

This month's Daf Digest is dedicated in memory of
Mrs Yenta Weiss, Rivke Yenta bas Asher Anshel & Yosef ben Chaim Hacoheh Weiss
By Mr. and Mrs. Manny Weiss

OVERVIEW of the Daf

1) **MISHNAH:** The Mishnah discusses different cases where two people claim ownership of the same item and the halachic outcome of those claims.

2) Clarifying the Mishnah

The apparent repetition of the claims, "I found it" and "It is all mine" is questioned.

After suggesting and rejecting a number of possible explanation the Gemara concludes that "I found it" refers to a case of a found object whereas the claim "It is all mine" refers to a case of buying and selling.

The necessity for the Mishnah to address these two cases separately is explained.

The circumstances of uncertainty for the case of buying and selling are further clarified.

3) Identifying the author of the Mishnah

It is noted that the Mishnah does not follow Ben Nannas who opposes imposing oaths when one of them will be a lie.

It is explained how the Mishnah could even follow Ben Nannas.

The Gemara observes that the Mishnah does not follow Sumchus who holds that money that is in doubt is divided between the two parties.

In response the Gemara notes that the Mishnah could not follow Rabanan either.

The Gemara explains how the Mishnah could follow Rabanan but seemingly can not be resolved with Sumchus.

A suggestion is made that resolves the Mishnah with Sum-

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REVIEW and Remember

1. How is a talis divided if one person claims the entire talis and the other claims half the talis?

2. Does a Tanna use Biblical language or common language?

3. Why was it necessary for the Tanna to address a case of a found object as well as a case of a sale?

4. Why did the Gemara think the Mishnah was not consistent with Sumchus?

Distinctive INSIGHT

Contrasting the law in our Mishnah with the opinion of בן ננס

דאי בן ננס האמר כיצד אלו ואלו באין לידי שבועת שוא וכו'

The ruling in our Mishnah is that each of the litigants receives half of the disputed garment after each is administered an oath. Our Gemara notes that this does not reflect the opinion of Ben Nannas, who appears in a Mishnah in Shevuos (45a). The case there is where a homeowner sent his worker to a store where he had a line of credit, and he instructed the storekeeper to pay the worker. Later, the store owner claimed that he paid, and the worker claimed that he never received the wages. Tanna Kamma rules that the worker and the store owner can take an oath that they are owed their money, and the home owner must pay both. Ben Nannas disagrees and he says that "we cannot allow this one and that one to come and take false oaths. Rather, each collects without having to swear." We see, says our Gemara, that money in doubt is not allowed to be subject to possible false oaths, which seems in contrast to our Mishnah where we allow both parties to swear.

The Gemara finally resolves this issue, noting that Ben Nannas could, in fact, be the author of our Mishnah. The differences between the cases warrant an oath in one but not the other.

Ritva comments that although the halacha does not follow the opinion of Ben Nannas, our Gemara analyzes whether our Mishnah could be understood according to all opinions. צ"ח explains that our Gemara pursues whether Ben Nannas could be the author of our Mishnah because Rebbe, who redacted the Mishnah, holds according to Ben Nannas in Shevuos (47b).

The Gemara first analyzes whether Ben Nannas could be the author of our Mishnah, although the opinion of Ben Nannas only appears in a different Massechta, before it discusses (on 3a) whether R' Yose is compatible with our Mishnah, even though R' Yose's opinion is found in a Mishnah in this Massechta (37a). The reason for this preference is that the parallel to the law of Sumchos is clear, as the contrast whether an oath is administered in this type of case is compared. The comparison to the law of R' Yose, however, is less obvious, as it refers to the case in our Mishnah of a purchase (מקח וממכר), which does not appear explicitly in our Mishnah. ■

HALACHAH Highlight

Who leads davening, a son or a grandson?

זה אומר כולה שלי וזה אומר חציה שלי

This one says, "It is all mine" and this one says, "It is half mine."

Magen Avrohom¹ cites a teshuvah of Rema in which he writes that a grandchild should recite kaddish for his deceased grandfather since a grandchild is obligated to honor his grandparents. However, if there is someone else who is mourning a parent in shul the child is given the privilege to recite two of the kaddishes and the grandchild will recite only one kaddish. Accordingly, Teshuvah Lehoros Nosson² wrote that if a man is unable to serve as sh'liach tzibbur he has the right to send his son, the deceased's grandson, to lead the services and if there is a conflict with another mourner the one mourning for his parent will lead the services or recite two-thirds of the time and the grandson will have the rights to the remaining one-third of the time.

Teshuvah Lehoros Nosson challenges this conclusion from a ruling of Teshuvah Binyomin Ze'ev. Binyomin Ze'ev³ writes that any person, even someone who is not even related, who is saying kaddish as the agent of mourner has all the rights of the mourner since an agent is like the person himself and thus, other mourners cannot deny the agent the right to lead services or recite kaddish. Based on this, one could argue that although a grandchild only has the right to claim one-third of the available privileges, if he is acting as the agent of his father he should command the same rights as his father and the grandchild and the other mourn-

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er should split everything equally.

The Gemara further explains how the Mishnah could even be consistent with Rabbah bar R' Huna's understanding of the view of Sumchus.

The rationale of this explanation is challenged. ■

er should split everything equally.

To resolve this matter he cites our Mishnah that discusses a case where two people are grasping a talis, one claims it is entirely his and the other claims that he owns half of it. The Mishnah rules that the one claiming exclusive ownership will get three-quarters and the one claiming half will get one-quarter of the talis. Rashi⁴ explains that since everyone agrees that half belongs to the one claiming exclusive rights, only half of the talis is under dispute and thus the two parties will split that part that is under dispute. Here also since a grandchild recognizes that the mourner has a claim to everything whereas he, the grandchild, can only claim a percentage of that privilege some of those rights go automatically to the mourner and the grandchild and mourner should split the percentage that is under dispute. However, since Teshuvah Binyomin Ze'ev maintains that as a representative of the mourner he has all the rights of his father a compromise should be reached with the grandchild being given a portion slightly less than the half. ■

1. מג"א סי' קל"ב סק"ב

2. שו"ת להורות נתן ח"א סי' א'

3. שו"ת בנימין זאב סי' ר"א

4. רש"י ד"ה וזה אומר חציה שלי ■

STORIES Off the Daf

Minor details

לימא מתנ' דלא כסומכוס

Two young bochurim set up a chavrusah in Yeshivas Volozhin. One was filled with a deep-seated love for Torah and the other was indifferent. He wondered what the gemara in Bava Metzia would teach him that could be applied to his life.

As they learned through the mishnah, the less interested of the pair felt more and more dissatisfied, until when they finally reached, לימא מתנ' דלא כסומכוס the dissatisfied bochur blew up. "What do I care whether our Mishnah is like Sumchus or not? What relevance does this have to my personal life?" At that moment he decided to give up yeshiva and seek his for-

tune in the real world.

The other bochur, who was filled with ahavas haTorah, did his utmost to convince his friend to change his faulty attitude but to no avail. Finally he pointed out that they should at least complete the inyan. The two learned through the Gemara, Rashi, and Tosafos. When the indifferent bochur heard that according to Tosafos only the first half of the Mishnah is like Sumchus he was even more put off. "The first half is, the second half isn't. What do I care?"

He packed his belonging and left the yeshiva that very day.

Not long after, this derelict young man was drafted into the army. After his term of service ended, it took him a long time to find a wife and settle down. Ten years after his fateful decision he had almost nothing to show for it.

Conversely, his chavrusah stayed in

learning and became an exceptional Torah scholar. Understandably, when the proprietor of Wissotsky tea—a famous millionaire—was looking for a match for his daughter, this bochur was suggested. He was able to learn with no financial worries over his head, while his more practical chavrusah had a hard time finding work.

One day, the chavrusah went to the tea factory to try and procure a job and noticed his old friend standing there. It was obvious that the Torah scholar was very well provided for and the shock of seeing him after all these years caused the foolish bochur to burst into tears.

"Apparently you were correct and I was in the wrong. There is indeed a very great נפקא מינה to me whether or not the Mishnah is as Sumchus!"¹ ■

1. Brought in the Mashgiach of Kaminitz, pg. 599