

OVERVIEW of the Daf

1) A porter who breaks a barrel (cont.)

The Gemara continues to elaborate on the position of R' Eliezer in the Baraisa regarding the liability of a porter who breaks a barrel.

R' Chiya bar Abba in the name of R' Yochanan resolves the earlier-mentioned contradiction between two rulings of R' Meir and suggests that the oath that is mentioned is a Rabbinic enactment.

Rava presents the language of the oath.

The Gemara elaborates on the positions of R' Yehudah and R' Eliezer according to the new understanding of R' Meir.

Two related incidents are presented.

A ruling related to a porter's liability is recorded.

Another incident regarding a porter's liability is presented.

הדרן עלך השוכר את האומנין

2) MISHNAH: The Mishnah rules that the guidelines of an employee's work conditions are set by the local custom. A related incident is recorded.

3) The terms of a worker's employment

The Gemara explains the novelty of the Mishnah's ruling that one can not force his worker to work longer than local custom requires.

Reish Lakish rules that the time to the worksite comes from the employer but the time from the worksite comes from the employee.

Two explanations are offered to explain when this ruling is necessary.

An exposition off of the verse cited it recorded.

The Gemara recounts an incident involving R' Elazar the son of R' Shimon since it is based partially on the verse that was just cited. ■

REVIEW and Remember

1. According to R' Yochanan, what is the point of dispute between the different Tannaim concerning a porter who drops a barrel?

2. What type of food do descendants of our forefathers deserve?

3. What was R' Elazar ben Shimon's method of catching thieves?

4. How did Chazal assure that a room was sterile to perform surgery?

Distinctive INSIGHT

Establishing standards and customs for a new town

וניחזי מהיכא קא אתו, בנקוטאי

The Mishnah at the beginning of the perek notes certain understandings between an employer and his employee. Some terms of employment are understood based upon local custom, while others may be agreed upon in advance between both parties.

Reish Lakish rules that the end of the work day is calculated when the stars become visible, and the time needed for a worker to travel home is at his own expense. However, when a worker sets out to work in the morning, he only needs to leave for the field at sunrise, and the time necessary to arrive at the field is at the expense of the employer. The fact that Reish Lakish establishes what sounds to be a universal standard leads the Gemara to ask that this should depend upon local custom for each city, and it should not be a general principle. To this, the Gemara answers that Reish Lakish agrees that each town or city may have its own custom, but in a new city the system suggested by Reish Lakish, and based upon the verses in Tehillim, should prevail.

The Gemara then notes that even in a new city, if most of the founders of the city came from one place, the customs that were in effect in their city of origin should carry over to the new city. We are dealing with a city where the residents were collected from many different cities and towns. The Gemara did not mean to suggest, however, that if the city itself has no established custom that the employment rules should follow the customs of the place from where the worker comes, because he is coming to hire himself to work here. The customs of his town are obviously not relevant to this employer, and in fact, our Gemara does not relate to whether the city of the worker is a new town or if its residents come from different places.

The Rishonim (Ritva, Ran, Nimukei Yosef, et al.) note that the question of the Gemara indicates that if most of the pioneers who arrive to establish a new city come from the same place, customs of the new city should follow those of the city from which they come. Shitta Mikubetzes cites רמ"ך who states that if the people come from many different cities, the new city should adopt the customs of the most important city nearby. If the people do not want to do this, or if they

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Today's Daf Digest is dedicated
 By Rabbi and Mrs. Sam Biber
 In memory of their parents
 ר' יהודה בן ר' שמואל איסר הכהן, ע"ה
 ומרת שרה פעסל בת הרב אליהו חיים, ע"ה

HALACHAH Highlight

Invoking local custom to collect expenses

הא דטפאי לכו אאגרייכו אדעתא דמקדמיתו ומחשכיתו בהדאי

The reason I added to your wages was so that you would come early and stay late with me

Reuven hired Shimon to make a delivery for a fee of ten gold coins. Before Shimon left to make the delivery, Reuven took a journey in the opposite direction. Shimon told some friends that he was hired to make a delivery for ten gold coins but he expects that Reuven will add travelling expenses to that amount since that is the local custom. When Shimon returned he asked Reuven to pay for his travel expenses in addition to the ten gold coins for the delivery and Reuven refused to pay claiming that the reason he paid ten gold coins as opposed to a smaller amount was that he was including expenses. Teshuvos Terumas Hadeshen¹ ruled that Reuven does not have to pay for Shimon's expenses. The active principle is דמים מודיעים – the amount of money that was discussed indicates that Reuven's claim should prevail. Since Shimon agrees that ten gold coins is too much to pay someone just to make a delivery he cannot come along and claim that he wants expenses on top of this high salary because that is the local custom.

Ketzos Hachoshen² challenges Terumas Hadeshen from our Gemara. The Mishnah states that one who hires workers may not expect them to put in more hours than what local custom dictates. The Gemara finds this ruling to be obvious

(Insight...continued from page 1)

cannot agree, they should then use the standard system as indicated in the Torah. If the consensus is that they want to establish a new custom altogether, and they want that everyone should accept a new but uniform custom, and if there is a qualified leader among them, they may adopt their own custom, and enforce it. ■

and therefore explains that it refers to a case where the employer paid a higher rate for his employees than local custom dictated. The Mishnah therefore teaches that the amount of money that was given is not an indication of the terms of the agreement and local custom will prevail. This clearly contradicts Terumas Hadeshen's ruling that we look at the money to determine the terms of the agreement even if it is inconsistent with local custom.

Nesivos Hamishpat³ suggests that the case of Terumas Hadeshen had a unique feature which is that all parties agree there was a deviation from local custom. Local custom had the deliveryman receiving money for expenses before the trip and Shimon did not ask Reuven for his travel expenses before he embarked on the journey. Once both parties agreed that local custom would not be followed Shimon can not come later and invoke local custom to claim additional money. Once local custom is put aside the determining factor will be the amount of money that was paid and that perspective supports Reuven's claim. ■

1. שו"ת תרומת הדשן סי' שכ"ג.

2. קצות החושן סי' של"א סק"א.

3. נתיבות המשפט סי' של"ב סק"א. ■

STORIES Off the Daf

At the employer's expense

"ביציאתו משל בעל הבית..."

Although mitzvos are the means for us to connect with Hashem, many people have great difficulty feeling this connection. This is despite their commitment to follow Shulchan Aruch and fulfill all the mitzvos as well as they can. The Chayei Adam, zt"l, once explained why this is so.

He said, "We learn an important lesson from the verse, 'שומר מצוה, לא ידע', 'One who guards a mitzvah will know no evil.' This teaches us how to do a mitzvah. One who wishes to do a mitzvah must not act quickly by rote. Instead

he must 'guard himself' and wait patiently, as in what the verse says of Yaakov, that he 'guarded the matter' of Yosef's dream. He waited on it. This teaches that one should take out time to think carefully what he is about to do. Even regarding Pesach, when we are commanded to eat quickly the verse describes to us how to do so. 'וככה, תאכלו אתו--מתניכם חגרים ורגי.' This also teaches that we must consider the meaning behind what we do before we act. Even when we hurry, we consider just how we are to hurry and fulfill the mitzvah."¹

The Chayei Adam continued, "This is what is behind the nusach of, 'Behold I am prepared and ready to fulfill...' which is said before each mitzvah. We are saying that we are truly prepared and

ready, as the verse states: 'הכון לקראת - אלקיך ישראל, Yisrael, to meet your God.' I have found in my personal experience that any mitzvah I have done without preparation was not done properly, so it is of paramount importance that one is careful in this regard."²

The Yehudi Hakadosh, zt"l, once said, "In Bava Metzia 83 we find that a worker comes to work at the expense of his employer. We see that the preparation to do work is just like work. Similarly, preparation to do a mitzvah is like the mitzvah itself since one cannot do a mitzvah properly without preparation!"³ ■

1. מעשרה מאמרות, מאמר ח"ה, ח"ג, פי"א ע"ש

2. כ"ז מובא בח"א, כלל ס"ח, סי' כ"ה

3. שם משמואל, ח"י שרה, תרע"ו, ע"ר ל"ח ■