

OVERVIEW of the Daf

1) Agency to commit a transgression (cont.)

The Gemara identifies two verses that qualify as שני כאחד according to the opinion of Bais Shammai.

Two alternative sources that one could appoint an agent for the transgression of slaughtering or selling a stolen animal are cited.

The Gemara asks for a source that one cannot appoint an agent for a transgression for the opinion which maintains that it is possible to generalize even when there are two verses that teach the same principle.

It is explained how the other opinion utilizes the exposition just cited.

Shammai the Elder is cited as ruling that there is agency to commit a transgression and the rationale behind that position is explained.

Two alternative explanations of Shammai the Elder's position are presented.

Rava qualifies the original version of Shammai the Elder's position.

2) Can an agent become a witness?

Rav and D'vei R' Shila disagree whether an agent can become a witness.

The rationales behind their respective opinions are explained.

Rav's position is unsuccessfully challenged.

The Gemara rules that an agent can become a witness.

Rava in the name of R' Nachman applies this ruling to three cases.

It is explained why it was necessary to issue the same ruling in three separate cases.

The ruling that relates to monetary matters is explained.

The Gemara explains how the case would be decided nowadays after Chazal introduced the possibility of taking a שבועת היסט.

3) Two hands retaining the right to acquire at the same time

A Mishnah in Gittin is cited that presents a dispute whether both a father and his daughter who is a na'arah have the right to accept her גט.

Reish Lakish asserts that the disagreement also applies for kiddushin, whereas R' Yochanan maintains that regarding kiddushin all opinions agree that it is the father's exclusive right.

R' Yosi bar R' Chanina offers an explanation for R' Yochanan's understanding of Rabanan.

The Gemara begins to challenge this explanation. ■

Distinctive INSIGHT

The role of the father to accept a גט for his daughter

נערה המאורסה היא ואביה מקבלין את גיטה

Our Mishnah taught that when a girl is a נערה, the father may arrange and accept kiddushin for her. The Mishnah in Gittin (64b) is cited where we find that during the period when a girl is a נערה, either she or the father can accept her גט. Rashi explains that the father's role in accepting a גט is only valid if the גט is given to terminate a state of אירוסין, while the girl is not yet married. However, once this man's daughter is married (נשואה), she has left her father's domain, and the father cannot receive the גט on her behalf anymore. In גליון הש"ס, Rabbi Akiva Eiger notes what seems to be a contradiction. In Yevamos (109a), Rashi (ד"ה קטנה) states that the father is the one who may accept the גט on her behalf if the girl is still a קטנה, even if she is married, while in his commentary to our Gemara, Rashi says that the father has no role to play after marriage, even for a קטנה.

Rabbi Akiva Eiger explains that we must say that Rashi only allows the father to accept a גט for his married daughter if she is still a קטנה, but not for a נערה. We must understand the words of Rashi in his commentary to our Gemara correctly, and when Rashi writes "אבל קטנה אביה ולא היא", he means to say that the father always maintains control for his minor daughter, even after she is married. It is only the נערה for which the father's role is relinquished with her marriage.

Pnei Yehoshua explains the rationale behind the distinction between נערה and קטנה. The halacha that the jurisdiction of the father ends once his daughter is married is learned from the verse regarding הפרת נדרים, the privilege of the father to annul a vow which his daughter pronounces, which ends with the girl's marriage. This lesson regarding a vow only applies to a נערה, as the vow of a קטנה has no validity. Therefore, we only have a source that marriage terminates the father's role in reference to a נערה, but not regarding a קטנה.

שו"ת הר"י (#47) points out that according to this approach in Rashi, it turns out that the father can arrange the marriage of his minor daughter, accept her גט, and still be in an authority position to arrange for her to marry again, yet the Gemara earlier (18b) stated clearly that the father may not arrange the marriage of his daughter once she is divorced from a previous marriage. ■

HALACHAH Highlight

Publishing a “thank you” to someone who lent money to publish a sefer

שלא מצינו בכל התורה כולה זה נהנה וזה מתחייב

We do not find in the entire Torah that one person benefits [from the sin] and the other is liable [for it.]

Rav Ovadiah Yosef¹ wondered whether it is permitted for someone who borrowed money to be able to publish his sefer to thank the lender at the beginning of the sefer. He began his research of the topic with a Gemara in Bava Metzia (75b). R' Shimon ben Yochai teaches that it is prohibited for a borrower to wish “Shalom” to his lender if that was not his practice before the loan. This is based on an exposition that teaches that even verbal interest - **ריבית דברים** - is prohibited. Seemingly, to thank a lender at the beginning of a sefer should be a violation of the prohibition against verbal interest. He then suggests that one could argue that it is permitted based on the principle that many achronim subscribe to, namely, that writing is not the same as speaking - **אין הכתיבה כדיבור**. If we were to adopt this position it would be permitted for the author to write a word of thanks in his sefer. The reason is that since he is not verbalizing the thanks it does not violate the prohibition against verbal interest. He rejects this approach, however, since many authorities maintain that writing is the same as speaking, consequently, the prohibition against verbal interest would be violated even if the thanks was expressed in writing.

Perhaps, suggests Rav Ovadia Yosef, there is room for leniency since it is the publisher who is printing the thanks rather than the author. Since it is the publisher printing the thanks we should be able to invoke the principle **עבירה לדבר עבירה**—there is no agency to commit a sin, and thus the transgression can not be

REVIEW and Remember

1. Which Navi maintains that one who sends someone to commit murder is liable for that murder?

2. Explain שליח נעשה עד.

3. Is it necessary to pay back a loan in the presence of witnesses?

4. What is the point of dispute between R' Yochanan and Reish Lakish?

linked to the author. Possible support for this approach can be found in the writings of Rashi² where he writes that it is permitted for the borrower to send interest to the lender through an agent. This approach, however, is flawed on two accounts. First of all, Darkei Moshe³ explains that even according to Rashi it is only permissible if the original loan was also done through an agent rather than directly between the lender and the borrower, which is not the case with the author. Furthermore, Poskim⁴ write, based on Ritva's commentary to our Gemara, that when the author pays money to the publisher to print the sefer he is considered the agent of the author and thus expressing thanks at the beginning of the sefer would constitute a transgression of the prohibition against verbal interest. ■

1. שו"ת יביע אומר ח"ד יו"ד סי' ט'.
2. שו"ת רש"י המובה במרדכי לפרק איזהו נשך סי' של"ח.
3. דרכי משה ליו"ד סי' ק"ס אות ז'.
4. קהלת יעקב (אלגאזי) בתוספת דרבנן מע' א' אות ה'. ■

STORIES Off the Daf

Proof of payment

"ומשתבע מלוה דלא שקיל ליה..."

A certain man borrowed a large sum of money from an elderly friend from out of town. Since the loan period had been set for a month, at the end of that time the borrower sent a messenger to repay the debt. The messenger traveled to the elderly gentleman and paid him the money, but he failed to take the loan document back as a proof of payment.

A few months later the elderly lender demanded his money. When the borrower claimed that the messenger had repaid the

loan, the elderly (and somewhat forgetful) lender claimed that he didn't remember this at all.

They set up a date for a din Torah and the worried borrower consulted with his inept messenger. The messenger consoled him, but he was worried. When they came before the beis din, the borrower immediately claimed that the messenger had paid the debt and demanded the elderly man swear.

"I will never swear for money. But I have a document that states that you owe me the money with witnesses who are willing to testify, so why must I swear?"

We learn from Kiddushin 43 that if a lender claims to have paid a loan and the lender claims he did not, both must swear. The messenger swears he paid the loan while

the lender swears that he did not receive the money. Here, the beis din was unsure whether this halachah also applies to a borrower who has a good document in hand.

When the Sha'arei Mishpat, zt"l, was consulted regarding this he ruled, "Ramban implies that if there is a loan document and the borrower is not challenged, he need not swear. However, if the borrower demands that the lender swear, he must do so. This is the same as anyone else with a document stating that he is owed money who must swear if the lender insists that the document was paid already or some other plausible claim."

Ultimately, the elderly man refused to swear and the lender was released.¹ ■

1. שערי משפט, סימן קכ"א, סי' י"א

