

OVERVIEW of the Daf

1) Clarifying the Mishnah (cont.)

The Gemara concludes the list of ramifications that result from the Mishnah's use of the word להוסיף rather than לכתוב.

2) Four disputes between Pumbedisa and Masa Mechasya

In Pumbedisa they held that the kesubah of the male children is not collected from encumbered property whereas in Masa Mechasya it was collected from encumbered property.

The Gemara rules that it is not collected from encumbered property.

Movable items designated as payment for the kesubah can be collected without an oath but if they no longer exist there is a dispute whether the widow must take an oath to collect. The Gemara rules like Pumbedisa that it is collected without an oath.

If a clearly defined land was designated for the kesubah it is collected without an oath but there is a dispute whether an oath is necessary if only one border was identified.

The Gemara rules that it is collected without an oath.

There is a dispute whether witnesses (who did not make a קנין) to a donor's commitment to transfer property, must consult with the donor before drawing up the documentation of the transfer of the property.

The Gemara rules that it is necessary to consult with the donor before drawing up the documentation.

3) The position of R' Elazar ben Azaryah

Rav and R' Nosson disagree whether halacha follows R' Elazar ben Azaryah's position in the Mishnah.

An attempt is made to demonstrate that R' Nosson is the one who states that halacha follows R' Elazar ben Azaryah since he accepts presumptions (אומדנא) as halachically valid.

The Gemara notes that Rav also accepts presumptions as halachically valid.

The case that indicates that Rav accepts presumptions as halachically valid is cited. ■

REVIEW and Remember

1. What is the dispute between the students from Pumbedisa and from Mechasya concerning the kesubah of male children?

2. Are witnesses to a transaction authorized to draw up a contract?

3. What is unusual about a deathbed gift that includes a kinyan?

4. Explain the dispute between Rav and Shmuel concerning a deathbed gift that includes a kinyan?

Distinctive INSIGHT

Instructions to the witnesses and arranging a קנין

אמר לעדים כתבו וחתמו והבו ליה קנו מיניה לא צריך אימלוכי ביה

The Gemara is in the middle of presenting a series of disputes between the students at Pumbedisa and the students of the city of Mechasya. One case is where a landholder instructs witnesses to write and sign a document to transfer his field to another person. All opinions agree that the halacha is that if the witnesses also accept the land on the part of the receiver by means of a formal קנין, such as חליפין וסודר, the witnesses may record the transaction in a document even without further formal instructions from the giver. The case which is disputed is where no transaction took place after the initial instructions to record the transfer. The students of Pumbedisa hold that even in this case, the witnesses may write a document, relying simply upon the instructions given them initially. Here, the students of Mechasya disagree and they hold that the witnesses should not record the event without specifically being told to do so..

Rashi learns that this case is referring to where the field is being given as a gift. Tosafos notes that once a formal transaction is performed, the witnesses could record the event even if they had not originally been instructed to "write and sign" their observations. And furthermore, once they are told to write down their testimony, the witnesses would be justified in recording the event even if no קנין is done. The introductory statement of the owner instructing the witnesses to "write and sign" is only significant for the case where no קנין was later performed. It is in this case that these words are essential, and this is where we find the dispute between the students of Pumbedisa who allow the document to be written, and those from the city of Mechasya, who require a specific order from the owner.

Tosafos adds that although the document may be written, if the owner chooses to change his mind because the קנין has not yet been made. The reason is that the owner wants the buyer to own the land as soon as possible, and he is not interested in his waiting until the קנין is completed. Tosafos, however, learns that the case here is dealing with a sales document, unlike Rashi who learned that we are dealing with a gift. Tosafos leaves the matter unresolved if the owner may change his mind in the case of a gift. ■

HALACHAH Highlight

Using tzedaka funds for another purpose

דשמעין ליה לר' נתן דאזיל בתר אומדנא

Because we learned that R' Nosson follows presumptions

Dayan Yitzchok Yaakov Weiss¹, the Minchas Yitzchok, was asked from a tzedaka collector whether funds he collected for a particular institution may be used for another institution that is similar to the first without consulting the donors. Minchas Yitzchok cited Shulchan Aruch² who rules that once money has been collected for one purpose it may not be redirected for another purpose. Certainly, when there is a strong presumption (אומדנא דמוכח) that the money was not given to be used for another institution it is prohibited to redirect those funds since a strong presumption has the halachic weight to allow a person to collect money from someone who has possession of that money (להוציא מן המוחזק).

Rav Dovid Sperber³, the Afraksta D'Anya, also addressed this question. There were once members of a pious but impoverished family who were taken into captivity. As funds were being collected for their ransom the captors set

them free and the question was what should be done with the collected funds. One could argue that now that the funds are no longer needed for the mitzvah of redeeming captives the money should be returned to the donors but one could also argue that the money should be sent to the newly-released families since they are in any case impoverished.

After a lengthy analysis of the relevant issues Afraksta D'Anya concluded that generally, the money should not be sent to the newly-released families without consulting the donors. However, in this case where the potential recipients are talmidei chachamim and specifically, since he knows many of the donors he has no doubt that they would want the money to be sent to these families to help them overcome their struggles with hunger. Although it is true that had the donors been approached in the first place to donate money for the sustenance of these families their donations would be lower than the amount they gave thinking that it was to redeem captives, nonetheless, once the money was given they would certainly waive their right to take back the money. ■

שו"ת מנחת יצחק ח"ט סי' ק"ד.

1. שו"ע או"ח סי' קנ"ג סעי' ז'.

2. שו"ת אפרקסתא דעניא ח"ג יו"ד סי' קפ"ב. ■

STORIES Off the Daf

D'mai Fruits

"ובתרומת מעשר של דמאי..."

Produce which an am ha'aretz claims was tithed is d'mai, is questionable. However, we find on today's daf that if some terumas ma'aser of the d'mai fruit got mixed in with chulin, we can believe the ignoramus if he claims that the produce was ma'asered.

Rav Zalman of Volozhin, zt"l, was a child prodigy. At fourteen he learned in the great beis medrash in Vilna, and was well known for his brilliance. Once, a certain man came to him and expressed a desire to say over a, "peirush tov on a Mishnah in Maseches D'mai." Since the man, like many Lithuanian Jews of that time, pronounced his shin as a sin, what he said sounded like, "peiros tov."

The young Rav Zalman heard his

visitor out, but he felt that the man's interpretation was off. He felt a bit annoyed at having such bitter "peiros tov" thrust upon him, and he responded sharply after the man finished, "That isn't peiros tov—it's peiros d'mai!" Meaning, this is the awful "fruit" of the scholarship of an ignoramus.

As soon as the abashed man left, Rav Zalman was filled with remorse. How could he shame a fellow Jew who was talking in learning to the best of his ability? Even though they had spoken one on one and Rav Zalman hadn't shamed him in public, there was no excuse for such behavior. He frantically started to search the town for the man to beg his forgiveness but to no avail. The man was nowhere to be found.

Rav Zalman searched for this man for well over a decade but still couldn't find him. It was only with great difficulty that Rav Zalman's son-in-law was able to stop him from undertaking a personal

exile and taking up wandering throughout Lita so that he could admit his sin in every shul throughout the land in the hope of finding the wronged man.

When the Vilna Gaon heard about this, he summoned Rav Zalman to try and comfort and encourage him. The Gaon closed their conversation by saying, "You did everything you possibly could to find the wronged party and make amends. About just such a case the Chovos Halevavos writes in the tenth chapter of Sha'ar Hateshuvah, "If a person earnestly repents after having sinned against his friend bodily or monetarily, Hashem will cause a broad-mindedness and a love to enter his friend's heart until he forgives him..."

Such was Rav Zalman's faith in the Gaon. Although he certainly was already familiar with these words of the Chovos Halevavos, he was instantly comforted as soon as the Gaon uttered them! ■

