

21 Elul 5776  
Sept. 24, 2016



Bava Kamma Daf 116

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**Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h**

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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

### **Fooling Around**

The *Mishna* had stated: Someone was approaching with his barrel of wine and the other with his jug of honey. If a crack developed in the barrel of honey and the other person spilled out his wine and saved the honey, he only receives his wages (*for his work, and for his jug*). But if he said, “I will save yours, but you must pay me the value of mine,” he is obligated to pay him.

The *Gemora* asks: Why (*does the owner of the honey have to pay*)? Let him say, “I was just fooling around with you!” Did we not learn in a *braisa*: Someone broke out of jail and a ferry was before him. He told the owner of the ferry, “Take a *dinar* and take me over to the other side!” The owner of the ferry cannot claim more than his usual fee. This is because the escaping prisoner can claim, “I was just fooling around with you (*and didn’t mean I would actually give you the outrageous price of a dinar for a cheap service*)!” Here, too, let the owner of the honey say, “I was just fooling around with you”!?

The *Gemora* answers: Our case is like the second part of the *braisa*, which says that if the prisoner said, “Take this *dinar* and take me over,” he indeed receives the *dinar*.

The *Gemora* asks: What is the difference between the two cases (*that in the second case he has to pay the dinar*)?

Rami bar Chama answers: The second case in the *braisa* is where the captain of the ferry is also a fisherman, and can claim that he lost a *dinar* worth of fish during the time he

was ferrying the escaping prisoner. [*Here, too, it is obvious that the owner of the wine is indeed losing the entire value of his wine. This is why the owner of the honey must pay him the entire value.*] (116a)

### **Necessary Cases**

The *Mishna* had stated: A river swept away his donkey and the donkey of his fellow. His was worth a *maneh* (*one hundred zuz*) and that of his fellow was worth two hundred *zuz*. If he let his go, and saved that of his fellow, he only receives his wages.

The *Gemora* explains: Both cases (*spilling his wine and not saving his donkey*) are necessary. If it would just say the case where he spilled out the wine, one would think that the owner of the honey must pay the entire value of the wine when it was stipulated, because the owner of the wine actively spilled his wine out of his barrel (*due to their stipulation*). However, in this case, where the donkeys were swept away without connection to any condition, perhaps he would not have to pay. One the other hand, if only the second case had been stated, we would think that he reimburses him because both donkeys were already swept away. However, in the case of the spilled wine, one might think that the owner of the honey must pay the owner of the wine even without an explicit stipulation to this effect. This is why both cases are necessary. (116a)

### **Heaven had Mercy**



Rav Kahana asked Rav: If one person saved the other person's donkey (*on condition that he would be paid for his donkey*), and the first person's donkey ended up being saved anyway, what is the *halachah*?

Rav answered: Heaven had mercy on him (*and the owner of the donkey he saved must still pay him the value of his donkey*).

This is comparable to the case of Rav Safra. When Rav Safra was traveling with a caravan, a lion joined them and started traveling with them (*protecting them from bandits and other wild beasts*). Every night one person from the caravan would feed the lion his donkey (*in order that he should not attack them*). When it was Rav Safra's turn, he offered the lion his donkey, but the donkey did not eat it. Rav Safra quickly went and reacquired his donkey.

Rav Acha from Difti asked Ravina: Why did he have to reacquire the donkey? When he made the donkey ownerless, he only did so because he had to feed it to the lion, not in order that anyone who wants can acquire it?

Ravina answered: Rav Safra did this as an added precaution (*just in case someone would claim that it did not belong to him any longer*). (116a)

### **Unsuccessful Attempt**

Rav asked Rebbe: What if the person tried to save the other person's donkey, but was unable to do so? [*Does the other person still have to reimburse him for his donkey?*]

Rebbe answered: This is a good question, but the answer is that he can only claim his wages (*for attempting to save*).

Rav asks a question on this from a *braisa*. The *braisa* states: If someone hired a worker to bring cabbage and

quinces for a sick person, and by the time the worker returned, the sick person either died or recovered, he must pay his entire wages. [*Why, then, should the fact that he did not save the donkey, make a difference?*]

Rebbe answered: The cases are not comparable. In this case, the worker fulfilled his task, while in the case of saving the donkey, he did not. (116a – 116b)

### **Dividing Expenses**

The *Gemora* cites a *braisa*: If there was a caravan traveling in the desert and bandits tried to rob them, if they pay off the robbers, each person must pay according to his wealth, not according to the (*sum divided by the*) number of people. If they hired a guide to show them the way, his wages are split by the number of people as well as by wealth (*half of his wages are divided by the number of people, and half by percentage of wealth*). If the custom is otherwise, the custom should be followed.

Those who provide donkeys for the journey can stipulate that if anyone loses his donkey, they will replace it for him with another similar donkey. However, if he loses his donkey negligently, they do not have to replace it (*even though they made this stipulation*). If the person who lost his donkey (*not through negligence*) says, "Give me my money (*instead of another donkey*) and I will watch the other donkeys with you," they do not have to listen to him. [*The case is apparently where everyone chips in money, and is entitled to at least one donkey for which they are responsible. They also collectively watch their donkeys to ensure they are not harmed.*]

The *Gemora* asks: This is obvious!?

The *Gemora* answers: The case where it is necessary is where the person making this claim has another donkey. One might think he can claim that he will still watch the donkeys as he still has a donkey. [*Rashi explains he might*



add to his claim that he can watch one donkey better than two donkeys.] The *braisa* therefore teaches that the group can deny this claim, as he will watch the donkeys even better if he sticks with his original two donkeys instead of one.

The *Gemora* cites a *braisa*: A boat was sailing in the sea and a wave threatened to drown it. The people therefore threw things overboard in order to lighten the load of the boat and keep it afloat. The items that are taken are decided by percentage of weight, not value. The custom of the sailors (*in this situation*) should be adhered to in any event. Those who provide boats for the journey can stipulate that if anyone loses his boat, they will replace it for him with another similar boat. However, if he loses his boat negligently, they do not have to replace it (*even though they made this stipulation*). If the person who lost his boat did so because he went to a place where boats do not normally travel, they do not have to give him another boat.

The *Gemora* asks: This is obvious!?

The *Gemora* answers: The case is needed for the following scenario. During Nissan there is a lot of water from the winter, and therefore sailors can sail closer to the riverbank. However, during Tishrei, the water level is lower, and sailors must travel further away from the riverbank, despite the fact that the waters are stormy. The case is where he traveled during Nissan as he would during Tishrei. One might think that he can claim that he was going in a regularly traveled path (*and therefore should not be considered as if he lost his boat negligently*). The *braisa* therefore teaches that this is not a good claim (*and he should have traveled closer to shore instead of in stormy waters*).

The *braisa* states: If a caravan was traveling in the desert and bandits came and robbed it, and then a person went and saved the money, he saved everyone's possessions

for them. If he said, "I am saving this for myself," he indeed saved it for himself.

The *Gemora* asks: What is the case? If it is that the other owners still have the ability to save their things, then in the second case, the other owners should also retain their possessions! If the case is that they despaired from ever getting their possessions back, then even in the first case he should keep everything!?

Rami bar Chama answers: The case is where the people in the caravan are partners, and in such a case a partner can dissolve the partnership without the consent of his friend. If he said that he is dissolving the partnership, he has done so (*and whatever he takes can be for himself*). Otherwise, it is split evenly.

Rava says: The case here is involving workers. This is according to the principle of Rav that workers can even quit in the middle of the day. As long as he has not quit, he is considered to be in the service of his employer. If he quits, he can acquire everything (*from hefker*). This is because the verse states, "For to me, Bnei Yisroel are servants," and not servants to servants. [*This is why they can quit in the middle of being a worker.*]

Rav Ashi says: The case is where it was possible to rescue what was stolen, but it was difficult. If someone told the owners that they were going to take it for themselves (*and the owner was quiet*), he may keep it (*as it is clear that the owner did not protest because he had already given up rescuing his possessions*). If he did not say anything, he must give it back to the owners (*as it is very possible that the owners themselves had not given up hope*). (116b)

### **Mishna**

If someone stole a field from his friend, and bandits stole it from him, if these second bandits are plaguing the area



(stealing many fields in the area), the first thief can say to the original owner, "Here is your field." If it was because of the first thief (explained in the Gemora), the first thief must give the original owner another field. (116b)

### **Explaining the Mishna**

Rav Nachman bar Yitzchak says: The one who calls these bandits "*masikin*" did not make a mistake, nor did the one who has the text "*matzikin*." The text *matzikin* has its roots in the verse, "*b'matzor u'bimatzok*" (*matzok meaning "with pain"*). The text *masikin* has its source in the verse, "*yi'yarash ha'tzlatzal*," which is translated as "the locust will take over" (see *Tosfos who argues*).

The *Mishna* concluded that if it was because of the first thief etc.

The *Gemora* asks: What is the case? If it is that the second bandits only stole this land and no other land, we already know this law from the first case!?

The *Gemora* answers: The case is where the first person did not steal it, but rather pointed out the field to those looking to steal it for the king.

Another version of this statement is that the case is where gentiles forced him to show them any field, and he chose this one on his own.

There was a person who pointed out a pile of grain that belonged to the *Reish Gelusa* (and which was subsequently seized). He came before Rav Nachman, and Rav Nachman obligated him to pay. Rav Yosef sat in back of Rav Huna bar Chiya, who was sitting before Rav Nachman. Rav Huna asked Rav Nachman: Is this the law, or is it a fine? He replied: This is a *Mishna*, as the *Mishna* says, "If it is because of the thief," and it is explained as a person who pointed out something to be seized by the king.

After Rav Nachman left, Rav Yosef asked Rav Huna: Why does it make a difference to you if it is the law, or if it is merely on account of a fine?

Rav Huna replied: If it is a law, we can learn from this ruling to other similar cases. However, if it is a fine, perhaps it was only because he was accustomed to inform, but it would not apply in other cases. (116b – 117a)

### **DAILY MASHAL**

#### ***Miracles in Halachah***

Rav Kahana asked Rav: If one person saved the other person's donkey (*on condition that he would be paid for his donkey*), and the first person's donkey ended up being saved anyway, what is the *halachah*?

Rav answered: Heaven had mercy on him (*and the owner of the donkey he saved must still pay him the value of his donkey*).

This is comparable to the case of Rav Safra. When Rav Safra was traveling with a caravan, a lion joined them and started traveling with them (*protecting them from bandits and other wild beasts*). Every night one person from the caravan would feed the lion his donkey (*in order that he should not attack them*). When it was Rav Safra's turn, he offered the lion his donkey (*rendering it hefker*), but the donkey did not eat it. Rav Safra quickly went and reacquired his donkey. [*Rav Safra had fulfilled his obligation by offering his donkey. He was not obligated to contribute any more to the cause, for the return of his donkey was regarded as a miracle – Heaven sent, and that would not undo the fulfillment of his obligation. This is comparable to Rav's ruling: Since the rescuer's donkey*



*was miraculously saved, it does not undo the obligation from the owner of the donkey that he saved.]*

Rav Acha from Difti asked Ravina: Why did he have to reacquire the donkey? When he made the donkey ownerless, he only did so because he had to feed it to the lion, not in order that anyone who wants can acquire it (*i.e. he did not really make it hefker in the first place*)?

Ravina answered: Rav Safra did this as an added precaution (*just in case someone would claim that it did not belong to him any longer*).

Tosfos asks: The *Gemora* in Bava Metzia rules that someone who rescues an animal from a lion attack is permitted to keep the animal for himself, for the owner abandoned hope of ever recovering his animal; it is therefore regarded as *hefker*. If so, shouldn't Rav Safra's donkey be legally regarded as *hefker*?

Tosfos answers that there is a basic distinction between the two cases. Here, the lion is not an attacker, but rather, it is a protector. The lion never attacked Rav Safra's donkey; the donkey was given to it. It was not inevitable that the lion would kill the donkey. There could have been times that the lion was satiated and would have no interest in eating on that particular night. Accordingly, Rav Safra did not give up hope on his donkey, and is therefore not considered *halachically hefker*.

The Chazon Ish explains as follows: If Rav Safra's donkey would have been saved in a completely natural manner (*e.g. if there would have been other nights where the lion was satiated and did not kill the donkey*), he would have been obligated to repay the others, for he would not have contributed to the caravan's protection. The *Gemora* stresses that this was viewed as a miraculous event, for every other night, the lion did consume the donkeys. Rav Safra, being a holy person, was accustomed of having miracles performed on his behalf, and therefore he knew

that there was a possibility that a miracle might happen and his donkey will be spared. It was therefore regarded as if he paid his portion towards the caravan's protection.

However, with respect to reacquiring his donkey, it is not sufficient to say that Rav Safra relied on the fact that a miracle might occur and therefore he would not abandon hope on retrieving his donkey. It would depend on the type of miracle. If a public miracle, revealed to all, one that would involve a change in the laws of nature would occur and his donkey would be spared, even if Rav Safra was confident that such a miracle will happen, it would be regarded as if he had despaired on his donkey and he would be required to reacquire the donkey. It would be as if a different donkey was sent down from Heaven. This is because the Torah was given according to the laws of nature, and the *halachah* will not change due to an open miracle. But, if the miracle would be a hidden one, one that would be concealed by nature, although it only happened because of Rav Safra, it would be regarded as a natural occurrence, and if Rav Safra would be confident that this would occur, the *halachah* would consider it as if he did not abandon hope about it. This is because all of nature is in truth governed by Heaven, and a miracle such as this would be considered a natural occurrence for one who is accustomed to such miracles. Therefore, since there are times when a lion, due to some abnormality in its stomach, be satiated and it will have no desire to eat, this is viewed as a natural even that Rav Safra was waiting for, and it is as if Heaven sent satisfaction to the lion in order for it not to consume Rav Safra's donkey.

It emerges from the Chazon Ish that something that changed through an open miracle is not halachically regarded as being the same item that it was before. This would be similar to Reb Chaim Brisker's challenge to some of the answers given to the *Beis Yosef's* famous question.

The *Beis Yosef* asks: Why do we celebrate Chanukah for eight days if we are celebrating the miracle that the oil

that should have lasted for only one day instead lasted for eight days? We should celebrate Chanukah for seven days, since only seven days of the burning of the oil were miraculous!?

He offers two solutions to this problem. He first suggests that on each night, when the oil was poured from the container into the Menorah, the jug remained completely full (similar to the miracle performed by Elisha). Another suggestion is that after every night, all the oil remained in the Menorah.

Rav Chaim Brisker challenges these two answers, arguing that miraculously generated oil is not acceptable for the lighting of the Menorah. He notes that the oil used for the Menorah is described not merely as “Shemen” (*oil*) but as “Shemen Zayis,” oil produced by an olive tree. This implies that it must be produced by an olive tree, and not by a miracle.

This parallels that which the Chazon Ish stated: The fact that it was a public miracle would change the nature of the oil. Beforehand, it was olive oil, but now, it is “Heaven-sent oil.”

#### QUESTIONS AND ANSWERS FROM YESTERDAY’S DAF

to refresh your memory

Q: Did the Sages institute “the benefit of the marketplace” in cases where the thief was caught?

A: It is a dispute amongst the *Amoraim*.

Q: If a crack developed in the barrel of honey and another person spilled out his wine and saved the honey, he only receives his wages. Why should this be? Let him tell the owner of the honey, “I have acquired the honey from *hefker* (a state of ownerlessness; it should therefore all be his)!?”

A: It is referring to a case where the netting of the olive press was twined around the barrel.

Q: Is it permitted to separate *terumah* from produce which is *tamei* on other produce that is *tamei*?

A: is a dispute amongst the *Tannaim*.