

2 Tishrei 5776
Oct. 4, 2016



Bava Metzia Daf 8

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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

Acquiring for his Fellow

Rami bar Chama said: We may conclude from our *Mishna* (which ruled that when two people pick up an object simultaneously, they each acquire half of it) that when one picks up a found object for his fellow, the fellow acquires it. For if you were to say that the fellow does not acquire it, this cloak (in our *Mishna*) ought to be regarded as if one half of it were still lying on the ground, and also as if the other half were still lying on the ground, and it would emerge that neither of them should acquire it. It must therefore follow that when one picks up a found object for his fellow, the fellow acquires it.

Rava said: I could hold that when one picks up a found object for his fellow, the fellow does not acquire it. But here, in our *Mishna*, the reason why he does acquire it is that we say the following principle: Since he acquires it for himself, he may also acquire it for his fellow.

Rava offers proof to this from the *halachah* that if one would say to a messenger, “Go and steal something for me,” and he went and stole it, the sender is exempt from paying (for one cannot send an agent to commit a transgression on his behalf), but if one partner stole for the partnership, they both are liable. What is the reason? It must be because we say: Since he acquires it for himself, he may also acquire it for his fellow. This is indeed a proof!

Rava said: Now that it has been established that we base our decisions on the “since” argument, it can be said that when a deaf-mute and a normal person picked up a found object simultaneously, since the deaf-mute acquires it, the normal person acquires it as well.

The *Gemora* asks: It is understandable that the deaf-mute acquires it because a normal person has picked it up for him, but how does the normal person acquire it?

The *Gemora* emends Rava’s ruling: The deaf-mute acquires it, but the normal person does not acquire it.

The *Gemora* asks: And how does the “since” argument apply here?

The *Gemora* answers: “Since” two other deaf-mutes would acquire a found object by picking it up simultaneously, this deaf-mute also acquires it.

The *Gemora* asks: But why should this be the *halachah*? Even if you say that when one lifts up a found object for his fellow, the fellow acquires it, this is correct only when one picks it up on behalf of his fellow. But in this case, the normal person picked it up on his own behalf. Now, if he himself does not acquire it, how can he possibly acquire it for others?

The *Gemora* again emends Rava’s ruling: Seeing that the normal person does not acquire it, the deaf-mute does not acquire it as well.

The *Gemora* notes: And if you will ask: In what way does this case differ from that of the two other deaf-mute people (where they do acquire it); I will answer you that our Rabbis decreed that the deaf-mutes will acquire it in order that they would not quarrel when they hear that they cannot acquire it; but here, the deaf-mute will say, “If the normal person does not acquire it, how should I acquire it?”



Rami bar Chama had said: We may conclude from our *Mishna* that when one picks up a found object for his fellow, the fellow acquires it.

The *Gemora* asks: From where exactly in the *Mishna* is this *halachah* derived?

The *Gemora* concludes: It is from the final clause of the *Mishna*, which stated: When they agree or there are witnesses regarding the true ownership of the item, they split it without having to take an oath. Now, what case is the *Mishna* dealing with here? If it is concerning a case of buying and selling, would it be necessary to state (*is it not evident that they split it if witnesses testify that they purchased it at the same time*)? Rather, it must be referring to a case of a found object. This would then prove that if one picks up a found object entirely for his fellow, the fellow acquires it.

And Rava will explain that this is because of the “since” principle: Since he acquires it for himself, he may also acquire it for his fellow. (8a)

1. *Riding and Leading*

The *Mishna* had stated: If two people were riding on an animal, or one was riding and one was leading the animal, and each of them claims that he owns the animal, each should swear that they do not own less than half of the animal, and they should then split the animal.

Rav Yosef said: Rav Yehudah told me: I have heard from the Master Shmuel two rulings regarding a rider and a leader. One of them does acquire the animal, and one does not. However, I do not know which of them acquires and which does not.

The *Gemora* asks: How is this to be understood? If it refers to two separate cases, in one of which there was a man riding on an animal by himself, and in the other, there was a man leading an animal by himself, is there anyone who would say that he who leads an animal by himself does not acquire it? [*That cannot be, for he most certainly is*

performing an act of meshichah; by leading the animal, he is pulling it – this would be regarded as a kinyan meshichah!?] It therefore must be that when he said that one does not acquire the animal, he must be referring to the rider! [*So why is Rav Yehudah uncertain as to Shmuel’s meaning?*]

It therefore must be assumed that the uncertainty expressed by Rav Yehudah concerns a case where one rides on an animal, and simultaneously someone else leads it. The inquiry then is: Is the rider superior because he is holding it (*and is actually taking possession of it while he is making the kinyan*), or is perhaps the leader to be given preference because the animal moves because of him?

Rav Yosef then said: Rav Yehudah said to me: Let us look into the matter ourselves, for we learned in a *Mishna*: He who leads a team composed of an ox and a donkey receives forty lashes (*for violating the prohibition of kilayim*) and he who sits in the wagon drawn by such a team receives forty lashes. Rabbi Meir exempts the one who sits in the wagon. And since Shmuel reverses the opinions mentioned in the *Mishna* and reads as follows: And the *Chachamim* exempts the one who sits in the wagon, it follows that he who rides on an animal by himself does not acquire it (*for riding should be comparable to sitting*), and certainly one who rides on an animal while someone else is leading it should not acquire it!

Abaye asked Rav Yosef: Have you not told us many times the proof beginning with the words: Let us look into the matter, and yet, you never told us it in the name of Rav Yehudah!?

Rav Yosef answered him: It is Rav Yehudah’s proof. And I even remember saying to him: How can you compare the case of one who rides on an animal and the case of one who sits in a wagon, seeing that he who sits in the wagon is not holding the reins, while he who rides on an animal is holding the reins? And he answered me: Both Rav and Shmuel agree that one does not acquire a found animal by holding its reins.

The *Gemora* cites another version of the above discussion: Abaye asked Rav Yosef: How can you compare the case of one who rides on an animal and the case of one who sits in a wagon, seeing that he who sits in the wagon is not holding the reins, while he who rides on an animal is holding the reins? And he answered me: Idi taught a *braisa* that one does not acquire a found animal by holding its reins.

It was also stated: Rabbi Chelbo said in the name of Rav Huna: If someone holds an animal's reins to acquire it from his fellow, he does acquire it. However, if he does so to acquire a found object or the possessions of a dead convert (*who died without heirs*), he does not acquire it.

The *Gemora* asks: What is the derivation of the term '*moseirah*' used for reins?

Rava said: Idi explained it to me: The handing over of the reins by the seller to the buyer enables him to acquire it, just as when a fellow transfers something to his fellow.

The *Gemora* explains the distinction mentioned above: When one person sells the animal to another, he acquires it when the seller hands him over the reins. But in the case of a found animal and in the case of an animal that was the property of a convert, who transferred it to him that he should have a right to acquire it?

The *Gemora* asks from our *Mishna*: If two people were riding on an animal etc. (*indicating that riding on animal does constitute a kinyan*). Whose opinion is that? If I should say that it is that of Rabbi Meir, we can ask: If one who is sitting acquires it, need I be told that one who rides on it acquires it? It must therefore be said that it is the opinion of the *Chachamim*, which would prove that one who rides on it acquires it!

The *Gemora* answers: The *Mishna* is dealing with a case where one is driving the animal with his feet (*as he is sitting on it; that is why it constitutes a kinyan*).

But if so, the *Gemora* asks: Then it is the same as leading!?

The *Gemora* answers: There are two ways of leading. One might say that a rider (who is also leading) is superior (*to one who is merely leading it*), for he leads it and holds it. Therefore, the *Mishna* informs us that leading while riding is the same as riding. (8a – 8b)

INSIGHTS TO THE DAF *Kinyan of Riding*

The *Mishna* had stated: If two people were riding on an animal, or one was riding and one was leading the animal, and each of them claims that he owns the animal, each should swear that they do not own less than half of the animal, and they should then split the animal.

Rav Yosef said: Rav Yehudah told me: I have heard from the Master Shmuel two rulings regarding a rider and a leader. One of them does acquire the animal, and one does not. However, I do not know which of them acquires and which does not.

It is evident from the *Gemora* that the "leader" is acquiring the animal with an act of *meshichah* (*pulling it*).

Many Rishonim understand the *kinyan* by the "rider" as follows: The animal is walking due to the weight of the person sitting upon it. This is tantamount to "pulling it."

Tosfos explains: The rider is holding onto the animal's reins and it is moving a little because of him.

Rashi seems to say that the "rider" can acquire the animal even if it doesn't move at all. It would seem that "riding" would be a new type of *kinyan*.

The Reshach cites the Ritzvash that the "rider" acquires it because he is "using" the animal. This would be similar to a propriety act done with land.

Partners Stealing

By: Rabbi Avi Lebowitz

The *Gemora* says that if partners steal they are both liable, but if Reuven asks Shimon to steal for him, only Shimon is liable.

Rashi explains that the case of partners stealing is when one partner does the act of stealing for both of them. Since he does it on behalf of both of them, they are both liable.

Tosfos disagrees because we would only say that one cannot be an agent for a transgression on the act of *shechitah* to be liable four or five, but on the act of stealing, even if Reuven and Shimon are partners, we would not say that Shimon can serve as Reuven's agent to make Reuven liable for stealing. Therefore, the only case that Reuven would be liable is when he commits the act of stealing together with Shimon.

The Maharitz Chayus points out that this is difficult even according to Tosfos. Why would we say that when Reuven and Shimon pick it up together - since he acquires it for himself, he may also acquire it for his fellow? Even when they steal it together, since we have a principle that one cannot be an agent for a transgression, Reuven is not able to serve as Shimon's agent to steal it, and Shimon cannot serve as Reuven's agent, so it should be considered from each one's perspective as if the other half of the cloak is still lying on the ground and they cannot acquire it?

He explains based on the Sm" a (C.M. 182), who says that one cannot be an agent for a transgression is based upon the idea that the sender doesn't really expect the agent to violate the prohibition, because he knows that the agent should listen to Hashem rather than him. This only makes sense in a case where the sender maintains his innocence, but in our case, where both Reuven and Shimon are doing an act of stealing, they aren't innocent and cannot claim that they didn't expect the other person to follow through with the agency of a transgression. Therefore, in the case where Reuven and Shimon are doing the transgression together,

we say that one can be an agent for a transgression and each one serves as the agent of the other to help him acquire it.

DAILY MASHAL

Every one of us descends from a relative in a forsaken village who, on a cold winter night and after an exhausting day, would soothe his sores from the blows inflicted on him by a cruel landlord and confidently enter a beis midrash to learn Torah by the light of a small candle.

Suddenly the gates of Gan Eden opened up before him. He studied the holy words of the greatest figures in our history who explained the Talmud hundreds of years before him and yet he thirsted for more. His neighbors in the next village behaved likewise. Hundreds and thousands of small flames kindled the fire each night. Am Yisroel chai!

Everyone can join and experience this wondrous pleasure. Businessmen, housepainters, judges, plumbers, lawyers, shopkeepers, accountants, manual laborers, wealthy directors and many more all gather daily near their homes, detach their minds from the rushing world and engage in our eternal Torah.

How happy is a Jew who, after an exhausting workday, leaves his cares behind and comes to a beis midrash to absorb the clear, pure atmosphere of HaShem's Torah, acquire new ideas and store interesting and important information, just like his forefathers in the woebegone hamlets.

The thousands of participants in the Daf HaYomi program are now starting tractate Bava Metz' a, which deals with halachah pertaining to finance and property. Significantly, the Mishnah (Bava Basra 10:8) states that "those who wants to grow wise should study the laws of finance and property."