

## OVERVIEW of the Daf

### 1) Delaying payment of an employee (cont.)

The Gemara explains that the Baraisa refers to where the agent told the employee that the employer would pay his wages.

Two related incidents are recorded.

### 2) Working for hours during the night

Rav and Shmuel dispute whether one hired to work for hours during the night must be paid that night or may be paid the next day.

Two unsuccessful challenges to Rav's position that the employee who works for hours at night must be paid at night are presented.

A detail in the second Baraisa is explained.

R' Chisda defines the terms עושק and גזל as they apply to paying an employee.

R' Sheishes refutes R' Chisda's definition of the term עושק and offers another explanation of the term.

Abaye refutes R' Sheishes's explanation and offers his own explanation of the term.

The Gemara discusses why R' Sheishes was not bothered by R' Chisda's definition of the term גזל.

Rava presents an alternative explanation of the terms עושק and גזל.

3) **MISHNAH:** Additional details related to paying a worker on time are recorded.

### 4) Identifying the author of the Mishnah

It is noted that the Mishnah does not follow Tanna Kamma nor R' Yosi the son of R' Yehudah.

The Baraisa that records the position held by Tanna

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## REVIEW and Remember

1. Why don't market traders in Sura violate the prohibition of delaying payment of their employee's salary?

2. What is the difference between עושק and גזילה?

3. What is the point of dispute between Tanna Kamma and R' Yosi the son of R' Yehudah?

4. How does the Tanna of our Mishnah differ from Tanna Kamma and R' Yosi the son of R' Yehudah?

## Distinctive INSIGHT

*Why are lashes assigned to the sin of withholding wages?*

מכאן אמרו כל הכובש שכר שכיר עובר בחמשה שמות הללו ועשה

The Gemara earlier (61a) noted that the Torah did not have to specifically write that there is a sin to steal, and we could have arrived at this conclusion by analyzing the Torah's prohibiting taking interest (ריבית) and overcharging (אונואה). The purpose of the Torah's writing that it is prohibited to steal (לא תגזול) in Vayikra 19:13 is in order to teach that it is prohibited to withhold the salary of a worker. Although not paying a worker is also mentioned explicitly as being a לאו (ibid.), the Torah hereby assigns two sins to this act.

Tosafos (ibid., ד"ה לעבור) notes that it seems that it would have apparently been better to interpret the words "do not rob" literally, and simply to say that the Torah is establishing a second sin to the act of stealing, rather than to assign the verse to a different act, such as withholding the salary of a worker. Tosafos answers that the Gemara does not assign a second לאו to stealing, as this is a sin which is not punished with lashes. The Torah therefore assigns a second sin to withholding wages, with the effect being that lashes are given in this case.

The commentators note that the words of Tosafos seem difficult to understand, as it is the same reason why no lashes are given for stealing or for withholding wages. It is the same verse (Vayikra 5:23) which teaches that a person is obligated to return a stolen item and to pay withheld wages. Being that these are both sins which are associated with a positive commandment to correct – לאו הניתק לעשה – (by paying), neither of them are punishable with lashes. Why are lashes assigned to the sin of withholding wages rather than to that of stealing?

Maharam Shif explains that paying a worker his wages which were illegally withheld is not the manner of correcting the לאו of having withheld the money in the first place. Even if the employer wished to pay, but he was delayed, he is in violation of this prohibition. The problem was the delay in paying, and not simply the fact that the worker was not paid. That delay is not repaired when the money is finally paid, thus demonstrating that this is not a לאו which can be corrected with the employer's gesture of paying now. This is why lashes may be administered for one who is in violation of this mitzvah. ■

This week's Daf Digest is dedicated  
 By Mr. & Mrs. Dennis Ruben in memory of their parents

ר' אברהם וואלף בן ר' בערל ז"ל  
 ר' חיים שלום בן ר' בנדיט מאיר ז"ל

# HALACHAH Highlight

## Delaying payment of one's rent

א' שכר אדם וא' שכר בהמה וא' שכר כלים יש בו משום "ביומו תתן שכרו"

Whether it is a man's wages or the rental of an animal or the rental of utensils, it is subject to, "You should pay him on the day he works."

The Mishnah enumerates objects that are included in the obligation to make timely payments (ביומו תתן שכרו).

One example that is noticeably absent is land. Rosh<sup>1</sup> cites the opinion of Ramah who asserts that the Biblical obligation to make a timely payment does not apply to the rental of land. This position is also adopted by Shulchan Aruch<sup>2</sup>. One rationale behind this position, explains Rosh, is that the exposition that teaches that the obligation to pay on time applies to movable objects and animals is derived from the word בארצך – in your land. This word indicates that the obligation applies to that which is found on the land but not to the land itself. Vilna Gaon<sup>3</sup>, however, rejects this approach since the Gemara will teach that the Tanna derived his position regarding movable objects from the phrase אתך – "with you" rather than from the phrase בארצך. Accordingly, since the Poskim follow the Tanna of the Mishnah that formulates his position from the word אתך there is no reason to differentiate between movable objects and land. Teshuvot Shevet Halevi<sup>4</sup> suggests, based on an explanation of Maharsha, that according to the conclusion of our Gemara even the Tanna of the Mishnah derives his position from a

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Kamma and R' Yosi the son of R' Yehudah is cited.

Rava asserts that the Mishnah follows Tanna D'vei R' Yishmael.

The debate between Tanna Kamma and R' Yosi the son of R' Yehudah regarding the relevant pesukim is recorded.

The Gemara explains how the Tanna of our Mishnah explains these verses and then addresses how Tanna Kamma and R' Yosi the son of R' Yehudah respond to this explanation. ■

gezeirah shavah rather than from the word אתך, accordingly it is possible to exclude land from the exposition.

Another explanation presented by Rosh and further developed by Rav Aharon Kotler<sup>5</sup> is the following. The reason utensils, animals and other movable objects are included in the obligation is that the renter does work with these utensils and they are, in a sense, working for him. As such it is similar to an employee; therefore it is logical that their rental fee should be included in the mitzvah of paying a worker on time. In contrast, rental of land is not similar to hiring an employee since the land does not perform a task for the renter, the renter uses other tools to cultivate the land. Since land is fundamentally different in this regard it is not included in the mitzvah to pay on time. ■

1. רא"ש המובא בשיטמ"ק קי"א: ד"ה כל.
2. שו"ע חו"מ ריש סי' שליט.
3. הגהות הגר"א שם סעי' א' ליקוט ראשון.
4. שו"ת שבט הלוי ח"ז סי' ר"ל אות ג'.
5. שו"ת משנה רב אהרון ח"ב סי' ע"ב. ■

# STORIES Off the Daf

## The poor take precedence

"להקדים עני לעשיר..."

Two people in a certain town had yahrtzeit, one for his mother and one for his father. This led to great contention, as usual. There was only one minyan in the city and both men wished to lead all the services.

When this question was brought before the Chidah, zt"l, he replied that the one with yahrtzeit for his father definitely takes precedence. "The reason is quite simple. We find in Bava Metziah 111 that a poor person takes precedence

over a wealthy man. Since a man is most often much closer to sinning than a woman and, in addition, men have a perpetual obligation to learn Torah to overcome their base nature, their needs after death are not the same. The sins that most men are drawn after hardly apply to most women, and certainly bitul Torah is not a problem at all. Therefore it is obvious that the one who desperately needs any possible merit is the deceased father, not the mother. In addition, women have many merits that protect them, unlike men.

"From all of this it is clear that the man who lost his father takes precedence over the one who lost his mother,

since his soul is certainly poor compared to hers."<sup>1</sup>

But when the Shaarei Efraim, zt"l, was consulted regarding the very same question he ruled that it was not so simple. It is not that he argued on the logic of the Chidah, he merely pointed out, "These halachos are predicated on custom. In a place where the custom is that the yahrtzeit of a father takes precedence over that of a mother, that is how they should conduct themselves. But if there is no custom the two should throw lots to find which has the rights of that year."<sup>2</sup> ■

1. שו"ת ברכי יוסף, או"ח, סי' רפ"ד
2. שערי אפרים, שער ט', סעי' מ"ב ■