

## OVERVIEW of the Daf

1) **MISHNAH (cont.):** The Mishnah concludes with the principle that whoever backs out of an employment agreement has the lower hand.

### 2) Deceiving one another

The Gemara begins to explore the meaning of the Mishnah's case of an employer and employee who deceive one another.

The Gemara finally pinpoints the case of the Mishnah.

Two additional explanations of the Mishnah's case are presented.

The last explanation is unsuccessfully challenged.

The Gemara returns to one of the earlier rejected cases and resolves the challenge that initially caused the Gemara to reject this explanation.

### 3) A discrepancy in the pay rate

The Gemara inquires about the halacha in a case where the employer instructed his manager to hire for four zuzim a day, the manager told the potential employers that they would be paid three zuzim a day and the employees responded and said that they accept the terms of the employer. Are the employees relying on the statement of the manager or are they relying on the statement of the employer?

An unsuccessful attempt to resolve this issue is presented.

### 4) Deceiving one another (cont.)

The Gemara returns to the initial rejected explanation and cites a Baraisa that demonstrates that the Tanna may use the term **הטעו** for a case where someone backs out of the employment agreement.

### 5) Paying an employee when there is no work to perform

A conversation is presented between Rav and the person citing the previous Baraisa regarding the wages paid to an employee who came to work only to discover there was no employment for him.

A second version of the conversation between Rav and the one who cited the Baraisa is presented. According to this second version the employer is responsible to pay the employees who have no work to perform only if he and the workers did not inspect the field the night before.

A related ruling of Rava is recorded. ■

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 ר' יהודה לייב בן ר' יהושע, ע"ה

## Distinctive INSIGHT

### Who misled who?

חזרו זה בזה לא קתני אלא הטעו זה את זה, דאטעו פועלים אהדדי

The Gemara detects a significant difference between the expression "חזרו," as opposed to the expression "הטעו." Rashi explains that the Gemara felt that "חזרו" suggests that the workers misled the employer or vice versa, while "הטעו" suggests that the workers misled and cheated one another. In other words, our Mishnah discusses the case where one worker misled the other, and this is where the halacha is that neither side can claim any financial damages, and all they have against each other is a complaint. This suggests that if the employer would have misled his workers he would have to compensate them financially.

Rashba (in Shitta Mikubetzes) writes that the Yerushalmi understands the words "הטעו זה את זה" in exactly the opposite manner than does our Gemara. There, the Mishnah is interpreted to refer to a case where the workers misled the employer, or where the employer misled the workers. According to that, even in such a case there is no legal recourse for financial payments. What is the case to which this refers? It is where the employer assured the workers that he would pay them 5 to work, and he informed them that this was what most workers accept for this particular job. After agreeing to these terms, they then found out that most workers receive more than the 5 they were told. The other case is where the workers assured the employer that the job they were being asked to do was generally paid 5, and after the price was agreed upon, the employer found out that the job was normally done for less. According to the Yerushalmi, these are the cases where the Mishnah rules that the wages must be paid as agreed. Rashba notes that on the one hand, we could understand why the workers would have to accept the lower amount which they were offered, because they agreed to the lower rate. And even if we were to say that they were not satisfied with that amount and their agreement is null, the halacha is that once workers complete a job, they can only demand wages equal to the lowest rate being offered for that particular task. The ruling that they can only register a verbal complaint (**תרעומת**) is reasonable. Rashba wonders, however, why the employer is committed to payment of a higher rate of wages as agreed, when the agreement was clearly based upon a misunderstanding. It is for this reason that Rashba feels that our Gemara in the Bavli did not learn that the halacha of **תרעומת** refers to where the workers misled the employer, but rather to a case where the workers misled one another. ■

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 הילדה רבקה דינה ע"ה בת ר' דוד שיחי

## HALACHAH Highlight

### Is it permitted for teachers to strike?

במה דברים אמורים בדבר שאין אבוד אבל בדבר האבוד וכו'

When is this said (that workers may quit)? Only regarding something that will not cause a loss but if quitting will cause a loss etc.

The Gemara rules that a worker is not permitted to back out of his employment if quitting will cause a loss to his employer. Rav Moshe Shternbuch<sup>1</sup> cited this ruling when he addressed a difficult question. There were a group of teachers (מלמדים) from a particular school that felt that their salary was insufficient to provide them with a living wage and to exacerbate matters the cost of living was rising. They made numerous attempts to negotiate with the school but the school responded that they had no money to give them. The teachers were interested in calling a strike and refusing to teach in order to send a strong message to the school that this is a concern that must be addressed. Rav Shternbuch responded that Rema<sup>2</sup> states explicitly that it is considered a loss (דבר האבוד) if a teacher does not teach; therefore the teachers are not permitted to strike since that would cause a loss to the school. Furthermore, since the teachers never stipulated that their salary should increase as the cost of living rises they may not strike. The most they could do is call the administration to a din Torah to claim that they deserve a higher wage but they may not disrupt the student's learning.

Rav Moshe Feinstein<sup>3</sup> also addressed the question of whether teachers are permitted to strike. In his response he explores the permissibility of teacher's holding a strike and re-

## REVIEW and Remember

1. What is the meaning of the phrase *הטעו זה אז זה*?

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2. Does an employee rely on what his employer offered to pay or does he rely on what the hiring manager reports to him?

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3. When does an employee whose employer reneged have no recourse other than *תרעומות*?

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4. When does a worker get paid his full salary for merely showing up to the job site?

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marks that one could find support in theory for a teacher's strike in Shas and Poskim. That said, he goes on to write that it would be a great sin for teachers to strike from teaching Torah. The existence of the world depends upon the Torah studied by children so how could teachers refrain from teaching? This concern creates a prohibition against teachers' striking because it is prohibited for a person to sin in order to earn more money and improve his financial circumstances. There are certain limited circumstances where it may be permitted for teachers to strike but before that decision is made it is necessary to give significant thought to the matter to determine that there is truly no other alternative. ■

1. שו"ת תשובות והנהגות ח"ב סי' תס"א.
2. רמ"א חו"מ סי' של"ג סעי' ה'.
3. שו"ת אג"מ חו"מ ח"א וח"ב סי' נ"ט.

## STORIES Off the Daf

### "His hand is behind his back"

"כל המשנה ידו על התחתונה..."

The Enlightenment movement penetrated into Eastern European Jewish communities in what were often insidious ways. Although many "freethinkers" had lost their belief in anything holy, they would not show their true colors publicly in hopes of quietly gaining more adherents without attracting opposition. As the ideals of the Enlightenment spread eastward, it was not unheard of for melamdim who were covert maskilim to send exceptional children who had learned under their tutelage not to a distant yeshivah, as

was customary, but instead to distant universities where they would through off their Torah observance. Some wealthy people would give free food to children of poor families; they would make a chevrah for the children to say Tehilim and set up learning groups so the parents would not suspect a thing. Quietly, they would corrupt the children's emunah and yiras shamayim, until the children were maskilim themselves.

People realized that they needed to take care, but how could a person identify a well-hidden threat?

There was a certain very wealthy and influential man in Ziditchov who would always stroll with his hands behind his back. Once, he passed by the window just as Rav Tzvi Hirsch of Ziditchov, ז"ל, was

looking out.

The Ziditchover immediately ordered that they check into this man's habits since he was certain he was a maskil. Although no one could tell what had prompted the suspicion, sure enough, upon close examination they found this man to be one of the closet secularists.

When members of the community asked the Rav how he had known, he jokingly replied, "It's a clear Mishnah in Bava Metzia 76: *כל המשנה ידו על התחתונה*—'Anyone who deviates from his obligation is at the legal disadvantage.' This can be read in another way, though: 'Anyone who is out to make strange changes to the status quo keeps his hand behind his back!'"<sup>1</sup> ■

1. אהל שמעון, ע' ל"ה