

## OVERVIEW of the Daf

### 1) A yevama accepting kiddushin (cont.)

Reish Lakish defends his explanation of the Mishnah.

### 2) Transferring something that has not yet entered the world

As a side note to the previous discussion it is noted that there is a dispute regarding R' Akiva's position concerning transferring something that has not yet entered the world.

R' Nachman bar Yitzchok presented a list of Rabbis who maintain that one may transfer something that has not yet entered this world and presents the source that each rabbi subscribes to that position.

### 3) Doing yibum on the testimony of one witness

R' Sheishes was asked whether yibum can be done based upon the testimony of a single witness.

The two sides of the inquiry are explained.

R' Shishes cites our Mishnah as proof that a single witness is believed to be able to do yibum.

According to a second version there was no question that a single witness is believed and the question presented to R' Sheishes was whether a single witness is believed to free a woman from her yibum obligation.

The two sides of the issue are explained. ■

## REVIEW and Remember

1. What is an effective means for a woman to prohibit the handiwork of her hands on her husband?
2. What are the "days" that one should fear Hashem?
3. What do the words "splintering cane" seen in a dream signify?
4. Is a woman permitted to remarry based on her own statement?

## Distinctive INSIGHT

*Transactions regarding items which are not yet in the world*  
 רב הונא כרב, ורב כרבי ינאי ורבי ינאי כרבי חייא, ורבי חייא כרבי וכו' כרבי עקיבא דאמר אדם מקנה דבר שלא בא לעולם

The Gemara brings an extended list of Amoraim and Tan-naim who all hold that a transaction can have an effect to acquire an item which is not yet existent—אדם מקנה דבר שלא בא לעולם. Nevertheless, the halacha in Shulchan Aruch (Choshen Mishpat 209:4) rules according to the opinion of Rav Nachman in our Gemara, that such a transaction is ineffective, and the seller may retract his approval for such a sale. For example, if a person sold his friend the fruit that will grow from his tree that coming year, even if a transaction was completed the seller may change his mind not only before the fruit grows, but even after it grows. The earlier transaction had nothing upon which to take hold, and it is non-binding.

The Gemara notes, however, that even Rav Nachman agrees that if the buyer has already collected some of the fruit and eaten it, we do not reverse that element of the transaction, even though it was originally made upon non-existent items. The question is, what is the legal significance of the transaction vis-à-vis this fruit which was already collected? If this transaction is meaningless, why should it be valid in regard to the fruit that was collected?

Rosh (to Bava Metzia 66b, #32) explains that this transaction derives its validity based upon מחילה—the owner surrenders his claim at this point, as the fruit is taken. Ketzos Hachoshen on Shulchan Aruch (ibid., #5) discusses the legal mechanics of this situation. Rosh understands the opinion of Rabeinu Tam to be that the seller wishes to be trusted, so he does not want to retract his approval of the sale regarding anything that was already collected. Rosh therefore concludes that because this hinges upon מחילה, this would only be valid regarding items of which the seller was aware. The Ketzos cites the Pri Chadash who understands that it is not dependent upon whether the seller was directly aware of the situation or not. Any case in which had the seller been able to retract his approval, but we know that he would not wish to do so, even if he does not consciously release his ownership of the items, as long as the circumstances are appropriate, can be interpreted as an automatic waiver of possession. The difference between these opinions would be in a case where the owner would certainly allow his object to be taken if he would realize what was happening, but he is unaware as of now.

The Ketzos himself points out that even if a person would certainly be מוחל if he would know the situation, it seems that it is critical that he actually be aware about the condition, or else we would have a problem of יאוש שלא מדעת. ■

## HALACHAH Highlight

### Appointing an agent to perform a mitzvah at a distant location

ד"ר ינאי הוה ליה אריסא דהוה מייתי ליה כנתא דפירי כל מעלי דשבתא

R' Yannai had a sharecropper who would bring him a basket of produce every Erev Shabbos

Tosafos<sup>1</sup> writes that the reason it is considered as if R' Yannai separated maaser from something "not yet in the world" – דבר שלא בא לעולם is that the produce belonged to the sharecropper rather than R' Yannai at the time he separated the maaser. The reason this must be the case is that if it belonged to R' Yannai it would not be considered something "not yet in the world" because the distance separating R' Yannai from his grain would not be a significant factor in these matters to consider it something "not yet in the world." Some Poskim thought to utilize this comment of Tosafos to draw a conclusion regarding a different question. R' Yonason Eibshutz<sup>2</sup>, the Kreisi U'pleisi, wrote that there were righteous people who sent money with emissaries of Eretz Yisroel to purchase animals on their behalf so that they could fulfill the mitzvos of ראשית הגז – giving to the kohen the first shearing and the זרוע ליחםם וקיבה – forearm, cheek and stomach of the

animal as priestly gifts. The mechanism that would allow this mitzvah to be fulfilled is that a person's agent is like himself and it is thus considered as if the people outside of Eretz Yisroel are fulfilling these mitzvos. Kreisi U'pleisi questioned the application of this principle because one is not able to appoint an agent to perform an act that the person himself could not perform and these people cannot fulfill these mitzvos due to the distance between themselves and Eretz Yisroel.

Those who supported the practice pointed to our Tosafos who comments that distance is not considered a significant factor in matters related to agency<sup>3</sup>. R' Ovadiah Yosef<sup>4</sup>, however, distinguishes between the two cases. In the case of maaser distance is not a factor because we say that if we could eliminate the distance and bring the produce to the owner he would be able to separate maaser himself, thus since he has the theoretical ability to separate the maaser himself he may appoint an agent as well. In the case of Kreisi U'pleisi eliminating the distance between the owner and his animal would not suffice since the mitzvah must be performed in Eretz Yisroel. Therefore, one cannot infer proof to the lenient position from our Tosafos. ■

1. תוס' ד"ה מייתי כנתא

2. כרתי ופליתי סי' ס"א סק"ה

3. ע' שו"ת יביע אומר ח"ו יו"ד סי' ל' סוף אות ב'

4. שו"ת יביע אומר הנ"ל ■

## STORIES Off the Daf

### The sanctity of Shabbos

למען תלמד ד לירא את ה' אלקיך כל הימים, אלו שבתות וימים טובים

Our Gemara teaches that the verse "So that you learn to fear Hashem your G-d all the days," refers to observing Shabbos and Yom Tov. Proper observance of Shabbos and Yom Tov demands extraordinary viras Shomayim.

The Chofetz Chaim, zt"l, was exceedingly careful never to violate the Shabbos in any way. Although he is often lenient in the Mishnah Berurah regarding his recommendations for the public, for himself he was always stringent.

Shabbos altered the Chofetz Chaim tangibly. Talmidim who saw him every day recounted that he would start to glow and seemed to be on a higher plane

every Shabbos. It is difficult to describe how much desecration of the Shabbos distressed him.

Once, the Chofetz Chaim received a letter that told of the establishment of a "Chevras Mishmeres Shabbos" in a certain city. When he read this, he burst into bitter tears.

Those around him were shocked. They asked, "Why cry? One should surely be pleased there are loyal Jews banding together to strengthen shemiras Shabbos!"

The Gadol explained, "If you saw a person go past a certain house, rest his eyes on it for a moment and say, 'I thank the Creator for making me whole with all my limbs!' You would immediately understand that the house is filled with handicapped people, and it must be some sort of a hospital or convalescent home.

When we see a chevrah for shemiras

Shabbos we know that the majority of people in the city are handicapped in their appreciation of Shabbos. That whole city is a hospital for mechalilei Shabbos!"

The Gadol would advise faithful Jews to encourage those who were weaker in their shemiras Shabbos just before Shabbos. Even the most diplomatically-worded rebuke offered on Shabbos itself would be more likely to fall on deaf ears, since one sin leads to another. Once a person has already profaned the sanctity of Shabbos, it will be that much harder for him to stop.

This is also why agents selling the Sefer Shemiras Halashon would always distribute them after davening. Since the potential buyers had just been engaged in the mitzvah of prayer, it would be that much easier for them to do the mitzvah of buying a sefer on shemiras halashon.

Mitzvah goreres mitzvah! ■

