



OVERVIEW of the Daf

1) Annulling a vow (cont.)

The Gemara continues its unsuccessful attempt to challenge R' Nachman's assertion that it is not necessary to specify the circumstances related to the original acceptance of the vow.

The ruling that public vows cannot be annulled is qualified.

2) Signing a וט

The Mishnah's statement that signing a וט is a rabbinic enactment is questioned since it is a Biblical requirement.

Rabbah answers that the Mishnah follows R' Elazar who maintains that Biblically there is no requirement for witnesses to sign a וט.

R' Yosef suggests that the Mishnah could even follow R' Meir.

The assertion that putting a mark rather than signing one's name to a document is unsuccessfully challenged.

3) Prosbol

The Mishnah in Shevi'is is cited that elaborates on the origin of the Prosbol.

The Gemara questions how Hillel could formulate an enactment that violates the Biblical command regarding the cancellation of loans.

Abaye explains that the enactment applies only in our times and according to Rabbi who maintains that shemittah is only a Rabbinic law.

Abaye further explains how the rabbis could enact that one is not obligated to repay a loan.

Rava offers another explanation how the rabbis could cancel a loan.

The Gemara inquires whether Hillel enacted the Prosbol for his generation or for all generations.

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REVIEW and Remember

1. Is it Biblically mandated that witnesses sign on a legal document?

2. Why did Hillel institute the Prosbol?

3. What allows Chazal to declare that a loan does not have to be repaid?

4. Is it necessary for the Prosbol to be written?

Distinctive INSIGHT

The enactment of Prosbol

פרוסבול אינו משמט. זה אחד מן הדברים שהתקין הלל הזקן

There are several approaches in the Rishonim to understand the nature of the Torah's rule that Shemitta cancels loans. One possibility is that the lender has an obligation to release the borrower from paying back the loan. Because this is a personal requirement for the lender, we would say that if he chooses to neglect his mitzvah, the loan remains in effect. Another approach is that the Torah is making a statement regarding the status of the financial markets. With the passing of Shemitta, the Torah nullifies all loans. This would mean that whether or not the lender wishes to comply with the Torah's rule, the loan has been cancelled. According to either explanation, there is still a negative commandment of **לא יגוש** (Devarim 15:2) for the lender not to pressure the borrower to pay back the loan.

Most Rishonim understand that the Shemitta cancels the loan in an objective manner. Accordingly, if the lender later attempts to collect the loan, not only is he in violation of the laws of Shemitta, but he also risks being in violation of theft (**שור"ת הרא"ש** and Minchas Chinush, 477:4).

The Yere'im (#164) holds that as long as the lender has not declared that he forgives the loan, the borrower still has an obligation to pay it back. He writes that in this case, the borrower should summon the lender to court, where the judges will formally implore the lender to declare the loan cancelled. This indicates that the Yere'im understands that the cancellation of loans is not a financial decree which the Torah issues, but rather a mitzvah incumbent upon the lender. The Acharonim point out, however, that there are several sources from which it is clear that this is an objective rule, and not a law which is presented to the lender to fulfill at his discretion.

The words of the Gemara suggest that Hillel instituted the device of Prosbol in order "to prevent people from going against that which the Torah says." This suggests that people saw that Shemitta was approaching, and they were afraid that they were not going to get their money back, so they stopped loaning money. This reluctance to loan is precisely what the Torah refers to as being "a lawless thought" (see Devarim 15:9). Yet, the Gemara (later, 37a) states that the enactment of Hillel was for the benefit of the rich as well as the poor. Rashi explains that Prosbol was designed for the "righteous wealthy people to be able to retrieve their loans." Rashi does not mention anything about ensuring that the evil ones would avoid being in violation of the Torah's warning not to be reluctant to lend.

Bach explains that, indeed, the rule was to protect the wonderful people who had lent money. The Mishnah on 34b just explains that since there were those who stopped lending, the righteous rich picked up the slack and had to lend extra. Because they were now in danger of losing large amounts of money, Hillel enacted the Prosbol. ■

HALACHAH Highlight

Eating kitnoyos on Pesach

אין בית דין יכול לבטל דברי בית דין חברו אלא אם כן גדול הימנו בחכמה ובמנין

One Beis Din does not have the authority to abolish the words of another Beis Din unless they are greater than the first in wisdom and in number

Although it is clear that according to the Gemara one is permitted to eat legumes (קטניות) on Pesach, nonetheless, Rema¹ remarks that the custom amongst Ashkenazim is to prohibit eating foods cooked with legumes on Pesach, and one should not deviate from this custom. Teshuvos Besamim Rosh² (attributed by some to Rosh) wrote very strongly against the practice of refraining from eating legumes on Pesach. He described the practice of prohibiting something that is explicitly permitted by the Gemara as strange (זרות). There is no known source that indicates that a Beis Din issued a decree prohibiting the consumption of legumes on Pesach. He claims that the origin of the practice is from a small group of Karaites who did not know the difference between bread made from grain and bread made from legumes.

Rav Yaakov Emden³ cited his father, the Chacham Tzvi, as stating that if had the authority he would abolish the custom. Rav Emden himself concludes his discussion of the matter by stating that he would like to share in the reward of the one who will succeed at abolishing the practice of refraining from legumes on Pesach and expresses the desire to join together with other Torah leaders for this great mitzvah. Rav Tzvi Hirsch Chayos⁴ opposed this sentiment and wrote that it is impossible to entertain the possibility of abolishing a cus-

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The practical difference between these two approaches is explained.

Two unsuccessful attempts are made to resolve this inquiry.

4) The term עולבנא

The Gemara inquires about the correct meaning of the term עולבנא.

It is demonstrated that the correct translation of the term is chutzpah.

A Baraisa that uses the term in this fashion is cited.

5) Prosbol (cont.)

The Gemara inquires about the meaning of the term Prosbol. ■

tom which was instituted by the Rishonim and became widespread amongst Ashkenazi Jewry. Chasam Sofer⁵ also wrote in strong terms that the custom to refrain from legumes on Pesach was instituted by earlier generations and no Beis Din, other than the Sanhedrin, has the authority to abolish the custom.

One question that arises related to this question is whether the custom can be set aside during a period of famine and hunger. Rav Chayos writes that even during a period of hunger there is no Beis Din that has the authority to abolish the custom of refraining from legumes during Pesach. Teshuvos Shoel U'meishiv⁶, however, permitted the consumption of legumes during a period of famine. ■

1. רמ"א או"ח סי' תנ"ג סע' א'
2. שו"ת בשמים ראש סי' שמ"ח
3. מור וקציעה סי' תנ"ג
4. בקונטרס מנחת קנאות אות ו'
5. שו"ת חת"ס או"ח סי' קכ"ב
6. שו"ת שואל ומשיב מהדור"ת ח"ד סי' קכ"ח ■

STORIES Off the Daf

Enforcing the Prosbol

עמד והתקין פרוזבל

We find on today's daf that Hillel instituted a Prosbol to enable the collection of loans made before or during Shmittah after the close of the seventh year.

Once, during the first day of Sukkos, Rav Nosson Adler, zt"l, the Chasam Sofer's mentor, instructed the gabBei not to call a kohen who was lenient regarding chadash in chutz l'aretz to the Torah,

since that is when we read about the prohibition of eating chadash. The Chasam Sofer paralleled this situation to one who collects loans and is not careful to write a Prosbol and Parshas R'ei, where we find the prohibition against a lender approaching his debtor after shmittah, since shmittah canceled the loan.¹

The Knesses Hagedolah, zt"l, on the other hand, would purposely call such a person to the Torah at that time to shame him into changing his ways. Only after the person stopped the forbidden behavior would they refrain from calling him to the Torah, so as not to remind

him of his earlier sins.²

The Ben Ish Chai, zt"l, would say that although one should be careful in this regard if able, it is not worthwhile to shame another in this manner since this will only sow hatred and jealousy and will be unlikely to do anything positive. This is especially true regarding the wealthy, many of whom violate this prohibition in our days. According to the Ben Ish Chai, it is better to just ignore the infraction if we can't avoid rebuking them in an obvious way.³ ■

1. שו"ת חת"ס או"ח סוף ס' ט"ו
2. שאו"ח סי' רפ"ב בהגהות הטור
3. רב פעלים חלק ב' (הל' או"ח) ס' י"א