

OVERVIEW of the Daf

1) A collection of teachings from Rava (cont.)

R' Chiya bar Avin derives the halacha that an idolater inherits his father's property from a source different than Rava.

This source is unsuccessfully challenged.

The Gemara explains why each Amora rejects the source brought by the other.

2) Contrasting male and female slaves

A Baraisa contrasts the halachos of a male and female slave.

The premise of the assertion that halachos that apply to the male slave do not apply to the female slave is unsuccessfully challenged.

The assertion that a male slave cannot be sold repeatedly is challenged and Rava resolves the challenge.

Abaye rejects this resolution and offers a resolution of his own.

3) Selling a thief into slavery

A Baraisa presents two opposing views about the conditions necessary to sell a thief into slavery.

Rava asserts that the opinion of R' Eliezer should be followed in this case.

4) Contrasting male and female slaves (cont.)

Rava and Abaye dispute the meaning of the Baraisa's statement that a maidservant can be redeemed "against his will."

It is asserted that R' Shimon is the author of the opinion that a maidservant may not be sold repeatedly.

The Gemara notes that the dispute between Tanna Kamma and R' Shimon parallels another dispute between Tannaim.

The Gemara identifies the exact point of dispute between the different Tannaim.

5) יעוד

Rabba bar Avuha asks whether יעוד effects nissuin or kiddushin.

The relevance of the question is explained.

One attempt to resolve this inquiry is recorded.

A second attempt to resolve the inquiry is presented and the Gemara ends off in the midst of that discussion. ■

Distinctive INSIGHT

A man is sold as a Jewish slave only due to his theft

בגניבתו ולא בזממו

The halacha is that a person is subject to being sold by the court as a slave if he steals and does not have the funds to repay the theft. The Gemara states that it is only due to his actual theft that this halacha applies, and not due to a sentence of payment for being an **עד זומם**.

Rashi understands that the case is where a person testified falsely saying that Reuven stole money and must pay. The court then discovers that the testimony was part of a false conspiracy, and the witness now must pay the money due to his attempted false accusation (**עד זומם**). In this case, if he does not have money to pay the penalty for his crime, he is not subject to be sold as a Jewish slave. This seems to be the way Rashi understood the way the case is presented on Makkos 2b.

Rambam (Eidus 20:8), however, writes that the case is that two witnesses testified that Reuven was sold as an **עבד עברי**—a Jewish slave. These two witnesses were then discovered to be false, conspiring witnesses. In this case, the punishment usually is that the witnesses are dealt the fate which they attempted to apply to their victim, which would mean in this case that they must be sold as Jewish slaves. However, due to the exclusion indicated in the verse, these witnesses are not to be sold as slaves, and lashes are administered instead.

Meiri lists both these illustrations as examples of where a witness would not be sold as a slave—both where they testify that Reuven stole, as well as where they testify that Reuven was sold as a Jewish slave, and that the witnesses were subsequently found to be conspiring. Minchas Chinuch (Mitzvah 42, #3) explains that Rambam would agree that the witnesses would not be sold as slaves in the case where the witnesses say that Reuven stole money, and after the scheme is exposed the witnesses have no money. Rashi, as well, would agree that the case presented by Rambam would not result in the witnesses being sold as slaves. The reason each presented the case differently is simply based upon their explanation of various specific cases which the Gemara features in different places. ■

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HALACHAH Highlight

Forcing a delinquent borrower to get a job to pay back a loan

”בגנבתו ולא בכפילו וכו’

”For his theft,” but not for his כפל payment etc.

Reuven borrowed money from Shimon and the two of them wrote a loan document that encumbered all the property that Reuven owned or would ever own, whether land or movable property. When the due date for the loan arrived Reuven had moved in to the house of one of his relatives. Although he continued to eat and drink well and wore nice clothing etc. he claimed that he had given all his property to the relative that was hosting him and retained no property with which to repay the loan. Shimon was obviously disturbed by the situation and asked Rabbeinu Asher ben Yechiel, the Rosh, about different options to see if there was any way he could recover some of his money. One of the possible approaches Shimon suggested was that Reuven should be forced to work for Shimon to pay back the loan. Amongst the proofs Shimon offered that he should be able to force Reuven to work for him was a Teshuvah of a Gaon who wrote that a man is obligated to find a job and earn a salary so that he has the means to financially support his wife since he accepted that responsibility in his kesubah. Similarly, since Reuven committed himself to pay back the money he borrowed he should also be forced to work so that he can pay back the money he owes.

REVIEW and Remember

1. What laws apply to a male slave that do not apply to a female slave?
2. What is the point of dispute between Rava and Abaye regarding the redemption of a maidservant “against his will”?
3. Explain יש אם למסורת.
4. What is יעוד?

Rosh responded that Beis Din is not authorized to force a person to work in order to pay back a loan. One of the proofs to this assertion is a Teshuvah from Rabbeinu Tam who wrote that just as our Gemara infers that a person is sold into slavery for theft and not due to his being an עד זומם or for owing כפל, so too one can deduce that only for theft is a person sold into slavery and not to pay back a loan. Therefore, since the Gemara in Bava Metzia (56b) equates a person who hires himself out as an employee with one who sold himself we must conclude that Beis Din cannot force someone to accept a job to pay back a loan. This ruling of Rosh is codified in Shulchan Aruch where the ruling is that Beis Din cannot force a borrower to find employment or do any sort of job to pay back a loan. ■

1. שו"ת הרא"ש כלל ע"ח סי' ב'.

2. שו"ע חו"מ סי' צ"ז סעי' ט"ו. ■

STORIES Off the Daf

Unpaid debts

”בגניבתו ולא בכפילו...”

A certain man was once owed an astronomical sum of money by a man who simply could not afford to pay. The debtor had been doing well but was robbed of every penny and was required to start from scratch. The man who had lent him the money was understandably upset about the robbery, but he decided that he may have a way to “cash in.” He figured that the borrower could work for him instead of for his family. The

debtor’s family could get whatever assistance the community would provide, and he would receive full reimbursement for his loan from the work this man would do for him.

He went to the sages of his city and asked permission to seize this man and use him to repay the debt. “Why can’t I? I know that we do this for someone who hasn’t paid his taxes. Why am I any different?”

The local rabbis had no idea how to answer this question, so they consulted with the Rosh, זת”ל. He answered, “The creditor certainly may not force this man to work the debt off for him. In Kiddushin 18 we find that one is sold

for his theft, but not to repay the secondary fine. Similarly, one may not be sold or forced to work for someone because of his debt. The verse discusses only selling one for a theft. Failure to repay a loan is surely not in this category.

The Rosh concluded, “The creditor cannot force him to work for him just as he cannot enslave him. The ‘proof’ he tried to bring is no proof at all, since in the case of taxes, the halachic principal of דינא דינא דמלכותא דינא applies. But we surely cannot learn from that that a creditor has the right to seize a person bodily for repayment of a private loan!” ■

1. שו"ת הרא"ש, כלל ס"ח, סימן י'

