

## OVERVIEW of the Daf

### 1) Leasing the rights of an idolater on Shabbos (cont.)

The Nehardeans presented an apparent contradiction to R' Yochanan's ruling permitting leasing rights from an idolater on Shabbos.

The Gemara explains that there is no contradiction.

R' Elazar questioned R' Yochanan's ruling but the Gemara does not record his challenge. R' Sheishes explains that the challenge was from a series of principles related to relinquishing rights in a chatzer taught by Shmuel. The Gemara accepts the challenge and R' Yochanan's lenient ruling is refuted.

R' Yosef stated that he was not familiar with the first of Shmuel's principles. Abaye reminded him that he taught the principle and cited the specific context in which it was taught.

### 2) Relinquishing rights from one chatzer to another and in a ruin

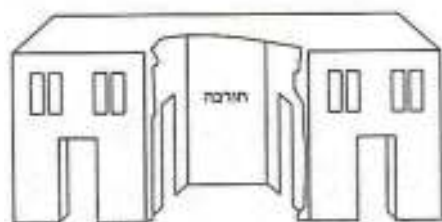
Shmuel and R' Yochanan disagree whether one may relinquish rights from one chatzer to another or in a ruin. The Gemara explains the necessity for them to disagree in two cases.

Abaye stated: Shmuel's ruling that one may not relinquish rights from one chatzer to another applies only when they are side by side but if they are one behind the other rights may be relinquished.

Rava disagrees and states that even when one chatzer is behind the other sometimes rights may be relinquished and other times not. Four different scenarios are presented and Rava begins to analyze the cases. ■

## Daf DIAGRAM

איך ביטול רשות פוזרי לחצור ואין ביטול רשות בחורבה



Shmuel ruled that if there are two houses on either side of a ruined building, the residents may not use the ruin unless they join in an eruv. Furthermore, if they failed to make an eruv, one of the residents may not relinquish his rights in the ruin to permit the other to carry. Although relinquishing one's rights is effective to permit carrying in a chatzer, in the case of a ruin it is ineffective. The reason is that Chazal only granted this leniency for a chatzer that is commonly used, but not for a ruin. ■

Today's Daf Digest is dedicated  
In memory of Davood Sasoon ben Itzhak  
and in memory of Rabbi Itzhak Kirzner  
on their yahrzeit, which is 26th of Tishrei

## Distinctive INSIGHT

### Issues regarding the giving of a gift on Shabbos

שיילו ליה לרבי יוחנן. אמר להן: יפה עשיתם ששכרתם

*They came and asked Rebbi Yochanan. He said to them that they had done well to lease the rights from the gentile on Shabbos.*

Tosafos (ד"ה יפה עשיתם שכרתם—השני) states that leasing the rights of a gentile on Shabbos may not be compared to transacting business which is forbidden on Shabbos, but rather it is considered as the giving of a gift being that it is done only to permit carrying.

Many Poskim comment upon this Tosafos. Shulchan Aruch HaRav (Orach Chaim 382:8) explains Tosafos' meaning. Being that the Jew leases the rights from the gentile without any intent of actually using the rights, but only to permit carrying, the act is seen as a gift and not as a business transaction where the interest is in using the purchased item. This view is shared by the Avodas HaGershuni (§25) who further derives from this Tosafos that one is permitted to give a gift on Shabbos. However, the Sha'ar HaMelech (Hilchos Yom Tov 6:9) rejects this assertion of the Avodas HaGershuni. He points out that our case is somewhat unique. The Jew is not giving the money to the gentile as a fully true gift; rather the gift is being proffered only in order to be able to permit carrying on Shabbos. Thus, the intent is purely for the Jew's benefit, and as such, it cannot be considered as a true gift to be forbidden on Shabbos. The Sha'ar HaMelech further supports this opinion by pointing out that in this manner the Mordechai can avoid contradicting himself, since here he writes similarly to the Tosafos, and yet is quoted by the Beis Yosef (Orach Chaim 527) as forbidding the giving of a gift on Shabbos even if no acquisition act is made because it is akin to transacting business. [See also: Meshiv Davar 1:27:3; Binyan Shlomo §17; Eretz Tzvi §88; Maharsham 1:164 and 8:6]. ■

## REVIEW and Remember

1. In what ways are the rules of leasing similar to the laws of joining an eruv?
2. How did R' Sheishes demonstrate that one may not lease rights from an idolater on Shabbos?
3. Why is it necessary for Shmuel and R' Yochanan to disagree concerning relinquishing rights in two separate cases?
4. Explain the dispute between Rava and Abaye.

# HALACHAH Highlight

## Giving gifts on Shabbos

אמר להן יפה עשיתם ששכרתם

Rabbi Yochanan told them, "It was a good thing you did that you leased the space from him."

The Gemara relates that a number of Amoraim spent Shabbos in an inn and on Shabbos the gentile owner of the property arrived. As a result, it was prohibited for them to carry in the enclosed yard. After some debate they decided that it was permitted to lease the land from the gentile, and when they retold what happened and their decision to R' Yochanan he agreed with their conclusion. Tosafos<sup>1</sup> questions the permissibility of leasing the land from the gentile when it is prohibited to engage in business transactions on Shabbos. He answered that since the purpose of the lease was merely to permit them to carry in the yard, it is considered the same as a gift. Later authorities disagree regarding the exact meaning of To-

safos's explanation and there are practical halachic differences between them.

Teshuvos Avodas HaGershuni<sup>2</sup> addressed the question of transferring ownership of an animal that is about to deliver a bechor in order to avoid the responsibility of caring for a bechor. In his analysis he writes that there is no issue of performing a transaction on Shabbos since the gentile does not give any money in order to acquire ownership of the mother. Even though the Jew will eventually do something for the gentile to show his appreciation, as long as he is not receiving anything on Shabbos and no mention is made that the Jew will give something to the gentile it does not violate the prohibition against making a business transaction on Shabbos since it is considered just a gift and it is permitted to give gifts on Shabbos. Magen Avrohom<sup>3</sup> in the name of Beis Yosef writes that it is prohibited to give gifts on Shabbos and Yom Tov since it appears as though one is engaged in a business transaction and it is only a gift given to fulfill a mitzvah that is permitted. ■

1. תוס' ד"ה יפה עשיתם – השני.

2. שו"ת עבודת הגרשוני סי' כ"ה.

3. מג"א סי' ש"ו ס"ק כ"ו. ■

## Gemara GEM

### Tefisas Yad

יפה עשיתם ששכרתם

Rabbi Yochanan tells the three Amoraim who came to an inn that they were correct in renting the right to carry from the innkeeper – so long as he had the right to evict the tenant (see above, 65b).

From The Contemporary Eiruv:

The Rashba (Avodas HaKodesh 4:3) writes: When a non-Jew rents his property to another non-Jew, if the owner retains the right to remove the tenant whenever he wants, then sechiras reshus may be done from the owner - even if he has not removed the tenant yet. There are two reasons why this is the halachah. One is that the sechiras reshus is itself a form of removal, and also, under such circumstances the owner is the primary authority. If, however, the owner cannot remove the tenant, then the sechiras reshus must be contracted with the tenant. It seems to me that if, however, the owner has some control over the property he has rented to the tenant, such as objects stored on that property, or even just the right to place

objects on the property, then one may even rent the right to carry from the owner, who is then no worse than the employee or agent of the tenant.

The ruling of the Rashba is codified as accepted practice in the Shulchan Aruch (382:18,19. See the Mishna Berura there, #60-64 and #75-77). Control of an owner over property through the placement of objects is known as "tefisas yad" (literally: under the control of one's hand).

Based on the principles that we find in these passages in the Avodas HaKodesh, Rabbi Moshe Feinstein rules that whenever a landlord owns objects in the tenants' apartments that the tenants may not remove without permission (refrigerators, stoves, etc.), one may contract the requisite sechiras reshus with the landlord, and each individual tenant does not have to be involved (Igros Moshe, Orach Chaim 1:141). This, in Reb Moshe's opinion, is true even if the tenant has rented the right to use the objects in question. The basis of this ruling, as the Rashba explained, is that through the ownership of the objects in each tenant's apartment, the owner retains some authority over the rented apartments. This enables the landlord to contract an umbrella sechi-

ras reshus for all the properties that the landlord owns.

We should note that other Poskim, most notably the Kovner Rav, Dvar Avraham 3:30 (who is not sure whether objects rented to the tenant still manifest the owner's control), the Chazon Ish, ibid., siman 92 (who assumes without question that rented objects do not manifest the owner's control), and the Chelkas Ya'akov 1:207 are not in agreement with Reb Moshe on this point. In fact, in reaching his conclusion, Reb Moshe differs with a Mishna Berura. Nevertheless, Reb Moshe's logic and evidence in this regard are very strong. Reb Moshe writes that objects of the types provided by the landlord to the tenant in our times are not completely at the disposal of the tenant. The tenant, for example, is not free to remove those objects from the premises without permission. Such restrictions that manifest the landlord's control constitute proper tefisas yad. It is possible that the Chazon Ish would accept this approach as well. The case discussed by the Chazon Ish is one in which the tenants may have had the right to reject and remove the objects in question. ■