



OVERVIEW of the Daf

1) Determining the status of an abandoned baby (cont.)

The Gemara continues to cite and clarify a Baraisa that was first brought to teach about the credibility of a midwife.

2) Testifying about a firstborn son

R' Nachman teaches that three people are believed, for limited periods of time, to testify that a baby boy is the firstborn son.

A Baraisa is cited that supports R' Nachman's statement.

3) Beduki

The meaning of the term beduki is explained.

The Gemara explains how Abba Shaul's use of the term beduki indicates a more stringent opinion than that of R' Gamliel.

4) MISHNAH: The Mishnah discusses those people who are prohibited from marrying into the congregation, and who they are permitted to marry.

5) Clarifying the Mishnah's first phrase

The Gemara questions who the Mishnah refers to when it states, "כל האסורין לבוא בקהל" - All those prohibited from entering the congregation..

After the Gemara rejects a number of possible explanations, R' Yehudah explains the meaning of the opening phrase of the Mishnah.

The Gemara clarifies R' Yehudah's explanation of the Mishnah.

Two successful challenges to R' Yehudah are presented and R' Nosson bar Hoshaya offers another explanation of the Mish-

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Today's Daf Digest is dedicated by Mr. and Mrs. Richard Ehrlich
 In loving memory of our grandmother
Julie Zohar Bat Rachel

REVIEW and Remember

1. What is שו"א דדיני?
2. What is the meaning of the term בדוקי?
3. Is a Kohen permitted to marry the daughter of converts?
4. What are the three opinions about the type of rela-

Distinctive INSIGHT

We trust the seller to say to whom he sold it

ונחזי זוזי ממאן נקט, לא צריכא דנקט מתרוייהו, ואמר חד מדעתא וחד בעל כרחי, ולא ידיע הי מדעתו והי לא מדעתו

A Baraisa had taught that when two people dispute who was the one who purchased an item, we can trust the seller who sold it to them to say which one of them was the actual buyer. However, this is only true as long as the item being sold is still in the hands of the seller. If, however, the item is not in his hands, he is not believed. The Gemara understood that the seller only took money from one of the buyers, which leads it to ask, "Let us see who is the one who paid for it!" The Gemara answers that we are speaking about a case where the seller took money from both people. From one he took the money willingly, and from the other he accepted money in a confused manner (בעל כרחי).

Several approaches are presented among the Rishonim to explain this discussion and the conclusion how the Gemara understands this case. We will study Rashi briefly.

Rashi understood that when the Baraisa said that the seller is no longer believed when the item is not in his hands, the Gemara asks that if he only accepted money from one, the seller should still be believed that the one who paid is the one who was the intended buyer. Ramban explains that Rashi holds that the credibility of the seller is based upon a rabbinic understanding that the seller is objectively trusted to identify the buyer, as the seller's responsibility is to know who must receive the item being sold. Even if he hands the object to one of two people, he will still remember clearly who the buyer is if only one paid for the item. The Gemara answers that we are speaking about a case where he accepted money from both, and he also handed the item over to two people. In this case, he is no longer in a position to resolve our doubt regarding who is the one and only true buyer.

Tosafos notes that according to Rashi, the text should read, "ולא ידיע—it is not known" who paid willingly, and not "ולא ידיע—and he does not know" who paid willingly. In other words, even if the seller claims to know who paid him willingly, the credibility of the seller as a single voice bears no special weight once he accepted money from both and after he handed over the item.

Ramban and Rashba hold that the seller should at least remain available as a single witness on the behalf of the one he claims is the true buyer. This would at least generate the need for an oath on the part of the other disputant. Tosafos R"l Hazaken says that the seller is not accepted even as a single witness at this point. Meiri explains that he is now a biased party, as he might have an interest to help the customer who might be more willing to let him keep the purchase money which was given. ■

HALACHAH Highlight

A father's credibility to identify his son

"יכיר" יכירנו לאחרים מכאן א"ר יהודה נאמן אדם לומר זה בני בכור
"He shall recognize," meaning he will identify him to others. From here R' Yehudah taught that a father is believed to declare, "This is my bechor."

Rambam¹ writes that a father is believed to identify someone as his son even if there was no presumption that he was the man's child. Furthermore, he may identify that person as his firstborn so that the child will collect a double portion of the father's estate. Ketzos Hachoshen² explains that the rationale behind this ruling is based on the exposition of the word **יכיר** that invests a father with the reliability to identify his son. Ketzos takes note of the fact that the Gemara in Kesubos (25b) seems inconsistent with the ruling of Rambam. The Gemara there states that a kohen is believed to identify his son even to the degree that the son is permitted to eat teruma. The basis of this ruling is that the father has the ability (**בידו**) to feed his son teruma. According to Rambam, the Gemara should not have offered as its explanation that the kohen has the ability to feed his son teruma; instead the Gemara should have explained that it is based on the exposition of the word **יכיר**. Rav Akiva Eiger³ cites another Gemara to present a similar challenge to Rambam. The Gemara Bava Basra (134b) teaches that if a man on his deathbed states that he has a son he is believed to exempt his wife from chalitzah. The reason we rely on his statement is that it is within his ability to divorce her which would also exempt her from chalitzah. Why did the Gemara make up a rationale why the father is believed rather than cite the exposition from the word **יכיר**?

nah.

After an unsuccessful challenge to R' Nosson bar Hoshaya the Gemara mounts two successful challenges to R' Nosson bar Hoshaya's explanation, and R' Nachman in the name of Rabbah bar Avuha offers an alternative explanation of the Mishnah.

This explanation is successfully challenged and Rava offers an alternative explanation.

This interpretation is unsuccessfully challenged.

6) The effect of cohabiting with someone who is genealogically unfit

A Baraisa discusses the effect of cohabiting with someone who is genealogically unfit. ■

Sefer Imrei Moshe⁴ answers that the exposition that allows a father to identify his son even when it was not previously known that this man had a son, is limited to inheritances, but regarding other matters a father is believed about his son only when it is known that he has a son. Therefore, the exposition of the word **יכיר** cannot be cited for the case of teruma or chalitzah, and the Gemara is forced to offer a different rationale why the father is believed. The reason to limit the exposition of the word **יכיר** to the case of inheritances, explains Rav Shach⁵, is that the father is the owner of his estate. Consequently, he has the ability to identify an heir even if it was not previously known that he had any heirs. ■

1. רמב"ם פ"ב מהל' נחלות הי"ד.
2. קצות החושן סי' רע"ז סק"ב.
3. שו"ת רעק"א קמא סי' ק"י ד"ה אולם.
4. ספר אמרי משה סי' י"א סק"ה.
5. אבי עזרי' ה"י יבום וחליצה פ"ג הי"ד. ■

STORIES Off the Daf

Situations of doubt

ודאין בספיקן וספיקן בודאן וספיקן בספיקן
אסור

A certain young woman told her husband that the baby she was carrying was not his. He chose to ignore her statement. Years later, the father began having doubts about what he had done. Who knows if his wife had told him the truth? He had no idea what to do. When he finally consulted with one person about this predicament, this person pointed out that a uncertain mamzer is even worse than a definite mamzer, since a person whose status is in doubt is pro-

hibited from marrying both a kosher person and a clear mamzer, as we find in Kiddushin 74. This person then suggested, "But why not have a DNA test done to verify if you are truly your daughter's father?"

The father went to speak with Rav Shraga Feivel Cohen, zt"l, about his predicament. The Rav pointed out that we find in Even Ha'ezer that the mother is definitely not believed to prohibit her child. He added, "But your question regarding if you should make a DNA test is an excellent one. I will consult with Rav Elyashiv, zt"l, and let you know his reply."

Rav Elyashiv ruled that the DNA test should not take place. He said, "In Even

Ha'ezer, we find that the mother is not believed to declare her child illegitimate, and the father is. Rabbi Akiva Eiger and the Tashbatz both wrote that the father is only believed if he is certain. If he is unsure, we presume that the child is kosher. Since years have gone by, the daughter has a chezkas kashrus and the father has no right to cast aspersions on this by testing the DNA. The Rashash learns from the Bertenoro and Rambam in Masseches Eduyos, that one should not reveal illegitimacy even with a foolproof test because of kavod habrios.¹ The same holds true in our case."² ■

1. אבל עיין בתוספות יו"ט בעדיות, פרק ח', משנה ז', שחולק על הרע"ב ורמב"ם שם
2. קובץ תשובות, חלק א', סימן קל"ה