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Bava Kamma Daf 97

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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

Is it really Stolen?

The *Gemora* (96b) had concluded the Rav's opinion was that a slave is in the same halachic category as real estate. The *Gemora* now challenges this conclusion from another statement of Rav that implies that a slave is not considered real estate. Rav said that if one seizes someone's slave and works him, he need not pay for the work done. If a slave is treated like movable objects, then just as one who steals an animal and uses it for work is only liable for the stolen item – but not for any profits made from it - so in this case, the one seizing the slave need not pay for the work. However, if the slave is treated like real estate, just as real estate always remains in the possession of the original owner, the slave is never truly stolen. Therefore, one who seizes him and works him should have to pay for the work. The *Gemora* answers that Rav only said this when one seized a slave outside of working hours. In this case, the slave's owner did not lose anything as the result of the work done by the slave, and only for this reason does the thief not pay for the work done. The *Gemora* compares this to the *halachah* of one who dwells in another's land without his knowledge. If the land owner would not have rented the land, then the dweller need not pay, since this falls in the category of *zeh neheneh v'zeh lo chaseir* – the dweller gains, but the land owner does not lose. If someone benefits from someone else, without that person losing, the one providing the benefit cannot demand payment. Similarly, although the seizer benefited from the slave, the slave owner did not lose anything, and therefore no payment is necessary. The *Gemora* explains that, in fact, in both the dwelling and

slave cases, the owner of the property actually gains from the other person's usage. In the case of a dwelling, having a tenant removes any destructive spiritual forces, and also maintains the house. In the case of the slave, occupying a slave keeps him industrious for further work.

The *Gemora* tells the story of the household of Rav Yosef Bar Chama who seized a slave from a debtor, and used it for work. Rav Yosef's son Rabbah asked him father why this was done, since benefiting from the work of this slave is tantamount to interest on the debt. Rav Yosef explained that this slave didn't even earn the value of the food Rav Yosef provided him, so Rav Yosef was not causing any loss to the debtor. Rabbah countered that this would be true only of a slave like Rav Nachman's, who earned minimal wages as a jester, but most slaves earn more than the food provided them. Rav Yosef responded that he was following Rav's statement, that one who seizes a slave and works him does not pay the owner. Therefore, the work is not considered money, and is not interest. Rabbah countered that Rav did not say his rule when one seizes his debtor's slave, since then it appears like interest. To prove this, Rabbah quotes Rav Nachman who says that even though one who dwells in someone else's courtyard without his knowledge need not pay, if the courtyard is owned by his debtor, he must pay rent. Rav Yosef agreed, and committed to change this practice.

The *Gemora* discusses one who seizes a ship and uses it for work. Rav says that the owner of the ship can demand either rent or the depreciation of the ship from the one who seized it, but Shmuel says that he may only demand the depreciation. Rav Pappa explains that Rav and Shmuel are not disagreeing, but merely discussing different situations. One option is that Rav is discussing a situation where the boat is for rent, while Shmuel is discussing a situation where the boat is not for rent. If the boat is for rent, the one who seized it did so to rent it, and must pay rent, if demanded. However, if it is not for rent, the one who seized it simply stole it, and must pay only depreciation. The other option is that both Rav and Shmuel are discussing a case of a boat which is for rent, but Rav is discussing one who seizes it to rent it, and Shmuel is discussing one who seizes the boat to steal it. Once again, when the boat is seized for rental, the owner has the option of charging rent, but if it is stolen, the owner may only demand payment for depreciation.

Monetary Fluctuations

The *Mishna* had stated that if one stole a coin and it was cracked, the thief must pay the value of the coin at the time of the theft. If one stole a coin, and it was invalidated by the government, he may return the coin itself as payment for the theft, even though its value has changed, since the physical coin is intact. (*This follows the general rule that if a stolen item is intact, and the thief has not acquired it by a substantial change, the item itself is returned, without regard for depreciation.*) The *Gemora* cites a dispute in explaining this *Mishna*. Rav Huna says that the *Mishna* should be read as it appears, and a coin which is invalidated can be returned as payment for the theft. However, Rav Yehudah says that a coin which is invalidated is unusable, and tantamount to being cracked. When the *Mishna* allows the thief to pay back with an invalid coin, this is only when one region has invalidated the coin, but it is still valid in another region. It therefore is inferior to its original status, but has not changed

drastically enough to not be considered intact. Rav Chisda challenged Rav Huna with another statement of the *Mishna*. The *Mishna* stated that if one stole fruits and they rotted, or wine, and it fermented, he must pay the value of the stolen item, since the stolen item is not intact. Rav Chisda said to Rav Huna that an invalid coin is similar to these items, since in both cases, the item is physically intact, but has depreciated. Rav Huna explained that in the cases of the *Mishna*, the items appear different than their state at the time of theft, as opposed the coin, where the change in its value is not apparent to an observer. Rava challenged Rav Yehudah with another statement of the *Mishna*. The *Mishna* stated that if one stole *terumah* fruits and they became impure, he may still return the fruits themselves as payment. Even though impure *terumah* fruits are not edible, the *Mishna* considers them intact, since no physical change was effected, and similarly, a coin which is physically intact should be valid for return to the owner. Rav Yehudah explained that *terumah* fruits looks just like other fully edible fruits, while this invalid coin does not look like the new valid coins. Since the coin's issue is physically discernible, it may not be used as payment.

The *Gemora* cites a dispute of Rav and Shmuel in a case of one who borrowed merchandise, agreeing to pay back the value in money later. If the currency agreed upon is invalidated, Rav says that the borrower must pay the value in the new valid currency, while Shmuel says that the borrower can pay back in the original currency, telling the lender to use the coins in a place where it is still valid (e.g., *Meishan, which was far from most people*).

Rav Nachman explained that Shmuel's position seems correct if the lender has reason to go to the other place, since then it really does retain its value for him. If, however, he has no reason to go to the other place, the

currency is worthless to him, and the borrower must pay in the new currency. Rava brought a *braisa* which challenges Rav Nachman's distinction. (*Tosfos discusses how this braisa can be understood without Rav Nachman's distinction.*) The *braisa* discusses the rules of redeeming *ma'aser sheini*. *Ma'aser sheini*, taken in the third and sixth year of the *shemittah* cycle, must be eaten in Yerushalayim. The Torah states that if one has too much *ma'aser sheini* to bring to Yerushalayim, he may redeem it with money, and buy with the money food which he will eat in Yerushalayim. The *braisa* states that the money used to redeem *ma'aser sheini* must be valid currency, and one may therefore not redeem it with ancient coins. Rava says that since the *braisa* only excludes *ancient* invalid coins, it implies that *contemporary* invalid coins may be used, even though the ultimate destination of the coins' owner is Yerushalayim, where they are not valid. The *Gemora* answers that the *braisa* is referring to a case where the governments do not mind if one holds a foreign currency, whereas Shmuel is referring to a situation where the governments forbid one to hold foreign currency. If one may freely hold foreign currency, the holder of the coin can find a native of the area where the currency is valid, and recoup its value. If he may not freely hold and display it, he cannot find such people. In Shmuel's situation, the government does not go so far as to check people's baggage when they travel, so the lender can recoup the value of the coins if he goes to the currency's valid area, but not if he stays here.

The *Gemora* brings another *braisa* to challenge Rav Nachman. The *braisa* discusses the relationship of the place of the currency used for *ma'aser sheini* redemption and the place of redemption, detailing three cases:

Currency	Place of Redemption	Redeem?
Eretz Yisroel	Bavel	No
Bavel	Eretz Yisroel	No
Bavel	Bavel	Yes

The *Gemora* focuses on the first case, where in the place of redemption (*Bavel*), the currency is invalid, but in the location where the owner will arrive (*Eretz Yisroel*, where he will eat the *ma'aser sheini* food), it is valid. This is parallel to Shmuel's case, as explained by Rav Nachman, but the *braisa* says that the redemption is invalid, indicating the coins are not considered valid currency. The *Gemora* explains that this *braisa* is a situation where the governments are so strict that they will search baggages for foreign coins and confiscate them, so the currency cannot even be transported, making it worthless. Nonetheless, the third case is a valid redemption, since at the place of redemption, the owner can buy an animal with the money, and transport the animal to Yerushalayim. The *Gemora* parenthetically explains that this *braisa* is a situation where the Jews are subservient to the foreign governments, and not many Jews travel to *Eretz Yisroel* to eat *ma'aser sheini*. Therefore, the second case is not a valid redemption, since the currency will not be usable in Yerushalayim. When there are many Jews traveling to *Eretz Yisroel* to eat *ma'aser sheini*, the Sages instituted a rule that all coins should be valid in Yerushalayim to facilitate such travel and commerce.



The *Gemora* brings a *braisa* describing two types of coins. The coin of Yerushalayim had David and Shlomo on one side, and Yerushalayim on the other side, and the coin of Avraham Avinu had an old man and lady (Avraham and Sara) on one side, and a young boy and girl (Yitzchak and Rivka) on the other side.

Rava asked Rav Chisda what the *halachah* would be when one borrowed currency, and the size of the currency increased before the loan was repaid. Should the borrower pay the initial number of coins, now worth more, or less coins, with the same initial value? Rav Chisda answered that he should pay the same number of coins, even though their value went up, no matter how much the coin's size was increased. The *Gemora* questions why this isn't interest, since food will now cost a smaller number of coins. Rav Ashi explains that if the food costs less simply due to the new size of the coins, we adjust the payment to the original value, but if the food costs less due to a higher supply, we do not adjust the amount. The *Gemora* still contends that the weight of the new coins will be more than the borrower received, making it interest. The *Gemora* concludes that for any change up to 10:8 (i.e., 8 of the new coins are equal in weight to 10 of the old coins), we adjust the payment. Any change smaller than that is negligible, and the borrower pays the same number of coins as he borrowed, using the new coins. (*Tosfos discusses different options for the parameters of the tolerance defined here.*)

INSIGHTS TO THE DAF

Slaves as Real Estate

There are many Halachic ramifications of classifying a slave as real estate or movable items, including:

1. Paying Kefel
2. Swearing
3. Acquisition methods
4. Lien

These are all areas where real estate and movable items have different rules.

On the issue of theft discussed on our daf, The Rif rules that slaves are not considered real estate, and therefore a thief pays depreciation, but does not pay for any work done by the slave.

The Raavad says that just as slaves are considered real estate in areas of *kefel* and swearing, so they are considered real estate for the purposes of theft. The Rashba concurs, and states that the only area where slaves are considered movable items is areas where the Sages made special rules for movable items, and then included slaves. These include writing a *pruzbul* and a lien on an estate, where the Sages excluded movable items, as well as slaves.

What is Interest?

The *Gemora* states that living rent free in a debtor's house seems like interest, and is therefore forbidden. Tosfos (97a Hilvahu) discusses the parameters of this prohibition. The *Gemora* states that living rent free is categorically prohibited, even if the debtor would have allowed the creditor to do so independent of the loan. Tosfos questions how a debtor can do any favors to his creditor, since these also would appear to be interest. Tosfos states that the prohibition only includes conspicuous activities, like living in someone's house, but not things like renting out tools. The Shach (Y"D 166:1)

rules that any inconspicuous favors that the debtor would have done anyway for the creditor may be done. In addition, if they were known to all to be such close friends that they would have allowed each other to dwell rent free, this also may be done. The Maharshah, however, states that any conspicuous favor may not be done, even if all knew that they would have done this favor without the loan in place.

Inflation

The *Gemora* discusses the case of coins whose worth was adjusted by the government, and concludes with a rule that allows for a minor tolerance, below which we consider the adjustment to not be interest. The Ri Migash, quoted by the Shita, explains that this is only true if the loan was structured around a specific coin. In that case, when the government adjusted the coin, the loan adjusted too, within the defined tolerance. However, if no coin was specified, per se, but an overall amount of gold or silver was specified, any adjustment of the coins must be factored in when paying back the loan. The tolerance allowed by the *Gemora* is akin to one who borrows a pound of silver, and then pays back a more purified pound of silver. Since he paid back silver, we do not take into account the difference in purity and quality. Similarly, if he owed specific coins, the increase in quality of these coins is not necessarily interest. However, an increase in quantity is real interest, and prohibited. The Raavad, quoted in the Shita, states that the change in quality may itself be the reason for the government's changing the value of the coins. The Rosh explains that anything within this tolerance will not be meaningful to the creditor, since whatever he would gain in melting the coins would be lost in the cost of the melting process.

In the course of discussing this case, Rav Ashi introduced the distinction between food price changes due to money value fluctuations, or due to changes in supply and

demand. In contemporary terms, the poskim discuss whether inflation is taken into account when determining payment for a loan. Rav Moshe Feinstein (Y"D 2:114) states that in the Torah's view, money is always considered the constant value, even though it was always clear that money itself can fluctuate. This is not an economic position the Torah is stating, but rather a *gezeiras hakasuv* -an absolute rule- around which the rules of interest are based. Rav Moshe discusses whether this may change today, since our money is not intrinsically valuable, but is useful purely for its buying power. His conclusion is that even today, inflation may not be taken into account, and a specific number of dollars borrowed must be paid back exactly.

See http://www.jlaw.com/Articles/inflation_issues1.html by Rabbi Dr. Aaron Levine for a wide ranging discussion of inflation and ribbis in contemporary economic terms.

DAILY MASHAL

A white beard on a silver coin

Tosafos explains that the coins minted in honor of Avraham, Yitzchak, Dovid and Shlom were inscribed with their names, not their image. For it is forbidden to engrave a human image.

The author of Rav Pealim writes that regarding the coin of Avraham and Yitzchak, there exists no other option. We have been taught that Avraham and Yitzchak entirely resembled each other; the only difference being that Avraham had a white beard. It is obvious then that it was not their faces on the coins for it is impossible to discern what color a beard is on a coin.