

## OVERVIEW of the Daf

### 1) Acquiring something on behalf of another (cont.)

The exchange between Ulla and R' Nachman concerning the dispute in the Mishnah in Peah continues.

R' Nachman and R' Chisda rule that if one picks up a lost object for his friend, the friend does not take legal possession of that item.

Rava unsuccessfully challenges this ruling.

R' Chiya bar Abba in the name of R' Yochanan asserts that if one picks up a lost object for his friend, the friend does take legal possession of that item and they explain why the Mishnah is not a contradiction to that ruling.

### 2) MISHNAH: The Mishnah teaches that falling on an object does not constitute an act of acquisition.

### 3) Acquiring an object with one's four amos

Reish Lakish in the name of Abba Kohen Bardela teaches that Chazal enacted that a person's four amos can perform the act of acquisition on his behalf.

Abaye and Rava report that there were those who challenged this assertion from different Mishnayos.

Abaye's unsuccessful challenge from a Mishnah in Peah is presented.

Rava's unsuccessful challenge from our Mishnah is presented.

Reish Lakish in the name of Abba Kohen Bardela teaches that a minor girl does not have the kinyan chatzer or four amos.

R' Yochanan in the name of R' Yannai disagrees with both rulings.

The point of dispute is explained.

This explanation is challenged because it seemingly violates the principle that there is no agent for a transgression – אין שליח חדבר עבירה.

Ravina presents a reason why this challenge does not apply.

R' Sama offers another explanation why this challenge does not apply.

The practical difference between these two explanations is presented.

Another challenge to the assertion that a chatzer works as the agent of the owner is presented.

As a result of this challenge the Gemara begins to present an alternative explanation of the dispute between Reish Lakish and R' Yochanan. ■

## Distinctive INSIGHT

### The enactment of one's four amos

ארבע אמות של אדם קונות לו בכל מקום

Reish Lakish reports that the immediate four-amos domain which surrounds a person serves to acquire objects located there. The Rishonim offer varying explanations how this mechanism works.

Ramban (to Gittin 78a) explains that the sages enacted that any item which comes into or is found within this range can be acquired by the person. Ritva and Ran, however, explain that the mechanism of four amos works using the rule of חצר. The sages, using their power of הפקר בית דין הפקר, enacted that the four amos which surround a person can serve as his חצר, and therefore anything which is situated there can become his. This works even in the public domain, which technically does not belong to anyone individually. Yet, for the purpose of acquiring things in one's immediate surroundings, the sages considered this area to be exclusive to that person for that moment. Avnei Milu'im (30:5) wonders about this definition, as the Gemara (Yevamos 89b) teaches that the concept of הפקר בית דין does not apply when the הפקר is only temporary. Here, the enactment of four amos is only applicable for the moment as the person stands in that position in the street. When he passes beyond it, his control over that space has ended. How, then, can this rule work? שערי תורה (2:20) explains that the rule of four amos is not that the person is given special power over that area, but rather that the sages took control of that area away from everyone else other than the one person who is standing there. Once no one else has any right over that area, even temporarily, the one standing there automatically becomes the owner

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## REVIEW and Remember

1. What is the rationale to say that if one picks up an object for a friend, the friend does not acquire that object?
2. Why does a person not acquire the object that he falls upon?
3. What is the point of dispute between Reish Lakish and R' Yochanan?
4. Has a Kohen violated a transgression if he instructs a non-Kohen to betroth a divorcee on his behalf?

## HALACHAH Highlight

### *Making a beracha on a fence (מעקה) constructed by a gentile*

שאני פועל דידו כיד בעל הבית דמי

An employee is different since his hand is like the hand of his employer

**M**achaneh Efraim<sup>1</sup> suggested a novel ruling that has far-reaching applications. If a person appoints an agent to build a fence on his roof the homeowner does not make a beracha on the construction of that fence but if one's employee builds the fence the homeowner would make a beracha and the rationale behind the ruling is that the hand of an employee is the same as the hand of his employer and thus it is considered as if the homeowner is doing the construction and he is able to make the appropriate beracha. The difference between an agent and an employee is that an agent acts on behalf of the principal but does not become the body of the principal whereas an employee is treated like the body of his employer rather than just his representative and thus the employer can make a beracha on the action of his employee. Proof to this novel ruling is found in our Gemara which teaches that an object found by an employee will belong to his employer. This principle also allows a homeowner to make beracha on a fence that is constructed on his roof by a non-Jewish employee. Although a non-Jew cannot act as the agent of a Jew he can be his employee and the regular employer/employee relationship will apply.

Maharit Algazi<sup>2</sup> disputed this ruling and maintained that

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of the item.

Rashi points out that the nature of this enactment is that if an ownerless object is near someone, no one else is allowed to take it. Furthermore, דברי יחזקאל explains that Rashi means that the four amos is in all directions. The radius of the area is four amos with the person in the middle, for a total of eight amos across, not including the space in which he stands. ■

an employer cannot make a beracha on a fence that was constructed by a non-Jewish employee. The reason is that the principle, "the hand of an employee is like the hand of his employer" applies only to those acts that the employee could do for himself but regarding those activities that the employee could not do for himself he cannot serve as the hand of his employer in the performance of those activities. Thus, since the non-Jew could not fulfill the mitzvah of constructing a fence around his own roof he may also not serve as the hand of his Jewish employer in the construction of his fence. Chasam Sofer<sup>3</sup> also disagrees with Machaneh Efraim but offers a different explanation. He asserts that the principle, "the hand of an employee is like the hand of his employer" applies only to monetary matters but not to the performance of mitzvos, therefore the non-Jewish employee is not acting as the hand of his Jewish employer when he constructs the fence. ■

1. מחנה אפרים הל' שומרים סי' י"א

2. מהרי"ט אלגאזי הל' בכורות על הרמב"ן פ"ד אות נ'

3. שו"ת חת"ס אורח סי' קע"ו ■

## STORIES Off the Daf

### *The best laid plans*

כהן דאמר לישראל קדש לי אשה גרושה

**A**certain couple was having a very turbulent family life. The husband decided that he had had enough and informed his wife that he wanted a divorce, but his wife wouldn't hear of it. The husband tried to convince her but to no avail. The man was very wealthy and didn't really care if his wife was willing to divorce or not. He found out that if a man divorces his wife against her will, the divorce does indeed take effect post facto. He began to plan a forced divorce.

With his money and connections it

was not hard to hire a couple of non-Jewish soldiers who would accost his wife and hold her still. He ordered a sofer to write the גט and a friend to present it to her in front of two designated witnesses.

When the divorce was ready everything went very smoothly. The soldiers forced the woman to stay in her chair while the messenger approached her and proclaimed that he was giving her the גט. Although she screamed the entire time that she was not willing to divorce, the messenger tossed the גט into her lap and the entire party left her weeping.

Everyone was outraged at this cruel man's blatant disregard for his wife's feelings and the halachah. Understandably this story spread throughout the city. When the Noda b'Yehudah, zt"l, heard

about it, he declared that the woman was not in fact divorced.

He said, "First of all, the general rule is אין שליח לדבר עבירה. This implies that one cannot do a sin by proxy. There is no shlichus when it comes to doing a sin—once the objective is unlawful, the shlichus is cancelled. We see this from the second answer in Tosafos on Bava Metzia 10. There we find that a kohen who sends a Yisrael to betroth a divorcee for him does not achieve his objective. It is for this very reason.

The Noda B'Yehudah continued, "Since in our case the messenger violated Rabbeinu Gershom's ban when he gave the divorce, this nullified the שליחות and the woman is still married!"<sup>1</sup>

1. שו"ת נודע ביהודה מהדו"ק ס' ע"ה