

OVERVIEW of the Daf

1) Acquiring with a field (cont.)

R' Ashi concludes his explanation concerning the difference between receiving a **ט** and acquiring a gift.

R' Yirmiyah in the name of R' Yochanan asserts that one's field can acquire an animal only if he has the ability to reach the animal if he were to run after it.

R' Yirmiyah asked whether the same halacha applies to one who is receiving a gift and R' Abba bar Kahana ruled that concerning a gift it is unnecessary for the recipient to be able to reach the animal.

Rava asked whether a house owner acquires a wallet that is thrown in one window and flies out the other window.

An attempt is made to answer this inquiry from the Mishnah.

Rava rejects the proof from the Mishnah.

2) **MISHNAH:** The Mishnah discusses when a man acquires lost objects found by relatives or slaves.

3) Objects found by a minor

Shmuel explains why Chazal enacted that a father acquires the lost objects found by his minor son.

The Gemara challenges the inference from Shmuel's explanation that a minor does not, Biblically, acquire property.

The contradiction is resolved by the Gemara.

A contradiction is noted concerning R' Yosi's position about the capacity of a minor to acquire property Biblically.

Abaye resolves the contradiction.

R' Ada bar Masna rejects this resolution and Rava offers an alternative explanation.

It is noted that Shmuel's earlier explanation is in contrast with the explanation of the Mishnah given by R' Chiya bar

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REVIEW and Remember

1. Is the Gemara able to prove from our Mishnah that one could acquire a wallet that was thrown through one window and emerged from the second window?

2. What is the significance of something described as **גל** **גמור מדרבנן**?

3. When does an employer acquire the lost objects found by his employee?

4. What type of loan document is returned to the lender if it is found?

Distinctive INSIGHT

The factor of **דעת אחרת**

אף על פי שרץ אחריהן ואין מגיען

The Mishnah on 11a taught the halacha of acquiring an animal which was running through one's field. The conclusion of the Gemara was that if the field was secure (**משתמרת**), the animal can be acquired even if the owner of the field is not standing next to it. However, in our Mishnah, which is dealing with a field which was not secure (**אינה משתמרת**), the owner can only acquire the animal which is running through if he is standing next to his field. This was the consensus of several of the Amoraim. Rav Pappa added that if the animal was being acquired from another person (**דעת אחרת מקנה**), for example if it was given as a gift, it would not be necessary for the recipient to stand next to the field.

On our daf, the Gemara notes another stipulation, and that is that the owner of the field can only acquire the animal if he could run after the animal and catch it before it would escape the boundaries of the field. R' Yirmiya inquired whether this same detail is legally necessary when acquiring an animal as a gift from someone else. Perhaps the necessity to be able to catch the animal is only required when acquiring an animal from **הפקר** – when there is no one transferring it to the new owner. However, when the animal is being given as a gift there is a direct effort of presenting the animal to the recipient. Is this type of transaction stronger so that the detail of having to be able to chase and catch the animal may not be needed? The Gemara concludes that, in fact, the receiver need not be able to chase after the animal and catch it if there is a **דעת אחרת**.

Rabbi Akiva Eiger points out that Rambam (**זכיה ומתנה**) (**ט: ד** and Shulchan Aruch (C.M. 243:21) rule unlike R' Pappa, and that the owner must be standing by his field even if the animal is being given as a gift. The advantage of **דעת אחרת** is apparently not a factor for the recipient's advantage. Yet, Rambam (**גזילה י"ז: י"א**) and Shulchan Aruch (ibid. 268:4) rule according to R' Yirmiya, that regarding a gift, the recipient need not be able to catch the animal running through the field. Here, **דעת אחרת** is an advantage. What is the difference between standing next to the field and being able to catch the animal with regard to **דעת אחרת**?

Rabbi Akiva Eiger notes that where the field itself is not secure, **דעת אחרת** cannot help to make the difference. The owner must be standing nearby. Where the field itself is secure, and the area can function to acquire other items situated within it, in this situation **דעת אחרת** can help alleviate the need for the owner to be able to run and catch the animal before it would escape. ■

HALACHAH Highlight

Must a child own the esrog to fulfill the mitzvah?

מציעאת בנו ובתו הקטנים...הרי אלו שלו

Objects found by one's minor son or daughter ... they belong to him

From our Gemara it is clear that lost objects found by a minor who is supported by his father belong to his father. Nimukei Yosef¹ cites opinions that maintain that even gifts that are given to such a minor immediately become the property of his father. Moreover, even gifts a father gives his son revert back to the father since the minor does not have the capacity to acquire property for himself. This position is codified by Rema². This halacha, however, presents difficulties. Teshuvos Shevet Halevi³ cites the Gemara Sukkah (46b) that states that one should not transfer ownership of a lulav and esrog to a minor on the first day of Sukkos since a minor has the capacity to acquire property but does not have the capacity to convey property. Based on what was previously explained we would have to assume that the Gemara refers to a minor who is not supported by his father and thus the minor discussed has the capacity to acquire the lulav and esrog for himself. The difficulty that emerges from this is that a minor who is supported by his father cannot acquire the lulav and esrog that is given to him and thus he is unable to fulfill the mitzvah since a prerequisite for fulfilling the mitzvah on the first day of Sukkos is to own the lulav and esrog that is used for the mitzvah.

The explanation for this, asserts Shevet Halevi, is that although the mitzvah of chinuch obligates a father to ensure that his son fulfills the mitzvah in accordance with the standards that would be applied to an adult, the restriction against using a borrowed esrog must not apply to a minor. This is consistent with the opinion of Turei Even⁴ but is at odds with the posi-

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Abba.

4) Objects found by a Jewish slave

The Mishnah's ruling that objects found by a Jewish slave belong to the slave is challenged.

Three different answers to this question are presented.

5) Hebrew maidservant

The Mishnah's reference to a Jewish maidservant is challenged based on a ruling of Reish Lakish.

The challenge is dismissed since the opinion of Reish Lakish is rejected and the Gemara explains why our Mishnah does not refute Reish Lakish's opinion.

6) Objects found by one's wife

The Gemara explains the novelty of the Mishnah's ruling concerning the right of a divorcée to keep objects that she finds.

7) **MISHNAH:** The Mishnah discusses whether one who finds a lost document should return it.

8) Finding a lost document

The Gemara clarifies the exact circumstances of the contract discussed in the Mishnah.

The Gemara challenges this explanation of the contract under discussion in the Mishnah. ■

tion of Magen Avrohom⁵ who writes explicitly that a child must own the lulav and esrog in order for him to fulfill the mitzvah. It is evident from this discussion, concludes Shevet Halevi, that it is not necessary for the minor to own the lulav, and the mitzvah of chinuch is nonetheless fulfilled. ■

1. נמוקי יוסף ו. מדפי הרי"ף
2. רמ"א חו"מ סי' ע"ר סע' ב'
3. שו"ת שבט הלוי ח"ח סי' קנ"ב
4. טוי אבן חגיגה ו
5. מג"א סי' תרנ"ח סק"ח ■

STORIES Off the Daf

Prior possession

בית דין נפרעין מהו

A certain chassid brought his son to Rav Tzvi Hirsch of Raminov, zt"l, to put tefillin on the bar mitzvah boy for the first time. The Raminover opened a siddur with the young man and said the l'shem yichud with him word for word. Immediately after they said the words, לשעבד בזה —תאווה ומחשבות לבנו לעבודתו יתברך שמו —“to subdue and direct the desires and thoughts of our hearts to Hashem's ser-

vice with this,” the Rebbe asked the boy, “Do you know what these words mean?”

After pausing for just an instant, the Rebbe explained, “We find in Bava Metzia 12 that when someone loans his friend money, this creates a lien on all of the borrower's property. No one can do anything to remove the lender's right to collect on his loan from the property. This statement is precisely the same. From the moment we ‘subdue and direct’ ourselves—literally, place a lien on ourselves—to Hashem and His avodah, we deprive any internal or external force of evil to get anything out of us. We have already declared that Hashem has a lien on us!”¹

When Rav Yissachar Dov of Belz, zt"l, once put tefillin on a bar mitzvah boy he said the same thing but added a further explanation. “We find that everyone has a thought of sin each day and if not for the fact that Hashems saves us, we would fall into the hands of the evil inclination. When a person wakes up in the morning and dedicates his every feeling and emotion to Hashem, even if the yetzer hara sends illicit thoughts meant to cause him to stumble, Hashem says, ‘My lien was placed on him first!’”² ■

1. בארת מהים השלם' ע' קכ"ו
2. נטעי גבריא, הל' בר מצוה, פתיחה, ע' ל"ט