

OVERVIEW of the Daf

1) Clarifying the dispute (cont.)

An unsuccessful challenge to R' Meir is presented.

After resolving this challenge the Gemara turns and uses that exposition to unsuccessfully challenge R' Chanina ben Gamliel.

Another unsuccessful challenge to R' Chanina ben Gamliel is recorded.

Tangentially, the Gemara clarifies some of the other verses related to tum'ah that were just cited.

2) **MISHNAH:** The Mishnah begins with a discussion of a kiddushin done under a false impression. The Mishnah concludes with cases involving kiddushin that is dependant upon some future event taking place.

3) A thing that has not yet come into the world

A Mishnah in Terumos is cited that teaches that separating terumah from cut produce for detached produce is invalid.

R' Assi asked R' Yochanan whether a declaration that fruit that is detached will become terumah for fruit that is attached when it is picked is a valid declaration or not.

R' Yochanan answered that as long as the one making the declaration has the ability to perform the action the declaration is valid (כל שבידו לאו כמחוסר מעשה דמי).

Three unsuccessful challenges to R' Yochanan's position are presented.

A Baraisa is cited that supports R' Yochanan's position.

4) Making a transaction on something that has not yet come into the world

Rabbah and R' Yosef disagree about how far to take R' Eliezer ban Yaakov's view that one can make a transaction even on something that is not yet in this world.

Tangentially the origin of the term אגם is discussed.

A Baraisa is cited and the Gemara explains how Rabbah and R' Yosef would interpret the Baraisa.

A second version of the dispute between Rabbah and R' Yosef is cited.

Abaye presents a list of three Tannaim who maintain that one can make a transaction on something that is not yet in the world. ■

Distinctive INSIGHT

An entity that does not yet exist—דבר שלא בא לעולם

תפשוט דבעי רב אושעיא

In general, it is legally impossible to deal with an entity that does not yet exist—דבר שלא בא לעולם. An example of this would be if a man tells a married woman that he is now giving her kiddushin that should be effective after her husband dies. In this case, the arrangement is done when a situation is not available for kiddushin. No legal maneuver is valid under these circumstances.

Rabbi Yochanan taught that if a person can change the matter, we consider the new situation to be in effect as of now, even before it is done. For example, that teruma can only be taken from produce which is already detached from the ground. A person can, at any time, detach the growing stalks of a plant. Therefore, if he says, "The grain from the stalks which are still connected to the ground shall be teruma for the pile of grain which is already detached," the halacha recognizes his words as binding. When he detaches those stalks, they become teruma, just as he had declared. Even though the grain designated as teruma was still attached to the ground and therefore not yet available, since the man had the power to change the situation and cut the stalks, this is not "an entity which does not yet exist".

Two questions are now advanced against R' Yochanan. Rebbe Oshaya rules if a man gives his wife a peruta and tells her that it should be for kiddushin after he divorces her, the kiddushin is not valid. According to R' Yochanan, perhaps the kiddushin should be valid, as the man has the ability to divorce his wife. The Gemara answers that although he can unilaterally divorce her, he cannot control if she will agree to remarry him.

A second point is a question raised by Rav Oshaya. A man gives a woman two perutos, and says, "With one you are betrothed to me now, and with the other you are betrothed to me after I divorce you." Rav Oshaya asked whether the second kiddushin takes effect. Now, if Rav Yochanan were correct, the man has no control over whether the woman would agree to a second kiddushin, and it should be a דבר שלא בא לעולם. The Gemara answers that perhaps just as the first kiddushin is effective, so too should the second kiddushin be effective.

Ramban and Rashba note that the first statement of Rebbe Oshaya leads us to the solution of the second inquiry, which was unresolved. If kiddushin is not valid when a man gives money to his wife to remarry her after he divorces her, we see that the second kiddushin will not be valid when he gives two perutos to a woman who is not his wife. Ramban answers that these must be two Amoraim, one Rebbe Oshaya (אושעיא), the other one Rav Hoshaya (הושעיא), so we cannot ask from one against the other. Rashba's text reads that the two Amoraim were Rebbe Oshaya and Rav Oshaya. ■

HALACHAH Highlight

Is conversion something that is considered in the power of the non-Jew?

גר נמי לאו בידו ... מי יימר דמזדקרו ליה הני תלתא

Becoming a convert is not in his power ... who says that he will find three people to preside over his conversion

Shulchan Aruch¹ rules that a convert may not give testimony on matters that he witnessed before his conversion. Shach² comments that the non-Jew who converts is not disqualified to testify based on the reason that we require the witness to be a valid witness when he witnesses the event as well as when he testifies. The reason is that since he had the choice to convert (בידו) and change his disqualified status it is not considered as if he was unfit at that point. Sefer Divrei Aharon³ challenges this ruling from our Gemara that states that we do not consider the possibility of converting something that is within his range of choice (בידו). He answers that the case in the Gemara Kiddushin is unique because it refers to a case of a non-Jew who betrothed a woman on condition that he would convert. The reason it is considered a case where it was not in his power is that it appears as if he is converting for the sake of marriage. Since the circumstances give that impression, he cannot assure that he will find a Beis Din that will convert him since that is one of the issues that Beis Din investigates before agreeing to go forward with a conversion⁴. The case of Shach, on the other hand, refers to a man whose intention is for the sake of Heaven and Beis Din will certainly agree to preside over his conversion

REVIEW and Remember

1. What does the word הנקי teach?

2. May one designate attached produce at terumah?

3. What is R' Eliezer ben Yaakov's position regarding a transaction on things that are not yet in the world?

4. Is it possible for a man to betroth a fetus?

and thus it is considered within his range of choice.

Rav Ovadiah Yosef⁵ notes that Tosafos in Sotah⁶ does not seem to follow this approach. Tosafos there explains that the reason conversion is not considered to be in the power of the non-Jew is that it requires a Beis Din and he does not have the power to convene a Beis Din for his conversion. According to this explanation the challenge against Shach returns since regarding this explanation there is no difference between the Gemara in Kiddushin and the case of Shach. Despite numerous attempts to resolve the challenge against Shach from our Gemara Rav Ovadiah Yosef leaves the matter unresolved. ■

1. שו"ע חו"מ סי' ל"ה סעי' ז'.
2. ש"ך שם סק"ז.
3. ספר דברי אהרן דף ק"ח ע"ב בשם אביו ומובא דבריו בשו"ת יביע אומר ח"ב אה"ע סימן י"ג אות ה'.
4. ע"י שו"ע יו"ד סי' רס"ח סעי' י"ב.
5. שו"ת יביע אומר ח"ב אה"ע סימן י"ג אות ה'.
6. תוס' סוטה כ"ה: ד"ה לאו כגבוי דמי. ■

STORIES Off the Daf

False pretenses

"במקדש אשה ואמר..."

A certain talmid chacham wished to marry and have as many children as possible. Although he was a pious and good person, he was also a bit naïve. When a shadchan sensed his lack of worldliness, he decided to lie about a potential match. He claimed that a certain girl was twenty-four when she was actually thirty-two. The man and the woman met, and the young scholar was very impressed with her. She came from an impeccable family of scholars and he wished to marry her.

They arranged the first stage of kiddushin but shortly thereafter, the young

man discovered that she was actually thirty-two. Naturally, he was very upset. He explained that he was afraid that she would not be able to have many children. He wished to divorce her since he had been duped, but he was told that sometimes women who start bearing children at her age also manage to have large families. In any event, he was a meek person and when he heard that the outspoken brothers of the bride wished to fight the matter out, he agreed to consummate their marriage.

Unfortunately, his fears were realized. She bore two boys and a girl, but then it became clear that she could no longer bear children. Her husband was furious and claimed that he would never have consented to marry her if he had known, even for all the money in the world. He felt that this was enough to annul the marriage, but

he decided to consult with the Ben Ish Chai, zt"l, regarding this question.

The Ben Ish Chai responded, "It is clear to me that the marriage stands despite your feelings. We see this from the Mishnah found on Kiddushin 62 which states that if one married a man on the assumption that he is a kohen or for some other reason that turns out to be false, the marriage takes effect unless the husband actually said: 'you are consecrated to me on condition that I am a kohen.' In your case, you knew her age before the second stage yet you decided to go through with it regardless. So there is no question about the validity of your marriage.

He concluded, "My advice to you is to remain with her, since a man should always cleave to his wife with love."¹ ■

¹שו"ת רב פעלים, חלק א', אבן העזר, סימן ח'

