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Bava Kamma Daf 113

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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

Complying with Beis Din

Rava says: When a bill of excommunication (*document written by Beis Din against someone who does not comply with their orders*) is written against someone who did not come to *Beis Din*, it is not torn up until they actually come to *Beis Din*. [*This is even if they agree in principle to appear before Beis Din.*] Similarly, if a bill of excommunication is written regarding someone who did not listen to the verdict of *Beis Din*, it is not torn up until they listen.

The *Gemora* rejects this statement of Rava, and says it is incorrect. Once a person agrees to comply with *Beis Din*, they take away the bill of excommunication against him.

Rav Chisda says: We set a date for him to come on Monday, Thursday (*if he didn't appear on Monday*), and Monday. Only after he does not show up for the third time in a row, do we write a bill of excommunication on the next day (*Tuesday*).

Rav Assi went to Rav Kahana's house. He saw a woman who was invited to *Beis Din* in the afternoon, and after she did not come, Rav Kahana wrote a bill of excommunication regarding her non-compliance the following morning. He asked Rav Kahana: Don't you hold of Rav Chisda's law above?

Rav Kahana replied: That law is only regarding a man who might be unable to be in the city due to forced circumstances. However, a woman who is in the city and does not appear is doing so out of rebellion.

Rav Yehudah says: We do not invite someone to come to *Beis Din* during the days of Nissan or Tishrei, nor on *Erev Yom Tov* or *Erev Shabbos*. We do send invitations during Nissan that they should come for a date after Nissan (*Iyar*), and we do the same in Tishrei. However, we do not send invitations on *Erev Shabbos* for after *Shabbos*. Why? People are busy on *Erev Shabbos* (*and will forget that they were told to come to Beis Din after Shabbos*).

Rav Nachman says: We do not invite the people going to the *kallah* (*times when the public were invited to hear special Torah lectures*) for a day that there is a lecture, nor do we do so when there are preparatory *halachic* lectures for the festivals.

When people who wanted to invite someone to *Beis Din* came before Rav Nachman on the days of the *kallah*, he would ask them, "Did I gather you here for your interests?" However, now that there are people who only use the lectures as an excuse to get out of appearing before *Beis Din*, *Beis Din* will invite them during these lectures (*if they think the person is simply trying to get out of the case*). (113a)

Achrayos

The *Mishna* said: If it was something that had "*achrayos*," he must pay. [*What does this mean?*]

Rebbe taught his son, Rabbi Shimon, that the *Mishna* is not referring to something that has an actual lien on it



(the usual translation of “achrayos” -- “(fiscal) responsibility”). Rather, even if it is a cow and he plowed with it, or if it was a donkey and he led it, they must return it due to the honor of their father.

Rav Kahana asked Rav: What if they had a bed and had leaned on it (*while eating*), or had a table and ate on it?

He replied: Give to a wise man, and he will become wiser (*meaning that they are the same as a cow and a donkey*). (113a)

Mishna

One should not receive change from the box of the tax collectors or the pocket of caretakers (*of the king*). One cannot take charity from them. However, he can take from their money from their house or the money they have in the marketplace (*as this money is their private money that is not stolen*). (113a)

Law of the Country is the Law

The *braisa* states: If he has to (*he owes taxes and only has a big coin*), he can give him a *dinar* and receive change.

The *Gemora* asks: Didn't Shmuel say that the law of the country is the law (*and must be kept according to Torah law as well*)? [*Why is their money considered stolen?*]

Rav Chanina bar Kahana said in the name of Shmuel: Our *Mishna* is referring to a tax collector that takes whatever he wants. In the *Beis Medrash* of Rabbi Yannai, they were known to say: Our *Mishna* is referring to a self-appointed tax collector (*i.e. a mafia taking protection money*).

Some say that these answers are referring to the following *Mishna*. The *Mishna* states: A person should not wear *kilayim* (*wool and linen*) even on top of ten other sets of clothes, in order to get out of paying taxes. This

Mishna is unlike Rabbi Akiva. The *braisa* states: It is forbidden to evade taxes. Rabbi Shimon says in the name of Rabbi Akiva: This is permitted.

The *Gemora* asks: Their argument regarding *kilayim* is understandable, as one holds that doing something unintentionally is permitted, and the other holds it is forbidden. However, does anyone hold it is permitted to evade taxes? Didn't Shmuel say that the law of the country is the law?

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Some say their answers are referring to the following *Mishna*. The *Mishna* states: One can swear to murderers, thieves, and tax collectors that they have *terumah*, or what they have belongs to the king, even though this is untrue.

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Rav Ashi answers: Our *Mishna* is referring to a Canaanite tax collector. This is as the *braisa* states: If a Jewish man and a Canaanite thief have a case together in *Beis Din*, you should acquit the Jew if you can according to Jewish law, and say, “This is the way of our law (*in this case*).” If the law of the Canaanites is to acquit the Jew in this case, you should say, “This is your law.” If the Canaanite will win in



any law, we should make the Jew win in a roundabout way. These are the words of Rabbi Yishmael. Rabbi Akiva says: We do not do so, on account of the sanctification the Name of Hashem. (113a)

Stealing from a Gentile

The *Gemora* asks: This implies that according to Rabbi Akiva, the only reason we do not do so is because there is a sanctification of the Name of Hashem. If there would not be, the implication is that it would be permitted. Is this true? Doesn't the *braisa* quote Rabbi Shimon as stating: Rabbi Akiva taught the following when he came from Zefirin. How do we know that stealing from a gentile is forbidden? The verse states, "After being sold he will have redemption." This implies that *Beis Din* does not simply take back a slave sold to a gentile, but rather he must be redeemed from him. One might think we allow the gentile to charge any price for his redemption. The verse therefore states, "And you will calculate with the one who bought him." This implies that you should calculate exactly how much should be paid.

Rav Yosef answers: This is not a contradiction. One is referring to a resident alien (*ger toshav* – one who eats *neveilos* but does not serve idolatry; from whom it is not permissible to steal), while the other is referring to a regular Canaanite.

Abaye asked Rav Yosef: The verse states regarding both a resident alien and a Canaanite that one must calculate the exact amount. The verse "to a *ger*" tells us that a person (who transgressed selling fruit from *shemita*) will eventually not be sold to a Jew or a convert, but rather to a resident alien. The verse continues "and to the family of a *ger*," implying that he may even be sold to a totally idolatrous family. [Yet, when redeeming the slave from both of these types of people, the verse says an exact calculation must be made.]

Rather, Rava answers: This is not difficult. One case is referring to stealing (*which is forbidden*) and the other is referring to evading paying back a loan.

Abaye asked: The case of redeeming the slave is similar to evading a loan!?

Rava answers based on his position that the body of a slave is owned by the master (*so redeeming him improperly is stealing*).

Rav Bibi bar Gidal said in the name of Rabbi Shimon Chasida: Stealing from a gentile is prohibited, but it is permitted to keep his lost object. Stealing from him is prohibited, as per the statement of Rav Huna. Rav Huna says: How do we know it is prohibited to steal from a gentile? The verse says: "And you will consume the possessions of all of the nations that Hashem gives you." This implies that you can only take their things when Hashem gives them to you. However, you can keep his lost object as per the following statement. Rav Chama bar Gurya states in the name of Rav: How do we know that one can keep the lost object of a gentile? The verse says: "For all the lost objects of your brother," implying that you must return the lost objects of your brother, but not the lost objects of a gentile.

The *Gemora* asks: One might think that this only means that if you did not pick it up, you do not have to return it. How do we know it even means that if you pick it up, you do not have to return it?

Ravina answers: "And you will find it," implies that it came into your possession (*the verse "your brother" is stated regarding this verse as well*).

The *braisa* states: Rabbi Pinchas ben Yair says that whenever there will be a desecration of the name of Hashem, it is forbidden to keep the lost object of a gentile.



Shmuel says: If a gentile makes a mistake (*in your favor*), it is permitted to keep the money. This is as per an incident in which Shmuel purchased a golden utensil when the gentile seller thought it was copper. In addition, the seller mistakenly only took three zuz instead of four.

Rav Kahana bought one hundred twenty barrels from a Cuthean who thought they were only one hundred barrels, and he mistakenly took one zuz less. Rav Kahana told the seller, "I am counting on you (*that the sale was done correctly*)."

Ravina bought a tree together with a gentile. He instructed his assistant, "Take from the pieces cut near the trunk, as the gentile is only interested in evenly splitting a number of pieces (*and the pieces by the trunk are thicker and therefore contain more wood*)."

Rav Ashi was going on the road and he saw some branches of a vine that had clusters of grapes hanging off of them. He instructed his assistant, "Find out if they belong to a Jew or gentile. If they belong to a gentile, bring them to me. If they belong to a Jew, do not bring any to me." The gentile was sitting in his field and heard this. He remarked: Just because it belongs to a gentile, you can take it!? Rav Ashi answered: A gentile does not mind taking money after the fact, whereas a Jew does. (113a – 113b)

Law of the Land

The *Gemora* discusses Shmuel's previous statement that the law of the land is (*Torah*) law.

Rava says: This is clearly true, as they chop down trees and build bridges, and we use them (*and do not say they are stolen property*).

Abaye asks: Perhaps we can use them because their original owners already gave up hope of ever getting them back!

Rava answers: If not for the law of Shmuel, how would this help (*as we rule that mere giving up hope does not suffice to take the item out of one's possession*)!

The *Gemora* asks: However, the people who build the bridges do not in fact listen to the king! He says to cut from many forests, and in the end they end up cutting from one forest (*meaning that the wood is stolen*)!?

Rava answers: The messenger of the king is like the king and he does not have to bother to take from everyone. They (*whoever lost wood*) lost their own wood, as they should have collected wood from everyone's field and taken money for it.

Rava says: Whichever partner's grain was found by the tax collectors of the king in the silo, has paid the tax for all of his partners. [*The partners have to reimburse him from their share, as he paid their taxes with his grain.*] This is only regarding partners. If the other party was a sharecropper, he does not have to pay back (*as he does not own the land, so the tax is not leveled at him*).

Rava says: A Jewish tax collector may take collateral from one Jew to ensure that another Jew will pay his taxes. This is only regarding the property tax or head tax of that year. However, for the year before, the king will often forgive those taxes (*and say that any profit belongs to the Jew, who therefore has no right to take collateral from another Jew solely for his own profit*).

Rava says: One cannot buy an animal from gentiles who have animals that they use to fertilize fields (*for pay*), if they do so inside the city limits. Why? This is because they steal animals from the city to use for their fertilizing operations. However, if they only do so outside the city

limits, it is permitted. Ravina says: If the owners of the animal are chasing them to get back their animals, then even outside the city limits this is prohibited. (113b)

INSIGHTS TO THE DAF

Obeying a Jewish King in Eretz Yisroel

It is evident from the *Gemora* that the law of the kingdom has the full force of *halachah* behind it. The Ritva writes that we do not find anyone that disagrees with this principle.

The Rashbam explains the rationale for this *halachah*: All citizens of a country voluntarily accept upon themselves to obey the king's decrees and laws. All of their laws are therefore binding. Accordingly, one who possesses his fellow's property based upon that particular country's law, does not violate a prohibition of stealing at all.

The Rashba explains it differently: Since the entire land belongs to the king, he is entitled to chase anyone away from his land if he wishes, and he has the right to tax everyone for the privilege of residing in his land.

A difference between these two opinions may be if this *halachah* would apply in *Eretz Yisroel* with a Jewish king. According to the Rashba, it might not apply in *Eretz Yisroel*, for every Jew has an inalienable right to live there, and no king would have the jurisdiction to banish anyone from the Land.

The Ra"n in Nedarim 28a rules that this principle applies only in the lands of the exile. The reason for this, he explains, is that in these countries, the land is the property of the kingdom, and one is therefore obligated to abide by the laws and ordinances of the country in which he resides. But, in *Eretz Yisroel*, which belongs to the entire Jewish nation, there is no obligation to comply

with the laws of a Jewish king. The Rambam and Shulchan Aruch both rule that this principle does apply to a Jewish king in *Eretz Yisroel*.

The Law of the Kingdom is the Law

Shmuel states: The law of the government is the law (*even according to our law*).

The *Gemora* in Shabbos (88a) teaches that when *Bnei Yisroel* stood at Mount Sinai and heard the word of Hashem, He held the mountain over our heads. Hashem declared, "If you'll accept the Torah, all will be well. If not, this will be your burial place!" Rav Acha bar Yaakov said: This can now be used as an excuse for *Klal Yisroel* when they do not perform the *mitzvos*. For when they are summoned for judgment, they can claim that they were coerced into accepting the Torah; it was not done willingly.

The Perashas Derachim asks from our *Gemora* which states that the law of the kingdom is the law. If so, this should certainly apply by The Holy One blessed is He, Who is the King of all Kings. How could *Klal Yisroel* use the coercion as an excuse? The law of the kingdom is the law, and they took an oath obligating themselves to perform His *mitzvos*!

He answers that Rabbeinu *Tam* holds that the principle of the law of the kingdom is the law is only applicable if the king decrees on all his subjects. However, if the decree is issued only on part of his kingdom, this principle does not apply. Since Hashem is the King over all the nations of the world and He only forced *Bnei Yisroel* to accept His *mitzvos*, this principle would not apply and hence, a claim of coercion can be effective.

It emerges that regarding the seven *mitzvos* that were given to all *Bnei Noach*, the principle of the law of the



kingdom is the law would apply, and a claim of coercion would not be valid.

According to this, the Ketzos HaChoshen explains the argument between Pharaoh and the midwives. Pharaoh asked them, "Why didn't you listen to my commandment? The law of the kingdom is the law and since I the king decreed that all the Jewish children should be killed, you are obligated to listen to me!" They responded to him, "Your decree is not a universal one; it was only issued regarding the Jewish children and not to any others. Accordingly, the principle does not apply and we are not obligated to adhere to the laws of the kingdom. Thereupon, Pharaoh immediately decreed that all children born must be thrown into the sea.

Reb Shlomo Kluger uses this principle to explain Adam HaRishon's response to Hashem. He answered, "The woman that you gave to me gave me from the tree and I ate." What kind of answer was this? Adam HaRishon was saying that since his wife was here as well and she was not commanded not to eat from the tree, therefore, the law of the kingdom does not apply and that is why he ate.

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

Q: When will minors be obligated to return that which their father stole?

A: If the stolen object is still in existence (*according to the Chachamim, and not Sumchos*).

Q: At what point in time will a borrower be liable for accidents?

A: Either at the time of the borrowing, or at the time of the accident.

Q: Can we authenticate a loan document when the borrower is not present?

A: It is a *machlokes* between Rav and Rabbi Yochanan.

DAILY MASHAL

Since the early periods of our exile many Jewish communities have been subject to cruel governments that have treated them and their property arbitrarily and taxed them unfairly. The question arose as to when a Jew would be forbidden to take money from such a government whose funds are assumed to be stolen. In a certain Hungarian community a fire consumed some buildings owned by a wealthy Jew. The local regime exploited the situation, forbade him to rebuild and confiscated his land for public use. He demanded compensation. The government taxed the Jews to finance the compensation, claiming they would benefit from the public facilities though only a few Jews lived in the area. The government paid the landlord but the Jews demanded their money from him. Our sugya explains that if tax-collectors give a person something in return for what they took, he must return it to its owners. So, in this case, the government took the land and paid the owner funds collected from Jews. They, in turn, wanted to be compensated. However, the Erech Shay (162:61) decided that he is not obligated to do so as it is not certain the money he received was the very same coins as were collected from the Jews.