

## OVERVIEW of the Daf

### 1) Mistaken waiver – מחילה בטעות (cont.)

Rava retells a conversation he had with R' Nachman in which they discussed מחילה בטעות as it relates to אונאה and an איילונית.

### 2) Recovering interest

An incident is cited and Rabbah bar R' Huna comments that the interest collected in this case is only אבק ריבית and it is not recoverable. Rava also subscribes to this position.

Abaye inquires whether collateral would have the same halacha.

Rabbah answered that this is also אבק ריבית and therefore unrecoverable.

An incident is cited in which R' Pappi ruled against Rabbah bar R' Huna.

### 3) Collateral

Halachos of interest that are related to collateral are presented in the name of Rava.

R' Ashi disagrees with one of Rava's rulings.

The Gemara reports of an incident in which R' Ashi ruled against minors.

Another ruling of Rava related to collateral is cited.

This ruling is challenged.

It is noted that this resolution depends upon a dispute between R' Acha and Ravina regarding the permissibility of a קיצות arrangement.

The parameters of the קיצות arrangement are presented.

An alternative definition of the קיצות arrangement is presented.

The Gemara resolves the question regarding Rava's ruling.

A number of rulings related to collateral are recorded.

After presenting a dispute about the matter the Gemara rules that a borrower must perform an act of acquisition in order to make a binding agreement with the lender that he will leave the property.

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## Distinctive INSIGHT

### Land arrangements for collateral - When are they permitted?

כי משכנתא דסורא דכתבי ביה הכי במשלם שניא אילין תיפוק ארעא דא בלא כסף

The Gemara presents various scenarios of loans where the borrower offers his field to the lender to use until the loan is repaid. Many variables are factored in to determine whether this is permitted or prohibited, and even when it is prohibited whether it would constitute rabbinic or Torah-level interest.

If the borrower can come at any time and dismiss the lender from his field by repaying the loan (באתרא דמסלקי), it is prohibited for the lender to take produce from the field while holding on to it, as any profit he captures would be interest for his having advanced the loan. Therefore, in this case, the lender would have to calculate any profit he takes and subtract it from the loan amount due. If the arrangement is that the lender may keep the land for a specified time period during which the borrower may not redeem it, the field is considered purchased by the lender during that period. Now that it is his, he may keep any profits he realizes from "his" field, and there is no need to subtract these gains from the loan amount at all.

A case called "קיצותא" is a matter of dispute between Rav Acha and Ravina. According to the second approach in the Gemara, the case is where the lender has the land for a number of specified years during which a fixed amount is deducted from the loan per year. After those first few years pass, the lender subtracts full value from the loan of any produce he then takes. Ravina (the more lenient of the two, see Tosafos Peachim 74b) permits it, as it no longer appears as interest once at least a set amount is deducted even during the first years. Rav Acha prohibits this case, as he rules that it appears as the lender is collecting interest.

The Gemara notes that even according to this explanation, Rav Acha would allow a case known as "משכנתא דסורא". Rashi explains that this agreement is where the land is given to the lender for a set term, after which the land is released back to the borrower. The loan is deemed fully paid in consideration of the lender's having used it for the term.

Tosafos notes that for the loan amount to be depleted each year, the agreement must be בנכיתא, where the borrower can pay off the loan early if he wishes. If the land is fixed to remain with the lender for a set amount of years without the ability of redemption, the lender would not have to subtract anything during those years. Tosafos asks why משכנתא דסורא is permitted, while נכיתא is prohibited. Tosafos explains that stating that a fixed amount will be deducted per year appears to be a loan being paid with interest. If the land is just given for a fixed term and then released, it is permitted, as it appears to be a sale. ■

## REVIEW and Remember

1. How do we see that a marriage involving an איילונית involves מחילה בטעות?
2. What is the point of dispute between Mar the son of R' Yosef in the name of Rava and R' Ashi?
3. Explain the point of dispute between R' Acha and Ravina concerning קיצותא.
4. What is a נכיתא agreement?

# HALACHAH Highlight

## Someone who dishonors Torah scholars

רבינא אכל בנכייטא

Ravina would eat produce from a pledged field if it is deducted from the total

Sefer Moznayim Lamishpat<sup>1</sup> was asked to rule about a man who disparaged all the Torah scholars of his generation. The man in question had declared that all Torah scholars are "mamzerim" and the inquiry was what would be the appropriate, if any, punishment? He began his response with a quote from Rambam. Rambam<sup>2</sup> writes that the punishment for someone who dishonors a Torah scholar is greater than the punishment for one who dishonors a regular person. A practical application of this is that one who verbally dishonors a friend does not have to pay for that disgrace (בושת), whereas one who verbally dishonors a Torah scholar is obligated to pay for the disgrace that he caused the Torah scholar. Additionally, Sefer Moznayim Lamishpat highlights the fact that normally payment for humiliation is calculated based on the people involved whereas one who dishonors a Torah scholar is penalized the value of a golden litra. Based on this perspective one would say that the person who dishonored the Torah scholars of a generation should certainly be responsible to pay for dishonor he brought upon the scholars of his generation.

In contrast, Maharik<sup>3</sup> is cited as ruling, based on Tosafos<sup>4</sup> in our Gemara, that in our times we do not have Torah scholars and thus the penalty of paying a golden litra does not apply. Tosafos noted that our Gemara had stated that a talmid chacham should not lend and collect using the נכייטא/deduction method of subtracting the value of the fruit from the loan. If so, Tosafos wonders how Ravina is reported as doing so. Several answers are

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Another dispute related to collateral is presented and the halacha is that the lender may not eat the produce once the borrower says that he plans on making an effort to obtain the funds to repay the loan.

**4) Consuming produce to reduce the loan**

The Gemara relates that some Amoraim would not eat produce of the borrower to reduce the loan whereas Ravina would eat the produce.

Mar Zutra explains the rationale behind Ravina's lenient opinion. ■

given, among them is that Ravina did not necessarily accept upon himself the title of Talmid Chacham, so he was able to do this. Maharik, however, agrees that although the halacha of penalizing someone financially does not apply, nevertheless, the halacha of banning someone who dishonors a Torah scholar applies even in our times. Although many authorities disagree with Maharik about this point, nevertheless Rema<sup>5</sup> does codify his position as halacha. Despite the lenient positions of Maharik and Rema the author of Moznayim Lamishpat rules that the individual in question should be punished severely. Even though we would not penalize someone a golden litra Maharik and Rema would still agree that one who dishonors a Torah scholar should be punished more severely than one who dishonored someone who is not a Torah scholar. Furthermore, the Gemara Kiddushin (28a) teaches that one who calls another a "mamzer" is deserving of lashes. Therefore, the person in question who called all the Torah scholars "mamzerim" should be punished severely. ■

1. ספר מאזנים למשפט סי' י"א.
2. רמב"ם פ"ג מהל' חובל ומזיק ה"ה.
3. שו"ת מהר"י"ק שרש קס"ג.
4. תוס' ד"ה רבינא אכל בנכייטא.
5. רמ"א יו"ד סי' רמ"ג סעי' ז'.

# STORIES Off the Daf

## A question of interest

"האי משחנתא באתרא דמסלקי לא ניחול אלא בנכייטא..."

Today's daf discusses benefits one may receive from those who owe him money and benefits that are forbidden to him.

A certain wealthy man was in shul one Shabbos when he was struck with a big halachic dilemma. His good friend had purchased an aliyah for him. As he walked up to the bimah he suddenly recalled that this friend owed him a large sum of money. Presumably, since the aliyah cost money, he was on the receiving end of rabbinic interest. But he did not wish to step down since this would have been very embarrassing to

him. In a flash he was struck with a simple solution. He pledged to buy an aliyah for the same amount of money for his friend. Surely, if he paid him back in kind, there would be no problem of prohibited interest. Was it possible that one who borrowed money from his friend was not allowed to lend other objects to his creditor?

But the wealthy man wondered if he had done right. He was also unsure whether he was allowed to receive an aliyah from one who owed him a monetary debt. He decided to consult with Rav Shmuel Wosner, zt"l, regarding these questions.

Rav Wosner answered, "Although one should not accept an aliyah from a person who owes him money, if he did so, he is definitely not required to step down. There are two essential reasons for this. First of all, this is definitely a marked lack of k'vod

habrios which certainly trumps the rabbinic prohibition of avak ribis. Secondly, once he went up to the bimah, it counts as though he has already received the honor from a halachic standpoint, so he need not step down. It is true that there is a dispute between the rishonim whether one is obligated to return avak ribis, but the Rashba holds one is not required to do so and the Shulchan Aruch rules that one who wishes to do his absolute heavenly obligation will return it. But in our case, he may not be obligated to return it since he received the interest through a mitzvah.

Rav Wosner concluded, "Since in your case you thought to return it, which the Beis Yosef and the Bach rule is permitted, there is no doubt that you violated no transgression whatsoever."<sup>1</sup> ■

<sup>1</sup>שו"ת שבט הלוי, ח"ט סי' קי"ע

