

OVERVIEW of the Daf

1) Arrangements (cont.)

Abaye answers R' Chaga's challenge to the premise of leaving the borrower with essential household items.

The Gemara inquires whether halacha follows those opinions which maintain that we derive the halachos of arrangements for a borrower from the halachos of arachin.

A statement of Amoraim is cited that assumes that one does not make arrangements for a borrower.

Tangential to this discussion the Gemara explores the disagreement whether arrangements are made for someone who pledged money to the Beis Hamikdash.

It is suggested that we should make arrangements for a borrower based on a kal v'chomer from the halachos of arachin.

This suggestion is rejected.

It is suggested that hekdesh should be required to return objects taken as security for outstanding debts based on a kal v'chomer from a borrower.

This suggestion is rejected.

Rabbah bar Avuha asked Eliyahu Hanavi whether we make arrangements for a borrower and he responded that arrangements are made.

After asking another question Rabbah bar Avuha inquired how Eliyahu Hanavi could stand in a cemetery since he is a kohen.

Eliyahu Hanavi responded by citing a Baraisa that indicates that gentiles do not transmit tumah when someone walks over their grave.

Eliyahu Hanavi and Rabbah bar Avuha discuss the latter's financial circumstances and how they cause Rabbah bar Avuha to be unable to learn as much as he would like.

2) Taking security for a loan

A Baraisa discusses taking security from a wealthy borrower.

R' Sheishes explains the intent of the Baraisa.

Another related Baraisa is cited that is explained by R' Sheishes.

Rava offers an alternative explanation of the Baraisa.

R' Shizvi cited a Baraisa in the presence of Rava.

Rava challenged the ruling of the Baraisa but instead of instructing R' Shizvi to remove it from his collection he offered an acceptable explanation of that Baraisa.

R' Yochanan ruled that if the borrower died while in possession of the object taken for security the lender may take that object away from the heirs.

The Gemara begins to cite and clarify a Baraisa that will challenge R' Yochanan's ruling. ■

Distinctive INSIGHT

Eliyahu HaNavi appears in different forms

אשכחיה רבה בר אבונה לאליהו דקאי בבית הקברות של עכו"ם, אמר ליה מהו שיסדרו בבעל חוב, אמר ליה מיכה מיכה מערכין

Nimukei Yosef cites the Geonim who say that the halacha is that we apply the rules of מסדרים for a borrower. When items are taken from a debtor, we must allow him to keep certain essential items for his basic survival. The reason the halacha rules according to this opinion is that we can have no greater source than Eliyahu HaNavi to decide the halacha, and we have a story in the Gemara of Eliyahu informing Rabba b. Avuha of this conclusion. This is also the opinion of the Chinuch (Mitzvah 350).

יוסף questions this reasoning, as we find several times in Shas that we cannot rely upon heavenly messengers or voices to determine the halacha. The Gemara (Shabbos 108a) clearly states that the rule of לא בשמים היא precludes our being able to rely upon testimony of Eliyahu at this time, and the Gemara earlier in Bava Metzia (59b) reported that we cannot rely upon a בת קול.

Furthermore, ברכי יוסף also questions מיימונית and Kesef Mishnah who rule according to R' Shimon that graves of non-Jews do not transmit tum'ah via אהל. These poskim arrive at their conclusion because we find on our daf that Eliyahu Hanavi rules according to R' Shimon. In fact, מהר"ץ חיות wonders why the Gemara can conclude an unresolved inquiry by stating תיקו, which indicates that we are waiting for Eliyahu Hanavi to come and miraculously provide us with information from the heavens. Why is this not a violation of the rule לא היא—שמים היא—the Torah is not in heaven, but rather on earth?

ברכי יוסף answers that when we find that Eliyahu will come and provide us with answers to questions, it does not refer to his offering a prophetic insight to the matter. Rather, the Gemara is referring to Eliyahu offering his wisdom and knowledge,

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REVIEW and Remember

1. What is the principle of מסדרין?

2. Is a donation to hekdesh considered a "charitable donation"?

3. What explanation did Eliyahu HaNavi give for why he was in a gentile cemetery?

4. Under what conditions is there an obligation to return a night garment taken as security for a loan?

HALACHAH Highlight

Do graves of gentiles transmit tumas ohel?

ר"ש בן יוחאי אומר קבריהן של עכו"ם אין מטמאין

R' Shimon ben Yochai states that the graves of idolaters do not transmit tumah

Tosafos¹ asserts that we do not rule in accordance with the opinion of R' Shimon ben Yochai recorded in our Gemara; rather halacha follows the opinion of R' Shimon ben Gamliel cited in the Mishnah in Ohalos (18:7) that gentiles do transmit tumas ohel and halacha generally follows the positions of R' Shimon ben Gamliel that are cited in the Gemara. Regarding Eliyahu Hanavi's response to Rabbah in our Gemara, Tosafos asserts that that response merely represents Eliyahu Hanavi's intent to push aside (דירחי בעלמא) Rabbah's question. The real reason it was permitted is that in most cases there is a tefach of space between the deceased and the top of the casket which confines the tumah to the casket.

Other Rishonim disagree with Tosafos and maintain that halacha follows R' Shimon ben Yochai's lenient position since Eliyahu Hanavi behaved in accordance with that position. There are also weaknesses in the position expressed by Tosafos. Ramban² notes that only Jews have the practice of making a casket large enough for there to be a tefach of space between the deceased and the top of the casket but gentiles do not have that practice so it should have been prohibited for Eliyahu Hanavi to rely on that rationale to enter a gentile graveyard. Furthermore, Ramban finds it untenable that Eliyahu Hanavi would give an explanation for his lenient practice that is not true since it could easily lead a per-

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which will help to resolve the halachic doubts that we have. Although we cannot rely upon prophecy to answer our questions, Eliyahu is certainly allowed to contribute his Torah scholarship to help settle anything that is unclear.

Chasam Sofer explains that the soul of Eliyahu separated from his body as it ascended to the heavens. His soul resides among the angels in the heavens, while his body remains in "the lower domain of Gan Eden." Whenever Eliyahu appears to one of the sages, his soul joins his body once again, and in this form he is just as any of the other Talmudic sages. When he appears at a bris, though, it is in his form as an angel, and any opinion he would render under such conditions would not be admissible to a halachic dispute. When Rabba saw him in the cemetery, he was in body and soul form, and his opinion was admissible. ■

son to apply that incorrect rationale to other circumstances.

Shulchan Aruch³ writes that concerning graves of gentiles it is proper for a kohen to be cautious and not walk upon them. Rema⁴ adds that even though there are authorities who are lenient and maintain that the graves of gentiles do not transmit tumah it is still proper to be strict on this matter. Shach⁵ adds that it seems reasonable that even those authorities who maintain that the grave of a gentile does not transmit tumah would agree that it is prohibited for a kohen to touch or carry the corpse of a gentile. ■

1. תוס' ד"ה מהו.
2. רמב"ן יבמות ס"א.
3. שו"ע יו"ד ס"י שע"ב סעי' ב'.
4. רמ"א שם.
5. שו"ך שם סק"ד. ■

STORIES Off the Daf

Mistaken appraisal

"אבל משכנו בשעת הלוואתו..."

Today's daf discusses the halachos of a mashkon.

A certain man asked to borrow a very large sum of money from his wealthy friend. The wealthy man agreed but he asked the borrower to provide an item of value as a security to insure that the loan would be repaid. The man did so and received the loan.

After the time to repay the loan had come and gone, the wealthy lender asked the borrower to pay the debt. "If not, I could always sell off the security," he concluded.

The lender asked for one more day to

try to get the money together. "If I don't manage it, you can sell the security..."

The next day passed, followed by several more, with no payment forthcoming. Understandably, the lender sold the security. But he was not a person who understood jewelry so he took the first price offered for the expensive necklace that had been entrusted with him, little knowing—or caring—that it was worth more than twice the sum of the loan.

That day, the wealthy man approached the borrower to give him the remains of the small amount that he had received for the expensive security, but before he even had a chance to speak, the borrower blurted out, "I am so sorry that I was delayed in paying you back. I finally have the money to repay the loan."

"That will not be necessary," replied the lender. "I have already sold your secu-

rity and got my money back. Here is what is left over from the money I received for it."

The borrower was outraged. "You mean you didn't even have it appraised? It was worth far more than you received for it!"

Naturally, the person who had purchased it refused to give it back while the borrower claimed it was a mistaken sale.

When this case came before the Zera Yaa-kov, ז"ל, for adjudication, he ruled that the sale was certainly void. "We find that one can sell a security as a messenger of the owner. Since when a messenger who sells something at even a slight error in price the sale is void, the same is true in our case!"¹ ■

1. שו"ת זרע יעקב, ס' ל"ז