

This month's Daf Digest is dedicated
לעילוי נשמת צבי בן יחזקאל יוסף גרין, מחסידי דעעש
From the Grin family, Sao Paulo, Brazil

OVERVIEW of the Daf

1) Making use of the one who was kidnapped (cont.)

One of the earlier-cited Beraisos was cited before R' Sheishes who emended the Baraisa.

The Gemara explains what about the Baraisa troubled R' Sheishes.

2) Kidnapping a son

Abaye explains the rationale behind Rabanan's position that one is not liable for kidnapping a son.

R' Pappa unsuccessfully challenges Abaye's explanation.

Rava notes an application of Abaye's explanation.

3) Disgrace to a slave

R' Yehudah is cited in a Mishnah that slaves do not collect payment for disgrace (בושת).

The disagreement between R' Yehudah and Rabanan on this point is explained.

The Gemara then explains the point of dispute between R' Yehudah and Rabanan in our Mishnah whether there is liability for kidnapping someone who is half slave and half freeman.

4) Kidnapping

R' Yoshiyah and R' Yochanan offer different sources for the warning against kidnapping and the Gemara explains that they do not disagree.

A Baraisa explains how we know that the verse לא תגנוב refers to kidnapping.

Another Baraisa demonstrates how we know that the verse לא תגנובו refers to stealing money.

5) Witnesses to a kidnapping who are zomemim

Chizkiyah and R' Yochanan disagree whether witnesses to the kidnapping and witnesses to the sale of the victim into slavery who are zomemim are killed.

The Gemara explains their respective positions.

R' Pappa challenges Chizkiyah's position that was based on the previous explanation and offers a different explanation of the dispute.

Abaye presents three different rulings of whether zomem witnesses in a ben sorer umoreh case are executed.

R' Assi rules that witnesses to the sale of a kidnapped victim are not executed even if they are zomemim.

R' Yosef offers a different rationale for this ruling.

Abaye's rejects R' Yosef's explanation and offers his own explanation.

This explanation is unsuccessfully challenged.

6) **MISHNAH:** The Mishnah elaborates on the procedure involved in convicting one as a zaken mamre. ■

Distinctive INSIGHT

Testimony about the kidnapping and about the subsequent sale

איתמר עידי גניבה ועידי מכירה בנפש שהוזמו חזקיה אמר אין נהרגין רבי יוחנן אמר נהרגין

When witnesses testify that someone committed an offense, and a second set of witnesses comes and testifies that the first set was lying, if the second set claims that the first set was with them in a different location and could not have possibly witnessed the event, the first set are called **עדים זוממין**—conspiring witnesses. The punishment for the first set is that they receive the penalty they attempted to apply to the defendant.

Our Gemara presents a discussion regarding witnesses who testify in court about a kidnapping. One set of witnesses testifies that the person was kidnapped, while a second set testifies that the kidnapper sold the victim. It is only with a combination of these two testimonies that the perpetrator is liable for death. In a case where these two sets are found to be **זוממין**, Chizkiya rules that neither set receives a death penalty, while R' Yochanan holds that the death penalty is applied to these witnesses. ר"ן explains that according to R' Yochanan, if the witnesses who testified about the selling of the person came first, followed by the witnesses who testified about the kidnapping, then both sets are to be killed. If the ones who testified about the kidnapping came first, then it is only the ones who testified about the sale of the victim who will be put to death as **זוממין**.

The reason Chizkiya holds that the witnesses cannot be punished as **זוממין** is that he holds that each set is only testifying about information which is only contributing to the total picture. This is a classic case of **חצי דבר**, as neither set is providing

(Continued on page 2)

REVIEW and Remember

1. What is the rationale to exempt someone who kidnaps his own child?

2. How do we know that the prohibition לא תגנוב refers to kidnapping?

3. According to R' Pappa, what is the point of dispute between Chizkiyah and R' Yochanan?

4. At what age is one fit to issue halachic rulings?

HALACHAH Highlight

Issuing halachic ruling before reaching the age of forty

תלמיד שהורה לעשות פטור נמצא חומר קולו

A student who issues a ruling is exempt and it emerges that his stringency is his leniency

Rashi¹ in his commentary to the Mishnah writes that since someone less than forty years old may not issue halachic rulings it is not possible for him to become a zaken mamre. The source of this comment is the Gemara Sotah (22b) that states that a student should not issue halachic rulings before he reaches the age of forty. Rashi² explains that this restriction is in force only when there are others who are qualified to issue halachic rulings, but if the other scholars are not greater scholars than he, he may issue halachic rulings even though he is younger than forty years old. Tosafos³ cites an opinion that maintains that even if the other rabbis are equal to him he should not issue halachic rulings; it is only when he is the greatest scholar in town that he would be permitted to issue halachic rulings before he is forty years old.

In the event that someone younger than forty issued a halachic ruling, Rashi⁴ writes that one should not follow that ruling. Radvaz⁵ disagrees and notes that although the Gemara declares that he is unfit to issue halachic rulings the Gemara does not say that his rulings have no force as the Gemara states (Bechoros 24b) when it disqualifies a judge who takes money to adjudicate.

The restriction against issuing halachic rulings before reaching the age of forty is not mentioned by Rambam or Tur. Beis Yosef⁶ explains that according to Rambam and Tur that it is not prohibited to issue halachic rulings before the age of forty; rather, until the age of forty one has the right to adopt a pious approach and refrain from issuing halachic rulings. Upon reaching the age of forty it is obligatory for a person who is qualified to issue halachic rulings and he may not avoid that responsibility. Other authorities⁷ explain that the restriction against issuing halachic

(Insight...continued from page 1)

us with information which in and of itself would result in the defendant's being liable for death. The Rishonim point out, however, that if this is indeed considered as a case of two bits of half information, how could these sets combine to convict the defendant to death even if they were not challenged as *זוממין* by a second set? And if Chizkiya actually holds that the original testimony cannot be used against the defendant himself, then the disagreement between him and R' Yochanan is not only regarding whether the first set will be put to death as *זוממין*, but also whether or not the original testimony can be used at all. Accordingly, the disagreement between Chizkiya and R' Yochanan should have been presented more drastically, in regard to the defendant, as well as in reference to the subsequent *זוממין* implications.

Ba'al HaMaor explains that this question is indeed present, but only according to the current assumed understanding of the Gemara. In fact, the Gemara could have questioned this interpretation as we noted. However, R' Pappa corrects our understanding and explains that Chizkiya and R' Yochanan agree that the testimonies of these sets combines, and they disagree only whether the witnesses who claimed to see the original kidnapping are liable. ■

ruling before reaching the age of forty applied in the time of Chazal before written works on halacha were available. In our times when there are many halachic works available if someone has studied and mastered the relevant material he may issue halachic rulings. ■

1. רש"י ד"ה נמצא.
2. רש"י לגמ' סוטה כ"ב: ד"ה בשוין.
3. תוס' שם בשוין.
4. רש"י לסוגיין ד"ה תלמיד.
5. שו"ת הרדב"ז ח"ו סי' ב' אלפים קמ"ז.
6. בית יוסף יו"ד סי' רמ"ב ד"ה כל תלמיד.
7. ע"י שו"ת הרדב"ז הנ"ל ולחם משנה פ"ה מהלי תלמוד תורה הי"ד. ■

STORIES Off the Daf

The improbable thief

"לא תגנובו..."

On today's daf we find the prohibition of stealing money.

Towards the end of his life, Rav Yisrael Salanter, zt"l, stayed at the home of one of his supporters. To the shock of his host, Rav Yisrael ordered that if he was taken ill on Shabbos he was not to do any prohibited labor to save his life. When his host asked what possible rationale he had for this, Rav Yisrael explained, "Our sages tell

us that a professional thief is not saved with prohibited labor on Shabbos. Since I am afraid that I may be in this category, I beseech you not to violate this halachah and save me."

"But why do you say that you suspect you might be a professional thief?" the man stuttered.

Rav Yisrael's reply was astounding. "I am supported by people because they think I am a holy tzaddik. But the sad truth is that I am not at all. This means that the money given is theft and you may not violate Shabbos even if my life is in danger..."

The host was very reluctant to follow Rav Yisrael's instructions but was equally

hesitant about disregarding his psak without consulting a renowned posek. He chose Rav Yitzchak Elchonon Spector, zt"l, who disagreed with Rav Yisrael. "Despite what he told you, you are obligated to violate Shabbos to save Rav Yisrael's life."

When Rav Yaakov Kaminetsky, zt"l, would recount this story he would comment, "Interestingly, Rav Yisrael was never in such a situation on Shabbos. His condition worsened on motzei Shabbos and he died on erev Shabbos. This is a prime example of a fulfillment of the verse, 'רצון רצון יראיו יעשה' Hashem does the will of those who fear Him."¹ ■

1. רבי יעקב, ע"י 257 ■