

This month's Daf Digest is dedicated  
L'iluy Nishmas Mrs. Yenta Weiss, Rivke Yenta bas Asher Anshel & Yosef ben Chaim HaCohen Weiss  
By Mr. and Mrs. Manny Weiss

שרגא פיבייל דוד בן קמואל  
L'iluy Nishmas By the Abramowitz family

## OVERVIEW of the Daf

### 1) The presumption that an agent performs his mission

All opinions agree that regarding laws of Rabbinic origin that apply the principle that an agent performs his mission. Regarding Biblical law, R' Nachman rules that we do not rely on the presumption and R' Sheishes rules that we do.

R' Sheishes attempts to prove his position correct and R' Nachman refutes each proof.

The Gemara takes note of an apparent contradiction within one of the Baraisos cited by R' Sheishes

Ravina explains: The two cases in the Baraisa refer to different circumstances.

The Gemara concludes with an explanation of the dispute between Rabbi and R' Shimon ben Gamliel in the Baraisa. The dispute concerns the question of a chaver violating a minor infraction to prevent an am ha'aretz from violating a major infraction.

### 2) MISHNAH: The Mishnah discusses placing the eruv on a tree [or in a pit.]

### 3) Clarifying the Mishnah

A group of Amoraim sat before R' Nachman to analyze the details of the case in the Mishnah. They concluded that the tree was standing in a public domain and the person intended to establish residence on the ground below the tree. The reason there is no issue as far as using the tree on Shabbos is that the Mishnah follows the opinion of Rabbi who maintains that rabbinic prohibitions are not in force during bein hashmashos.

R' Nachman approved of this interpretation and Shmuel is also quoted as explaining the Mishnah in this way

Rava ruled: The case of the Mishnah invalidating an eruv in a tree above a height of ten tefachim applies only if the tree is

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## Daf DIAGRAM



עירוב

If a person placed the eruv on a tree above ten tefachim from the ground, and he intends to establish his residence on the ground below (N). ■

## Distinctive INSIGHT

### The "minor" violation of separating Teruma improperly

רבי סבר ניחא ליה לחבר דלעביד הוא איסורה קלילא ולא ליעבד עם הארץ איסורה רבה

T

he Gemara teaches that it is preferable for a "chaver" to separate teruma —not in the proximity of the fruits being tithe—rather than risk having an **עם הארץ** eat level. The reason is that this infraction on the part of the "chaver" is only minor. The Mishneh LaMelech (Hilchos Terumos 5:13) explains why, in our Gemara, it is only considered a relatively minor infraction (**איסורה קלילא**) if a "chaver" would separate teruma—not in the proximity of the fruits being tithe. Apparently, the reason this is only considered a slight infraction is that it is only rabbinic, as is implied by Rashi (Gittin 30b).

Tosafos (ibid.), however, is of the opinion that it is a Torah-level requirement to separate teruma with the fruit being tithe being in the immediate proximity. How, then, can this violation on the part of a "chaver" be referred to as being a minor infraction? There are several approaches offered to address this issue.

Noda BiYehuda (Even HaEzer 2:37) cites the Teshuvos Rashba (1:127) who writes that although this is a Torah-level law, it is still only an **איסור עשה**. This means that the Torah expresses this law in terms of its being a positive commandment to take off teruma with its being next to the tithe fruit. One is not in violation of a negative commandment if he fails to fulfill this requirement. This is why this is relatively "less" of an infraction than the **עם הארץ** eating level, which is a negative commandment, and which is punishable with death from the heavens.

Teshuvos Chelkas Yoav (Yoreh De'ah 192) points out that the requirement to separate teruma in the proper manner is suspended on erev Shabbos and erev Yom Tov (see Tosafos, Yevamos 93b, d'h, and Gittin 31a, d'h). The fact that this rule is sometimes deferred may be an indication that it is of a lower priority than the sin of eating level.

Finally, Teshuvos Maharam Shik (O.C. #127) explains that today, according to some opinions, the obligation to separate teruma is only rabbinic. When a person separates his teruma improperly, remote from the fruits being tithe, he is in violation of the law once. However, the alternative of eating level applies to each and every bite which the **עם הארץ** partakes. This may be the reason why the Gemara refers to the violation of **שלא מן המוקף** as a minor violation, as opposed to that of eating level. ■

# HALACHAH Highlight

An eruv that was locked up in a beis haknesses

דקיי ברה"ר ונתכוון לשבות למיטה

It rests in the public domain and one intended to rest below

**T**he Gemara teaches that the food of the eruv must be in an accessible place. If the eruv food is placed in a location that one may not access on Shabbos due to some sort of Torah prohibition, e.g. moving the eruv from a private domain to a public domain, the eruv is invalid. Poskim discuss the validity of an eruv that is inaccessible due to a government regulation that the beis haknesses must be locked and it is illegal for anyone to enter the building. Does the eruv become invalidated as a result of this restriction or perhaps the government regulation does not render the eruv inaccessible and it therefore remains valid?

Noda BiYehudah<sup>1</sup> answered that if the government closes a beis haknesses due to taxes, the eruv is inside of the building is invalid. Although there is no Biblical prohibition against breaking the lock even if it is attached to the ground (Beitzah 31b) and a Rabbinic restriction that stands in the way of accessing the eruv does not invalidate the eruv, nevertheless the eruv is invalid. The reason is that once the government prohibited anyone from entering the building, it is inaccessible since no one will violate that restriction and break the government's lock. Furthermore, although theoretically one could pay the tax bill and have the government open the

## REVIEW and Remember

1. Why was R' Sheishes unable to prove his position from the case of the korban omer?
2. What presumption is made regarding chaverim concerning produce?
3. Explain Rabbi's opinion regarding Rabbinical prohibitions during Bein HaShmashos.
4. Explain מטה כמאן דלמייא דמייא.

building, as long as the bill is not paid it cannot be considered as though one has access to the food for the eruv to be valid. Others<sup>2</sup> question Noda BiYehudah's rationale. They contend that an eruv becomes invalidated only when the only way to access the food is by violating a prohibition. If, however, there is a permitted manner to access the food of the eruv (for example, in this case they could pay the tax bill) the eruv is not invalidated just because there is an impediment to accessing it. However, as far as the practical halachah is concerned he agreed with Noda BiYehudah that the eruv is invalid due to the fact that it is in accessible. ■

- .1. שווית נודע ביהודה תניניא או"ח סי' ל"ט.  
 ■ .2. שווית נר למאור סי' ט"ז סק"ח.

## Gemara GEM

The assumption that an agent fulfills his agency

חזקת שליח עושה שליחותו

**I**n accordance with the Gemara here, the Mishneh LaMelech in the fourth chapter of Hil. Bechoros rules that the assumption that an agent fulfills his agency is not effective immediately, but only at the end of the day. Hence, even if a person appointed an agent in the morning, he cannot assume that the agency is fulfilled until evening.

The Mishneh LaMelech also rules that the assumption that an agent fulfills his agency only applies in regard to a matter that the agent can complete on

his own, such as to slaughter an animal or separate terumah. However, in regard to a matter which the agent cannot complete on his own, such as the sale of chometz, we are afraid that the other party might not participate in the process, and therefore in such cases we cannot assume that the agent fulfills his agency.

[Mishneh LaMelech bases this ruling on Tosafos, Gittin 64a (d.h. Assur). The Gemara there rules that if a person appointed an agent to marry a woman on his behalf and the agent does not return to identify the woman, he is forbidden to marry all the women in the world, lest they be forbidden relatives of his wife. Tosafos write that this ruling is a penalty, not the strict letter of the law — because the fulfillment of this agency requires another person's participation. Moreo-

ver, although the Ramban (ad loc.) disagrees with the Tosafos, Mishneh LaMelech explains why this argument is unique to the case of marriage and not applicable to other cases (see also Melo HaRo'im, Shaliach Oseh Shelichuso #5).] ■

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outside the outskirts of the city, but if it was within the outskirts of the city it should be valid.

The Gemara demonstrates that according to this rationale, even if the tree is beyond the outskirts of the city it should still be valid.

R' Yitzchak the son of R' Mesharsheia explains that the Mishnah refers to a branch that extends more than four amos from the trunk and the person intended to establish residence at the base of the tree. ■

