

OVERVIEW of the Daf

1) Identifying the sources for the Mishnah's rulings (cont.)

Abaye concludes citing the Baraisa that serves as the source that unconsecrated animals slaughtered in the Beis Hamikdash are prohibited from benefit.

Mar Yehudah pointed out to R' Yosef and R' Shmuel the son of Rabbah bar bar Chanah a contradiction between two rulings of R' Shimon whether unconsecrated animals slaughtered in the Beis Hamikdash are Biblically prohibited from benefit.

When they did not know how to resolve the contradiction they turned to Rabbah who resolved the contradiction.

2) Using the proceeds of the sale of an item prohibited from benefit for kiddushin

The Gemara cites an exposition concerning avodah zarah that teaches that money received for the sale of avodah zarah is prohibited, from which we infer that the sale of other prohibited items is permitted.

Avodah zarah is not used as a model to teach that money received for the sale of other items that are prohibited from benefit is permitted to be used. The reason for this is explained.

The Gemara explains how the opinion that maintains that we can generalize from two examples in the Torah (שני) (כתובים הבאים כאחד) knows that the money received for items that is prohibited from benefit are permitted.

3) **MISHNAH:** The Mishnah discusses the validity of kiddushin when different unusual items are given to effect kiddushin.

4) טובת הנאה – The benefit of gratitude

Ulla asserts that the benefit of gratitude is not worth money.

R' Abba unsuccessfully challenges this ruling.

R' Chiya bar Avin asked R' Huna whether benefit of gratitude is worth money.

R' Huna answered that it is worth money.

R' Chiya bar Avin unsuccessfully challenged R' Huna's proof.

It is suggested that the question of whether the benefit of gratitude is worth money is subject to a dispute amongst Tanaim.

Four alternative ways to explain the Baraisa are presented.

A contradiction between our Mishnah and a Mishnah in Bechoros is noted.

Abaye reconciles the contradiction.

הדרן עלך האיש מקדש

5) **MISHNAH:** The Mishnah discusses numerous cases of two men who betroth the same woman.

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Gemara GEM

טבל Restitution by a thief who steals

והכא בדשמואל קמיפלגי דאמר שמואל חיטה אחת פוטרת את הכרי

In its analysis of the final Mishnah of the second perek, Ulla explained that the reason a Yisroel may use teruma for kiddushin is that the Mishnah is speaking about a Yisroel who inherited teruma which was given to his maternal grandfather. However, the Mishnah cannot be speaking about one's own collection of teruma which was designated from his own produce and is waiting to be given to a kohen. According to Ulla, even though the Yisroel has the privilege to decide which kohen will receive the teruma, this favor—טובת הנאה—is not recognized as a financial entity.

The Gemara tried to show that the issue whether or not טובת הנאה is ממון or not is actually a dispute between Rebbe and Rebbe Yose ben Yehuda regarding what a thief must repay if he steals untithed grain. Rebbe says the thief must repay the full value of the grain, including the value of the teruma and ma'aser contained therein. Rebbe apparently holds that the privilege to select the kohen who will be the recipient of the teruma amounts to financial equity. Rebbe Yose ben Yehuda rules that he need only repay the value of the חולין – the part which remains after the teruma and ma'aser are removed. There is no value of the tithes for the Yisroel, not even in the power to determine to whom they will be distributed.

The Gemara responds that the dispute between Rebbe and Rebbe Yose ben Yehuda is regarding the halacha of Shmuel, whether one kernel is enough to exempt the entire pile. The Achronim immediately ask that the rule of Shmuel is, at best, a Torah law, but the rabbis enacted that the amount for teruma be at least one-sixtieth. According to the Gemara at this point, the thief should be released from at least this amount, and not have to pay the full amount about which Rebbe spoke.

Pri Yitzchok explains that rabbinically, one kernel still can exempt the entire pile, but the rabbis insisted that the farmer give at least one-sixtieth (there is a requirement of נתינה). The thief can therefore claim that he would not have fulfilled the directive to give the amount that the rabbis recommended. ■

REVIEW and Remember

1. Whom did Rabbah refer to as the "dissenter"?
2. If a non-Kohen gives a woman terumah for kiddushin, is it valid?
3. What is טובת הנאה?
4. What word in our Mishnah indicates that the agent acted deceitfully?

HALACHAH Highlight

Taking payment for the performance of a mitzvah

כאן בשכר הזאה וקידוש

Here we are discussing payment for transporting the ashes and drawing the water

Even Ha'ezel¹ notes that there is a fundamental disagreement, related to our Gemara, whether it is permitted for a person to take money for the performance of a mitzvah. Rashi² writes that the reason it is permitted to take wages for transporting the ashes and the drawing of the water is that it involves exertion and there is no obligation for the kohen to exert himself for the sake of this mitzvah since someone else could also transport the ashes and draw the water. Since this kohen is the one doing those activities he has the right to collect payment for that mitzvah. Tosafos Ri Hazaken offers an alternative explanation. The reason it is permitted to take money for the transporting of the ashes and the drawing of the water is that these activities are only preparatory activities (הכשר מצוה) of the mitzvah rather than the mitzvah itself, thus it is permitted to take payment for those activities. It would seem, observes Even Ha'ezel, that Rashi and Tosafos Ri Hazaken disagree whether one is permitted ever to take money for the performance of a mitzvah. According to Rashi it is permitted to take money for a mitzvah that involves exertion since the Torah does not mandate the one performing the mitzvah to exert himself whereas according to Tosafos Ri Hazaken one may never take money for the performance of a mitzvah, only for the preparatory activity

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6) The character of the deceitful agent

A Baraisa states that the agent in the Mishnah's first case behaved deceptively.

The Gemara notes that the choice of words in our Mishnah also alludes to this. ■

of the mitzvah.

Machaneh Ephraim⁴ notes that there is a disagreement whether a witness is permitted to take payment for the exertion that is involved in traveling to Beis Din and testifying. Rabbeinu Simchah Hakohen maintains that one is not permitted to take payment for testifying, even if it is necessary for the witness to travel a great distance to give his testimony. Ritva, in his commentary to our Gemara, writes that a witness is permitted to take payment for the exertion involved in giving testimony. The point of dispute seems to be related to the disagreement between Rashi and Tosafos Ri Hazaken. Rabbeinu Simchah Hakohen subscribes to the position of Tosafos Ri Hazaken that one may never take payment for the performance of a mitzvah and thus one may not even take money for traveling to testify since that is considered part of the mitzvah to give testimony. Ritva, on the other hand, follows the opinion of Rashi that it is permitted to take payment for the exertion involved in performing a mitzvah. ■

1. אבן האזל פי"ב מה'ל גניבה ה"ג ד"ה אכן.

2. רש"י ד"ה בשכר.

3. תוס' ר"י הזקן בסוגייתינו.

4. מחנה אפרים ה'ל שכירות סי' י"ז. ■

STORIES Off the Daf

"He acted falsely"

"אלא שנהג בה מנהג רמאות..."

A certain man met a woman he felt could be a good match for him. He was quite wealthy and she was from a fairly poor family without prospects. Although she didn't feel that he was necessarily Mr. Right, she still agreed to become engaged to him.

Around a month later, this very same woman met a truly wonderful man who was a superior match for her in many ways. Although she had committed to marry the first gentleman, who was older, they had not made any halachically binding agreement. After some deliberation, the younger man finally won her over and the

two agreed to marry.

The two of them held a quiet wedding and were blissfully happy. But this left the second suitor with the unpleasant job of informing his predecessor that the woman he thought would be his bride was no longer willing to marry him—in fact, she had already been married to another man.

When the elderly man was apprised of this, he was furious. "Don't you know that halachically you are considered a rasha for this? Even now you should divorce her, since she agreed to marry me and not you!"

The younger man agreed to go to beis din and do whatever the dayan instructed. When this question was raised before the Halachos Ketanos, zt"l, he replied, "We find in Kiddushin 58 that in a case where one who sends an agent to propose to a woman for him and the messenger propos-

es for himself instead, the woman is nevertheless married to the messenger. The Gemara explains that although the messenger is a trickster, what he did took effect. This implies that although he acted falsely, he is not considered an absolute rasha for having betrayed his trust and absconded with the sender's intended.

"Although that sugya is not discussing where they were already betrothed, we can also explain that our case is better than that of the Gemara of a messenger who has not apprised his bride that there was another man who wished to marry her. In our case, there was no halachic obligation for the woman to marry the first man. Although what the couple did was not right, it is definitely a binding marriage and they need not dissolve it."¹ ■

¹ שו"ת הלכות קטנות, חלק ב', סימן רפ"ו