

OVERVIEW of the Daf

1) A presence of all three transaction מעמד שלשתן (cont.)

R' Ashi offers another rationale for the ruling that מעמד שלשתן works to pay back loans.

This explanation is also rejected and Mar Zutra asserts that this is one of three Rabbinic enactments that does not have an obvious explanation.

The other two enactments are presented.

An incident related to מעמד שלשתן is recorded.

A second related incident is presented.

2) An agent to deliver money to a creditor

Rav and Shmuel disagree whether one who gives money to pay back a creditor is allowed to retract the agency. Rav holds that he may not whereas Shmuel holds that he may.

An explanation of the dispute is suggested.

This explanation is rejected in favor of an alternative explanation.

A Baraisa is cited that supports Rav's position.

A law mentioned in the Baraisa is clarified.

A related incident is presented that has two possible endings.

Another related incident is recorded.

3) "Take this" is like "Acquire" – הולך כזכי

Conflicting Beraisos are cited related to whether an agent who discovers that the intended recipient has died should return the money to the sender.

It is suggested that the dispute relates to whether the instruction, "take this – הולך" is equivalent to "acquire – זכי".

Three alternative explanations are offered by different Amoraim.

It is suggested that הולך כזכי is a matter of Tannaic dispute.

The suggestion is rejected and an alternative explanation for the Baraisa is suggested. ■

Distinctive INSIGHT

Rav Yosef retrieves the property of Rav Sheishes from Mechoza

רב ששת הוה ליה אשרתא דסרבלי במחוזא

Rashi explains that Rav Sheishes was owed money by some people in Mechoza, as payment for some clothing he had sold to them on credit. When Rav Yosef bar Chama was going to go to Mechoza, Rav Sheishes asked him to retrieve the money for him, and Rav Yosef agreed. Rav Yosef went, and collected the money. When the buyers asked Rav Yosef to accept responsibility for the money in case anything should happen to it on his way back home, Rav Yosef agreed, but he ultimately refused to make a formal transaction to accept responsibility. When he arrived home safely and told Rav Sheishes about what had transpired, Rav Sheishes told Rav Yosef that he had acted properly. He told Rav Yosef, "You did the correct thing. The borrowers are indebted to me, and they must take responsibility, not you."

Tosafos understands that the people in Mechoza owed Rav Sheishes some articles of clothing, and this is what Rav Yosef brought back for him. Accordingly, the people who gave him the clothing asked Rav Yosef to formally accept the clothing as a deposit (פקדון) and to be a guardsman (שומר), which he refused to do. The Achronim note that there is a subtle difference between two reading of the Gemara, and the approaches of Rashi and Tosafos seem to reflect these nuances. According to Rashi, Rav Sheishes affirmed that Rav Yosef was justified in not making a commitment, as it was not his responsibility "שפיר עבדת – You did the right thing. They are indebted to me as borrowers, not you." According to Tosafos, though, the response of Rav Sheishes was "You did the correct thing by not becoming indebted." The people of Mechoza were also not debtors of his, so Rav Sheishes did not emphasize that they were particularly responsible, but the emphasis was that Rav Yosef did not need to become a full שומר for an item which was not his.

As mentioned, Rashi understands that the people of Mechoza asked Rav Yosef to accept responsibility for any mishap which might occur along the way back. Although Rav Yosef agreed verbally, he did not formally accept this role with a קנין. The קצות החושן (291: #16) asks that we find that a unpaid watchman (שומר חנם) can commit himself to be responsible for mishaps (אונסין) even without a formal transaction. Why, then, was Rav Yosef asked to back up his verbal promise with a קנין? Furthermore, what did Rav Yosef gain by refusing to make a קנין, as he had already agreed verbally?

The קצות answers that the reason a שומר חנם agrees to additional commitments is in response to being afforded the trust of caring for an object. Here, however, Rav Yosef was not the real שומר, and the request for additional responsibility was not discussed at the moment the money or clothing was given to him. When they appealed to him later, his verbal acceptance was not binding. ■

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HALACHAH Highlight

Lying

אמרי ליה נקני מינך אמר להו איך

They [the residents of Mechoza] said to him [R' Yosef bar Chama], "Make a kinyan with us [to accept responsibility]." And he said, "Yes!"

The Gemara relates that R' Yosef bar Chama was asked to return some money that was owed to R' Sheishes. The debtors asked R' Yosef bar Chama to accept upon himself responsibility for the money that he was to transport and he agreed. When the time came to formally accept that responsibility he avoided the matter and never accepted responsibility for the money. Commentators question, how was it permitted for R' Yosef bar Chama to agree to make the requested transaction and not follow through? Rav Yaakov Emden² infers from this incident that it is permitted for a person to lie, when there is no alternative, to avoid an unwarranted financial loss. Darkei Choshen³ points to a Gemara in Nedarim (28a) as another proof to this principle. The Gemara there relates that if a tax collector is collecting additional funds without the authorization of the king it is permitted to deceive him to avoid paying the illegal tax.

The use of this principle is found in other areas as well. The Gemara in Berachos (55b) teaches that one who wishes to be saved from the harmful effects of the "evil eye - עין הרע" should declare, "I am from the descendants of Yosef - מזרעא דיוסף קאתינא." Although not every Jew is a descendant of Yosef, nonetheless, the Gemara allows a person to lie, observes

REVIEW and Remember

1. What is done with the property when a husband gifts his entire estate, during his lifetime, to his wife?
2. Explain הולך כזכי.
3. Why did R' Dostai encourage a group of ruffians to give R' Yosi ben Kippar a good beating?
4. What is the dispute between R' Elazar and Chachamim?

Darkei Choshen, in order to be safe. He then suggests that this may not be a definitive proof to the principle since over the course of centuries it is likely that everyone descends from Yosef in some way.

The author of Teshuvos Torah Lishmah signs his teshuvos with the name יחזקאל כחלי. It is known that it was Rav Yosef Chaim of Baghdad, the Ben Ish Chai, who authored the work and desired to hide his identity so that the Torah would be taught for its own sake. This seems to be another instance in which it is permitted to lie. This occurrence is also not a definitive proof to the principle since he does, in fact identify himself as the numerical value of יחזקאל כחל (224) is the same as his actual name יוסף חיים. ■

1. עי הגהות וחיידושים לר' יעקב עמדין שכתב דנקט לשון "איך" דיש לה ב' משמעות אי "כך" ובי "לא".
2. הגהות ר' יעקב עמדין הני"ל.
3. דרכי חושן ח"א עמ' שע"ה. ■

STORIES Off the Daf

The Unacceptable Match

"מצוה לקיים דברי המת..."

On today's daf we find that it is a mitzvah to fulfill the will of the deceased.

A certain man had a daughter of marriageable age. Although a young man from a wealthy family was willing to marry her even without any dowry, the young woman's father would not hear of it. "I absolutely forbid this match." The girl's father refused to entertain the proposition.

But when the father suddenly passed away, this possibility seemed more ap-

pealing than ever to the young woman's widowed mother. "Although I would like to do as my deceased husband requested, we don't have any money for a dowry. Should my daughter really refuse this excellent opportunity to marry without a dowry which may never come again?"

When this question reached the Machaneh Chaim, זת"ל, he responded, "To all appearances, there is no mitzvah for a woman to listen to what her husband told her once he is deceased. Even the daughter has no obligation to obey her father since the Rema rules that one need not listen to a parent regarding shidduchim.

He continued, "However, it's a bit

more complicated than it appears at first glance. It comes out of the words of the Chasam Sofer, זת"ל, that until a woman remarries she has a spiritual connection to her first husband and should listen to what he told her. In our case, the widow has not yet remarried so she should really listen to what her husband told her; we don't tell someone to sin for the benefit of another.

"The daughter is another matter, however. As I mentioned, the halachah is that regarding a shidduch a daughter need not listen to either parent. If she is interested in this young man, she may definitely agree to the shidduch!" ■

