

## OVERVIEW of the Daf

### 1) Redeeming a firstborn donkey (cont.)

R' Sheishes suggests a second resolution to the contradiction between the two Baraisos.

This resolution is unsuccessfully challenged.

2) **MISHNAH:** The Mishnah enumerates many instances in which the Torah offers two options and the Mishnah identifies which option is preferable. The first case is the choice to redeem a firstborn donkey or to decapitate it.

### הדרן עלך הלוקח עובר חמורו

3) **MISHNAH:** The Mishnah begins with instances in which one is exempt from the obligation to redeem a firstborn kosher animal. The Mishnah concludes by teaching that kohanim and levi'im are not exempt from redeeming firstborn kosher animals.

### 4) The order of the chapters

The Gemara questions why we first discuss the redemption of the firstborn donkey and then the firstborn kosher animal.

Two answers to this question are presented.

### 5) Proprietary acts (kinyanim) with non-Jews

R' Oshaya is cited as ruling that when making a proprietary act with a non-Jew idolater as soon as the act is recognized according to their laws it is recognized in halacha as well.

The Gemara inquires about the meaning of the phrase "according to their laws" when used in reference to a Jew giving money to a non-Jew.

A possible explanation is suggested and rejected.

Abaye offers an explanation of this phrase.

This explanation is unsuccessfully challenged.

The Gemara inquires about the meaning of the phrase "according to their laws" when used in reference to a non-Jew later giving money to a Jew.

A possible explanation is suggested and rejected.

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## REVIEW and Remember

1. Which is preferable; to perform yibum or chalitzah?
2. Which firstborn halachos are kohanim and levi'im obligated to observe?
3. What is the point of dispute between R' Yochanan and reish Lakish?
4. What is done if one finds idols mixed into money that he received from an idolater?

## Distinctive INSIGHT

*Agreeing to a transaction that is not valid*

שקיבל עליו לדון בדיני ישראל

**R'** Oshaya said that a Jew acquires the property of a non-Jew with the paying of the purchase price to the non-Jew. The transfer of the money effects this transaction. A Baraisa was brought which challenges this view.

A Jew arranged to buy a collection of broken pieces of silver from a non-Jew. After paying for the box of silver, the Jew noticed that among the pieces were some items of idolatry in the box, and these items are clearly prohibited for the Jew to derive any benefit from them. The halacha in the Baraisa is that if the Jew had not paid the money, then even if he had pulled the silver into his possession he may still return it to the non-Jew. Taking possession without having paid does not constitute a legal transaction. If the Jew has paid for the silver, and then he took possession of the silver by pulling it into his property, the Jew had already acquired the silver. It becomes prohibited from any benefit. He may not return it to the non-Jew, and the pieces of idolatry must be cast into the Dead Sea (destroyed).

If R' Oshaya's rule were correct, in the latter case the Jew should become the owner immediately by paying money for the silver, and pulling it into his possession should not be necessary.

The Gemara answers that the Baraisa is dealing with a case where the non-Jew agreed to abide by Jewish law and that the sale should follow guidelines of how Jews conduct business among themselves. In this case, transfer of the money alone is not enough for the item to be transferred, and pulling it into one's possession is also necessary.

Ritva writes (Kiddusin 25b) that whenever we find that a particular mode of acquisition is not effective, the halacha is that it does not work even if the buyer and seller agree with each other to honor that method. It is as if they had agreed that their verbal agreement is binding, and the halacha is that it is not so.

Shach (C.M. 198:#10) writes that the words of Ritva are problematic with the ruling of Beis Yosef (ibid.) and Rema who say that movable objects are acquired with pulling them into one's possession (משיכה), if the buyer and seller agree that they wish the sale to be final based upon transfer of money, their mutual agreement is binding. This is difficult to understand, because our sages have nullified the validity of money to effect a sale, so how can the agreement of the parties validate it?

Machane Ephraim (Ma'os 1) and Sha'ar Mishpat (198:2) explain that Ritva means that a condition agreed upon has no validity when the parties agree to recognize a transaction which has no validity at all, for example מסירה in a private domain or משיכה in a public domain. However, money is a valid method of transfer, but the sages disallowed it for the benefit of the buyer. If he wishes to utilize it, this agreement can be recognized as valid. ■

# HALACHAH Highlight

## Selling chometz to a gentile

כר' יוחנן דאמר דבר תורה מעות קונות משיכה לא

Like R' Yochanan who maintains that according to the Torah money effects acquisition and meshicha does not

The Gemara presents a dispute regarding the correct method of performing a kinyan with a gentile. R' Yochanan and Ameimar maintain that a gentile only acquires with meshicha and giving money does not effect the transaction. Reish Lakish disagrees and asserts that it is only money that effects transactions and not meshicha. Rishonim also debate whether halacha follows R' Yochanan or Reish Lakish. Therefore, Rosh<sup>1</sup> writes that if one wants to sell an animal that will give birth to a firstborn animal to a gentile he should perform two proprietary acts, give money and meshicha in order to accommodate both opinions about the recognized means of selling movables to a gentile.

Teshuvos Mas'as Binyomin<sup>2</sup> notes that the same procedure should be followed when selling one's chometz to a gentile in order to avoid violating the prohibition of owning chometz on Pesach. Preferably the gentile should give money and perform meshicha to accommodate both opinions. However, בדיעבד one may rely on those opinions that maintain that just giving money is sufficient since that opinion represents the majority opinion. Chok Yaakov<sup>3</sup> asserts that the majority of Poskim disagree with Masais Binyomin and maintain that a transaction that only involves money is not effective. Nevertheless, if someone sold his chometz to a gentile and the only proprietary act was the transfer of money, the chometz is not prohibited after Pesach. His reason is that all that is required is for a person to demonstrate that he is not interested in owning the chometz on

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Abaye offers an explanation of this phrase.

This explanation is unsuccessfully challenged.

Ameimar's earlier statement that meshicha with a non-Jew effects acquisition is analyzed in light of the dispute between R' Yochanan and Reish Lakish whether money or meshicha acquires movables.

This discussion leads to a discussion of the prohibition against ona'ah as it relates to non-Jews and hekdesch.

R' Oshaya's earlier position that transactions involving non-Jews are effected with money is unsuccessfully challenged.

In the course of this discussion Abaye suggests an explanation of a Baraisa.

Rava successfully challenges this interpretation of the Baraisa and offers his own explanation of the Baraisa.

R' Ashi suggests another interpretation of the Baraisa.

Ravina offers one more explanation of this Baraisa. ■

Pesach. Once he has done so, even if the method is not recognized as a halachic transfer, nevertheless, it is sufficient to permit the chometz after Pesach. Mikor Chaim<sup>4</sup> disagrees because indicating that one does not want chometz is only sufficient as far as nullification is concerned but as far as effecting a transaction it is necessary to perform a halchically recognized kinyan. Nevertheless, he rules that since the prohibition against using chometz after Pesach is only Rabbinic one may be lenient and rely on the opinion who maintains that a proprietary act involving money is sufficient. ■

1. רא"ש פ"א סי' ב'.

2. שו"ת משאת בנימין סי' נ"ט.

3. חק יעקב סי' תמ"ח ס"ק י"ד.

4. מקור חיים שם סק"ה ד"ה שמוחץ. ■

# STORIES Off the Daf

## The Second Option

"מצות הפדיה קודמת למצות העריפה..."

The Arizal revealed that the totality of the mitzvos is incumbent on each and every Jew. "Every Jew is obligated to fulfill every mitzvah possible for him in order to rectify his soul. And he will have to return to this world to fulfill whatever he failed to carry out in this lifetime."

One chassid learned this and made it his creed. He worked as hard as he could to fulfill every mitzvah conceivable. Of course, he fulfilled the mitzvah to redeem

a firstborn donkey. When he learned the details of this mitzvah in depth he found that the Rambam rules that there are actually two distinct mitzvos one can do with a firstborn donkey: he can redeem the donkey with a sheep, or kill it by breaking the back of its neck. Since these mitzvos are listed as two different mitzvos, the chassid wondered if he should break the animal's neck to fulfill the mitzvah of arifah in addition to having done a pidyon.

When this question reached Rav Yaakov Moshe Hillel, shlit"א, he ruled that he need not do arifah. "From Bechoros 13 we find that it is preferable to redeem a donkey, not to break its neck. The Ram-

bam rules this way and the Radvaz adds that, l'chatchilah, one should redeem his donkey, not break its neck. The Chinuch explains that the killing of the animal is actually a fine: 'He didn't want to give the kohein a sheep to redeem his animal, so God decreed that he should break the creature's neck and that he may not even derive benefit from its carcass.'

Rav Hillel concluded, "Surely one need not act in an incorrect manner to fulfill a mitzvah בדיעבד! Will we then say that one who wishes to fulfill the Arizal's words should steal to fulfill the mitzvah of **והשיב את הגזילה**"? ■

1. קובץ מקבציאל, קוצץ גי' ע"י כ"יג ■

