

OVERVIEW of the Daf

1) Abandonment without awareness – יאוש שלא מדעת (cont.)

An unsuccessful attempt is made to support Rava's position that abandonment without awareness is abandonment.

An unsuccessful attempt to support Abaye's position (abandonment without awareness is not abandonment) is presented.

A Baraisa is cited that seems to support Rava's position and Rava presents an explanation that is consistent with Abaye's position.

An incident related to this Baraisa is recounted.

Another Baraisa is cited to support Abaye's position but the Gemara rejects this proof as well.

A teaching of R' Yochanan in the name of R' Yishmael ben Yehotzadak is quoted as support for Abaye.

This proof is accepted and the Gemara rules in accordance with Abaye's position.

In light of the Gemara's ruling R' Acha the son of Rava asks why people commonly eat dates that are blown off other people's trees.

The issue of eating these wind-blown dates is discussed.

2) Identifying marks that will be trampled

Rabbah and Rava disagree whether one is obligated to return a small bundle that has an identifying mark and the Gemara explains that the point of dispute is whether an identifying mark that will be trampled is considered an identifying mark.

According to a second version the disagreement did not begin with a discussion of our Mishnah.

(Overview...Continued on page 2)

REVIEW and Remember

1. Is one permitted to keep objects that get flooded off of your friend's?

2. Why did Mar Zutra refuse to eat the fruit even after the owner indicated that he didn't mind?

3. How does the Gemara ultimately refute Rava's position?

4. Explain סימן העשוי לידרס.

Distinctive INSIGHT

The Jordan River takes and gives

וכן ירדן שנטל מזה ונתן לזה

The Gemara is in the midst of the topic of יאוש שלא מדעת—determining the status of an object which is found before the owner would have noticed that it was missing. A Baraisa is cited which illustrates cases where an item was lost by one person and found by another. The example is where a thief or robber takes from one person and deposits the item with someone else. Another example is where the Jordan River swept away the items of one person and later deposited them on someone else's property downstream. In all of these cases, the law is that "what is taken is taken, and what is deposited is deposited." Here, ostensibly, the owner would give up hope immediately as he watches a robber grab his article or when the river sweeps away his items. However, when a thief steals his items, the owner is often not aware that something may be missing, or the owner might be under the impression that the item is misplaced. Yet, the Baraisa rules that the receiver of such an item may keep it. This indicates that יאוש שלא מדעת is considered יאוש, in accordance with the opinion of Rava.

Regarding the case of the river, Rashi learns that the example given of the Jordan River is not specific, as this law applies to any river. The author of the Baraisa chose to illustrate his case with the Jordan River because that is the river which flowed near where he lived in Eretz Yisroel. Many of the Rishonim (see Shitta Mikubetzes), however, explain this case differently, and that it is speaking specifically about the Jordan River, based upon the Yerushlami (Challah 4:4). The context of the statement is referring to the borders of Eretz Yisroel and the halachos which apply to the holiness of the Land. The Jordan River was an eastern border of the country. If the waters of the Jordan River swell or expand towards the east and effectively encompass or "grab" land which was formally to its east, the eastern border of the land now changes. It could also be that the river might change course slightly and encircle land that was originally outside Eretz Yisroel, but is now situated to the west of the river. "What is taken is taken, and what is given is given." The tract of land which is repositioned now has its previous status of being outside the land changed, and it is now deemed inside the realm of Eretz Yisroel.

According to the explanation of the Yerushalmi, the next comment of the Gemara must read בשלמא גזלן דקא חזי ליה—because the case of the Jordan River has nothing to do with items being swept away from their owner and being deposited with anyone else. Rather, it only deals with the borders of Eretz Yisroel. ■

HALACHAH Highlight

Sharing Reuven's food with Levi

אייתי אריסיה תמרי ורימוני וכו'

His sharecropper brought out dates and pomegranates etc.

The Gemara retells an incident in which some Amoraim were walking together and a sharecropper emerged from an orchard and placed some fruit before them. Two of the Amoraim ate the fruit whereas the third refused to eat the fruit. Tosafos¹ questions the rationale behind the Amora who refused to eat the fruit when the Gemara in Bava Kamma (119a) teaches that one is permitted to purchase produce from a sharecropper since one can assume that he is giving you produce that is his rather than the land owner's fruit. In his analysis of the dispute between the Amoraim Tosafos writes that the Amoraim who ate the fruit did not eat the fruit because they assumed that when the owner would find out he wouldn't mind because the halacha follows Abaye who ruled **יאוש שלא מדעת לא הוי יאוש**—abandonment without awareness is not abandonment. Thus, even if it could be assumed that the owner would not mind when he discovers what occurred, it would still be prohibited to take the fruit without his prior knowledge.

Shach² writes that from the comments of Tosafos it is

Rava's position is unsuccessfully challenged.

(Overview...continued from page 1)

3) Identifying the place

Rabbah and Rava disagree whether the place where the object was lost is an identifying mark.

A Baraisa is cited that poses a difficulty for both opinions.

The Gemara begins to explain how Rabbah explains the Baraisa. ■

obvious that Shimon is not permitted to take Reuven's food and give it to Levi even if Shimon is confident that Reuven would not mind. Shach takes issue with this ruling claiming that the issue of **יאוש שלא מדעת** is not related to the question of Shimon giving Levi some of Reuven's food. Cases involving **יאוש שלא מדעת** are circumstances in which the owner has no choice but to abandon hope of recovering his object because he does not know where it is so his only alternative is to have **יאוש**. When Levi eats Reuven's food that was given to him by Shimon it is not because we assume that when Reuven will find out he'll be left with no choice but to have **יאוש**; rather it is because it we assume that Reuven wants Levi to eat this food. As such it is considered as if it came into his possession in a permitted fashion. ■

1. תוס' ד"ה מר זוטרא לא אכל ■

STORIES Off the Daf

Giving up

והלכתא כוותיה דאביי ביע"ל קג"ם

On today's daf we find that the halachah is **יאוש שלא מדעת אינו קונה**—the finder of a lost object does not acquire it if the owner does not know that his object seems irretrievably lost. The She'eris Menachem, ז"ל, learns a very inspiring lesson from our gemara. "One can explain that giving up, yei'ush, is 'not from da'as,' displays a lack of understanding. A true 'bar da'as'—someone with genuine understanding—will never give up and always encourage himself to serve Hashem, no matter what!"¹

The Kotzker Rebbe, ז"ל, adds, "The reason why one can acquire another's

property only after despair is because one really has no right to give up at all. He should trust that Hashem will help him recover what was taken from him. Therefore, if he gives up, he loses his right to his property. One must never give up!"²

Someone once asked the Maharal, ז"ל, "Why should one acquire what is not his property? Why does the Torah make a distinction if the one who lost the object gave up or not?"

The Maharal explains, "We must know that our money is not like our body or soul. Our body and intellect are ours for our entire stay in this world and they are the primary means through which we fulfill Hashem's will in this world. With our possessions, there is a difference; sometimes people have ample money, and at other times they hardly get by. However, since we must usual-

ly work to make money it is easy to fool ourselves into thinking that one's money is also a part of him like his own body. We must learn that it is only Torah and mitzvos that have real lasting value. If money remained in one's possession no matter what, it would be that much easier to mistakenly attribute more value to it than it really has.

He concludes, "And if one will claim that it is still only proper for the finder to return the lost object, that is actually the halachah. It really is fitting to return any lost object, even that which lacks an identifying mark. Yet the Torah refrains from obligating us to do so in order to teach us to distance ourselves from too much attachment to money since you can't take it with you!"³ ■

1. שארית מנחם ח"א ע' ר"פ
2. ליקוטי בתו לילוטי ח"ט"ו ע' ס"א