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Nedarim Daf 34

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Rav Yosef’s Perutah

The *Mishna* had stated: He (one who is subject to a vow that forbids benefit from his fellow) may return his lost objects.

The *Gemora* presents an Amoraic dispute between Rabbi Ami and Rabbi Assi regarding this: One of them said: This is only when the property of the finder is forbidden to the owner of the lost object, so that in returning it to him, he is returning to the owner what is his own. But if the property of the owner is forbidden to the finder, he may not return it, because he is benefiting him through Rav Yosef’s *perutah*. (*If a poor person were to come and ask him for charity while he was busy returning it, he would be exempt from giving a perutah of tzedakah, for someone who is occupied with one mitzvah is exempt from fulfilling another mitzvah. Rav Yosef holds that because of this, he is regarded as a paid custodian.*) But the other maintained: Even if the finder may not benefit from the owner’s property, he may return it, and as for Rav Yosef’s *perutah*, this is extremely uncommon.

The *Gemora* asks: The *Mishna* had stated: In a place where people usually give a finder’s fee for returning a lost object, the finder’s fee should go to *hekdesh*. Now, it is understandable according to the opinion who said that even if the finder may not benefit from the owner’s property, he may return it (for we are not concerned about Rav Yosef’s *perutah*), this is why the

Mishna states: In a place where people usually give a finder’s fee for returning a lost object, the finder’s fee should go to *hekdesh* (for neither party may benefit from the other). However, according to the opinion that holds that if the property of the owner is forbidden to the finder, he may not return it (*because he is benefiting him through Rav Yosef’s perutah*), why does the money go to *hekdesh* (*the finder is permitted to derive benefit from the owner; let the money go to the finder*)?

The *Gemora* answers: The *Mishna* is only discussing the owner (he may not keep the finder’s fee money (*if the finder refuses to be compensated*) because he is forbidden against deriving benefit from the finder. (33b2 – 34a1)

An Alternative Version

The *Gemora* cites a different version of the above discussion: Rabbi Ami and Rabbi Assi argue regarding the *Mishna*’s ruling of returning a lost object: One of them said: This is only when the property of the owner of the lost object is forbidden to the finder, and as for Rav Yosef’s *perutah*, this is extremely uncommon. But if the property of the finder is forbidden to the owner, he may not return it, because he is benefiting him directly (*see Ra”n Elucidated for the contrast between this case and the other cases of the Mishna*). But the other maintained: Even if the property of the finder is

forbidden to the owner, he may still return it, for he is returning to the owner what is his own.

The *Gemora* asks: The *Mishna* had stated: In a place where people usually give a finder's fee for returning a lost object, the finder's fee should go to *hekdesh*. Now, it is understandable according to the opinion who said that even if the finder may not benefit from the owner's property, he may return it, this is why the *Amora* explains it: In a place (where people usually give a finder's fee for returning a lost object, the finder's fee should go to *hekdesh*). However, according to the opinion that holds that if the property of the finder is forbidden to the owner, he may not return it, (then the only case that the *Mishna* can be referring to where he may return it is where the property of the owner is forbidden to the finder and if so) why would the money go to *hekdesh* (the finder is permitted to derive benefit from the owner; let the money go to the finder)?

The *Gemora* remains with this difficulty. (34a1 – 34a2)

Me'ilah on the Bread

Rava said: If there was a loaf of an ownerless loaf of bread in front of him and one said, "This loaf is *hekdesh*," the *halachah* is as follows: If he picks it up with the intention of eating it, he has committed *me'ilah* (one who has unintentionally benefited from *hekdesh* or removed it from the ownership of the *Beis Hamikdosh* has committed the transgression of *me'ilah*, and as a penalty, he would be required to pay the value of the object plus an additional fifth of the value; he also brings a *korban asham*) and is liable to pay for the entire value. If he picks it up with the intention of bequeathing it to his children (he is not acquiring it and it is still under the domain of *hekdesh*), he has only committed *me'ilah* with respect to the benefit of gratitude involved in it (his children will feel

gratitude to him for striving to give them an inheritance). (34b1)

My Loaf is Forbidden to You

Rav Chiya bar Avin inquired of Rava: What is the *halachah* if one said to his fellow, "My loaf is forbidden to you," and then, he gave the loaf as a gift to that fellow?

He explains: Do we say that since he said, "My loaf (is forbidden to you)," it is only when it is in the owner's possession that the loaf is forbidden to the other fellow (however, when it is in the other fellow's possession, it is not forbidden)? Or perhaps, since he said, "to you," he has rendered the loaf *hekdesh* upon the other fellow (and it will remain forbidden to him even after it leaves the vower's possession)? (See *Ra"n Elucidated for an elaboration of this inquiry.*)

Rava replied: It is obvious that the vower meant that the loaf should be forbidden even if he gives it to the fellow as a gift, for otherwise, what is the purpose of the *neder*? He surely does not mean to prohibit the loaf to the fellow if he steals it from him (*since people do not consider this possibility*)!

Rav Chiya bar Avin said to Rava: The vower may mean to prohibit the loaf to the other fellow when he invites him to eat with him (*the fellow would be benefiting from the vower*). (34b1 – 34b2)

INSIGHTS TO THE DAF

Courtyard of Hekdesh

Rava said: If there was a loaf of an ownerless loaf of bread in front of him and one said, "This loaf is *hekdesh*," the *halachah* is as follows: If he picks it up with the intention of eating it, he has committed *me'ilah* (one who has unintentionally benefited from

hekdesh or removed it from the ownership of the Beis Hamikdosh has committed the transgression of me'ilah, and as a penalty, he would be required to pay the value of the object plus an additional fifth of the value; he also brings a korban asham) and is liable to pay for the entire value. If he picks it up with the intention of bequeathing it to his children (he is not acquiring it and it is still under the domain of hekdesh), he has only committed me'ilah with respect to the benefit of gratitude involved in it (his children will feel gratitude to him for striving to give them an inheritance).

The Ran explains that Rava is discussing an ownerless loaf of bread which was lying within his four amos. One can acquire an ownerless item with a *kinyan* of four amos. Here, when he declared that the loaf should be *hekdesh*, it immediately took effect and he himself never gained possession of it. This would be similar to a case where one finds something and picks it up for someone else. The other person acquires it, not him.

The Ketzos Hachoshen (200:1) proves from here that even according to the Rishonim who maintain that there is no *chatzer* (courtyard) for *hekdesh*, that is only when the *chatzer* belongs to *hekdesh*. However, *hekdesh* may acquire something through the *chatzer* of a private individual.

The Keren Orah asks: How will this acquisition take effect? There is no *shlichus* for *hekdesh*!

Reb Shlomo Zalman Auerbach answers that the *chatzer* is not acquiring it for *hekdesh* as if *hekdesh* is the one making the *kinyan* (which is the manner in which one person may acquire something for another). But rather, *hekdesh* is acquiring this object because it is lying in

someone's *chatzer* for the sake of *hekdesh*. This can be accomplished even without the use of *shlichus* at all.

The Ra"n Elucidated

Returning a lost object – The various cases in the *Mishna* are not all comparable to one another. Giving the half-shekel and paying a loan refer to the one from whom benefit is forbidden doing it for the one whom is forbidden to receive benefit from him. Returning the lost object refers to the one forbidden benefit doing it for the one whom benefit is forbidden for him.

It was because that the *Tanna* wanted to teach all the ways that are permitted, in whichever direction, that he taught it in this manner.

But if the property of the finder is forbidden to the owner, he should not return it because he is giving him benefit. And it is more serious than paying his debt, because he is giving it to him directly with his hand, and were he not to return it to him, it is quite possible that he would lose it entirely.

My loaf is forbidden to you - Rav Chiya bar Avin inquired of Rava: What is the *halacha* if one said to his fellow, "My loaf is forbidden to you," and then, he gave the loaf as a gift to that fellow?

He explains: Do we say that the loaf is only forbidden to the fellow when it is in the owner's possession, but not when it is in the other fellow's possession? Or perhaps, he has rendered the loaf *hekdesh* upon the other fellow, and it will remain forbidden to him even after it leaves the vower's possession?

The Ran elaborates: Does the word "my loaf" mean while it is still his, but after he has given it, since it is not his, it is permitted to the other person? Or perhaps,



since he said “to you,” he made it *hekdesh* for him? This is what he was saying to him: “This, that is now my loaf, is forbidden to you forever.”

It was certainly obvious to Rav Chiya that in a case where the person who made the *neder* gave the loaf to a third person, it becomes permitted to the one to whom he forbade it. Thus the *Mishna* later (46a) says: “Your house is hereby forbidden to me to enter,” or “Your field is hereby forbidden to me to buy” and he died or sold them to someone else, it is permitted. So whenever another person separated them, it is permitted. The reason he had a question here is that there was no other person separating them, because it went directly from the one who made the *neder* to the one to whom it was forbidden.

One might suggest that the *Mishna* itself implies that it is forbidden, since it speaks of a case in which he sold it to someone else, implying that had he sold it directly it would have been forbidden. Such an implication cannot be drawn, however, because it can be answered that the *Mishna* spoke of selling to someone else because later it would say: “this house of yours that I enter,” or “this field of yours that I buy” and he died or sold it to someone else, it is forbidden. It was there that “someone else” was included to teach an additional law. For that reason it can be said that when the beginning spoke of “someone else”, it didn’t mean only that case, but rather, that the same law would apply if he sold it to him directly.

The Rashbam objected: What was Rav Chiya bar Avin asking? It’s a *Mishna*! It says in this chapter (43a): One who is forbidden benefit from someone else and he has nothing to eat, he can go to a shopkeeper with whom he deals regularly, and say to him, “So-and-so is forbidden benefit from me, and I don’t know what to

do for him.” Then the shopkeeper gives to the one and comes and takes from the other. If he was traveling in the desert, he gives to another person and etc. If there is no one else with them, he puts it on a rock etc. That is certainly not a case where he said, “This property is hereby forbidden to you,” because in such a case even if another person separated them it would still be forbidden. Rather it is certainly where he said, “My property is hereby forbidden to you,” and even so, the reason is that there is another person; were it directly from the hand of one to that of the other, it would be forbidden.

It can be answered that there it is where he forbade the other person benefit from him. If he would give him a gift, he would be getting benefit from him at the moment that he gives it. But here, where he said “my loaf,” it can be said that it is permitted because at the time that he has benefit from the loaf, it no longer belongs to the one who made the *neder*.

[We use the sefer “The Commentary of Rabbenu Nissim on Nedarim” from Rabbi Nathan Bushwick extensively to assist us in preparing the “Elucidation of the Ra”n.” The sefer, written in English is available for sale by writing to: Rabbi Nathan Bushwick 901 Madison Ave. Scranton, Pa 18510-1019. The cost is \$25.00.]