

OVERVIEW of the Daf

1) Sanctifying an ownerless object (cont.)

Rava's position that one who was prohibited by virtue of a vow may not benefit from a loaf even after it was given to him as a gift is unsuccessfully challenged.

R' Ashi finds support for Rava's response in the language of a previously-cited Baraisa.

2) Does a violation of one's konam vow also constitute meilah?

Rava asked R' Nachman whether one who violates his konam vow is in violation of meilah in addition to violating his vow.

R' Nachman demonstrates that a violation of a konam vow also violates the prohibition of meilah.

The Gemara cites a dispute between Tannaim about this matter.

R' Ashi was asked about the halacha of the following case: A person declared his loaf prohibited to his friend and then gave it to him as a gift, who violated the prohibition of meilah, the giver or the recipient?

R' Ashi asserts that it is the recipient who commits meilah when he makes personal use of the loaf.

3) **MISHNAH:** The Mishnah continues to enumerate actions that one is permitted to perform for his friend who may not benefit from his property.

4) Kohanim

The Gemara inquires whether kohanim who perform the service in the Beis Hamikdash are our agents or agents of Hashem.

The practical difference between these two approaches is explained.

An unsuccessful attempt is made to resolve this inquiry.

The refutation is unsuccessfully challenged. ■

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By Mr. and Mrs. Howard Geller
In loving memory of their mother
מרת חנה בת ר' יעקב מאיר, ע"ה

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Distinctive INSIGHT

The nature of benefiting from a קונם

אימר ליה תניתוה—מקום שנוטלין עליה שבר תיפול הנאה להקדש, למימרא כי הקדש

The Gemara had presented a question whether an object declared as a קונם has the sanctity of a קרבן and that the law of מעילה should apply, or is a קונם simply a name we give to an object which is declared as prohibited to someone just like a קרבן, and that מעילה would not apply.

Rav Nachman proves to Rava from our Mishnah that there is a condition of מעילה for a קונם. We learned that if Reuven declares that he may not provide benefit to Shimon, it is still permitted for Reuven to return to Shimon an object which he lost, and which Reuven found. The Mishnah added that if the conditions were such that one who returns a lost object was to receive money upon completing this mitzvah, then Shimon must take the reward money and give it as a gift to the Beis Hamikdash. If Reuven would return it for free, this would result in Shimon receiving benefit from Reuven, which is prohibited in this case. (See Distinctive Insight to Daf Digest for Nedarim 33 for a full explanation of this halacha). Because the Mishnah insists that the money be given to the Beis Hamikdash, we see that the prohibited benefit has some aspect of being the property of the holy, and consequently, מעילה should apply.

ר"ן explains that the proof is based upon the wording of the Mishnah which states that the money should be "given to the Beis Hamikdash," and it does not say that "the money should be cast into the Dead Sea." The typical expression used in a Mishnah when something is prohibited from benefit is that it should be "cast into the ים המלך". It must be, he notes, that the nature of קונמות is not simply that it is prohibited from benefit, but that it assumes some aspects of an actual קרבן, and that מעילה applies. The truth is, however, that Shimon may take the money and destroy it by tossing it into the ים המלך, as long as he derives no benefit from it, but the manner in which the Mishnah teaches this halacha is designed to teach us this added insight.

Rosh, however, explains that the fact the Mishnah recommends that the money be given to the Beis Hamikdash teaches that Shimon may not destroy the money. The nature of a קונם is that it assumes the status of a קרבן and they are the actual property of the holy. This, then, is the proof of Rav Nachman that מעילה applies, as the item is owned by הקדש.

קובץ הערות explains that ר"ן and Rosh argue about the basic nature of the sin of מעילה. Rosh holds that it is due to one's stealing from הקדש. Therefore, he explains that the question of our Gemara was whether the object is owned by הקדש. ר"ן understands that מעילה is prohibited due to one's benefiting from הקדש, or its equivalent (א קונם). ■

HALACHAH Highlight

Teaching Torah to someone who may not benefit from you ומלמדו מדרש הלכות ואגדות אבל לא ילמדנו מקרא

You may teach him Midrash, halachos and aggados but you may not teach him scripture

The Mishnah teaches that amongst the different activities that one is permitted to perform for a person who may not benefit from you is to teach him Torah. This halacha, however, does not apply to all areas of Torah. The Mishnah draws a distinction between the teaching of scripture (מקרא), which is prohibited and the teaching of the oral law, which is permitted. The reason¹ teaching scripture is prohibited is that halacha allows a person to receive payment for teaching scripture, thus if one teaches and does not charge for the lesson he is providing the student with a benefit, i.e. the money he saved by not paying tuition. In contrast, since one is not permitted to charge money for teaching oral law, when one teaches the person who may not benefit from you he has not benefited in a monetary way so the vow has not been violated. Shulchan Aruch² adds that nowadays that it is permitted to charge even for the teaching of oral law it would be prohibited to teach any Torah to someone who may not benefit from you.

Shulchan Aruch³ rules that even regarding the portions of Torah that one is permitted to teach it is prohibited for the subject of the vow to ask to be taught Torah. The reason, explains Aruch Hashulchan⁴, is that when one complies with a request to teach Torah one is acting as the agent (שליח) of the other and

REVIEW and Remember

1. Explain the inquiry: יש מעילה בקונמות או לא
2. How does R' Ashi demonstrate that the recipient of a forbidden loaf violates meilah when he uses it?
3. What is the practical difference whether kohanim are our agents or Hashem's agents?
4. What does the phrase זאת תורת היולדת teach?

that itself is a benefit. Rema⁵ cites dissenting opinions who maintain that it is permitted to ask to be taught Torah. The rationale for the lenient position, suggests Aruch Hashulchan⁶, is that mitzvos were not designed to provide physical benefit (מצות לא ליהנות ניתנו) and thus teaching Torah, even when asked, is not in violation of the vow. Aruch Hashulchan⁷ adds that it is certainly prohibited to teach someone who may not benefit from you secular studies or a trade since one is certainly permitted to charge for these activities. ■

1. שו"ע יו"ד סי' רכ"א סע' ב'
2. שו"ע שם
3. שו"ע שם
4. ערוה"ש שם סע' כ"ה
5. רמ"א שם
6. ערוה"ש שם
7. ערוה"ש שם ■

STORIES Off the Daf

The partners

באיסורא לא ניחא לי

There were once two friends who were moderately successful in business and worked well together as a team. They agreed to split everything that came their way while doing skilled labor or business. Even any loss or damage incurred while trying to make a profit would be split by both partners regardless of who inflicted the actual damage or loss.

Unfortunately, one of the partners was unscrupulous and stole an expensive object from a wealthy member of the community. He was caught while making

his getaway and received a thrashing and some of his property was damaged.

The would-be thief tried to collect half the cost of the damages from his partner but met with very strong opposition. His partner was horrified that he had attempted to rob and refused to pay him a penny. "You cannot designate someone to be your legal emissary when it comes to sin," was his constant refrain.

This strange question was brought before the Rashba. "Although their agreement was definitely binding, in this particular case the partner need not pay. First of all, stealing and robbery were most likely not included in their deal. It seems more than likely that the innocent partner never meant to make a pact with this devil if he had known the mischief he had in mind. Secondly, their agree-

ment explicitly stated, 'while engaged in skilled labor or business.' Finally, even if he sent him to steal, the general rule is: 'אין שליח לדשן עבירה'!

The Rashba concluded, "Nedarim 35a discusses one who pronounced a ban against the enjoyment of a loaf upon another person, according to the opinion that there is me'ilah on konamos. If the person unaffected by this ban went and gave the loaf to the man upon whom the konam was pronounced, how could he transgress me'ilah? Since he didn't know the loaf was prohibited to him he can say, 'I only wished to acquire what is permitted not what is prohibited.' The innocent partner can say the very same thing. 'I only wanted to make the partnership for the permitted not the forbidden!' ■

