

OVERVIEW of the Daf

1) Clarifying the Mishnah (cont.)

Rava qualifies R' Ami's interpretation of the Mishnah's final ruling.

A Baraisa is cited that confirms Rava's qualification.

The interpretation of the Baraisa that proves Rava's qualification is unsuccessfully challenged.

The Gemara inquires how Rav and Shmuel, cited on the previous daf, would interpret the previously-cited Baraisa since it seems to contradict their position.

Rav and Shmuel assert that the Baraisa reflects the opinion of Rabbi, thus their position is not refuted.

2) Kiddushin with a loan

Rav asserts that if a man betrothed a woman with a loan the kiddushin is invalid since the money is given to be spent **מלוה להוצאה ניתנה**.

It is suggested that a Baraisa demonstrates that the matter is subject to a dispute amongst Tannaim.

An alternative explanation of the Baraisa is cited.

This interpretation is unsuccessfully challenged.

The Gemara challenges Rav's ruling from a Baraisa.

Rava demonstrates that the Baraisa is not reliable and thus defends Rav's ruling.

Rava's explanation leaves in place a dispute amongst Tannaim regarding Rav's halacha. Rabbah suggests an explanation of the point of dispute.

Rava's explanation of the Baraisa is unsuccessfully challenged.

It is suggested that Rav's ruling is subject to debate amongst a different set of Tannaim.

This suggestion is rejected since the Baraisa could be interpreted differently and the Gemara presents different ways to interpret the dispute in the Baraisa. ■

REVIEW and Remember

1. What is the difference between **באלו** and **בזו ובזו ובזו**?
2. Explain **מלוה להוצאה ניתנה**.
3. What is the status of a loan that the borrower has not yet begun to spend?
4. Explain **אותיות נקנות במסירה**.

Distinctive INSIGHT

Receiving less than she expected

האומר לאשה התקדשי לי הפקדון שיש לי בידך והלכה ומצאתו שנגנב או שאבד אם נשתיירו הימנו שוה פרוטה מקודשת, ואם לאו אינה מקודשת

A man gave a woman an item as collateral for a loan. He later tells the woman that he wants her to keep the item, which he now offers her as kiddushin. The woman finds that the item has been stolen or lost. The halacha is that if there is even the smallest remainder of the item intact, even the value of a peruta, the kiddushin is valid. If not even that amount is remaining, the kiddushin is not valid.

The Rishonim ask why the kiddushin should be valid if a peruta amount of the item remains. The woman agreed to kiddushin upon being told that she would receive the full item, but she did not get what she was promised. Earlier (8a) Rabbi Elazer taught that if a man promised to give a woman a **מנה** for kiddushin and the sum of money is lacking even one coin, the kiddushin is not valid. Here, too, we should say that the woman expected to receive the full value of the item, and she did not receive it.

The Halachos Gedolos writes that although the kiddushin is valid immediately, nevertheless, the man must add and pay the woman up to the full value of what the item was worth. The **שיטה לא נודע למי** questions the words of the Halachos Gedolos. Earlier (8a), when a man tells a woman that he will give her "this one hundred coins" for kiddushin, and the pile of money he presents to her is deficient, the halacha is that the kiddushin is not valid. There we do not say that the kiddushin is valid and the man should make up the difference. Our case is parallel to the case of the deficient pile of money, as the man promised to give her a particular item (the collateral), and the woman then finds that the item is lost or ruined. Why should the kiddushin be valid?

He answers that in the case of the deficient pile of money, the man misled the woman. He promised to give her one hundred, but the amount given was less. In the case of the collateral item, the man sincerely meant that the woman receive the full and intact item. If it was found to be damaged or lost, the man willingly will make up the difference.

Tosafos Rid also argues against the **שיטה לא נודע למי**. He points out that the man never committed himself to give the woman a specific amount when he offered the item of collateral for her to keep. He should therefore not be responsible to supplement the value to its full, original amount. If it is still worth at least a peruta, the woman cannot claim that she was promised any more than that. In the case of Rabbi Elazer on 8a, the man promised one hundred, and the kiddushin is not valid if she does not get what she expected. ■

HALACHAH Highlight

Betrothing a woman by waiving the money she should give to fulfill the mitzvah of Chanukah candles as a guest
 אמר רב המקדש במלוה אינה מקודשת

Rav ruled that if kiddushin is done with a loan the kiddushin is invalid

Sefer Atzei Zayis¹ presents an interesting question related to the topic discussed in our Gemara of kiddushin with a loan. If a woman is a guest at someone else's home (אכסנאית) she must give the homeowner a perutah in order to fulfill the mitzvah of lighting candles on Chanukah. Is it possible for the homeowner to betroth a woman by waiving her obligation to give him that perutah? In other words, if the homeowner were to say to the woman, "Behold, you are betrothed to me with the benefit you have by my waiving your obligation to give a perutah to be part of the mitzvah of Chanukah candles." What makes this more interesting is that he is waiving a payment she must make to be part of a mitzvah. On the one hand one could argue that in this case it is not considered a benefit since mitzvos were not designed for benefit (מצוות לאו ליהנות נתנו). On the other

hand, one could contend that despite the fact that it relates to a mitzvah she is still saving money and thus benefits.

He concludes that this would not produce a valid kiddushin. The reason is that this case is not similar to the case of the Gemara of forgoing payment of a loan. In the case of forgoing payment of a loan if the man had decided to give her other money for kiddushin she would be left with the debt she created when she first borrowed money from him. Therefore, when the man decides to waive payment of the loan as a form of kiddushin she is benefiting financially. In contrast, the reason the woman in our case was obligated to give a perutah was that she was a guest in her host's home. If the homeowner decided to give the woman a perutah for kiddushin she would immediately become a member of his household and there would be no need for her to give a perutah to fulfill the mitzvah of Chanukah candles since she would fulfill the mitzvah as the wife of the homeowner. Therefore, whether he betroths her with the money he waives for her portion in his Chanukah candles or whether he betroths her with other money she will not benefit financially and thus since she is not benefiting financially the kiddushin is invalid. ■

1. ספר עצי זית דף כ' טור ב'.

STORIES Off the Daf

A tragic mishap

"מה שאלה דהדרה בעינא חייב באונסים..."

It is hard to picture the unsettled conditions of life during the Middle Ages. Crusaders racing through European towns could take any person's possessions at any time for any reason—especially if the victim was a Jew who could be relieved of life and limb as well. Holy seforim, all in manuscript form before the advent of the printing press, were also very expensive and hard to come by. This was all the more true after the public burning of dozens of wagonloads of seforim in Paris in 1242.

Understandably, people were very careful to whom they lent their precious seforim. In addition they often asked for valuable collateral as a pledge just in

case the sefer was damaged in some way.

A certain man lent his friend a sefer and took a different sefer as collateral. Sadly, a group of crusaders arrived in the town soon afterward and made off with virtually all the sefarim, including the two works in question. A short time later, the sefer that had been given as collateral found its way back to the man who had lent the sefer to his friend. The moment word of this traveled through the town, the overjoyed borrower visited his friend and demanded that he return his sefer.

The friend refused point blank. "First return my sefer," he retorted. This was, of course, impossible, since it had been looted by soldiers. When the two went to their beis din, the judges were uncertain as to the halachah. On the one hand, we find on Kiddushin 47 and many other places that a borrower is responsible even in an unavoidable mis-

hap. On the other hand, maybe there was something different about this case since both borrower and lender had been robbed—it was only an act of providence that had restored the collateral to the lender. They decided to consult with the Ran, ז"ל, regarding this question.

The Ran answered, "The lender must certainly return the collateral. The only reason why a borrower is obligated for unforeseen mishaps is because the owner gets nothing from the deal. We hold that even if he gets the slight pleasure of not being obligated to give tzedakah while doing the mitzvah, he is not obligated in אונסים. Since lending a sefer is enough of a mitzvah that he would not have to give tzedakah while doing it, the borrower is not obligated to make restitution for the mishap." ■

1. שו"ת הר"ן, סימן י"ט

