

OVERVIEW of the Daf

1) Acquisition of movable objects (cont.)

Reish Lakish defends his position from the Gemara's challenge.

Rava presents a verse and a Beraisa that support Reish Lakish's assertion that **משיכה** is a Biblical method of acquisition of movable objects.

R' Pappa unsuccessfully challenges Rava's proof from the pasuk.

The ruling in the Beraisa cited by Rava is challenged from another Beraisa that rules differently.

The Gemara answers that the second Beraisa deals with a non-Jew for whom **משיכה** is not a valid method of acquisition.

Another Beraisa is cited that supports this distinction.

R' Nachman subscribes to R' Yochanan's position that Biblically money acquires movable objects.

Levi found a Beraisa that supports R' Yochanan's position.

Reish Lakish's response to this Beraisa is recorded.

2) Issuing a **מי שפרע**

Abaye and Rava disagree whether Bais Din actually curses the person who does not honor his commitment.

Each Amora offers a source for his respective position.

Rava unsuccessfully offers a proof to his position.

3) A down payment

Tangentially the Gemara brings up the disagreement between Rav and R' Yochanan whether a down payment acquires an amount equal to its value or whether it acquires the entire purchase.

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REVIEW and Remember

1. Is there any legal consequence for one who backs out of a verbal agreement?

2. How is the Baraisa discussing the bathhouse attendant a proof to Reish Lakish?

3. What is the point of dispute between Abaye and Rava concerning the issuance of a **מי שפרע**?

4. What is the issue debated by Rav and R' Yochanan related to a down payment?

Distinctive INSIGHT

*How does beis din implement the law of **מי שפרע**?*

איתמר: אביי אמר אודועי מודעינן ליה, רבא אמר מילט לייטינן ליה. אביי אמר וכו' דכתיב ונשיא בעמך לא תאור

The Mishnah at the beginning of the perek noted that even after someone gives money to pay for an item, the sale is technically not consummated. It is the transfer of the item which is the legal point of no return. Therefore, if the buyer or seller wishes to renege on their stated intention to participate in the deal, they may do so even after the money is transferred. Nevertheless, the Mishnah warns that anyone who does not stand behind his word is subject to the curse known as "**מי שפרע**" - "The One Who paid retribution against the people of the generation of the flood and of the Tower of Babel (God) will also punish one who does not keep his word."

Our Gemara brings a discussion between Abaye and Rava regarding how the beis din actually deals with a person who does not keep his word and thereby becomes eligible for this curse. Abaye says that the court simply informs him of the consequences of his actions, but the court does not issue the curse. Abaye notes that the verse prohibits a Jew to curse another Jew, as it states (Shemos 22:27), "You shall not curse a leader among your people." The Gemara in Sanhedrin (66a) concludes that the Torah prohibits cursing any Jew from the three directives found not to curse a leader, a deaf person or head of a tribe (**נשיא**). And although the verse only deals with prohibiting a curse using the name of God, it is still prohibited to curse even without pronouncing the Name. Others note that if the court would mention "the One Who exacted punishment from..." this is tantamount to a bona fide reference to Hashem, and the curse would be in full violation of the verse.

Rava argues and contends that the court should pronounce the **מי שפרע** curse against the one who is not keeping his word. He understands that the Torah does not prohibit pronouncing a curse when the target of the curse is a sinner. The verse warns against issuing a curse against one who is "among your people," and one who does not keep his word is not included among the faithful. Ritva explains that Abaye certainly agrees that the verse permits issuing a curse against a sinner, but in this case the person is backing out of the deal due to price fluctuations, and he simply wants out in order to obtain a better price for his purchase, or because he no longer needs the item. Although his actions are not proper, he is still not to be deemed a sinner.

Rosh and Rambam conclude that the court does issue this curse, in accordance with the opinion of Rava. ■

HALACHAH Highlight

Choosing between a previous commitment and attending a bris milah

והחוזר בו אין רוח חכמים נוחה הימנו

The Chachamim are not satisfied with one who backs out of his verbal commitment

The author of Teshuvos Chelkas Yaakov¹ was asked a very sensitive question. Shimon was hosting a number of guests at his house and he asked Reuven to come and visit while the guests would be at his home. Reuven's visit would accord Shimon with honor and if Reuven were not to visit it could be perceived as though Reuven was disrespecting Shimon. Before the date of the visit arrived, another friend of Reuven invited him to join the seudah for the bris milah of his son. Rema² rules that one who is invited to the meal of a bris milah and does not attend deserves to be placed in **נידוי**, so Reuven inquired about the correct course of action. Should he follow his first commitment to Shimon or should he attend the bris?

Chelkas Yaakov answered that Reuven should not cancel his visit to Shimon in order to attend the bris. He based his decision on the ruling of Rema³ that one who is present at a bris milah where there are unsuitable people (**אנשים**) (**שאינם מהוגנים**) is not required to eat at the meal.

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Rav's position that it acquires an amount equal to its value is unsuccessfully challenged.

It is suggested that the dispute between Rav and R' Yochanan could be traced to a dispute between Tannaim. ■

Accordingly, we could assert that certainly in our case there is no requirement for Reuven to go to the bris milah and not honor his commitment to visit Shimon. Agreeing to visit Shimon is similar to promising a friend to give him a small gift regarding which Shulchan Aruch⁴ rules that one who does not honor such a commitment lacks trustworthiness and is not in sync with the spirit of the Chachamim. Therefore, if a Torah scholar is permitted to skip the meal of a bris milah in order to avoid eating together with unsuitable people certainly one is permitted to not attend a bris milah in order to not qualify as one who is lacking trustworthiness and is not in sync with the Chachamim. Additionally, Chazal taught⁵ that a person must make sure to honor his word and commitment and these reasons are sufficient reason for Reuven to visit Shimon rather than attend the bris. ■

1. שו"ת חלקת יעקב אור"ח סי' כ"ד.
2. רמ"א יו"ד סי' רס"ה סעי' י"ב.
3. שם.
4. שו"ע חו"מ סי' ר"ד סעי' ז' ו'.
5. גמ' לקמן מ"ט. ■

STORIES Off the Daf

"It is forbidden to lie!"

"אבל אמרו מי שפרע מאנשי דור המבול..."

On today's daf we see the potential consequences due to one who goes back on his word. The Chazon Ish, zt"l, was very careful never to promise anything to ensure that he didn't go back on a promise if for some reason he could not fulfill it.

Even when Rav Wolbe, zt"l, asked him if he would be able to make it to the out-of-town bris of his newborn son, the Chazon Ish merely said, "I would very much like to come see the yeshiva..."

Rav Tzvi Oberlander, shlit"a, recounted how the Chazon Ish helped

him in a tricky situation that seemed to require that he promise what he really could not deliver. "My elderly uncle was childless and he wanted a ben Torah to say kaddish for him. It was natural that he should try to designate me to say the kaddish. But I really did not wish to do this. As a yeshiva bochur it would be distinctly uncomfortable to be saying kaddish even for my uncle when the time came. In addition, my mother was still alive at that point and I did not know how she would feel about such an obligation. I was willing to learn mishnayos for him, however.

"I went to the Chazon Ish and explained that I wanted my cousin, who was not a ben Torah, to say the kaddish, while I would learn mishnayos for his neshamah."

"So tell him you will learn mish-

nayos for him," said the Chazon Ish decisively.

"I explained that my uncle was a simple person who would not understand the importance of mishnayos. To his understanding, the main thing is kaddish. If I tell him that I will merely learn mishnayos for him, this will likely pain him..."

"The Chazon Ish had been lying in bed as I asked my question, but at this he stood up and spoke in a very strong tone of voice. 'It is forbidden to lie! It is forbidden to lie!'

"He made this statement three times and besides causing me to lose all interest in promising my uncle what I had no intention of fulfilling, this also imparted powerful yiras shamayim that lasted me for months!"¹ ■

1. מעשה איש, ח"ב, ע' קע"ט-ק"ף