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Bechoros Daf 13

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Daf Notes is currently being dedicated to the neshamot of

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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

Mishna

If he does not wish to redeem it (*the firstborn of a donkey*), he must decapitate it (*breaks its neck*) from behind and buries it.

The *mitzvah* of redemption takes precedence over the *mitzvah* of decapitating it, for it says: *and if you will not redeem it, then you shall decapitate it.*

[*(a) A destitute father, under certain circumstances, may sell his daughter into servitude to a Jewish master as long as she is a minor. The sale is for a period of six years or until she becomes an adult (when two pubic hairs grow after she enters her 12th year) or until the Yovel year (the year after seven shemittah cycles), whichever comes first. During this period she is called an "amah ha'Ivriyah."*

(b) The Torah gives to the master of a Jewish maidservant the option of marrying her by first betrothing her through a procedure called "yi'ud." The marriage takes effect through the money that he initially gave to her father when he purchased her.

(c) If the master does not want to betroth her with "yi'ud," the Torah allows his son to betroth her with "yi'ud". If neither the master nor the son wants to marry her, no one else may marry her until she is released from servitude.]

The *mitzvah* of *yi'ud* takes precedence over the *mitzvah* of redemption, for it says: *who did not designate her, then he shall cause her to be redeemed.*

[*When a man dies childless, his brother has a mitzvah to perform yibum; if he declines, she submits to chalitzah, i.e. she removes his shoe, spits before him and declares that he does not want to marry her.]*

The *mitzvah* of *yibum* takes precedence over the *mitzvah* of *chalitzah*. This was only initially, when the people intended solely for the sake of the *mitzvah*, but now that they have ulterior motives involved, the *mitzvah* of *chalitzah* takes precedence.

The *mitzvah* of redemption (*of a non-kosher animal that is consecrated to the Temple for maintenance purposes*) rests upon the owner (*to buy it from the Treasury; the proceeds will go towards the maintenance of the Temple*). He is first, before any other person, for it says: *and if is not redeemed, then it shall be sold according to its valuation.* (13a)

**WE SHALL RETURN TO YOU,
HALOKEI'ACH UBBAR CHAMORO**

Mishna

A Jew who buys the fetus of a cow belonging to an idolater, or one who sells the fetus of his own cow to him, although this is not permitted (*for one is forbidden to sell large livestock to an idolater because the animal is worked on Shabbos*), or one who forms a partnership with him (*an idolater*), or who receives an animal from him (*to look after*), or one who gives his cow to him (*an idolater*) to look after, is exempt from the law of the firstborn, for it is written: *all firstborn in Israel*, but not in other nations.

Kohanim and *Levi'im* are subject (*to the law of the firstborn*), for they are not exempt from the law of the firstborn of a kosher animal, but only of a firstborn son and the firstborn of a donkey. (13a)

Donkey First; then Cow

The *Gemora* asks: Why does the *Tanna* state the case of the fetus of a donkey in the first chapter, and the case of a fetus of a cow subsequently in the second chapter? Why not state first the case of a fetus of a cow, since it is a case of an animal consecrated with physical sanctity, and, subsequently state the case of a fetus of a donkey, as it is a case of an animal consecrated only for its value?

The *Gemora* answers: They said in the West (*Eretz Yisroel*): Either, I may say the reason is because the case of a firstborn donkey is cherished by him, as Rabbi Chanina explained above (*the donkeys helped the Jews when they left Egypt, as each Jew took many donkeys laden down with treasures of Egypt*), or if you prefer, I can say it is because the issues concerning a non-kosher animal are relatively few; the *Tanna* therefore finishes that and cleared it out of the way first. (13a)

Method of an Idolater's Acquisition

Rabbi Yitzchak bar Nachmeini said in the name of Rish Lakish, who said it in the name of Rabbi Oshaya: If a Jew gave money to an idolater for his animal (*without making a meshichah – pulling it towards him*), we judge the transaction according to their laws; even though he did not make a *meshichah* (*pull the animal towards him; an act of acquisition*), he acquires possession (*due to the acquisition of kesef – the transfer of money*), and is subject to the law of the firstborn. If the idolater gave money to a Jew for his animal, we judge the transaction according to their laws, and although he did not make a *meshichah*, he acquires possession and is exempt from the law of the firstborn.

The master had said: If a Jew gave money to an idolater for his animal, we judge the transaction according to their laws; even though he did not make a *meshichah*, he acquires possession, and is subject to the law of the firstborn.

The *Gemora* asks: What does 'according to their laws' mean?

The *Gemora* suggests a meaning: Perhaps you would say that it means: 'according to their laws regarding his person (*of the idolater; and just as one can acquire a Canaanite slave through 'money,' so too, one can acquire an animal, i.e., movable items, through 'money'*), and we would derive it through a *kal vachomer*: if the idolater is acquired by the Jew (*as a slave*) through money, as it is written: *to inherit as a possession*, where the Torah compares a Canaanite slave with a possession (*real property – land*); just as real property is acquired by handing over the money to the seller, by a bill of sale, and a propriety act, so too, a Canaanite slave is acquired through money, How much more so, therefore, regarding the idolater's property – the Jew should be able to acquire through money!

The *Gemora* rejects this, for if this were the case, then an idolater's property should also be acquired even by means of a bill of sale and a propriety act! And, furthermore, this suggestion can be proven flawed from the case of a Jew (*having a transaction*) with another Jew, for although a Jew can be acquired by another Jew with money, his movable property is acquired only through *meshichah* (*and not through money*)!?

Rather, said Abaye: The expression 'according to their laws' means as follows: those laws which the Torah prescribed for them. It is written: *Or buy (movables) from the hand of your fellow (with meshichah)*, and we deduce from this that from the hand of your fellow (*another Jew*), the method of acquisition is *meshichah*, but from the hand of an idolater, the method of acquisition is with money.

The *Gemora* asks: But why not deduce that from the hand of an idolater there is no way to perform an act of acquisition at all (*until it actually enters the Jew's possession*)?

The *Gemora* answers: They said: Is there not a *kal vachomer* here? If the idolater's person (*as a slave*) can be acquired, how much more so that his property (*can be acquired*)!

The *Gemora* asks: But perhaps we should say that in the case of an idolater, two acts of effecting possession (*money and meshichah*) are required?

The *Gemora* answers: Is there not a *kal vachomer* for this as well? If the idolater's person (*as a slave*) can be acquired with one (*act of acquisition*), should acquiring his property require two?

The *Gemora* asks: But why not say that an idolater acquires an object either by means of one (*money*) or the other (*meshichah*)?

The *Gemora* answers: The method of acquiring from an idolater must be similar to the form of acquiring mentioned in connection with the verse: *your fellow*. Just as in the case of *your fellow* (*i.e., a Jew*), possession can be acquired only in one way (*meshichah*), so too in the case of an idolater – you can acquire in only one way (*money*).

The master had said: If the idolater gave money to a Jew for his animal, we judge the transaction according to their laws, and although he did not make a *meshichah*, he acquires possession and is exempt from the law of the firstborn.

The *Gemora* asks: What does 'according to their laws' mean?

The *Gemora* suggests a meaning: Perhaps you would say that it means: 'according to their laws regarding his person (*of the Jew; and just as an idolater can acquire a Jew through 'money,' so too, he can acquire an animal, i.e., movable items, through 'money'*), and we would derive it through a *kal vachomer*: if the idolater can acquire a Jew (*as a servant*) through money, as it is written: *from the money of his purchase*, how much more so, therefore, regarding the Jew's property – he can certainly acquire through money!

The *Gemora* rejects this, for a Jew acquiring another Jew's property can refute this, for although a Jew can acquire another Jew with money, his movable property is acquired only through *meshichah* (*and not through money*)!?

Rather, said Abaye: The expression 'according to their laws' means as follows: those laws which the Torah prescribed for

them. It is written: *When you make a sale to your fellow (with meshichah)*, and we deduce from this that when you sell to your fellow (*another Jew*), the method of acquisition is *meshichah*, but when you sell to an idolater, the method of acquisition is with money.

The *Gemora* asks: But why not deduce that when selling to an Idolater, there is no way for him to perform an act of acquisition at all (*until it actually enters his possession*)?

The *Gemora* answers: They said: Is there not a *kal vachomer* here? If an idolater can acquire a Jewish person, how much more so regarding his property (*that an idolater can acquire*)!

The *Gemora* asks: But perhaps we should say that in the case of (*selling to*) an idolater, two acts of effecting possession (*money and meshichah*) are required?

The *Gemora* answers: Is there not a *kal vachomer* for this as well? If the idolater acquires the Jewish person with one (*act of acquisition*), should acquiring his property require two?

The *Gemora* asks: But why not say that when selling to an idolater, it would take effect either by means of one (*money*) or the other (*meshichah*)?

The *Gemora* answers: The method of selling to an idolater must be similar to the form of acquiring mentioned in connection with the verse: *your fellow*. Just as in the case of *your fellow* (*i.e., a Jew*), possession can be acquired only in one way (*meshichah*), so too in the case of an idolater – he can acquire in only one way (*money*).

They said: Now according to Ameimar who said that *meshichah* (*when he buys from a Jew, and when a Jew buys from him*) effects possession in the case of an idolater, this is well if he holds according to the opinion of Rabbi Yochanan who maintains that according to the Biblical law, money effects possession (*by movable property*), whereas *meshichah* does not effect possession; the text '*to your fellow*' serves then the purpose of allowing us to interpret that '*to your fellow*' (*i.e., a*



Jew) money effects possession, but for a idolater to effect possession, *meshichah* is required. But if he holds according to the opinion of Rish Lakish, who maintains that *meshichah* is explicitly mentioned in the Torah, accordingly, 'to your fellow' is with *meshichah* and *meshichah* is effective when selling to an idolater; what need then is there for the Torah to specify 'to your fellow'?

The *Gemora* answers: It can be explained as follows: 'To your fellow,' you return *ona'ah* (an overcharge), but you do not return an overcharge to a Canaanite.

The *Gemora* asks: But do we not derive the exception of the law of *ona'ah* in connection with the Canaanite from the following verse: *You shall not aggrive one man his brother?*

The *Gemora* answers: [Both verses are necessary:] One verse refers to a Canaanite and the other refers to consecrated property (which is also excluded from these laws).

The *Gemora* asks: This would be well according to the one who says that stealing from a Canaanite is forbidden; therefore a Scriptural verse is necessary to exempt one from returning *ona'ah* (by a Canaanite); but if he holds according to the one who says that stealing from a Canaanite is permitted, can there be any question about *ona'ah*?

They said: If Ameimar holds according to the one who says that stealing from a Canaanite is permitted, then he must hold according to the view of Rabbi Yochanan. [For since stealing from a Canaanite is permitted, there is therefore no need to exclude the retention of overcharging from the verse, 'to your fellow.'. Consequently, the verse will imply that although money effects possession in a transaction between Jews, in the case of idolaters, *meshichah* is required. Evidently, Ameimar holds according to the opinion of Rabbi Yochanan.]

The *Gemora* asks on Rabbi Oshaya (who maintains that acquisition through money applies to an idolater) from a *braisa*: If one bought scraps of silver from an idolater and found an idol

amongst it, should he have performed *meshichah* on it before paying over the purchase price he can return the idol (for he has not acquired it, and has no obligation to destroy it); but should he have performed *meshichah* on it after paying over the purchase money, he must cast the idol into the Dead Sea (for he has acquired it through *meshichah* and money; he cannot return it, for it is forbidden to sell an idol). Now, if you hold that money effects possession, what need is there for *meshichah*?

The *Gemora* answers: We are dealing here with the case where the idolater undertook to be judged in the matter in accordance with the Jewish law.

The *Gemora* asks: If so, what is the necessity for money (as well, as a means of effecting possession)?

The *Gemora* answers: The *braisa* means as follows: Although he had given the money, if he made *meshichah*, (then he acquires the idol), but if not, he cannot do so.

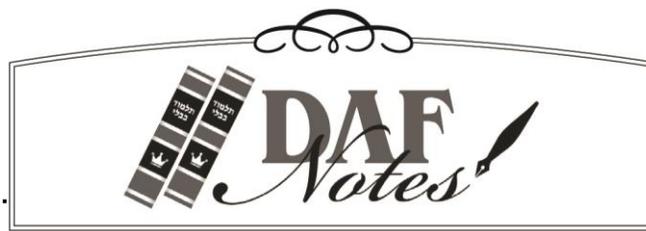
The *Gemora* asks: If this is the case, there is a difficulty in the first part of the *braisa* (for there it rules that *meshichah* does not effect the acquisition)!?

Abaye answers: It is because it is a purchase made in error.

Rava asked: Is there a purchase made in error only in the first case, and not in the second?!

Rather, said Rava: There is a purchase made in error in both cases; but in the first case, since the Jew did not pay any money yet, it does not appear like an idol in the possession of a Jew (for when he returns the idol, the idolater does not give any money), whereas in the second case, since the Jew paid the money, it appears like an idol in the possession of a Jew (for when he returns the idol, the idolater returns the money).

The *Gemora* notes that Abaye will answer that the first part is a case of a purchase made in error, for he did not know of the idol, since he had not yet paid the money, but the last part is not a case of a purchase made in error, for since he had given the



money, when he was about to make *meshichah* he should have examined the purchase and then made *meshichah*.

Rav Ashi said: Since in the first part of the *braisa*, *meshichah* does not effect possession, in the last part also, *meshichah* does not effect possession. [How then can the *braisa* be explained?] But since he mentions *meshichah* in the first part, he also states *meshichah* in the last part (although, in truth, it was not done).

Ravina said: Since in the last part *meshichah* effects possession, in the first part too, *meshichah* effects possession. [How then can the *braisa* be explained?] And what the first part is saying is as follows: If he had not given the money, nor made *meshichah*, he withdraws. This means that he can retract his words, for the *Tanna* of the *braisa* maintains that to retract one's words indicates a lack of honesty, but this is the case only with a Jew dealing with another Jew, because they generally stand by their commitments, whereas in the case of an Jew dealing with an idolater, since they do not stand by their word, it is not so (*he doesn't have to either*). (13a – 13b)

INSIGHTS TO THE DAF

The mitzvah to behead a firstborn donkey

Some conscientious people want to achieve all the mitzvos by finding ways to obligate themselves in all the mitzvos that can be observed, such as redeeming a firstborn donkey by buying a donkey about to give birth, or *shiluach haken*, by purposely going to a nest. Such conduct has great benefit and according to Kabbalah there are exalted lofty purposes to observe all the mitzvos (*Sha'ar HaMitzvos* by Rabbi Chayim Vital zt"l, in the preface, cited in *Orchos Yosher* by HaGaon Rav Chayim Kanievski, p. 86).

Is beheading the donkey a mitzvah? An interesting halachic subject came about through people who observed the mitzvah to redeem a firstborn donkey when they wanted to clarify if there is any advantage in purchasing another donkey, waiting for it to give birth to a firstborn and then behead it to observe

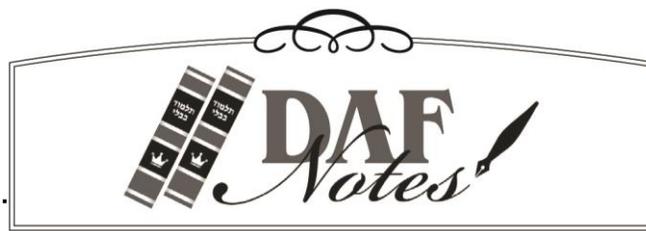
the mitzvah to behead it. In other words, is beheading it a mitzvah at all and if so, should it be preferred to redemption?

As we know, as soon as a firstborn donkey is born, it is a mitzvah to redeem it with a lamb or by means of its value. "And if you don't redeem it," says the Torah, "you will behead it." The question is, then, is the beheading considered a mitzvah or does the Torah command the donkey's owner to behead if he didn't observe the mitzvah to redeem it?

Rambam asserts (*Hilchos Bikkurim* 12:1): "It is a positive mitzvah for anyone to redeem a firstborn donkey with a lamb and if he doesn't want to redeem it, it is a positive mitzvah to behead it, as we are told: '...a firstborn donkey you will redeem with a lamb and if you don't redeem it, you will behead it' and the mitzvah to redeem it takes precedence over the mitzvah to behead it." We thus see that he calls the beheading a positive mitzvah. To tell the truth, even our mishnah uses this phrase when discussing beheading: "The mitzvah to redeem it takes precedence over the **mitzvah** to behead it." But this fact does not prevent the Raavad from remarking that the beheading is no mitzvah at all and, on the contrary, is a transgression, that he who beheads the donkey harms the *kohen's* wherewithal as the donkey belongs to the *kohen* till its redemption. He explains our mishnah's phrasing – "the **mitzvah** to behead it" – in that the mishnah borrowed this expression from the beginning of the sentence addressing the mitzvah of redemption.

The secret of the beheading: The radbaz writes about the Raavad's statement (in his commentary on Rambam, *ibid*): "Does he call what the Torah allowed a transgression?" As he concludes, he reveals somewhat of his knowledge of Kabbalah when he wondered about the Raavad as to how could he write that the beheading is a transgression as he surely knew its secret.

The disagreement of Rambam and the Raavad focuses on a *beraisa* cited in our *sugya* (10B), which defines the beheading as a punishment for the donkey's owner for not redeeming it. The Raavad relies on this as clear proof that the beheading is no mitzvah at all while Rambam, writes Maharit Algazi (s.v.



Mesanei), assumed that this *beraisa* is not according to halachah as in the *Mechilta* opinions differed as to whether the beheading is a mitzvah and Rambam adopted the opinion that it is a mitzvah.

Some wanted to explain Rambam's opinion, that the redemption and beheading are two mitzvos to be chosen from but that the mitzvah of redemption should be preferred, till they wrote that he who observed the mitzvah to redeem a firstborn donkey and had another firstborn donkey should behead it (see *Yalkut Peter Chamor*, who cites this opinion). However, this opinion is rejected by the halachah and according to all *poskim*, the mitzvah of redemption always takes precedence, even according to Rambam (see *ibid*).

A donkey's owner who has neither a lamb nor money: The author of *Shebet HaLevi* writes (Responsa, II, 174) the halachic implication stemming from the disagreement of Rambam and the Raavad is expressed if the donkey's owner cannot redeem it, neither with a lamb or with money. According to Rambam, at the end of the 30 days during which it must be redeemed he should behead it and thus observe the mitzvah. But according to the Raavad, he should wait till he has a lamb or enough money and not ignore a positive mitzvah as the beheading is no mitzvah at all (however, it doesn't seem so from Responsa *Radbaz*, I, 496).

DAILY MASHAL

As since according to Rambam, the beheading is also a mitzvah, Rabbi Shlomo Refael Galiko wrote (*Sha'ar HaMitzvos*, p. 47) that he who needs to behead the donkey should say "*Leshem yichud Kudsha berich Hu ushechinteh*, I am about to behead a firstborn donkey to observe a positive mitzvah."

The Gemara had stated: The *mitzvah* of *yibum* takes precedence over the *mitzvah* of *chalitzah*. This was only initially, when the people intended solely for the sake of the *mitzvah*, but now that they have ulterior motives involved, the *mitzvah* of *chalitzah* takes precedence.

The question is asked: How can he say (when he reads the passage in the Torah when submitting to *chalitzah* that "I don't want to marry her," when in truth he does want? It is just that Beis Din's not allowing him!? It emerges that he is saying a lie!?

The Imrei Emes answers: The intent is referring to his soul, and his *nefesh*, no doubt, is in sync with the words of the sages. This is understood based on the words of the Rambam that a every Jewish person wants to perform all the mitzvos and distance himself from all sin; it is his Evil Inclination that is holding him back. When there is a bit of force, this weakens the *yetzer hara* and the person reverts to his good nature. This is what he is saying when he says, "I do not want to marry her" – for that is what the Sages has said is the best for me.