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Bava Metzia Daf 68

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Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h

Tzvi Gershon ben Yoel (Harvey Felsen) o”h

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

The Elders of Mechasya

Rav Ashi says: The elderly men from the city of Mechasya told me that a general pledge (*time of a loan during which the lender possesses the land and gives it back after the allotted time*) is a year. What is the difference (*whether or not this is true*)? The difference is that if the lender has had the land for a year, he can be evicted from the land, but not if he has had it for less than a year.

Rav Ashi also said: The elders from the city of Mechasya told me that pledge stands for “mashkuna gabei” -- “the pledge dwells with him.” What is the difference? The difference is regarding a case where the borrower wants to sell the land. The first person who would have the right to purchase it is its “neighbor,” the lender. (68a)

Types of Tarsha

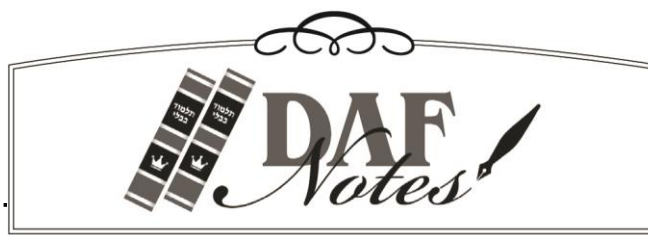
Rava says: The law does not follow the *tarsha* of Papunai, the documents of Mechoza, nor those who work a field for a set amount of produce in Narash.

The *Gemora* elaborates: The *tarsha* done by Papunai refers to the *tarsha* of Rav Pappa. [*The Gemora above (65a): Rav Pappa said: The way I offer payments is permitted. [Rashi explains that he would offer payment at the expensive price of Nissan during Tishrei, which would only be expected to be paid during Nissan.] This is because I could really store my date beer (that he sold) until Nissan, I don’t need the money (and don’t have to sell at the cheap*

price), and essentially I am just doing a favor for the customer.]

The documents of Mechoza refer to merchants (*in a partnership called an iska*) would add the estimated profit to the principal and record it in a bond (*as a debt owed from the seller to him*). [*An ordinary iska is one where an investor gives goods to a merchant to sell. The arrangement is that all profits and losses will be split evenly between them. Since the merchant is responsible for half of the merchandise, it is regarded as a loan to him. When he pays back the investor for the initial capital and he adds half the profits, it does not constitute ribbis, for it was offset by the risk he accepted on half of the losses. In Mechoza, they estimated what the potential profits would be and wrote half of that amount into the document. The investor is guaranteed this amount (even if the profit is less), but he also waives his rights to any potential higher profits.*] The *halachah* did not follow them because it was without knowing for certain that any profit will be made. [*The people of Mechoza viewed this arrangement as a sale, and not a loan. However, the halachah disagrees with them, for one cannot sell something that is not yet in existence. Accordingly, the initial investment is regarded as a loan, and the automatic profit being returned to the investor would constitute ribbis.*]

Mar bar Ameimar said to Rav Ashi: My father does business this way. If the sellers would come to him and say that they did not make this anticipated profit, he would believe them (*without imposing an oath upon them; in such a case, he would only receive half of the*



actual profit, and not the amount written in the document; this way, he would avoid any ribbis concern).

Rav Ashi said: This is fine because your father is alive (and he will waive the amount written in the document). However, if he would die and the orphans would have a document saying that the merchants owed them a certain amount of money, wouldn't they have to pay? This statement (talking about the death of Ameimar) was like an "error proceeding from a ruler," and Ameimar died.

The field workers of Narash (mentioned above) used to write the following in a contract. So-and-so (borrower) gives as collateral this field to So-and-so (lender). So-and-so (lender) now gives the field to So-and-so (borrower) as a field worker who is guaranteed a set amount of produce.

The Gemora explains the reason why the halachah does not follow them: When did the lender acquire the field that now gives him ability to make its original owner into his worker?

The Gemora continues: Nowadays that they write in the document, "I (lender) have acquired this from him, and I have had it for a few seasons (in order to use the fruit to pay off his loan). I have now hired him (borrower) as my field worker in exchange for a set amount of produce," this is permitted in order not to lock the door before borrowers (in order that their field should be attractive collateral). However, the Gemora concludes that this is incorrect (and forbidden as interest). (68a)

Mishna

One (an investor) cannot set up a storekeeper to sell his goods in order that the storekeeper should receive half of the profits. [Being that the storekeeper is also responsible for half of the stock, even under forced circumstances, it is as if he is giving the storekeeper a loan in order that he

should make money, which is deemed interest (see Rashi here at length and our explanation of "iska" above).] One also should not give someone money to buy fruit for him for half of the profit, unless he pays the worker a wage (instead of them splitting the profits, based on similar reasoning to the first case). Similarly, a person should not give eggs to a person with hens so that the hens should raise the eggs to become chickens for half of the profit (and responsibility). Similarly, he should not give calves or young donkeys to someone to raise them with this type of arrangement. Rather, he should give wages to the person taking care of his animals; this is compensation for his trouble and for the feed. However, we allow people to raise calves or young donkeys and split the profits with the owner (as long as they do not have responsibility for the animals they are raising in case of forced circumstances). They split the animal when it gets to one third of its growth, or for a donkey, when it is able to carry burdens. (68a)

Iska

The braisa states: [When the Mishna says he receives wages,] It means like a worker who is paid for his time (but he does not have to expend any effort).

The Gemora asks: How is this applicable here (he has to put in effort to sell the fruit)?

Abaye says: It means that he is paid to rest from his difficult work, and do this instead.

The Gemora states: The first two cases of the Mishna are necessary. If it only would have stated the case of the storekeeper, it would be understandable, as a storekeeper does not have to go through so much trouble. However, a buyer, who must shop around to get a good price, perhaps can be paid more than a worker doing easy work. If it would only have stated the case of the buyer, one might think that because he goes through

a lot of trouble, he gets paid like an easy worker. However, a storekeeper can be paid even a small amount, even if he allows him to dip bread in his brine or shares a date with him, to avoid this problem of interest. This is why the *Mishna* states both cases.

The *braisa* states: How much does he have to get paid? He can be paid a little or a lot. These are the words of Rabbi Meir. Rabbi Yehudah says: Even if he allows him to dip bread in his brine or shares a date with him, this is his wage. [According to Rabbi Meir they must set an amount for his wages, whereas Rabbi Yehudah holds they do not even have to have an agreement, although he must give him some benefit.] Rabbi Shimon ben Yochai says: He must pay all of his wages.

The *braisa* states: One may not assess goats or sheep, or anything that does not do work and eats, for half of the profits (and responsibility). Rabbi Yosi, the son of Rabbi Yehudah, says: One can have such an arrangement with goats because they provide milk. One can have such an arrangement with sheep because they provide wool when they are shorn, washed or plucked. One can have such an arrangement with hens because they work and eat.

The *Gemora* asks: According to the *Tanna Kamma*, why isn't milk and wool considered providing wages and money for feed?

The *Gemora* answers: Everyone agrees that if the animals provide milk and wool, this is sufficient. The argument is regarding watery milk, the water from wool, and wool from thorns. The *Tanna Kamma* holds like Rabbi Shimon ben Yochai that if these are the only benefits, he must receive regular wages. Rabbi Yosi, the son of Rabbi Yehudah, holds like his father that even if he allows him to dip bread in his brine or shares a date with him, this is his wage.

The *braisa* states: A woman can rent a hen to her friend (for the year) in exchange for two chicks. If an owner of a hen says to her friend: I have the hen and you have the eggs. We will split the chicks (and I will take two chicks for my pay). Rabbi Yehudah permits this. Rabbi Shimon forbids this (as she is responsible for half of the eggs).

The *Gemora* asks: Doesn't Rabbi Yehudah require wages for work and food?

The *Gemora* answers: Rabbi Yehudah relies on the eggs that will not turn into chickens (she can take them as her wages).

The *braisa* states: In a place where the custom is to give money to the person taking care of the animals because he is carrying them around, one may give this money, and he should not deviate from the custom of the place. Rabban Shimon ben Gamliel says: When this arrangement is done with a calf and its mother or a young donkey and its mother, there is no need to pay "carrying money," even when such money is normally paid (as the animal normally follows its mother, and there is therefore no extra trouble).

The *Gemora* asks: Doesn't Rabban Gamliel require wages for work and food? [Even though it is with its mother sometimes it needs to be carried (Tosfos).]

The *Gemora* answers: The animal provides fertilizer.

The other opinion holds this is insufficient, as fertilizer is made ownerless (and cannot be made into pay in this fashion).

Rav Nachman says: The law follows Rabbi Yehudah, Rabbi Yosi, the son of Rabbi Yehudah, and Rabban Gamliel. (68a – 68b)

DAILY MASHAL

THE POWER OF A "WORD"

The *Gemora* relates the following: Mar bar Ameimar said to Rav Ashi: My father does business this way. If the sellers would come to him and say that they did not make this anticipated profit, he would believe them (*without imposing an oath upon them; in such a case, he would only receive half of the actual profit, and not the amount written in the document; this way, he would avoid any ribbis concern*).

Rav Ashi said: This is fine because your father is alive (*and he will waive the amount written in the document*). However, if he would die and the orphans would have a document saying that the merchants owed them a certain amount of money, wouldn't they have to pay? This statement (*talking about the death of Ameimar*) was like an "error proceeding from a ruler," and Ameimar died.

The *Gemora* in Moed Katan (18a) records the following incident: The Sage Shmuel paid a condolence visit to his brother Pinchas, who had lost a child. He asked him why he allowed his fingernails to grow although it was permitted to cut them. The rebuttal of Pinchas, "If such a tragedy as mine had befallen you, would you also show such disregard for mourning?" is described by the *Gemora* as an example of "an error proceeding forth from the ruler" (*Koheles* 10:5). The result of this apparent slip of the tongue was that Shmuel himself soon became a mourner because "there is a covenant for the lips" — a spoken word has the power to effect fulfillment. As proof of this power Rabbi Yochanan cites the statement made by the Patriarch Avraham, on his way to offer his son Yitzchak as a sacrifice, to the two young men accompanying them. "Stay here," he told them "and I and the lad will return to you" (*Bereishis* 22:5), and did indeed result in their both returning.

How can we derive from here that a person should be careful with his words; this brought about a positive result that Yitzchak was saved?

The Chasam Sofer answers that to Avraham, it was regarded as undesirable, since he was unable to fulfill the will of Hashem.

QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF

to refresh your memory

Q: Why must *ona'ah* be returned? Didn't the defrauded party agree to the sale and waived his right to any claim?

A: Originally, the *Gemora* thought it was because it was an erroneous error, in conclusion, the *Gemora* explains, it is because he did not know that he was being cheated.

Q: Does a firstborn receive a double portion from property that was pledged to his father?

A: Only if it was in a place where he cannot be evicted from the land at an earlier time (*before the loan was due*).

Q: In a place where it was customary to allow the borrower to remove the lender from the property if he paid early, but the lender stipulated (*when making the loan*), "I shall not be removed before the loan is due," is the deal binding?

A: Yes.