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Gittin Daf 41

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Daf Notes is currently being dedicated to the neshamot of

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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

### ***Explaining the Mishna***

The *Mishna* had stated: A slave whose master pledged him to others as an *apotiki* (A person may designate any type of property as security to the creditor without placing it in the possession of the creditor. The creditor has a lien on this property, and if the debt is not otherwise repaid, the creditor can collect his debt from the security. This security is called an *apotiki*.) and freed him, according to the letter of the law, the slave is not liable for anything, but for the benefit of the public, they force his master to make him a free man, and the slave writes a document for his value. Rabban Shimon ben Gamliel says: The slave does not write it, but rather, the one who frees him.

The *Gemora* asks: Who emancipates him?

Rav said: His first master. The following is the explanation of the *Mishna*: According to the letter of the law, the slave is then not liable for anything to his second master. The reason for this is because of Rava’s principle: Rava said: Consecration (of an animal to the altar), becoming prohibited as *chametz* and the freeing of slaves can release an *apotiki* from the lien of a creditor. (Rava teaches us that there are three instances where the lien can be revoked or cancelled, and the creditor must be reimbursed through other means. If an animal designated as an *apotiki* was consecrated for a *korban*, the consecration is effective and the lien is revoked. If the object designated as an *apotiki* to a gentile was *chametz* and *Pesach* arrived while the Jew still had possession, it becomes forbidden for any Jew to derive benefit from the

*chametz*, and he is obligated to destroy it; the lien from the *chametz* is dissolved. If the *apotiki* is a slave and the owner frees the slave, the emancipation is effective, and the slave becomes a free man. One cannot have a monetary right on a Jewish man and therefore the lien is cancelled.) To prevent abuses, however, that is to say, out of concern that the second master should find him in the street and say to him, “You are my slave” (because you were mortgaged for my loan; this will result in a rumor that his children are actually slaves), his second master is compelled to emancipate him. The slave then writes a document (to the second master) for his value (to compensate him for his loss).

Rabban Shimon ben Gamliel says: The slave does not write it, but rather, the one who frees him. In regard to what point do the two *Tannaim* argue about (according to Rav)? It is in regard to a person who damages an object pledged as security to another. Rabban Shimon ben Gamliel holds that he is liable (and therefore the first master is obligated to pay the second one for the value of the pledged slave), and the *Chachamim* hold that he is not liable. It has also been stated elsewhere: Concerning the issue of a man who damages an object which has been pledged as security to another, we find a difference of opinion between Rabban Shimon ben Gamliel and the *Chachamim*.

Ulla offers a different explanation to the *Mishna*: Who emancipates him? It is his second master. According to the letter of the law, the slave is exempt from observing *mitzvos* (for the emancipation was not effective, since he

*belongs to the second master*). To benefit the public, however, that is to say, out of concern that people will be under the impression that he is free and they will wonder why he is not observing the mitzvos, his first master is compelled to emancipate him. The slave then writes a document (*to the first master*) for his value (*to compensate him for his loss*).

Rabban Shimon ben Gamliel says: The slave does not write it, but rather, the one who frees him. In regard to what point do the two *Tannaim* argue about (*according to Ulla*)? It is in regard to being liable for damaging in an unrecognizable manner. Rabban Shimon ben Gamliel holds one is liable for such damages (*and therefore the second master is obligated to pay the first one for the value of the slave, although the damage is unrecognizable*), and the *Chachamim* hold that he is not liable.

The *Gemora* asks: Why didn't Ulla explain the *Mishna* like Rav? It is because Ulla doesn't understand why the *Mishna* refers to the second person as "his master" (*when the slave, in fact, does not belong to him*). And why didn't Rav explain the *Mishna* like Ulla? It is because Rav doesn't understand how the *Mishna* can say that the second one should free the slave. How can he free him, if he doesn't even belong to him? (40b – 41a)

### **Apotiki**

It has been stated: If a man designates his field as an *apotiki* for a debt to another, and it is flooded by a river, Ammi Shapir Na'ah (*he was called that since he was handsome as a rose*) says in the name of Rabbi Yochanan that he cannot recover his debt from the remaining property of the debtor (*and he loses out*). Shmuel's father, however, says that he can recover from the remainder of his property.

Rav Nachman bar Yitzchak says: Because he is Ammi Shapir Na'ah, does he say statements which are not commendable (*why can't the creditor collect from the remaining properties*)!? But we must explain his reported ruling to refer to the case where the debtor has said to the creditor, "You shall not be able to recover the loan except from this" (*for then, this property is regarded as being in the possession of the creditor at the onset of the loan, and when the land becomes flooded, it is his loss*). A *braisa* has been taught to the same effect: If a man designates his field as an *apotiki* for a debt to another, and it is flooded by a river, the creditor may recover his debt from the remainder of his property. If, however, he said to him, "You shall not be able to recover the loan except from this," he cannot recover from the remainder of his property.

It was taught in a different *braisa*: If a man designates as an *apotiki* for a debt to his creditor or for a woman's *kesuvah*, they may recover from the remainder of his property. Rabban Shimon ben Gamliel, however, says that while a creditor may recover from other properties, a woman does not recover from the remainder (*and therefore we do not allow the husband to sell this particular property*), because it is not the way for a woman to keep on coming to court. (41a)

### **Mishna**

Someone who is half-slave and half-free man (*he was owned by two partners, and one of them emancipated him*), he works for his master one day and for himself one day; these are the words of Beis Hillel. Beis Shamai, however, says: You have created a solution for the master (for he does not lose out through this division), but you have not solved anything for the slave. He may not marry a slavewoman, for he is half-free. He cannot marry a free woman for he is half-slave. If you will say that such a person should refrain from marrying, that cannot be, for the world was created for the purpose of propagation, as

it is written: *He did not create it to be desolate; He formed it to be inhabited.* Rather, to benefit the public (*this slave*), we force his master to make him a free man, and the slave writes a document for his value. Beis Hillel later retracted and ruled in accordance with Beis Shamai. (41a – 41b)

### **Partial Emancipation**

The *Gemora* cites a *braisa*: If a man emancipates half his slave, Rebbe says that the slave acquires himself (*his freed half*), and the *Chachamim* say that he does not.

Rabbah says: The dispute between them relates only to the case where the master has written for him a deed of emancipation. Rebbe holds, since it is written: *And she was partially redeemed, but she was not completely redeemed, nor was a deed of emancipation given to her*, we apply the same rule to emancipation through a deed as we do to money. Just as with money, the slave can acquire either the half or the whole of himself, so too, with a deed, he can acquire either the half or the whole of himself. The *Chachamim*, however, derive their ruling from a *gezeirah shavah* (*one of the thirteen principles of Biblical hermeneutics; it links two similar words from dissimilar verses in the Torah*) from the word “*lah*” said both by divorcing a woman and regarding a slave. Just as a wife, divorcing half of her will not be effective, so too, a slave, emancipating half of him will not set him free. However, regarding money, both agree that he can acquire himself through a partial redemption.

May we say that the issue between them is the following: Where a ruling may be based either on a *hekesheh* (*analogy*) or a *gezeirah shavah*, one holds that preference is to be given to the *hekesheh* and the latter to the *gezeirah shavah*?

No! Both agree that preference is to be given to the *gezeirah shavah*, but there is a special reason for not doing so here, because we may ask on the *gezeirah shavah* as follows: Since a woman cannot leave her

marriage by money (*she cannot be partially divorced either*), but this cannot be said with respect of a slave who is redeemed through money!?

Rav Yosef said: The dispute between them relates only to the case where the slave was partially redeemed with money. Rebbe holds, since it is written: *And she was partially redeemed, but she was not completely redeemed*, this teaches us that she may be partially redeemed through money. The *Chachamim* say that the Torah speaks in a language commonly used by men (*and therefore does not teach us anything*). However, with respect of a deed of emancipation, everyone agrees that the slave will not be partially freed.

The *Gemora* challenges Rav Yosef from the following *braisa*: If a man emancipates half his slave with a document, Rebbe says that the slave acquires himself (*his freed half*), and the *Chachamim* say that he does not. This, the *Gemora* notes, is a clear refutation of Rav Yosef's opinion.

The *Gemora* asks: Can we infer from this *braisa* that they only argue by a document, but they would agree that a partial redemption through money is effective, and it would be a refutation of Rav Yosef on both issues (*firstly – we see that Rebbe holds that a partial emancipation with a document will be effective, and secondly – the Chachamim hold that a partial redemption through money will be effective*)?

The *Gemora* answers: Rav Yosef could say that they argue with respect of a document and money; the *braisa* only mentions the case of a document to show us the strength of Rebbe's opinion (*that even a partial emancipation through a document is effective*).

The *Gemora* asks: Why didn't the *braisa* state the case of money, and it will have taught us the strength of the



*Chachamim's opinion (that even a partial redemption with money is not effective)?*

The *Gemora* answers: The *braisa* would rather teach us the strength of a permissive ruling (*that the Tanna relies on his position to such an extent that he is not afraid to rule in a lenient manner*).

The *Gemora* cites a *braisa* in support of Rav Yosef. [It is written regarding a slavewoman who is married to a Jewish servant and she committed adultery] *And she was redeemed*: You might have thought that this meant that she was entirely redeemed, therefore it says: *she was not redeemed*. You might have thought that this meant that she was not redeemed at all, therefore it says, *And she was redeemed*. How is this explained? It means that she was partially redeemed, but not completely redeemed. And this redemption was done with money or with the equivalent of money.

I only know so far that she may be redeemed with money. How would I know that she may be redeemed with a document as well? It says: *And she was partially redeemed, but she was not completely redeemed, nor was a deed of emancipation given to her*, and in a different place (*with respect to divorcing a woman*) it says: *And he shall write for her a bill of severance*. Just as there, the woman is divorced through a document, so too, here, a slave may be emancipated through a document.

I only know so far that a half-emancipation can be valid through money redemption, or a full one can be valid with a document. How do I know that a half-emancipation can be valid with a document? It says: *And she was partially redeemed, but she was not completely redeemed, nor was a deed of emancipation given to her*. We compare the emancipation document to the money redemption. Just as with money, either a half-emancipation or a full one can be effected, so too, with a document.

Now, according to Rav Yosef after he was refuted (*where he maintains that the argument between Rebbe and the Chachamim pertains to both money and a document*), this *braisa* is in accordance with Rebbe (*that a partial emancipation, whether with a document or with money, is effective*). But, according to Rabbah (*that the Chachamim hold that a partial redemption is effective, but not when it is done with a document*), we must say that the first part of the *braisa* follows both opinions, but the latter part is only in accordance with Rebbe's viewpoint!?

The *Gemora* answers: Rabbah would reply that indeed, it is so that the first part of the *braisa* follows both opinions, but the latter part is only in accordance with Rebbe's viewpoint.

Rav Ashi said: The entire *braisa* was authored by Rebbe (*and therefore, there is no difficulty at all*). (41b)

## INSIGHTS TO THE DAF

### ***Freeing a Partial Slave***

The *Mishna* had stated: Someone who is half-slave and half-free man (*he was owned by two partners, and one of them emancipated him*), he works for his master one day and for himself one day; these are the words of Beis Hillel. Beis Shamai, however, says: You have created a solution for the master (for he does not lose out through this division), but you have not solved anything for the slave. He may not marry a slavewoman, for he is half-free. He cannot marry a free woman for he is half-slave. If you will say that such a person should refrain from marrying, that cannot be, for the world was created for the purpose of propagation, as it is written: *He did not create it to be desolate; He formed it to be inhabited*. Rather, to benefit the public (*this slave*), we force his master to make him a free man, and the slave writes a document for his value. Beis Hillel later retracted and ruled in accordance with Beis Shamai.



The commentators ask: How can we force the master to free the slave? Isn't there a prohibition against emancipating a slave?

The Kli Chemdah answers this question based upon the Avudraham, who says that a woman is exempt from *mitzvos* which have a time element to them, because she is pledged to her husband at these times. So too, it can be said with respect to a half-slave half-free man. Since he is partially a free man, he is obligated to observe all the *mitzvos*. Therefore, at the times where he is responsible to serve his master, he cannot do so completely, for he is obligated in *mitzvos*. Consequently, the master will anyway not be able to fulfill the *mitzvah* of working the slave forever; therefore, there is no prohibition against freeing him.

### **Permitted Ruling**

The *Gemora* had stated, applying the classic principle that it is preferable to render a permissible ruling. Rashi in Beitzah (2b) explains that this means that something that is permitted indicates that the Tanna is relying on his knowledge of the subject matter, and is not afraid to rule leniently. One can be strict even if he is in doubt and it does not necessarily indicate the conclusiveness of the ruling.

Rashbam in Pesachim (102a) writes that if there is no compelling logic to rule stringently, then ruling leniently is not regarded as a more preferred option. Rather, it is the only option. The Rema in his responsa (§ 54) rules that one is not allowed to be stringent regarding an issue where there is no uncertainty.

Pischei Teshuvah (Yoreh Deah 116:10) cites a dispute amongst the Acharonim if one is permitted to be stringent for himself regarding a matter that has been permitted by the Torah, such as a prohibited matter that was nullified.

Bnei Yissachar writes that it is a *mitzvah* not to be stringent in such a situation.

The Tzlach writes that it is preferable to record the permitted ruling regarding a situation that may be subject to a Biblical prohibition, because if there would be uncertainty, we would be compelled to rule stringently. The *Tanna* would not be introducing a novel ruling if the ruling was that the matter is prohibited. Regarding a matter that may be subject to a Rabbinic prohibition, however, the reverse would be true. It is preferable to record the stringent ruling because if there would be uncertainty, we would rule leniently.

### **QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF**

to refresh your memory

Q: What is the *halachah* if the master told his slavewoman, "Become free with this deed (*of betrothal*) and be betrothed to me with this"?

A: *Machlokes* between Rabbi Meir and the *Chachamim* if she becomes betrothed to him or not.

Q: When will a slave go free, for putting on *tefillin*?

A: If he does it in front of his master.

Q: Which three things can release an *apotiki* from the lien of a creditor?

A: A consecrated item, *chametz* and emancipation.