested is considered as if it is already detached from the ground. Shach¹ quotes the opinion of Ra'avan² who rules that long fingernails are considered an interposition (חציצה) when immersing in a mikvah. The reason is that long nails stand to be cut, therefore following the principle in our Gemara they are considered as though they are already cut and thus their presence, by definition, constitutes an interposition. Authorities³ disagree about the exact intent of Ra'avan. According to some opinions the presence of the long nail itself is the interposition. According to others just because the nails will eventually be cut does not make them presently into an interposition. The issue is that since there is a requirement to cut one's nails before immersing, out of concern for dirt trapped beneath the nails, it is considered as though the nails stand to be removed before the immersion. Only something that stands to be removed before immersion would constitute an interposition but something that would be removed some time after the immersion would not constitute an interposition.

Teshuvus Mishpatei Uziel⁴ was asked whether nowadays long fingernails are considered an interposition. Since there are many women who grow their fingernails long, considering long nails to be more beautiful, the rationale behind considering long nails an interposition no longer applies and as long as the nails are clean

REVIEW and Remember

1. When is the ruling of יחלוקו issued rather than המוציא מחבירו עליו הראיה?
2. In what case does Sumchus agree that the money under dispute is not divided?
3. What is the case under dispute between Tanna Kamma and R' Gamliel concerning מודה במקצת?
4. How does the Gemara explain the first case of the Mishnah?

it should be permitted for a woman to immerse with long nails. He responded that since women who grow their nails long, generally, have their nails cut by a beautician we do not consider those nails as though they stand to be cut. Accordingly, he permits a woman to immerse with long nails.

From the wording of Ra'avan it is evident that he maintains that toenails must also be cut before immersion for the same rationale, namely, that they stand to be cut. Pischei Teshuvah⁵, however, cites Chamudei Daniel who is lenient regarding toenails since people are not generally particular to cut long toenails. ■

1. שיך יו"ד סי' קצ"ח ס"ק כ"ה.
2. בשיך שם איתא "ראבי" אבל ע' בשיעורי שבט הלוי שם דצ"ל ראב"ן.
3. ע' שם בשיעורי שבט הלוי.
4. שו"ת משפטי עוזיאל ח"ב יו"ד סי' ל"ב.
5. פת"ש שם סק"י. ■

STORIES Off the Daf

Sharing the wealth

זה אומר ארצי גדלה וזה אמר זיתי גדלו יחלוקו

A certain person owned a very large piece of meat that had unfortunately been rendered non-kosher and was no longer fit to eat. Clearly, this piece of meat was not worth much since he could only sell it to a gentile. As he was bemoaning this fact, he heard that his piece of meat has accidentally been thrown into a pot of other similar-sized pieces of meat which nullified his piece and permitted the entire stew to be eaten. As he was rejoicing in his good fortune, the owner of the stew approached him and offered to pay the value of a piece of treif meat the size of the meat that had

been unknowingly cast into the pot.

The man explained, "Clearly, the extra value conferred on your meat is mine since it was only due to my cholent that your meat was 'kashered.'"

But the owner of the piece of meat disagreed. "I appreciate that your cholent offered the right environment to kasher my meat but the good fortune is clearly mine since the piece remains mine, whether kosher or not. Since we have no way of knowing which piece is mine, it is your obligation to replace it with a piece from your stew and the extra value clearly remains my own."

When this case came for adjudication before the eldest son of the Chakrei Lev, ז"ל, he ruled that they split the meat. "This is clear from the Mishnah in Bava Metzia 100. There we find that if one sold

his woodlot to someone to use for lumber and in the meantime the trees produced excellent olives which each claimed for his own because his share of the commodity caused the growth, they split the value of the olives since they are both correct. The same is true in our case!"¹ ■

1. שו"ת חקרי לב, ח"ב, יו"ד, סי' ה' ■

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the uncertainty is self-understood even without each party presenting his argument. Therefore, if the buyer has the calf in his possession and he presents a claim that he is certain (ברי) that the calf is his, he would win. On the other hand, if the seller has the calf in his possession, he would retain possession even with a claim of שומא, one of "perhaps it is mine," and we could not take it away from him. ■