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Kiddushin Daf 28

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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

Gilgul Shevuah

The *Gemora* asks: We have derived the concept of *gilgul shevuah* (devolving an oath - once we force someone to take one oath, we can extend this obligation to take another oath even though there is no requirement for the other oath) from *sotah*, which is a matter of prohibition. How do we know that this *halachah* applies to monetary law as well?

The *Gemora* answers: A *braisa* was taught in the Beis Medrash of Rabbi Yishmael: This can be derived through the following *kal vachomer* (literally translated as light and heavy, or lenient and stringent; an a fortiori argument; it is one of the thirteen principles of biblical hermeneutics; it employs the following reasoning: if a specific stringency applies in a usually lenient case, it must certainly apply in a more serious case): If we cannot administer an oath to a *sotah* based upon the testimony of one witness, nevertheless, we can impose another oath on her using the principle of a *gilgul shevuah*; so with respect to monetary matters, where we can administer an oath based upon the testimony of one witness, we should certainly be able to impose another oath using the principle of a *gilgul shevuah*!

The *Gemora* asks: We have derived that we may use the principle of *gilgul shevuah* to impose another oath in a case where the claimant is claiming with a certainty. How do we know that this *halachah* applies to an uncertain claim as well?

The *Gemora* cites a *braisa* where Rabbi Shimon ben Yochai derives this principle from an analogy to *sotah*. Just like there the Torah treats an uncertain claim the same as a certain one, so too, with respect to all oaths taken in *Beis Din*, the Torah treats an uncertain claim the same as a certain one.

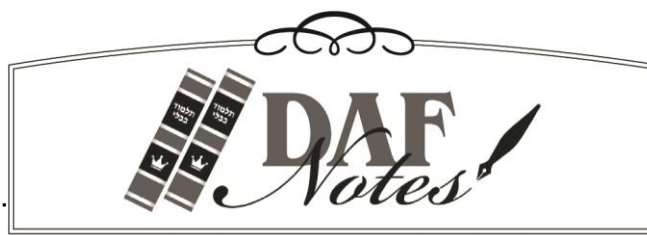
The *Gemora* asks: What are the guidelines for a *gilgul shevuah*?

Rav Yehudah said in the name of Rav: He can even force him to take an oath that he is not his slave.

The *Gemora* asks: If someone refers to his friend as a Canaanite slave, he deserves to get excommunicated (so why would someone be forced to defend such an unfounded accusation)! For we learned in a *braisa*: One who calls someone else a slave should be excommunicated! If he calls him a *mamzer*, he receives lashes! If he calls him an evil person, he (*the insulted person*) may descend against his life (*he is permitted to hate him to such an extent that he may attempt to reduce his income*).

Rather, Rava says that the claimant may force the defendant to swear that he was not sold to him as a Jewish servant.

The *Gemora* asks: That would be a legitimate claim! He is claiming that the defendant owes him money (*why should this claim be different that any other monetary claim*)!?



The *Gemora* answers: Rava is following his own line of reasoning that a Jewish servant's body is acquired by the master (*and therefore the servant is not regarded as movable property*).

The *Gemora* asks: But if so, it should have the same *halachah* as land!?

The *Gemora* answers: I would have thought that an oath can be imposed by a claim involving land, for one generally sells land privately, and if the claimant truthfully purchased this land, people would not necessarily know about it. However, with respect to a Jewish servant, if the claimant did purchase him as a servant, it would be well-known (*and by the fact that people have not heard about this, we might have said that the defendant would not be obligated to take an oath in order to defend against such an extreme claim*); Rava therefore teaches us that even regarding such a claim, the *halachah* of *gilgul shevuah* is still applicable. (27b – 28a)

Mishna

Anything which takes on monetary value (*as payment*) in place of something else, once the seller acquires it, the buyer becomes obligated for its exchange (*this is what is known as chalifin*). [*If the object being sold gets lost or stolen, he is responsible for it, since by the seller's meshichah, the buyer acquires the seller's object wherever it is, even though he has not yet made a physical acquisition.*] How is this so? If one exchanged an ox for a cow, or a donkey for an ox, once this one acquires one, the other one becomes obligated for its exchange. (28a)

Chalifin

The *Gemora* asks: If the object that the *Mishna* is referring to is a coin, this would prove that it would be valid if a coin was the object used for *chalifin* (*and we hold that it cannot be used for chalifin*)!?

Rav Yehudah explains the *Mishna* as follows: Anything, whose value must be evaluated (*any object except for a coin*), which takes on monetary value (*as payment*) in place of something else, once the seller acquires it (*the coin*), the buyer becomes obligated for its exchange.

Proof to this explanation can be brought from the language of the *Mishna* which states: How is this so? If one exchanged an ox for a cow (*and it did not say "if one exchanged money for a cow"*), or a donkey for an ox, once this one acquires one, the other one becomes obligated for its exchange.

The *Gemora* asks: According to what we initially thought that a coin can be used for *chalifin*, what did the *Mishna* mean when it said "How so etc." (*it should have said, "if one exchanged money for a cow"*)?

The *Gemora* answers: The *Mishna* would have been coming to teach us that produce (*anything that is not a utensil*) can be used for *chalifin*.

The *Gemora* asks: This would be understandable according to Rav Sheishes, who holds that produce can be used for *chalifin*. However, according to Rav Nachman, who disagrees, how would he explain the *Mishna*?

The *Gemora* answers: The following is what the *Mishna* means: There is money that can be used as *chalifin*. How is this so? If one exchanged money which he owed for an ox (*he had purchased an ox from him, but did not yet pay for it*) for a cow (*the benefit that he is giving him for cancelling the loan is in exchange for the cow*), or money which he owed for a donkey for an ox, it is valid (*for he is actually making the kinyan with money*).

The *Gemora* asks: What is the reason for this (*generally, money cannot be used to make a kinyan on movable properties*)?

The *Gemora* answers: He holds like Rabbi Yochanan, who maintains that Biblically, only money can acquire movable property, and why was there a Rabbinic decree where they replaced the *kinyan* of “money” with the *kinyan* of “pulling it near”? *This was because a seller might tell the buyer, “Your wheat was destroyed in a fire.” [Since the wheat belonged to the buyer when the money changed hands, the seller will not try hard to save the wheat. The Rabbis therefore abrogated the kinyan of money and replaced it with meshichah.]* The Rabbis issued decrees only in common cases. However, in our case (*where the purchaser is buying the animal with the cancelled loan*), where it is an unusual one, the Rabbis did not impose this decree.

The *Gemora* asks: But according to Rish Lakish, who holds that “pulling it near” is the *kinyan* that the Torah specifies for movable properties, how can the *Mishna* be explained (*for “money” would certainly not be effective*)?

The *Gemora* answers: He must hold like Rav Sheishes that produce is valid for *chalifin*. (28a – 28b)

DAILY MASHAL

Don't Call him “Evil”

One who calls someone else a slave should be excommunicated! If he calls him a *mamzer*, he receives lashes! If he calls him an evil person, he (*the insulted person*) may descend against his life (*he is permitted to hate him to such an extent that he may attempt to reduce his income*).

Rashi in Bava Metzia (71a) explains this to mean that the insulted person may fight with him as if the libeler hit him, and it is as if he was coming to kill him. Furthermore, Rashi

heard that he can compete against him in his line of business in an attempt to decrease his income.

Rashi asks that it is hard to understand how the *Chachamim* would allow this person to take revenge.

Some answer that here it is permitted because he suffered personally and he was subject to a public humiliation. The Chafetz Chaim, however, writes that it is unclear if this is the accepted *halachah*, and therefore, one should be stringent in the matter and not take revenge.

Others answer that it is permitted because if people think that he is indeed an evil person, his income will suffer tremendously, for people will not have compassion on him.

Tosfos in Bava Metzia writes in the name of the Gaonim that it is permitted to burn one-third of his grain. Tosfos concludes that this is bewildering, for where is the source for this?