

14 Nissan 5776  
April 22, 2016



Kiddushin Daf 42

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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

***Shlichus by Korbanos***

[The Gemora above had derived the concept of *shlichus* from the verse: “And all of the group of the congregation of Israel will slaughter it between the evenings.” Does everyone slaughter? Only one person slaughters! Rather, from here we derive that a person’s agent is like himself.]

The Gemora asks: That is understandable according to Rabbi Yehoshua ben Korchah (*who learns the verse in that manner*). However, how does Rabbi Yonasan, who uses that verse for something else, derive the concept of agency with respect to *korbanos*? For we learned in a *braisa*: Rabbi Yonasan said: How do we know that all of *Klal Yisroel* can fulfill their *korban pesach* obligation with just one *korban* (even though there will not be sufficient meat in this animal for each person to have a *k’zayis*, nevertheless, they have fulfilled their obligation by the fact that they were included in the slaughtering of the *korban*)? It is written: *And all of the group of the congregation of Israel will slaughter it between the evenings*. Does everyone slaughter? Only one person slaughters! Rather, from here we derive that all of *Klal Yisroel* can fulfill their *korban pesach* obligation with just one *korban*. How does he know that *shlichus* is effective by *kodoshim*?

The Gemora answers: He may derive it from that very same verse (since it says “and they shall slaughter,” and only one of them is slaughtering it).

The Gemora asks: But perhaps there it is different because he has a partnership in it (*for the one who is*

*slaughtering the korban is also fulfilling his obligation; perhaps only in such cases would shlichus be effective*)?

Rather, it is derived from the following: it is written: *They shall take for themselves, each man a lamb for his family, a lamb for a household*. [Everyone is obligated to purchase a lamb for the *korban pesach*; yet, only one of them is actually buying it!]

The Gemora asks: But perhaps there it is different because he has a partnership in it (*for the one who is purchasing the korban is also fulfilling his obligation; perhaps only in such cases would shlichus be effective*)?

The Gemora answers: If so, why would it be necessary to have two verses teaching us the same thing? Obviously, if it is not needed for the case where the agent has a connection to it, we can use the verse for cases where the agent does not have a connection to it.

The Gemora asks: But this verse is needed for Rabbi Yitzchak’s *halachah*!? For Rabbi Yitzchak said: Only a man may acquire the *korban* for the others, but a minor cannot.?

The Gemora answers: Rabbi Yitzchak derives his *halachah* from the verse, “each man according to what he can eat.”

The Gemora asks: But that verse is needed for the *halachah* that a *korban pesach* may be slaughtered even for only one person (*as long as he is capable of eating all the meat by himself*)?



The *Gemora* answers: He holds like the opinion who maintains that a *korban pesach* may not be slaughtered for only one person. (41b – 42a)

### **Source for Shlichus**

[*The Gemora above had derived the principal of shlichus from gittin, terumah and korbanos.*] The *Gemora* notes: Rav Gidel said in the name of Rav: How do we know that a person's agent is like himself? It is written with respect to the division of *Eretz Yisroel*: *And you shall take one prince from each tribe to allocate the land.* [*The Nasi was appointed to acquire the land for each person in his tribe; he was thus serving as their agent.*]

The *Gemora* asks: Why didn't he derive this principal from the sources cited above?

The *Gemora* answers: Can it be that this division was actually *shlichus*? This cannot be, for there were minors receiving land as well, and they cannot appoint an agent!?

Rather, Rav Gidel was teaching us Rava bar Rav Huna's *halachah*. For Rava bar Rav Huna said in the name of Rav Gidel, who said it in the name of Rav: How do we know that one may benefit a person even without him being present? It is written: *And you shall take one prince from each tribe to allocate the land.* [*And since there were minors who received land as well, and they could not have appointed the Nasi as their agent, it is evident that a person may acquire something for another without his authorization, provided that it is an undeniable benefit for him.*]

The *Gemora* asks: Is the division of land an undeniable benefit? But behold, it may be detrimental for some!?

Some people are content with a portion in a mountainous area, but they will not be pleased with receiving a portion in a valley. And some people are content with a portion in

a valley, but they will not be pleased with receiving a portion in a mountainous area!?

Rather, Rav Gidel was teaching us Rava bar Rav Huna's *halachah*. For Rava bar Rav Huna said in the name of Rav Gidel, who said it in the name of Rav: How do we know that *Beis Din* appoints an administrator for the detriment and the benefit of orphans who are minors when they come to divide the property of their deceased father?

The *Gemora* interrupts: Why would we want to cause a disadvantage to the orphans?

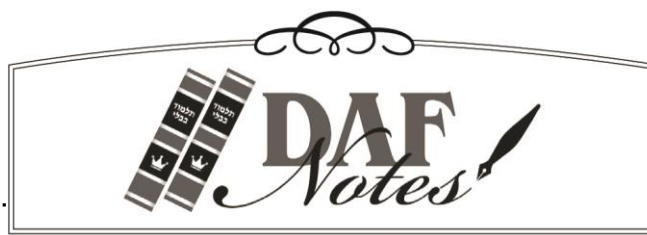
The *Gemora* explains: The administrator wants to benefit him, but it results in a disadvantage.

It is derived from the verse: *And you shall take one prince from each tribe to allocate the land.* (42a)

### **Administrator for Orphans**

Rav Nachman say in the name of Shmuel: If a father dies leaving over minor orphans, *Beis Din* sets up for each of them an administrator, and they choose a positive portion for them. When they become adults, they can protest, and claim that they would like to the property to be divided again. Rav Nachman himself states: They cannot protest, for otherwise, it degrades the power of *Beis Din*!?

The *Gemora* asks: Does Rav Nachman in fact hold from this logic? But we learned in a *Mishna*: The *Mishna* states: The property sold according to the assessment of the judges who undervalued it by one sixth or added one sixth, their sale is void. Rabban Shimon ben Gamliel says: Their sale is valid, for otherwise, how is the power of *Beis Din* superior? And Rav Huna bar Chanina rules in the name of Rav Nachman: The *halachah* is in accordance with the *Chachamim* (*if Beis Din makes a mistake of a sixth in the*



*selling of a field, the sale is invalid*). [Evidently, Rav Nachman is not concerned about the preservation of the power of Beis Din!?!]

The *Gemora* answers: The *Mishna* is discussing a case where the *Beis Din* made a mistake (*in that case, Beis Din is not superior*). Rav Nachman's ruling was in a case where the *Beis Din* did not make any mistake.

The *Gemora* asks: If there was no mistake, why are the orphans protesting?

The *Gemora* answers: They are claiming that they desire a field in a different location (*which shares the boundary of an independently owned field*). (42a – 42b)

### **Price Fraud**

Rav Nachman said: If brothers divide an inheritance, they are regarded as purchasers (*for they are exchanging their true portions for those that they actually receive*). If one brother received more than the other, but it was less than a sixth more than his brother's share, the deal remains valid. If it was more than a sixth, the deal is void. If it was precisely a sixth, the deal is valid, but he is required to return the extra.

Rava rules: That which we said that if it was less than a sixth more, the deal remains valid, that is only if the wronged brother did not appoint an agent to negotiate the deal for him. However, if he did appoint an agent, he is entitled to say to the agent, "You were sent for my benefit, not for my detriment."

And that which we said that if it was more than a sixth, the deal is void, that is only when the brothers did not agree beforehand to divide the property according to *Beis Din's* evaluation. However, if they agreed to that, the deal

remains valid. This is based upon the following *Mishna*: The property sold according to the assessment of the judges who undervalued it by one sixth or added one sixth, their sale is void. Rabban Shimon ben Gamliel says: Their sale is valid.

And that which we said that if it was precisely a sixth, the deal is valid, but he is required to return the extra, that is only if they were dividing movable property. However, if they were dividing land, the rules for "price cheating" do not apply (*and the extra would not need to be returned*).

And by land, the extra does not need to be returned only if they divided it according to value. However, if they divided it according to measurement, the extra must be returned. This is in accordance with what Rabbah said, for he said: Anything which is sold according to measure, weight or number (*and the amount specified was not the amount delivered*), it must be returned even if it (*the discrepancy*) was less than the usual amount for "price cheating." (42b)

### **Shliach I'dvar Aveirah**

The *Gemora* asks from a *Mishna*: If one sends out a fire in the hands of a deaf-mute, an imbecile or a minor (*and it consequently burned someone's haystack*), he is not liable to pay according to the laws of man, but he is liable according to the laws of Heaven. If, however, he sent out the fire in the hands of a competent person, the competent person is liable to pay for the damages. Why should that be? Let us say that the agent of a person should be regarded like himself (*and the sender should be liable*)?

The *Gemora* answers: There it is different, for we say that there cannot be a *shliach* to commit a transgression. This is because we say: If you hear the words of your Master (*Hashem; telling you not to commit this transgression*)



and the words of the student (*the sender*), who should you listen to?

The *Gemora* challenges this answer from the following *Mishna*: If an agent did not carry out his commission, he himself is guilty of *me'ilah* (*one who has unintentionally benefited from hekdesh or removed it from the ownership of the Beis Hamikdash 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*). If, however, the agent carried out his commission (*according to the instructions of the house owner*), the house owner is guilty of *me'ilah*. Why is the house owner guilty of *me'ilah*? Shouldn't we say that that there cannot be a *shliach* to commit a transgression?

The *Gemora* answers: *Me'ilah* is different, for we derive a *gezeirah shavah* (*one of the thirteen principles of Biblical hermeneutics; it links two similar words from dissimilar verses in the Torah*) from *terumah* that just as an agency is effective by *terumah*, so too, it will be effective by *me'ilah* (*even though it is a transgression*).

The *Gemora* asks: Let's derive from *me'ilah* that a *shliach* can be effective, even by a transgression!?

The *Gemora* answers: We cannot derive from there because there is another transgression that is also an exception (*namely, shlichus yad, which is when a custodian uses the object he was supposed to watch for his own purposes*) and we cannot learn from two verses when they teach the same *halachah*. (42b)

## INSIGHTS TO THE DAF

### *Laws of Heaven*

The *Gemora* cites a *Mishna*: If one sends out a fire in the hands of a deaf-mute, an imbecile or a minor (*and it*

*consequently burned someone's haystack*), he is not liable to pay according to the laws of man, but he is liable according to the laws of Heaven. If, however, he sent out the fire in the hands of a competent person, the competent person is liable to pay for the damages.

It would seem that in the case where the sender sent the fire with a competent person, the sender is not liable at all, even under the laws of Heaven!

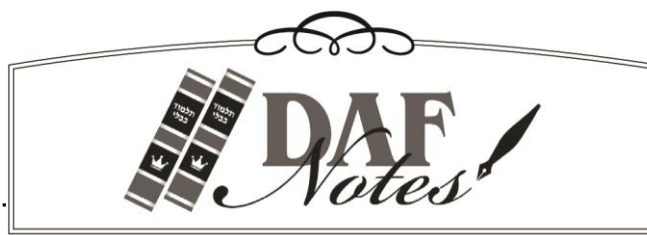
The Ram" a (C" M: 32:2) rules that if one sends out false witnesses to testify against someone, and they cause that fellow a loss, the sender is not liable at all, even under the laws of Heaven. This is because we say that there cannot be a *shliach* to commit a transgression.

The Sha" ch disagrees and maintains that the sender will be liable to pay under the laws of Heaven. He explains the distinction between the two cases. The sender will always be liable under the laws of Heaven. The reason that the sender is not required to pay at all in the case of the fire is only because once the competent person is liable to pay, there is no place for the sender to be liable as well!

### **Price Fraud by Land**

Rav Nachman said: If brothers divide an inheritance, they are regarded as purchasers (*for they are exchanging their true portions for those that they actually receive*). If one brother received more than the other, but it was less than a sixth more than his brother's share, the deal remains valid. If it was more than a sixth, the deal is void. If it was precisely a sixth, the deal is valid, but he is required to return the extra.

Rava rules: That which we said that if it was precisely a sixth, the deal is valid, but he is required to return the extra, that is only if they were dividing movable property. However, if they were dividing land, the rules for "price



cheating” do not apply (*and the extra would not need to be returned*).

And by land, the extra does not need to be returned only if they divided it according to value. However, if they divided it according to measurement, the extra must be returned. This is in accordance with what Rabbah said, for he said: Anything which is sold according to measure, weight or number (*and the amount specified was not the amount delivered*), it must be returned even if it (*the discrepancy*) was less than the usual amount for “price cheating.”

The Ri”f rules (*and this seems to be Rash”i’s opinion as well*) that there is no “price fraud” by land is only if the discrepancy was exactly a sixth; however, if the discrepancy was for more than a sixth, the deal is void.

Rabbeinu Tam holds that there are no rules of “price fraud” by land as long as the discrepancy is not by more than half of its value; however, if the discrepancy was for more than half of the land’s value, the deal is void.

The Baal Hameor writes that if the discrepancy is for exactly half of its value, there is no rule of “price fraud”; however, if the discrepancy was for more than half of the land’s value, the deal is void.

The Rambam, however, rules that there are no *halachos* of “price fraud” by land at all, and the transaction is never voided. This is because there is no limit to the price of land.