

16 Tishrei 5776  
Oct. 18, 2016



Bava Metzia Daf 22

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Daf Notes is currently being dedicated to the neshamot of

**Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h**

**Tzvi Gershon ben Yoel (Harvey Felsen) o”h**

May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

### ***Lost in a River***

The *Gemora* cites a *braisa* in support of Abaye: If a river washed away someone’s beams, timber, or stones, and has deposited them in someone else’s field, they belong to the field owner because the owner has given up hope.

The *Gemora* notes: The reason why they belong to him is because the owner has given up hope, but ordinarily (*where the original owner did not yet know about his loss*), they would not belong to the finder! [*This proves that ye’ush shelo midaas, ye’ush that has not yet occurred but will occur later, is not effective!?*]

The *Gemora* explains why it is not a proof: Here we are dealing with a case where the owner is able to save them. [*We would therefore assume that the owner would not despair of them.*]

The *Gemora* asks: But if so, let us consider the latter part of the *braisa*: If the owner was running after them, the finder must return them. Now, if we are referring to a case where the owner is able to save them, why state that he is running after them? The objects should belong to him even if he is not running after them!?

The *Gemora* answers: We deal here with a case where the owner is able to save his possessions only with difficulty: If he runs after it, we may assume that he has not despaired; if he does not run after it, we may assume that he has despaired. (22a)

### ***Terumah***

The *Gemora* cites a *braisa* in support of Rava: How does someone separate *terumah* without the owner’s knowledge and have it be considered as a valid *terumah*? If someone goes into his friend’s field and he gathers and separates *terumah* without permission, the *halachah* is as follows: If the owner acts as if he stole, the *terumah* is invalid. If not, the *terumah* is valid. How do we know if he acts as if he was stealing? If the owner arrived and told him to take off better quality *terumah* and there indeed is better quality, the *terumah* is valid. Otherwise, the *terumah* is invalid (*as he was just being sarcastic*). If the owner was helping to gather and add *terumah*, the *terumah* is valid.

If there was better quality, the *terumah* is valid. But surely at the time when the *terumah* was separated, the owner did not know it! [*It must be that we consider his “anticipated knowledge” as good as real knowledge. In the same way ye’ush shelo midaas should be regarded as ye’ush. This would support Rava’s opinion.*]

Rava explained it according to Abaye: The *braisa* is referring to a case where the owner made him his agent beforehand.

The *Gemora* proves that this explanation is conclusive indeed: For if he did not make him his agent, how could the *terumah* be valid? Did we not learn: *You also shall separate terumah*. This includes “your agent.” And just as when you separate *terumah*, it is with your own knowledge, so must your agent separate *terumah* with your knowledge! Therefore we must be dealing here with a case where the owner made him his agent and said to him, “Go and separate the *terumah*,” but he did not say to him, “Separate the *terumah* from this kind.” Usually an owner sets apart the *terumah* from the medium kind, but the agent went and



separated *terumah* from a better kind. The owner arrived and found him and said to him, “You should have separated it from a better kind.” The *halachah* is if a better kind can be found in the field the *terumah* is valid, but if not, it is not valid.

Ameimar, Mar Zutra. and Rav Ashi once came to the orchard of Mari bar Isak. His sharecropper brought dates and pomegranates and put them down in front of them. Ameimar and Rav Ashi ate them, but Mar Zutra did not eat them (*for he was concerned that this was being done without the owner’s knowledge*). Meanwhile Mari bar Isak arrived and he found them. He then said to his sharecropper, “Why did you not bring for the Rabbis from the better kinds of fruit?” Ameimar and Rav Ashi said to Mar Zutra, “Why does the master not eat now? Has it not been taught: If a better kind can be found in the field the *terumah* is valid”!? Mar Zutra answered them: Rava said that “You should have taken from the better ones” has been declared to be a validation of the agent’s act only in regard to *terumah* because it is a *mitzvah*, and we may assume that the owner really wishes to offer better ones, but here, he may have said it only out of embarrassment (*so he should not appear like a miser*). (22a)

### ***Susceptible for Tumah***

The *Gemora* cites a *braisa* in support of Abaye: If the dew is still upon them (*produce left on a roof to be dried, which by receiving moisture from water or other specified liquids is rendered capable of becoming tamei*), and the owner is pleased (*that they became wet*), then the Scriptural term: *If water is placed* applies to it. [*The produce can now become tamei even if it eventually dries.*] If it dried (*before the owner became aware of it*), then even if the owner is pleased (*that they became wet*), the Scriptural term: *If water is placed* does not apply to it. What is the reason for this? Is it not because we do not say, “since it appears that he is pleased now it is as if he had been pleased originally”? [*Similarly, we should say regarding ye’ush shelo midaas, that ye’ush that has not yet occurred but will occur later, is not effective!?*]

The *Gemora* explains why it is not a proof: There it is different, for it is written: *If he places*. This means that only when he puts the water on (*does the produce become susceptible to tumah*).

The *Gemora* asks: But if so, why does this not apply also to the first case?

The *Gemora* answers: That can be explained according to Rav Pappa. For Rav Pappa pointed out a contradiction: It is written: *If he shall place* (*which indicates that the produce will only become susceptible to tumah if he wets it himself*), and yet we read it: *if it should be placed* (*which seems to indicate that the produce can become tamei if it became wet, regardless of who made it wet!*)? How is this to be explained? He says: “*If he shall place*,” is compared to “*if it should be placed*.” Just as the latter applies when it is with his knowledge, so too, the former is when it is with his knowledge. (22a – 22b)

### ***Flooding and Ruling***

The *Gemora* cites a statement in support of Abaye: Rabbi Yochanan said in the name of Rabbi Yishmael ben Yehotzadak: How do we know that an article lost through the flooding of a river may be retained by the finder? It is written: *And so shall you do with his donkey, and so shall you do with his garment, and so shall you do with every lost thing of your brother, which he has lost, and you have found*. This means to say that (*one must return a found object*) only if the object has been lost to him and is accessible to any person. But a case like this is exempt from the *mitzvah* of returning, since it is lost to him and not accessible to any other person. Now, the object which is forbidden to be kept by the finder is like the object which is permitted to be kept by the finder: Just as the permitted object may be kept whether it has an identification mark or not, so too the forbidden object may not be kept regardless of whether it has an identification mark or not. This is a refutation of Rava (*for he holds that if an object does not have an identifying*



mark, the finder may keep it, for the owner will eventually despair of it)!

The *Gemora* rules that the *halachah* follows Abaye. The *Gemora* rules that the *halachah* follows Abaye (when he argues with Rava) in six arguments. These are known as YA"LG" M. [The "Y" is for the letter "yud," which is for the word *ye'ush* – the dispute in our *Gemora*.] (22b)

### **Wind-blown Dates**

Rav Acha the son of Rava said to Rav Ashi: Seeing that Rava has been refuted, how may we eat dates that have been blown off the tree by the wind?

Rav Ashi answered him: The owner gives up on them from the beginning (even before they fall off the tree) because there are vermin and creeping creatures that eat them (the fallen dates).

The *Gemora* asks: But what if they belong to orphans who are minors, who cannot legally relinquish their possessions?

Rav Ashi answered him: We do not assume that every piece of land in the valley is the property of orphans.

Rav Acha persisted: But what if it is known to be the property of orphans? Or what is the *halachah* if the tree is surrounded by a stone fence (that is protected from the vermin)?

Rav Ashi answered him: They are forbidden. (22b)

### **Likely to be Trampled on**

The *Mishna* had stated: Bundles of grain, when found in the street, may be kept by the finder.

Rabbah said: This applies even by something which has an identifying mark on it.

The *Gemora* notes: It would seem that Rabbah maintains

that an identifying mark which will likely be trampled on is not regarded as an identifying mark (and the finder will not be required to announce it, for he can safely assume that the owner, knowing that, will despair from recovering it).

Rava said: The *Mishna's halachah* only applies to something which does not have an identifying mark on it, but regarding something which has an identifying mark on it, the finder will be required to announce.

The *Gemora* notes: It would seem that Rava maintains that an identifying mark which will likely be trampled on is regarded as an identifying mark.

There are those who cite the above discussion as an independent argument (and not with respect to the *Mishna*): An identifying mark which will likely be trampled on – Rabbah said: It is not regarded as an identifying mark. Rava said: It is regarded as an identifying mark.

The *Gemora* asks from our *Mishna*: Bundles of grain, when found in the street, may be kept by the finder. If they are found in a private domain, the finder is required to take them and announce them.

Now, what are the circumstances? If there is no identifying mark on them, what can the finder announce when it was found in a private domain? [What is the point, if the owner can't identify it?] Rather, the *Mishna* must be referring to a case where there is an identifying mark on them, and yet, the *Mishna* rules that if they were found in a street, he may keep them. Would this not prove that an identifying mark which will likely be trampled on is not regarded as an identifying mark? This would seemingly be a refutation of Rava's opinion!?

Rava answers: the *Mishna* can be referring to a case where there is no identifying mark on them, and yet, if it was found in a private domain, the finder will still announce it, for the location of the object can be used as an identifying mark. [Rashi learns that the finder announces the location where



he found it and the owner can claim it by stating the object that he lost there.]

Rabbah holds that the location is not regarded as an identifying mark. For it was stated: Location of the object – Rabbah said: It is not regarded as an identifying mark. Rava said: It is regarded as an identifying mark. (22b)

### INSIGHTS TO THE DAF

#### ***Without his Knowledge***

The Acharonim laid down that the dispute between Abaye and Rava does not apply to cases where a *chalos* is required, for then it would be necessary to have the person's knowledge and will. If he does not actually want that thing to happen, it cannot be accomplished through his "anticipated consent." The dispute is only relevant to *halachos* like *ye'ush*, where his "anticipated consent" might be sufficient – that is - we know that the owner would not mind, they argue if someone else can acquire the object or not. If so, why does the *Gemora* compare this dispute to the case where one separates *terumah* for another without his knowledge? In order for the *terumah* to take effect, is it not necessary to have the knowledge and willingness of the owner?

Some answer that the *Gemora* thought that although it is required to designate the produce as *terumah*, it is not necessary for the owner to do so himself. As long as the owner does not prevent others from separating his *terumah*, they can accomplish this result. This is why the *Gemora* compares the *halachos* of *terumah* to the *halachos* of *ye'ush*.

The Ketzos Hachosehen disagrees with the question and holds that Abaye and Rava argue in all cases, even in those where a *chalos* is created.

### QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF to refresh your memory

Q: Over what size area is produce considered "scattered"?

A: A *kav* in four *amos*.

Q: Is one allowed to keep "scattered money" which he finds?

A: Yes.

Q: Who keeps an article without an identifying mark that is found in a Shul?

A: The finder keeps it.

### DAILY MASHAL

**Hanging the *afikoman* on the wall:** *Kitzur Sheloh* ('*Inyenei HaSeder*, p. 67 of Warsaw edition) mentions an ancient tradition, of unknown origin, to make a hole in a piece of *afikoman* and hang it on the wall as a protective charm. *Yafeh LaLev* (477:1) expands on the protective value of *afikoman*, indicating a hint in the verse "From every trouble save me" – ***Mikol tzarah hatzileni*** (Tehillim 54:9) – of which the initials form the word *matzah*. *Kitzur Sheloh* remarks that the custom shows disrespect for food and it is better to keep some *matzah* in one's pocket as protection from thievery and misfortunes. *Matzah* also means "contention" and the *matzah* remaining after eating *afikoman* saves us from quarrels and other afflictions. *Baer Heitev* (477, S.K. 4) states that he accepted the tradition to hang a piece of *afikoman* on the wall. It is not regarded as disrespect for food as the custom is intended mainly to observe the commandment to remember the Exodus.