

# OVERVIEW of the Daf

## 1) Rules of psak (cont.)

The Gemara continues to search for a source which supports R' Mesharshiya's rejection of the principles of psak formulated by R' Yochanan.

After failing to demonstrate why R' Mesharshiya rejects R' Yochanan's principles of psak the Gemara concludes that all R' Mesharshiya intended to state was that the guidelines are not held by all opinions because Rav rejects these principles.

## 2) The residence of objects owned by non-Jews

R' Yehudah in the name of Shmuel stated that objects owned by non-Jews do not acquire residence and may be moved beyond two thousand amos from their original location.

The Gemara seeks to identify which opinion Shmuel is following when he stated his ruling and concludes that it is consistent with the ruling of Rabanan.

R' Chiya bar Avin in the name of R' Yochanan disagrees and rules that objects owned by non-Jews do acquire residence for Shabbos as a decree because of objects that have Jewish owners.

An incident is cited wherein Rava ruled like Shmuel and Ravina challenged the ruling because halachah follows R' Yochanan rather than Shmuel. ■

## REVIEW and Remember

1. Are there any women who do not have to wait three months between marriages?
2. What leniencies are permitted to save a person's property from non-Jews?
3. Is it possible to learn from any teacher?
4. What is the rationale to subject objects owned by non-Jews to the laws of techum?

## Distinctive INSIGHT

*Learning Torah and the Mitzvah to honor one's parents*  
שאין מן הכל זוכה אדם ללימוד וכו' וא"ר יוחנן הלכה כ' יויסי

In Hilchos Talmud Torah, the Shulchan Aruch (Y.D. 240:25) rules that if a student wants to travel to a place where he is certain that he will succeed in his studies under the tutelage of a particular Rebbe, and this young man's father opposes the move because he is afraid that there may be hostile gentiles in that city, the student need not heed the advice of his father. The source **באר הגולה** cites the source for this halachah as coming from the Terumas HaDeshen, (#40). The proof of the Terumas HaDeshen is from our Gemara, where we rule according to R' Yose who says that it is permitted to travel outside of Eretz Yisroel, and even to a beis hapras, to study Torah.

Yet, the Gemara in Kiddushin (31b) tells the story of Rav Ashi whose father was coming to Eretz Yisroel, and Rav Ashi wanted to leave Eretz Yisroel to go and greet him. He asked Rav Yochanan whether he was permitted to leave the Holy Land to honor his father, to which Rav Yochanan responded that he was not sure that it was allowed. We see, therefore, that to study Torah, one may leave Eretz Yisroel, but to honor one's parent the issue is unresolved. We can therefore conclude that the study of Torah is a higher priority than the mitzvah of honoring one's parent.

Pischei Teshuva (#23) also brings a case in which the Teshuvos Chavos Yair issued a ruling. A woman on her deathbed instructed her son not to rent out the house he was about to inherit from her. There was a tenant living there already, an elderly man who was a Torah scholar and a well-known mitzvah activist. The question was whether the son was required to adhere to the request of his mother, or whether he should allow this man to continue to rent the house.

Chavos Yair first writes that the son would apparently not have to listen to his mother. The elderly man was immersed in Torah, and the study of Torah takes precedence over the honor of one's parents. In particular, the man wanted to dedicate his learning to the merit of this woman's soul. There was no doubt that this was in the best interests of this mother.

Yet the conclusion is that although it was advantageous for the Torah study to continue, nevertheless, the son was not permitted to disregard his mother's wishes. In all cases which the Gemara mentions that a son may learn Torah rather than listen to his father, the son himself is fulfilling the mitzvah. Here, it would be wonderful to let the elderly man continue to learn undisturbed, yet, the son was not permitted to violate the wishes of his mother to rent out the apartment for the sake of someone else to learn. It was therefore necessary for the son to not allow the tenant to remain in the property. ■

# HALACHAH Highlight

## The "residence" of person's items

חפצי נכרי אין קוני שביתה

Utensils that belong to a gentile do not acquire "residence"

**A** Baraisa teaches that utensils that "take residence" may be moved for 2000 amos in each direction. Tosafos<sup>1</sup> in the name of Rashi explains that the Baraisa refers to utensils that have an owner but the owner is in a different city for Shabbos for if the owner was in the same city as his utensils they may be transported wherever he may travel. It is only when a person and his utensils are in a different place that the utensils are given 2000 amos in each direction. In contrast, Shulchan Aruch<sup>2</sup> based on the Gemara in Beitzah (39b-40a) rules that if one deposits fruit in one city and stays in another city, his fruit may be moved only where he may move. This ruling seems in conflict with the earlier ruling.

Tzalach<sup>3</sup> answers by distinguishing between items that are left out in a field and items that are deposited by others. Items

deposited by others still remain in the control of the owner and thus are confined to the owner's techum. Those items left outside are comparable to items that belong to a gentile that acquire "residence" where they are at the outset of Shabbos and thus are limited to 2000 amos in all directions from that place. Avnei Nezer<sup>4</sup> suggests that the two conflicting sources represent the disagreement between R' Yochanan ben Nuri and Rabanan whether ownerless utensils acquire "residence" where they rest. Rashi and Tosafos follow R' Yochanan ben Nuri's position that ownerless items acquire "residence" in the place they are located at the outset of Shabbos and thus may not be moved more than 2000 amos in any direction. The Gemara in Beitzah follows Rabanan's position that ownerless objects do not acquire "residence" and thus objects remain confined to the techum of their owner and even Rashi and Tosafos would agree that since Shulchan Aruch follows Rabanan's position items are confined to the techum of their owner. ■

- .1. **תוס' ד"ה והכלים.**
- .2. **שו"ע או"ח סי' שצ"ח סע' י"ז.**
- .3. **צל"ח ביצה מ. ד"ה תן.**
- .4. **שו"ת אבני נזר ח"מ סי' ק"ט.**

## Distinctive INSIGHT

### Principles of Psak Among Tana'im רבי יהודה ורבי שמעון הלכה כרבנן

**H**alachos Gedolos (Behag) §53 lists the following rules of Psak Halacha:

1. If in one mishnah there is a difference of opinion, but another Mishnah follows only one of the opinions without attribution ("stam"), the law follows the stam Mishnah.

2. In a dispute between any individual Tanna and R' Yose the law is in accordance with R' Yose.

3. This is only the case in a "one on one" disagreement. However, in a dispute between the Chachamim and R' Yose, the law is in accordance with the Chachamim.

4. In a dispute between R' Meir and R' Shimon the law is in accordance with R' Shimon.

5. In a dispute between R' Yehuda and R' Shimon the law is in accordance with R' Yehuda.

6. In a dispute between R' Yehuda and R' Meir the law is in accordance with R' Yehuda.

7. In a dispute between R' Yehuda and R' Eliezer ben Yaakov the law is in accordance with R' Eliezer ben Yaakov..

8. In a dispute between any individual Tanna and Rebbe (R' Yehuda Ha'Nasi), the law is in accordance with Rebbe.

9. However, although in a dispute between Rebbe and R' Yishmael ben R' Yose the law is in accordance with Rebbe, this is only if R' Yishmael ben R' Yose was taking his own position. If, however, he is quoting his father R' Yose, the law is in accordance with R' Yose.

10. Anywhere R' Shimon ben Elazar is cited without a fellow Tanna disagreeing, the law is in accordance with R' Shimon ben Elazar.

11. In a dispute between any individual Tanna and Rabban Shimon ben Gamliel, the law is in accordance with Rabban Shimon ben Gamliel..

12. This is even the case if the other Tanna in the dispute is R' Yose.

13. In fact, with the exception of three cases (the cases of the Guarantor, of Sidon, and of the Final Proof), the law is in accordance with Rabban Shimon ben Gamliel.

14. Anywhere the following terminology is used, the case is one of Halachah l'Moshe MiSinai – viz., be'emes – in truth; bameh devarim amurim – in what [context] was this stated; ve'eimasai bizman – when, at the time.

15. In a dispute between R' Eliezer and R' Yehoshua the law is in accordance with R' Yehoshua.

16. In a dispute between R' Yehoshua and Rabban Gamliel the law is in accordance with Rabban Gamliel.

17. In a dispute between R' Akiva and R' Tarfon the law is in accordance with R' Akiva.

18. In a dispute between R' Akiva and R' Yochanan ben Nuri the law is in accordance with R' Akiva.

19. With the exception of some cases that are listed in Meseches Eduyos, in a dispute between Beis Shammai and Beis Hillel the law is in accordance with Beis Hillel. ■

