

OVERVIEW of the Daf

1) A field for its produce (cont.)

The Gemara concludes its presentation of the second dispute where R' Yochanan rules that bikkurim are brought and the verses are read whereas Reish Lakish maintains that the verses are not read.

The necessity of this dispute in two contexts is explained.

Two unsuccessful attempts are made to support R' Yochanan's position.

The Gemara cites a Baraisa in an attempt to demonstrate that the dispute between R' Yochanan and Reish Lakish is a dispute amongst Tannaim as well.

R' Nachman bar Yitzchok rejects the assertion that the Tannaim of the Baraisa argue the same issue disputed by R' Yochanan and Reish Lakish.

R' Yosef notes that were it not for R' Yochanan's position on this matter another ruling of his would be refuted.

Rava cites a verse and a Baraisa that supports Reish Lakish's position.

Abaye reports a tradition about a husband's rights to his wife's מלוג property and adds a qualification to that tradition.

הדרן עלך השולח

2) **MISHNAH:** The Mishnah discusses different categories of creditors and the type of property they are authorized to collect. The last halacha states that one who finds a lost object is not required to take an oath.

3) Collecting damages

Abaye explains that the Mishnah follows R' Yishmael who maintains that, Biblically, superior land that is collected for damages is assessed in terms of the damaged party's property and for the benefit of society Chazal enacted that the assessment will be done in terms of the damager's property.

A Baraisa is cited that presents R' Yishmael's dispute with R' Akiva regarding damages.

The Gemara begins to explore the precise meaning of R' Yishmael's position with regards to payment of damages. ■

Distinctive INSIGHT

The rabbinic enactment for a finder not to take an oath

והמוצא אבידה לא ישבע מפני תיקון העולם

The Mishnah rules that a person does not have to take an oath when he returns a lost object which he finds. Rashi explains that the case is where the owner claims that the object is not being returned in its entirety. Rambam, in his Commentary to the Mishnah, and Rabbi Obadiah of Bertinoro note that if the halacha would require an oath to be taken under these circumstances, no one would ever offer to return a lost object, as he would be subject to the response of the owner to claim that the object is not being returned in its entirety.

Sefer הר צבי notes that returning a found object is a fulfillment of a Torah-level mitzvah, and avoiding doing so is a negative command (לא תוכל להתעלם). Why, then, would a person be reluctant to perform the mitzvah while the only risk would be to take a truthful oath, which is not prohibited? He explains, based upon the Gemara in Bava Metzia (30b). There, we find that an elderly person is exempt from the mitzvah of returning a found object if it is the type of object which he would not carry in the street even if it was his own. So too here, we say that every person who finds an object does not want to be subject to an oath, so everyone foregoes having his own item returned to him if it necessitates an oath on the part of the one returning it.

Rabbi Akiva Eiger writes that when the original owner claims with certainty that he actually saw the finder pick up two bags, and the finder is only returning one, this is a standard case of a claim and a partial admission (מודה במקצת), and the rabbinic enactment to release the finder from an oath was not instituted in this case. Our Mishnah is dealing with a scenario where the original owner claims that he lost two bags, and that he saw the finder from a distance as he found them. The owner claims with relative certainty that two bags were found, as it seems unlikely that the two bags became untied. The finder asserts that he only found one bag. It is in this case that the Mishnah releases the person returning the object from an oath, where the owner claims with relative certainty that the item being returned is not that which was found. ■

HALACHAH Highlight

Paying for damages with land

הניזקין שמין להן בעידית

[Payment for] damages is assessed according to superior quality land

Rashi¹ writes that if the damager does not have cash to pay for the damages but has land, he must pay for the damages with the highest quality land that he owns. This comment implies that the allowance for the damager to pay for the damages with land applies only when he does not have cash to pay for the damage. This inference is further supported by Rashi's later comment² where he writes explicitly that when the damager declares that he does not have the necessary cash to pay for the damages he has the option to pay for the damages with land. Nimukei Yosef³ cites the opinion of Ramah who maintains that there are three steps to this halacha. If the damager has cash he must use cash to pay for the damages. If he does not have cash and the choice is to pay for the damages from movable property or land he must pay for the damages from the movable property. The only circumstance in which the damager may pay for the damages with land is if he does not have cash or movable items to pay for the damages. Tosafos⁴, in contrast, adopts the position that the damager has the choice to pay land or cash and he is not forced to give preference to one type of payment over another.

This matter is also debated amongst the Poskim. Sema⁵ writes that the damager has the stronger position when it comes to making payment and if he prefers to pay with land rather than cash or movable items he can make that choice. Shach⁶ writes at length disagreeing with Sema on this matter and concludes that if the damaged party prefers movable objects rather than land he can

REVIEW and Remember

1. Why is it necessary for R' Yochanan and Reish Lakish to dispute the same issue in two different contexts?
2. Explain פירות קנין הגוף דמי.
3. From what type of property are damages paid?
4. What was the Gemara's initial understanding of R' Yishmael's position?

demand the damager to pay for the damages with the movable items rather than with land. A simple reading of Shulchan Aruch seems to support Shach's position since he writes that damages will be collected from movable property but in the event that the damager does not own movable property the damages could be collected from land. Sema is forced to explain that Shulchan Aruch's language addresses the more common outcome which is that the damager will prefer to pay from movable property rather than land. If, however, the damager expresses a desire to pay with land he has the option to do so. ■

1. רש"י מ"ח: ד"ה מן העידית.
2. רש"י מ"ט. ד"ה הכא.
3. נימוקי יוסף לבי"ק ב. (בדפי הרי"ף) ד"ה ישיב.
4. עי' תוס' מ"ט. ד"ה כגון ותוסי' בבי"ק ט. ד"ה רב הונא וע"ש שמביא כמה דעות בזה.
5. סמ"ע סי' תי"ט סק"א.
6. ש"ך שם סק"ב. ■

STORIES Off the Daf

To Right the World

"...מפני תיקון העולם"

On today's daf we find that the details of certain types of debt repayment are due to the demands of tikkun ha'olam—the duty to right the world and human relationships.

A certain man once fell ill. At times, he was fully sane, but at other times he would have fits and lose his reason. A close relative was concerned for his health and hired a doctor to diagnose and treat him. Unfortunately, the patient died shortly after. But when the relative asked the designated executor to pay the doctor's hefty bill, the executor refused.

The executor pressed, "Did the deceased ask you to summon a doctor? If he had, I would gladly pay you from his estate since you summoned the doctor at his request. But do you not admit yourself that you brought the doctor on your own initiative and paid him with your own money? Of course, this was very generous of you and is a great zechus to your credit, yet I see no reason why the orphans should lose from their inheritance because of your unsolicited kindness."

The relative was very indignant since they felt that it was obvious that the orphans should pay their father's healthcare bill from his assets. After all, the doctor had been summoned for him.

This question was presented to the Rosh, ז"ל, who answered, "Why should the relative lose because the father himself nev-

er summoned a doctor? The custom is well known: when a person gets sick, his relatives summon a doctor to attend him. This is especially true in this case where the man in question was not always in his right mind. Clearly the relatives couldn't just ignore his illness. Not only that, but even a stranger who summons a doctor for a seriously ill person must be recompensed for this since a doctor is often a matter of life and death and the more one acts with alacrity in such cases the more praiseworthy he is."

The Rosh concluded, "Therefore if there are witnesses that the relative spent money on the doctor or other healthcare needs and was not recompensed he must be repaid out of the orphans' newly-acquired assets." ■¹

1. תשובת הרא"ש, כלל פ"ה, אות ב'