

## OVERVIEW of the Daf

### 1) Doing more than instructed (cont.)

The novelty of the Mishnah's ruling is explained.

2) **MISHNAH:** Additional cases of me'ilah through an agent are presented.

### 3) Clarifying the Mishnah

The novelty of the Mishnah is explained.

The Gemara questions how the principal could be liable when he appoints an agent incapable of being an agent, e.g. minor, deaf-mute, etc.

R' Elazar offers one explanation for the Mishnah.

R' Yochanan suggests an alternative explanation.

A contradiction between the Mishnah and a Baraisa is noted and resolved.

4) **MISHNAH:** The Mishnah discusses cases in which the agent deviates from the instructions he was given.

### 5) Clarifying the Mishnah

The Gemara infers from the Mishnah that if an agent does only half of what he was instructed he has nevertheless performed his agency.

This inference is rejected and the Gemara continues albeit unsuccessfully to prove its point.

R' Pappa clarifies a point in the Baraisa.

6) **MISHNAH:** The Mishnah distinguishes between a money changer and others with regards to me'ilah and then highlights other halachos that are unique to a moneychanger.

### 7) Clarifying the Mishnah

R' Dimi presents one version of an exchange between R' Yochanan and Reish Lakish that relates to our Mishnah.

Ravin presented another version of the exchange which begins with a contradiction between our Mishnah and a Baraisa. ■

## REVIEW and Remember

1. If one sends a child with hekdesch money to purchase something from a storekeeper, who has violated the prohibition of me'ilah?  
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2. What is the point of dispute between Tann Kamma and R' Yehudah?  
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3. When is a moneychanger permitted to use the money that was deposited by him?  
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4. If one sanctifies one of his two oxen, which one goes to the Beis HaMikdash?  
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## Distinctive INSIGHT

*Thoughts in one's mind are not admissible*

דברים שבלב אינם דברים

The Mishnah presented a case of someone who sent an agent to take money that was near the window and to buy him an item from the market. The agent did as he was told, but afterwards it became clear that instead of taking a pile of regular money, he took from a pile of consecrated money which was also near that same window. The halacha is that the one who sent him is guilty of me'ilah. The agent did as he was told, although the one who sent him may claim that it was not his intent for the agent to take the consecrated money. The Gemara begins its discussion by noting that the point of the Mishnah is to illustrate the rule that "thoughts in one's mind are not reckoned in halacha."

In his Commentary to the Mishnah, Rambam notes that although this rule is universal, our Mishnah teaches it in reference to me'ilah, where we might have said that thoughts in one's mind may be a factor when it involves trespass with consecrated items. Sefer Takanas Ezra also points out that me'ilah is a sin between man and God, and we might have said that one's intent might be considered as a leniency in regard to a sin against heaven. This is why the Mishnah illustrates that we do not regard the person's thoughts, and he is liable for me'ilah for having sent an agent who fulfilled his instructions.

The Rishonim cite several examples where we do, in fact, take a person's thoughts into consideration to reverse or cancel one's actions. In Kesubos (79a), a woman sold or gave her personal property away to others before marrying. The halacha recognizes that her intent is to conceal them from her new husband to minimize her assets so that he not take control of them when they marry. Therefore, the woman may later approach the buyers or receivers and demand that the property be returned, on the grounds that she did not sell them or give them willingly. Also in Bava Basra (146b) a person heard that his only son died, so he went and divided his estate among others. When he later hears that his son was really alive, the father may retrieve all of his assets which he gave away, because the halacha recognizes that he only gave the property away because he thought his son was gone.

The Rishonim explain that the rule is that one's thoughts are disregarded in halacha only when it is not

# HALACHAH Highlight

## The liability of an agent for me'ilah

זכר בעל הבית ולא נזכר שליח

If the principal realized but not the agent

The Gemara teaches that when a principal realizes that he sent an agent with hekdesch money but the agent is unaware that he has hekdesch money the agent is the one who violates the me'ilah prohibition. Rashi in Kiddushin<sup>1</sup> explains that once the principal realizes that he sent the agent with hekdesch money he is categorized as someone who intentionally misappropriated hekdesch funds and as such is exempt from bringing a korban. Since the principal is exempt, the agent becomes liable in accordance with the general principle of the Torah that there is no agency for a transgression and the agent is liable for the me'ilah transgression that he committed. In Chagigah, Rashi<sup>2</sup> offers a different explanation. There he writes that as soon as the principal realizes that he gave the agent hekdesch money we assume that he nullifies the agency. Accordingly, the "agent" is no longer acting as an agent; rather he is spending the hekdesch money on his own volition and therefore personally accountable for his transgression.

Ketzos HaChoshen<sup>3</sup> notes that Rashi's explanation in the Gemara in Kiddushin seems to refute a position adopted by Tosafos. Tosafos<sup>4</sup> writes that although generally the principle is that there is no agency for a transgression and the transgressor is liable rather than the one who sent him

(Insight...continued from page 1)

obvious or clear that this is what he might have been thinking at the time of the event. A person's claim that he was under a particular impression is not admissible. However, in the cases presented, it is objectively obvious that the person acted due to the circumstances which were present. In the words of Ritva (Kiddushin 50a), "a thought which was in a person's mind and in the mind of everyone else as well" is admissible. ■

to sin, if the agent is a shogeg we would say there is agency for a transgression and the one who sent him to commit the transgression is liable. The reason for the difference is that the rationale for the principle that there is no agency for a transgression is that we say to the agent that he should have known better than to listen to the principal rather than God. This does not apply when the agent was a shogeg. Accordingly since the rationale behind the principle does not apply the principle also does not apply and the principal is liable. In Rashi's explanation in the Gemara in Kiddushin the agent is liable even though he is a shogeg not realizing that the money is hekdesch. Tosafos must follow the explanation of Rashi to Chagigah that the reason the agent is liable is that the principal nullified his agency. Since he was not acting as another person's agent he is personally liable for the transgression. ■

1. רש"י קידושין נ. ד"ה שליח.

2. רש"י חגיגה י: ד"ה שליח.

3. קצות החושן סי' שמ"ח סק"ד.

4. תוס' קידושין מ"ב: ד"ה אמאי. ■

# STORIES Off the Daf

## Stipulations

שליח מעל

Today's daf discusses when a messenger makes an independent decision to misuse a consecrated object.

Although in our times people are often not careful with tevilas Ezra, many great authorities hold that doing so is very important even today.

One wealthy man was very careful in tevilas Ezra and tried to convince as many people as possible to be careful in this regard. When he donated a sef-

er Torah to a local shul, he did so on condition that the ba'al kri'ah at least immerse before reading each time. In this manner, he would be certain that his Torah would always be read in purity.

But the ba'al kri'ah soon complained. "The mikveh is very distant and I find it difficult to go before davening. I will try, but what if one time I simply do not manage it? Can't we read from this sefer Torah even if I didn't immerse?"

When they asked Rav Yosef Shalom Eliyashiv, zt"l, whether laining in this sefer Torah without immersing is misappropriation—and forbidden—he

ruled that this was not a simple question. "One who donated a sefer Torah on condition that the ba'al kri'ah immerse before laining might or might not have made his condition binding. If he simply said that the ba'al kri'ah should immerse before reading from the Torah, this is not a halachically valid stipulation and they can read even if the ba'al kri'ah did not immerse. But if the owner said something like, 'If the ba'al kri'ah reads without immersing, he is a thief,' or the like, the ba'al kri'ah is obligated to go to the mikveh first when necessary!" ■

1. וישמע משה, ע"ש ■

