

OVERVIEW of the Daf

1) Consecrating or declaring a slave ownerless (cont.)

The Gemara concludes the last challenge to Rabbah's ruling in the name of Rav that a slave goes free if his owner consecrates him.

It is suggested that the matter is subject to a Tannaic dispute.

This explanation is rejected in favor of another explanation of the dispute.

The second explanation is also rejected and a third explanation is offered.

It is suggested that another Tannaic dispute relates to this issue.

This suggestion is also rejected.

2) Declaring a slave ownerless

R' Yochanan's reaction to Rav's ruling that a slave goes free if he is declared ownerless is presented and analyzed.

A second version of the conversation is recorded.

R' Yochanan's ruling that a slave goes free if he is declared ownerless is repeated.

The ruling is challenged and after some debate the Gemara concludes that the challenge was successful.

3) The slaves of a convert who dies

R' Yaakov bar Idi in the name of R' Yehoshua ben Levi rules like Abba Shaul that if a convert dies his adult slaves go free and the minors belong to whoever takes possession of them.

R' Zeira asked R' Yaakov bar Idi whether he heard this ruling explicitly or whether it was drawn from an inference.

R' Zeira explains how one could draw this inference from another ruling of R' Yehoshua ben Levi.

When asked, R' Zeira explains why the inference is inaccurate.

R' Yaakov bar Idi answered that he heard the ruling explicitly.

R' Chiya bar Abba in the name of R' Yochanan stated that the halacha does not follow Abba Shaul's ruling.

R' Zeira asked R' Chiya bar Abba whether he heard this ruling explicitly or whether it was drawn from an inference and the rest of the conversation is the same as the previous exchange between R' Zeira and R' Yaakov bar Idi.

4) A slave who was declared ownerless

R' Yehoshua ben Levi reported that Rebbi declared that a slave that was declared ownerless has no ability to marry unless he receives an emancipation document.

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Distinctive INSIGHT

Abandoning (יאוש) and declaring as ownerless (הפקר)

אמר נתיאשתי מפלוני עבדי מהו?

Rashi explains that the terminology of "נתיאשתי" (abandoning) indicates a formal declaration on the part of the master to render the slave ownerless (הפקר). Tosafos, in Bava Kamma (66a, ד"ה כיון) says that abandoning something does not have the legal effect of making something ownerless. The commentators clarify that יאוש is not a formal transaction, but it is removal of one's control of the object. It does not declare anything about the object itself, but it rather a statement by the owner that he is lacking his rights of ownership. R' Shimon Shkop, in his Sha'arei Yosher (5:12), explains that when the owner thinks that he will no longer find his item, he realizes that he will not lose if someone else now benefits from his object. Due to this helplessness, he no longer cares that anyone who finds it or has it will use it. In fact, at that point, anyone who finds it may take it for his own. Accordingly, if someone finds that object before the owner arrives at this realization, the finder may not keep it. If, however, someone finds it after יאוש, the item is available to be possessed.

Tosafos asks that earlier (38b) that Shmuel holds because we know that an owner who declared that he is abandoning his slave (אומר נתיאשתי) need not give the slave a שטר שחרור, we therefore say that when a master declares his slave ownerless (הפקר), this slave also does not need to have a שטר שחרור. This suggests that these legal situations are synonymous. Tosafos explains that these two mechanisms are, in fact, distinct. However, the lesson of Shmuel is simply that both הפקר and יאוש share in common that an owner loses the ability to subjugate his servant, and the servant no longer needs to procure his שטר שחרור. ■

REVIEW and Remember

1. What is the point of dispute about the prohibition of me'ilah when one consecrates a slave?
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2. What happens to the slaves of a convert who dies?
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3. Why, according to Rebbi, is it necessary for a slave that was declared ownerless to receive an emancipation document?
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4. What is the dispute between Rebbi and R' Shimon?
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HALACHAH Highlight

The marital status of an ownerless slave

אומר אני אין לו תקנה אלא בשטר

I maintain that there is no remedy unless he receives an emancipation document

There is a disagreement between Rashi¹ and Tosafos² regarding the slave who was declared ownerless (הפקר) but did not receive an emancipation document. Rashi maintains that he is not permitted to marry a free woman or a slave. Since he is partially free and partially still enslaved we apply to him the stringencies of both categories. Tosafos, on the other hand, rejects this explanation and writes that the slave who was declared ownerless may not marry a free woman, since he did not yet receive an emancipation document but he remains permitted to a slave (or mamzer) since his status as far as marrying a maidservant is concerned hasn't changed.

This disagreement plays a major role in the difficult question of whether there is a way for a mamzer to marry and have children that are not mamzerim. Shulchan Aruch³ rules that a mamzer is permitted to marry a maidservant and once the children are freed they become Jews without the stigma of being mamzerim. Teshuvos Minchas Yitzchok⁴ cites a discussion amongst earlier authorities about the status of a non-Jewish slave after the government outlaws slavery. Many Poskim assume that the result of the government outlawing slavery is similar to a slave owner declaring his slave as ownerless without giving him an emancipation document. Accordingly, Teshuvos Haradvaz⁵ writes that when a maidservant is declared ownerless she acquires herself but she remains a slave in the

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This ruling is unsuccessfully challenged.

It is explained that Rebbi's position is at odds with R' Shimon.

R' Nachman is cited as ruling like R' Shimon whereas R' Yochanan is cited as ruling against R' Shimon.

An incident that relates to different opinions about the halacha of this matter is presented.

A series of Amoraim ruled like R' Shimon but the Gemara rules against R' Shimon.

5) A slave who marries a free woman

Rebbi is cited as ruling that a slave who marries a free woman in his owner's presence goes free. ■

sense that she is not permitted to marry a free man since she never received an emancipation document. On the other hand she remains permitted to marry a mamzer, the children will be hers and she has the authority to free them from slavery so that they should be permitted to marry into Klal Yisroel. This approach will work according to the earlier mentioned Tosafos who writes that a slave that was declared ownerless remains permitted to marry a mamzer. According to Rashi who maintains that a slave declared ownerless is prohibited to marry either a maidservant or a free woman, the maidservant in our case would not be permitted to marry a mamzer in order to assist in making his children permitted to marry into Klal Yisroel. ■

1. רש"י ל"ט: ד"ה אין לו תקנה.

2. תוס' מ. ד"ה אותו העבד.

3. שו"ע אה"ע סי' ד' סעי' כ'.

4. שו"ת מנחת יצחק ח"ה סי' מ"ח.

5. שו"ת הרדב"ז ח"ב סי' תקצ"ח. ■

STORIES Off the Daf

Consecrating Oneself

"וכן הוא שהקדיש את עצמו..."

In a certain town there was a plague that affected all the residents equally, both Jewish and non-Jewish. One young man lost his father in this plague and he himself fell ill. He was on the brink of death when he vowed to give a quarter of his very self to hekdesh if he only survived the epidemic.

He did survive but was left very weak and suffered chronically from many ailments. Since he was very poor he could

not do what he viewed as his obligation—to travel to Yerushalayim and sanctify a quarter of his time to holy endeavors. He was hardly able to make ends meet, let alone pay his trip. Besides, he simply didn't have the strength to make the grueling trip to Yerushalayim. But he attributed his ailments to failing to fulfill his vow. He asked the Ralbach, zt"l, if there was some way to fulfill his vow daily and locally instead of actually going to Yerushalayim?

The Ralbach replied, "You would not need to go to Yerushalayim even if you were healthy. We see this in Gittin 39 where the Gemara states that one who was makdish himself works and eats

since he sanctified his value. This is clear from the Rambam as well: 'One who sanctifies himself only owes money. He may work and eat, since sanctifying himself does not make his actual body a slave to hekdesh.' To fulfill your duty, you must evaluate how much you are worth as a slave and pay the entire sum to tzedakah—in your case, it would have been impossible to really consecrate 'a quarter' of yourself. When discussing a human being, the quarter is tantamount to the whole, since you couldn't survive without a quarter of yourself!" ■

¹שו"ת המרלבה, סימן ג'

