

## OVERVIEW of the Daf

### 1) Uprooting Biblical laws to uphold Rabbinic decrees (cont.)

R' Chisda continues to offer proofs that Chazal have the ability to uproot Biblical law to uphold Rabbinic decrees.

At one point R' Yosi bar Chanina, answering on behalf of Rabbah, distinguished between passively uprooting Biblical law which is allowed and actively uprooting Biblical law which is not allowed.

R' Chisda suggests additional proofs to the principle that Chazal have the ability to uproot Biblical law to uphold Rabbinic decrees but all of them are refuted.

### 2) Identifying the sources of the Mishnah's rulings

The exposition that prohibits the husbands against becoming tamei is identified.

The reason neither husband acquires the lost objects she discovers is explained.

The reason neither husband acquires the wife's wages is explained.

The reason neither husband nullifies her vows is explained. ■

## REVIEW and Remember

1. Explain the dispute between Sumchus and Rabanan.  
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2. What affect does the tzitz have on korbanos?  
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3. Name two examples where all opinions agree that Chazal can suspend Biblical law to support a Rabbinic enactment?  
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4. Under what conditions is Beis Din authorized to administer lashes even though it is not Biblically mandated?  
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Today's Daf Digest is dedicated  
By Mr. and Mrs. Marc Brown  
In loving memory of their mother  
Helene Hannah Basha Brown o.b.m.

## Distinctive INSIGHT

### Passive lack of fulfillment of the mitzvah of tzitzis

השתא דשנית לן שב ואל תעשה לא מיעקר הוא כולהו נמי שב ואל תעשה

The Gemara is in the midst of the discussion whether the rabbis have the power to negate a Torah law to support a rabbinic ruling. For example, if the blood of an offering became טמא, it becomes invalid for the service. If a kohen takes it and knowingly sprinkles it (מוזיד), the Torah law is that the ציץ atones for its being used while impure. The rabbis, however, declared that this offering is not valid. We see that the rabbis can nullify the Torah law, here in order to penalize the kohen for unauthorized use of the impure blood.

Rabbi Yossi bar Chanina answers that the rabbis do not have the authority to require another offering to be brought, as the first one was technically acceptable. When we deemed the first offering invalid it was only in terms of eating the meat. Although eating the meat is fulfillment of a Torah law, the rabbis have the ability in this case to declare that we remain being passive and not eat it (שב ואל תעשה). Therefore, by declaring that the intentional act of the kohen has ruined the offering, the rabbis thereby instruct us to be passive and not fulfill the mitzvah of eating its meat. At this point, Rav Chida admits to Rabba that he was ready to ask many more questions, but this approach answers all of them. The rabbis can stop a Torah law by telling us to be passive.

Tosafos (ד"ה כולהו נמי) asks how the rabbis can rule not to place wool tzitzis (סדין) on a linen garment, due to their concern that one might inadvertently place tzitzis which are shaatnez on a nighttime garment. As a result of this rule, a person would wear a garment without tzitzis, which is an active situation of noncompliance with the Torah's requirement to place tzitzis upon one's garments.

In his answer, Tosafos establishes a tremendous fundamental understanding of the halacha of tzitzis. At the moment one is actually wrapping himself in a four-cornered garment, he is not yet obligated in tzitzis. Once the garment is wrapped around him, he is passive in his being clothed. If the rabbis exempted him from placing tzitzis in a four-cornered סדין, this is in the realm of שב ואל תעשה. While this approach helps to explain how the rabbis can rule not to place tzitzis on a linen garment, Tosafos notes that the mitzvah does, however, seem to begin at the moment we begin to wrap ourselves, as the bracha we recite when per-

# HALACHAH Highlight

## *Punishing when not mandated by the Torah*

שמעתי שבית דין מכין ועונשין שלא מן התורה

*I heard that Beis Din can administer lashes and punish when not mandated by the Torah*

A community appointed a group of people to oversee the conduct of its members, and included in their agreement they granted authority for this group to punish people, physically and monetarily, for transgressions. A member of the community violated an oath and was deserving of punishment, but the only witnesses in the case were his relatives. These relatives were reliable but the community was uncertain whether the testimony of relatives is acceptable for these cases since Biblically relatives are disqualified witnesses.

The Rashba<sup>1</sup> answered that this oversight committee is empowered to decide as they see fit on all matters. The restrictions concerning witnesses apply only to cases adjudicated in Beis Din that is deciding matters according to Biblical law, but a case that is being adjudicated outside of that context is not bound by the same rules and decisions can be rendered based on what their present conditions require. This must be so, argues Rashba, because otherwise, we would be faced with the untenable circumstance that transgressors would never face a consequence for their actions. Nowadays, Beis Din is not authorized to adjudicate cases involving a fine—דיני קנסות, and in order to administer lashes Biblical law

(Insight. Continued from page 1)

להתעטף בציצית

forming the mitzvah of tzitzis is Shaagas Aryeh (#32) resolves the question of Tosafos from a different angle. He explains that wearing a four-cornered garment without tzitzis is not a violation of a prohibition, but it is rather the neglect of an עשה. This is certainly a case of being passive. ■

requires two valid witnesses who gave a proper warning to the transgressor before he committed his transgression, which is rare. There must be, asserts Rashba, some mechanism to punish transgressors even though Biblically they are exempt.

Rabbeinu Yehudah the son of Rosh<sup>2</sup> also addressed this issue in a case of a litigant who attacked and inflicted bodily harm to one of the dayanim who ruled against him. Rabbeinu Yehudah responded that our Gemara teaches that Beis Din is authorized to punish perpetrators even more severely than the Torah would in order to create a deterrent to prevent others from repeating the same crime. Therefore, although he expressed hesitation about putting this person to death, he did support a very severe punishment for this assailant.

This halacha is cited in Shulchan Aruch<sup>3</sup> and he even allows Beis Din to administer lashes to a person who has a reputation of violating prohibitions of עריות as long as the rumor continues uninterrupted. ■

1. שו"ת הרשב"א ח"ד סי' שי"א
2. שו"ת זכרון יהודה לרבינו יהודה בן הרא"ש סי' ע"ט
3. שו"ע חר"מ סי' ב' ע"ג ■

# STORIES Off the Daf

## *Annulment and Mamzeirus*

ואפקעינהו רבן לקדושין

There was a woman whose husband went abroad. Two witnesses testified that they had seen her husband die. Within a year she remarried and subsequently had a son. Tragically, after several years, her husband returned. The witnesses admitted their mistake but this was no comfort to the poor woman who needed to divorce and whose child was a mamzer. The gedolim of the generation tried in vain to somehow invalidate the mamzerus of the unfortunate child. The Maharsham, ז"ל, raised the possibility of Rabbinically annulling the first marriage.

However, since he was not certain of permissibility of this, he concluded with the statement, “לא למעשה”—not to be relied upon practically.”

In Israel, there were certain dayanim that served on the Rabbinic court that wished to actually permit such children based on the above Maharsham. When Rav Shlomo Zalman Auerbach, ז"ל, heard this from certain other dayanim who wished to garner his support, he protested vehemently. “Why do we never find mention of annulment in similar cases? If this is really a viable option, why didn't the Chachamim have mercy on the poor women and children by annulling the original marriage?”

He concluded, “We see, then, that annulment is not an option unless there was an attack on a Jewish community

which created many such cases at once. (See Darkei Moshe, Even HaEzer #7) This is despite the terrible pain which, from a moral viewpoint, seems to indicate that annulment would be a very great mitzvah indeed. However, the Chachamim were Divinely inspired and understood that using annulment as a regular recourse would prove disastrous. It would degrade the sanctity of marriage in the eyes of the people. The moment they see annulments for such cases, they will feel that relationships outside of marriage are not so bad. After all, they will say, ‘So-and-so was a mamzer and the marriage was annulled...’ The Shitah Mekubetses (Kesuvos 3a) writes this quite clearly: ‘There has never been a way to purify a mamzer himself, and there never will be!’ ■