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DAF Notes
Insights into the Daily Daf
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Bava Kamma Daf 99

Daf Notes is currently being dedicated to the neshamot of

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***Acquiring the Improvement***

The *Gemora* attempted to prove from our *Mishna* that a craftsman acquires the improvements of the utensil.

Shmuel deflects this proof: The case is where he ruined it when it was being dyed, so there is no improvement.

The *Gemora* asks: What would be the law if he ruined it after it was already dyed? It seems that he would have to give both the value of the wool and the improvement. This implies that Shmuel does not hold like Rav Assi!

Shmuel will answer: The case is where the wool and dye belongs to the customer. The worker is only receiving wages for his work (*not for materials*).

The *Gemora* asks: If so, he should pay for the wool and the dye!?

The *Gemora* answers: Rather, Shmuel was pushing aside each possibility. [*The Pnei Yehoshua explains that Shmuel himself was unsure how to interpret the case of the Mishna, and therefore was merely trying to answer each possibility.*]

The *Gemora* attempts to answer this question from a *braisa*. The *braisa* states: If a person gave his cloak to a worker who finished his work and told his client that he was finished, even if the client waits ten days to pay, he has not transgressed the prohibition against delaying to pay a worker. If the worker gave him the cloak in the middle of the days, he transgresses this prohibition if he does not pay the worker by sunset. If one holds that a worker acquires the improvement that he made to the vessel, why does he transgress this prohibition? [*The worker is effectively selling back his share in the vessel, and is not getting paid as a regular worker.*]

Rav Mari the son of Rav Kahana says: The case is where the worker was merely combing his clothes, and he did not add any improvement (*i.e. materials*).

The *Gemora* asks: Why did he give it to him if there is no improvement? He obviously gave it to him to soften (*through the combing*)! This, too, should be called improvement!?

The *Gemora* answers: The case is where he hired him to step on it, and paid him for each step. This is clearly a case of a worker, not someone who accepts accomplishing a job (*known as a "kablan"*).

The *Gemora* notes: Our original understanding, that the case is not where he is paid per step, is a proof to Rav Sheishes. Rav Sheishes was asked: Does a person transgress the prohibition against not paying a worker on time if the worker is a *kablan*? Rav Sheishes answered that he does transgress the prohibition by not paying a *kablan* on time.

The *Gemora* asks: This implies that Rav Sheishes argues on Rav Assi!?

Shmuel bar Acha answers: Rav Sheishes is referring to someone who is sent to deliver a letter (*where there is certainly no improvement, even though he is a kablan*). (98b – 99a)

***Betrothal with his Labor***

The *Gemora* asks: Let us say this is an argument among the *Tannaim*. The *braisa* says: If a woman says to a man, "Make for me bracelets, earrings (*or nose rings*), and rings and I will be *mekudeshes* to you," once he makes them, she is *mekudeshes*, according to Rabbi Meir. The *Chachamim* say: She is not *mekudeshes* until she receives the money. What money are they referring to? If it refers to the money that she gave him and he made into jewelry, does the *Tanna Kamma* hold this is a valid *kiddushin* even if she never receives the jewelry? How is he being *mekadesh* her?! It must be that the *Chachamim* mean that more money must be given to her. Everyone agrees that a worker constantly accumulates earnings when he works, which is essentially a loan his employer takes from him until he is paid. And everyone agrees that he cannot be *mekadesh* with a loan (*for he is not giving her anything right now*). The argument between Rabbi Meir and the *Chachamim* must be whether or not a worker acquires what he improves in a vessel. One opinion says he does, and one says he does not (*and therefore it is considered a loan*).

The *Gemora* answers: Everyone agrees that a worker does not acquire what he improves in a vessel. Their argument is whether wages are paid as described above (*Chachamim*), or whether wages are only owed to the employee at the end of the job (*Rabbi Meir*). [*The commentaries discuss why this too is not regarded as a loan. See Rabbi Akiva Eiger who explains at length that the man acquires part of the objects as collateral.*]

Alternatively, the *Gemora* answers: It could be that everyone agrees that wages are owed continuously and the argument here is whether one can be *mekadesh* with a loan or not.

Alternatively, Rava answers: It could be that everyone agrees that wages are owed continuously, and one cannot be *mekadesh* with a loan, and a worker does not acquire what he improves. They argue regarding a case where he added his own materials. One opinion is that if someone is *mekadesh* with a loan and a *perutah*, the *kiddushin* is valid because the woman understands the *perutah* is her *kiddushin*. [*Similarly, the woman understands here that the kiddushin is the material or metal he added.*] The other opinion holds that in such a case she things the loan is the *kiddushin*, and does not think of the *perutah* as her *kiddushin*.

This is like the (*end of the*) argument between the following *Tannaim*. The *braisa* states: If a man says to a woman that she should be *mekudeshes* to him with the wages she owes him, she is not *mekudeshes*. If he says, with the wages that she will owe him, she is *mekudeshes* (*when he finishes and gives the finished product to her*). Rabbi Nassan says: If he says, with the wages that she will owe him, she is not *mekudeshes*, and this is certainly true if he says she should be *mekudeshes* for the wages that she owes him currently. Rabbi Yehudah Ha'Nasi says: Truthfully, they have said that in both cases she is not *mekudeshes*. However, if he adds his own materials she is *mekudeshes*. The *Tanna Kamma* and Rabbi Nassan argue how wages are calculated (*continuously or at the end*), while Rabbi Nassan and Rabbi Yehudah Ha'Nasi argue regarding the case of being *mekadesh* with a loan and a *perutah*. Rabbi Nassan holds it is invalid, while Rabbi Yehudah Ha'Nasi holds it is valid. (99a – 99b)

***Slaughtering Improperly***

Shmuel said: If a professional butcher improperly slaughtered an animal, he must pay the owner of the animal, as he is considered one who damages and is

negligent. It is as if the owner said, "Slaughter it from here," and he slaughtered it from somewhere else.

The *Gemora* asks: Why did Shmuel have to stress that he is a damager and is negligent?

The *Gemora* answers: If he would just say that he is a damager, we would think that this is because he was paid to slaughter. However, if he did so as a favor, perhaps he would not be called one who damages. This is why Shmuel said he is called one who is negligent (*even if he did so for free*).

Rav Chama bar Gurya asked a question on Shmuel. The *braisa* states: If someone gives an animal to a butcher to slaughter and he causes it to be a *neveilah* (*animal not slaughtered properly and therefore ruled unkosher*), if the butcher is professional, he is exempt, but if he is a novice, he is liable for the damages. If he pays him, either way, he is exempt.

Shmuel answered: Your brain should become muddy (*for the answer is self-evident*).

Another Rabbi asked him this question, and he said: You will take what your friend has taken! I am teaching you about the position of Rabbi Meir, and you are quoting me a *braisa* about the position of the *Chachamim*! Why don't you study my wording? I said, "He is considered one who damages and is negligent. It is as if the owner said, "Slaughter it from here," and he slaughtered it from somewhere else." Who is the author of this logic? It is Rabbi Meir, who says that he should have been careful.

The *Gemora* asks: Which statement of Rabbi Meir is the source of Shmuel's comments? If it is Rabbi Meir in the following *Mishna*, this seems difficult. The *Mishna* says: If the owner tied it by its reins and locked the door in front of it properly, and it anyway went out and damaged, whether it is a *tam* or *mu'ad*, he is liable. These are the words of Rabi Meir. This cannot be Shmuel's source, as the argument regarding Rabbi Meir's position in this *Mishna* is about how to understand the verses pertaining specifically to a *tam* and *mu'ad* (*and is not applicable to other topics*).

Rather, it is Rabbi Meir in the following *Mishna*. The *Mishna* states: If he hired him to dye the wool red and he dyed it black or vice versa, Rabbi Meir says that he must give him the value of the wool.

The *Gemora* asks: This is not similar to our case, as he purposely differed from his instructions!

Rather, it must be Rabbi Meir from the following *Mishna*. The *Mishna* states: If his barrel broke and he did not take it out of the way, or if his camel fell and he did not pick it up, Rabbi Meir says that he is liable for the damages. The *Chachamim* say: He is exempt in *Beis Din*, but liable under the Laws of Heaven. We understand that their argument is whether or not one who trips is considered negligent.

Rabbah bar bar Chanah says in the name of Rabbi Yochanan: A professional slaughterer who made an animal into a *neveilah* is liable, even if he is a professional like the slaughterers of Tzipori.

The *Gemora* asks: Did Rabbi Yochanan actually say this? Didn't Rabbah bar bar Chanah say that there was an incident by Rabbi Yochanan in the synagogue of Maon and Rabbi Yochanan ruled that the slaughterer should bring proof that he is known as an expert in slaughtering chickens, and he will then rule that he is exempt (*for making one a neveilah*)?

The *Gemora* answers: His statement in this case was regarding someone who slaughtered for free, whereas his previous statement was regarding someone who slaughters for pay. This is as Rabbi Zeira states: If

someone wants to make the slaughterer liable (*if the animal becomes a neveilah*), he should pay him a *dinar*.

The *Gemora* asks a question from a *braisa*. The *braisa* states: If someone accepted wheat to grind and he did not soak them in water or crush them (*in order to take out the outer shell and produce fine flour*) and therefore the flour turned out coarse, or if someone gave flour to a baker and the bread turned out crumbly, or if he gave an animal to a slaughterer who made it into a *neveilah*, he is liable because he is like a person who gets paid to watch an item! [*This implies that even if he does so for free, he is "like" someone who gets paid and therefore liable!*]

The *Gemora* answers: The *braisa* means to state because he "is" someone who gets paid.

There was a case of a *hagramah* (*where he inclined the knife outside of the cartilage ring where he was severing the trachea, which renders the animal a neveilah; in our case, he inclined the knife outside of the ring after a majority of the trachea had been severed*) that came before Rav, who rules that the slaughtering was invalid, but that the slaughterer did not have to pay. Rav Kahana and Rav Assi met up with the owner of the animal (*who told them the story*). They told him: Rav did two things to you. What two things were they referring to? If they meant that he should have ruled that this type of animal is kosher as per the opinion of Rabbi Yosi ben Rabbi Yehudah and unlike the *Chachamim*, and even if he had ruled like the *Chachamim*, he should have ruled that the slaughterer should pay, is this sensible? Doesn't the *braisa* say that when someone goes out of *Beis Din*, a judge should not tell him, "I would have ruled that you were innocent, but my fellow judges said you were guilty. What can I do, as they are more than me?" Regarding such behavior, the verse states, "One who peddles and reveals secrets." Rather, they must have meant that he did two good things to him. He saved him from eating meat that was possibly prohibited and he saved him from possibly stealing (*from the slaughterer*). (99b)

***Bad Advice***

It was taught: If someone shows a dinar to a money-changer (*in order that he should authenticate it*) and it turned out to be a forgery, one *braisa* states that if he is an expert he is exempt, but a regular person is liable. Another *braisa* states: Either way he is liable. [*This is a contradiction!?*]

Rav Pappa explains: The *braisa* that says he is exempt is referring to experts such as Danku and Issur, who do not have to learn about money-changing. How, then, did they make a mistake? They made a mistake regarding a new type of coin.

A woman showed a coin to Rabbi Chiya, who said it looked authentic. The next day she came back to him and said that people would not take it, as they said it was a forgery. Rav Chiya said to Rav: Exchange this coin for her, and write in my ledger that this was a bad deal (*as I lost money by giving my opinion for free*).

The *Gemora* asks: Why are Danku and Issur exempt? It is because they do not have any more to learn. Rabbi Chiya also was an expert who did not have anything more to learn!?

The *Gemora* answers: Rabbi Chiya went beyond the letter of the law. (99b)

**INSIGHTS TO THE DAF**

**The Crushed Silver Goblet**

A man who through excessive banging with a hammer, had entirely disfigured the silver goblet of his friend, so much so that all that remained was a lump of metal, was

confronted by his victim who insisted that he be reimbursed the value of the goblet. Though it would seem that the victim was merely claiming damages owed to him, the poskim are ambivalent as to whether the perpetrator is at all liable.

We have learnt in the preceding pages (60A), "One is not liable for damage by grama (a secondary cause)," This means if the damage was the effect of a secondary cause, the guilty party while still responsible by "Heavenly law," and though disqualified to be a witness, he cannot be forced by Bais Din to compensate his victim. Later in our sugya (98b, 100a) there is an argument between Tanoim if the perpetrator of damage caused indirectly (garmi) is liable. (The halacha is that he is indeed liable Shulchan Oruch C.M. 386:1)

The difference between grama and garmi damage caused indirectly and damage by a secondary cause. The Gedolei Rishonim and Achronim struggle to define the exact difference between a "secondary cause" and an "indirect cause". The Ritsba (B.B. 22b Tos. S.V. 205) maintains that there is no qualifying distinction and all the cases dealt with in the Gemora are cases where the damage was caused in a roundabout fashion. The Chachomim, however, labeled certain actions - the ones that occur more frequently - as garmi and ruled that punitive damages be paid. [Other Rishonim maintain that the damages referred to by Chazal as garmi are of a more immediate nature (see Tos. ibid and Ramban Kuntres Dina D'Garmi and Shach C.M. 386.]

In the Remo's opinion (C.M. 386:3) the example given in our sugya of a man who disfigured his friend's coin and was deemed not liable is grama. "The silver from which the coin was made was still present in its entirety. The fact that its owner could no longer buy things with the coin is a "secondary cause." (See Shulchan Oruch ibid, who disagrees and categorizes this as a garmi).

Returning to our case of the silver goblet, we need to consider whether it is comparable to the Gemara's example of a disfigured coin. The author of Tzafnas Panayach (quoted in Yam Shel Shlomo B.K. Ch. 9 §17 89:17) is of the opinion that the important factor in the worth of a silver object is the value of its metal, and therefore the perpetrator will not be liable. The fact that a smith will be needed to restore its previous form is a "secondary cause", just as one who is guilty of disfiguring a coin is not liable to pay for its restoration.

The Shach (ibid S.K. 7) disagrees. There is an essential difference between the two cases. Whereas the form on a coin helps to discern which coin it is the value of the coin is determined by its weight; therefore, the disfigurement is not an intrinsic damage. In the case of an object, however, the essence of an object is its form and its purpose as a utensil and if one destroys its form, one is liable to pay damages.



L'zecher Nishmas HaRav Raphael Dov ben HaRav Yosef Yechezkel Marcus O"H