

OVERVIEW of the Daf

1) Returning lost objects (cont.)

One of the two opinions regarding the case when it is permitted to return a lost object when there is a vow prohibiting benefit is unsuccessfully challenged.

A second version of the dispute between R' Ami and R' Assi, concerning the Mishnah's case, is recorded.

One of the two opinions is successfully challenged.

2) Sanctifying an ownerless object

Rava issues two rulings related to a person who sanctifies an ownerless object and then uses it for personal use.

R' Chiya bar Avin asked Rava about the halacha of one who prohibited his bread to another and then gave it to him as a gift.

R' Chiya bar Avin spells out the exact nature of his question.

Rava answered that it is obvious that the loaf is prohibited because the vow by default must refer to where the vower gives the loaf to his friend.

R' Chiya bar Avin rejected the proof and suggests an alternative application of the vow that could allow the vower to give the bread to his friend without a violation of the vow. ■

REVIEW and Remember

1. Explain the dispute between R' Ami and R' Assi (two ways).
2. What is done with property from which one may not benefit?
3. Is it possible to sanctify an ownerless loaf of bread?
4. Does a guest own the food that is placed before him?

Distinctive INSIGHT

Can חצר acquire something using the power of הקדש?

היתה לפניו ככר של הפקר ואמר ככר זו הקדש, נטלה לאכלה מעל לפי כולה, להורישה לבניו מעל לפי טובת הנאה שבה

Tosafos and Rashbam in Bava Basra (79a) write that חצר does not have the legal ability to acquire an object using the קנין of חצר. This is indicated from the Mishnah in Me'ilah (13a) where someone consecrated a pit, and it subsequently was filled with water. If anyone takes this water and benefits from it, he is not liable for מעילה, because הקדש does not automatically become the owner of the water which collected in its domain. These Rishonim explain that the reason for this is that the rule that חצר works is derived from the verse written about a thief (Shemos 22:3): "If the theft will be found (המצא) (במציא) in his hand (בידו)." This teaches us that a person's domain is considered an extension of his own hand, and anything which is placed in his property can become his. Therefore, הקדש which does not have "a hand" does not have this power of being able to acquire with חצר.

אלגזי questions this premise based upon the explanation of ר"ן to our Gemara. Here, a person finds a loaf which is ownerless, and he consecrates it for הקדש using the power of acquiring the loaf by its being within his four-cubit domain. We apparently see that using one's domain, or חצר, allows a person to obtain an object for הקדש. How would Rashbam and Tosafos understand this? Even if we were to say that the person in the middle is a civilian, and he indeed does have the power to utilize חצר, we are still faced with a question. This person is acquiring this object on the behalf of הקדש, and he is serving as an agent (זכיה מדין שליחות). If הקדש itself cannot use the power of חצר, its agent cannot use this function either, on its behalf. How, then, can this person acquire this object for הקדש using the four-cubit process?

The קצות החושן (200, #1) clarifies the process of חצר and whether a civilian can acquire an object for הקדש using his own power of חצר. Perhaps when we say that there is no rule of חצר for הקדש, this only means that when the object is physically situated in the domain of הקדש, that we do not recognize the power of חצר to help the transfer to occur. However, when the object is being acquired by a civilian who is using his power of חצר or of four-cubits, here the transaction does work, and the object can then become consecrated. On the other hand, we might say that there is no manner for חצר to work for

HALACHAH Highlight

Does the guest own the food that is served?

דאי אזמניה עלה

If the vower invited the subject of the vow to partake of it

Rema¹ rules that if a guest takes some of the food his host placed on the table and gave it to a woman for kiddushin, the kiddushin is valid since food taken by a guest becomes his property. Taz² challenges this ruling from Shulchan Aruch's³ ruling that a guest is not permitted to take some of the food that the host put out on the table and give it to the host's son or slave. Why then would a guest be able to take some of the food that is on the table and give it to a woman for kiddushin? In light of this question Taz rules that the kiddushin is in a state of uncertainty (ספק קידושין).

This contradiction gives rise to a significant debate about whether a guest acquires the food that is placed on the table before him. Teshuvos Chikrei Lev⁴, for example, writes that the matter is a dispute between Rishonim expounding upon our Gemara. Do we say that the guest becomes the owner of the food as soon as it is placed before him, or does he not become the owner until he actually lifts up the food (הגבהה)? Rav Shlomo Kluger⁵, the Chochmas Shlomo, writes that once the guest has eaten his fill (כדי שובעו) the leftovers revert back to the host because there is an assumption that the host only confers ownership to the portion that the

(Insight. Continued from page 1)

הקדש at all. The החושן קצות determines from the words of Rava in our Gemara that, in fact, a civilian can use his power of חצר or four-cubits to acquire a loaf on the behalf of הקדש. ■

guest will eat. If, however, the guest refrains from eating his fill, the leftovers of the portion he would have eaten remains his and he may use that to betroth a woman.

Rav Shmuel Halevi Vosner⁶, the Shevet Halevi, addressed the issue of whether guests at a Simcha are permitted to take home food or flowers when the simcha is over. Shevet Halevi ruled that it is akin to theft (סרך גול) to take leftovers from a simcha, except for the portion that one was given that he did not finish. The reason is that many times the leftovers are taken home by the host of the simcha and sometimes, in Eretz Yisroel, the host returns the uneaten leftovers and receives credit from the simcha hall for the uneaten portions. In the United States, however, where the leftovers are normally thrown away after the simcha it would be permitted for a guest to take home any portions that would otherwise be thrown away. ■

1. רמ"א אה"ע סי' כ"ח סע' י"ז
2. ט"ז שם
3. או"ח סי' ק"ע סע' י"ט
4. שו"ת חקרי לב חו"מ סי' קמ"ז
5. הגהות חכמתשלמה לאה"ע סי' כ"ח סע' י"ז
6. שו"ת שבט הלוי ח"ד סי' רכ"ה ■

STORIES Off the Daf

The presumptuous guest

לאפוקי דאי אזמניה עלה

A certain man attended a simchah. He remained a respectable amount of time and eventually stood up to go. As he left, he removed some plastic bags from his pocket and filled them with food from the buffet. A duly shocked fellow guest asked the man if he had permission to take food from the Ba'al Hasimchah.

"Not explicitly," the man replied.

"But what gives you the right to take his food?" asked the indignant one.

"What do you mean? The Ba'al Hasimcha did himself when he wrote on the invitation that my entire household is invited! Although they couldn't make it, I certainly have the right to bring them their portion."

The fellow guest was not so sure and asked if he had spoken with a Rav.

The man answered, "No. This seems to me to be an open-and-shut case. No need to bother a posek."

His fellow guest stated that he didn't think it was so simple and that he planned to ask.

Later, the second guest brought the question before his own posek, who responded, "I think this is definitely prohibited, but would prefer to ask Rav Vosner regarding this. I will ask and

get back to you."

Rav Vosner's replied, "It is forbidden. The invitation was not meant to be a meal voucher, just a nusach that permits one to bring his family."

Rav Vosner continued, "Although the Rishonim at the very end of Nedarim 34b discuss whether one who is a guest at his host's table acquires the portion in front of him, that is only when one is sitting down to eat! A guest who leaves the affair certainly has no right to take any food unless he is certain that it will be disposed of and will not be wanted or needed by any other guest or the Baal Simchah himself. The only exceptions are if he himself didn't eat or if he asked the Baal Simchah." ■

