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Bava Metzia Daf 78

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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 one rented a donkey to lead it on a mountain (*to use it to transport goods only on a mountain*), and he led it through a valley; or the deal was that he would lead it in a valley, and he led it on a mountain, even if both routes were ten *mils* long - if it died, the renter is liable.

If one rented a donkey to lead it on a mountain and he led it through a valley – if it slipped (*and was killed or injured*), the renter is not liable; if it became affected by the heat, the renter is liable. If one rented a donkey to lead it in a valley and he led it on a mountain – if it slipped (*and was killed or injured*), the renter is liable; if it was affected by the heat, the renter is not liable. If it was affected due to the climb, the renter is liable.

If one rented a donkey and it became blind, or it was pressed into service of the king, the owner says to him, “What is yours is before you!” If it died or broke a limb, the owner must provide him with another donkey. (78a)

### **Case of the Mishna**

The *Gemora* asks: Why does the *Tanna* of the *Mishna* make no distinction in the first clause (*between the causes of death*), while he does so in the second?

In the *Beis Medrash* of Rabbi Yannai they said: In the first clause (*where it did not die because it slipped and it did not die on account of the heat*) the owner may claim that it died on account of the air (*although it appears that it*

*died naturally*), and so we say: The cold mountain air killed it, or the hot air of the valley killed it (*for he deviated from the arranged deal*). [*This is why the renter is definitely liable.*]

Rabbi Yosi bar Chanina said: It refers to a case where the owner may claim (*although it appears that it died naturally*) that it died through exhaustion. [*If it was led on the mountain instead of on the valley, the owner can claim that the ascent had overtaxed its strength, and later, it collapsed under the weight of its load and died. Or, if it was led through the valley instead of on the mountain, it can be claimed that the cool air of the mountain, which is lacking in the valley, would have revived it. This is why the renter is definitely liable.*]

Rabbah said: It refers to a case where it was bitten by a snake (*and nevertheless, he is liable, for he deviated from the arranged deal*).

Rabbi Chiya bar Abba said in the name of Rabbi Yochanan: The *Mishna* is following the opinion of Rabbi Meir, who said that whoever deviates from the owner’s stipulation is regarded as a thief. (78a – 78b)

### **Deviating from the Owner’s Desire**

The *Gemora* asks: Which ruling of Rabbi Meir are we referring to? Is it his ruling in the case of the dyer? For we learned in a *Mishna*: If wool was handed over to a dyer to dye it red but he dyed it black, or to dye it black and he



dyed it red, Rabbi Meir says that he (the dyer) must pay the owner for the value of his wool. Rabbi Yehudah says: If the appreciation to the wool is more than the expenditure of the dyeing, he (*the owner*) gives him (*the dyer*) the expenditure (*but not his fee*); and if the expenditure is more than the appreciation, he (*the owner*) gives him (*the dyer*) the appreciation.

The *Gemora* notes that this *Mishna* does not prove that (*whoever deviates from the owner's stipulation is regarded as a thief*), for the dyer must pay the owner the value of the wool for he acquired it with the act of changing (*and this would not apply by the case of the donkey, where he merely deviated from the arrangement by traveling a different route*).

The *Gemora* attempts to find a different ruling from Rabbi Meir: Perhaps it is his ruling regarding the Purim collection, for we learned in a *braisa*: The Purim collections must be distributed for Purim (*and nothing else*). The local collections belong to that town only, and we are not required to be so precise in the matter (*how much is needed for Purim, and how much the poor of the city needs*), but calves are purchased in abundance, slaughtered and eaten, and the surplus goes to the charity fund. Rabbi Eliezer said: The Purim collections must be used for Purim only, and the poor may not even buy straps for their shoes, unless it was stipulated in the presence of the townspeople that such shall be granted; these are the words of Rabbi Yaakov, who said it in the name of Rabbi Meir. Rabban Shimon ben Gamliel is lenient in the matter (*and allows the poor person to use the charity funds for other uses besides the Purim feast*). [We may derive from here that Rabbi Meir holds that we cannot deviate from the owner's intent.]

The *Gemora* notes that this *braisa* does not prove that (*whoever deviates from the owner's stipulation is regarded as a thief*), for perhaps there too, the reason is that the donors gave the charity only that it should be

used for Purim, and not for any other purpose? [Regarding charity funds, there is a significant difference between the two purposes, whereas the two routes discussed in our case are not significantly different than each other, for one is not more dangerous in any way than the other.]

The *Gemora* concludes that it must be the following opinion of Rabbi Meir. For it has been taught in a *braisa*: Rabbi Shimon ben Elozar said in the name of Rabbi Meir: If one gives a *dinar* to a poor man to buy a shirt, he may not buy a cloak with that money; to buy a cloak, he must not buy a shirt, because he is deviating from the donor's desire.

The *Gemora* asks: But perhaps there it is different, for he may fall under suspicion. People might say, "So-and-so said, 'I will buy a shirt for that poor man,' and he has not bought it," or, "So-and-so said, 'I will buy a cloak for that poor man,' and he has not bought it."

The *Gemora* answers: If so, the *braisa* should have stated: because he may be suspected: Why did it state: because he is deviating from the donor's desire?

This proves that it is because he is changing, and he who deviates from the owner's desire is called a thief. (78b)

### **Hivrikah**

The *Gemora* explains that when the *Mishna* uses the term, "*hivrikah*," it either means "blind" (*caused by a speck in the eye*), or it means "break" (*a worm infestation caused one of its legs to break*).

The *Gemora* cites a related incident: A man once said, "I saw moths in the royal garments." The officers asked him, "Did you see them in the flax garments or the golden garments?" Some say that he replied that it was in the flax garments, whereupon he was executed (*for this was an*

outright lie, since moths do not go to flax garments). Others maintain that he replied that he saw them in the golden garments, so he was set free. (78b)

### **Renting a Donkey**

The *Mishna* had stated: If one rented a donkey and it became blind, or it was pressed into service of the king, the owner says to him, "What is yours is before you!"

Rav said: This is true only if the animal will be returned; however, if it will not be returned, the owner must provide the renter with another animal.

Shmuel said: The *Mishna's* ruling applies even if the animal will not be returned. However, it can be qualified as follows: If the animal was taken in the same direction in which he was traveling, the owner can say, "What is yours is before you" (*for the king's soldiers take the animal on their journey until they find another animal to replace it*). If, however, they were traveling in a different direction, the owner must provide the renter with another animal.

The *Gemora* challenges Shmuel from the following *braisa*: If one rented a donkey and it became blind, or it became demented (*and it is still fit to transport a load*), the owner says to him, "What is yours is before you!" If it died or it was pressed into service of the king, the owner must provide him with another donkey.

Now, according to Rav, this *braisa* is not difficult, for we can say that the *Mishna* refers to a case where the animal will be returned, and the *braisa* is referring to a case where the animal will not be returned. But according to Shmuel, it is difficult!?

We cannot answer that the *Mishna* is referring to a case where they were traveling in the same direction, and the *braisa* is referring to a case where the animal was taken

in a different direction, for the *braisa* concludes with this statement from Rabbi Shimon ben Elozar: If the animal was taken in the same direction in which he was traveling, the owner can say, "What is yours is before you" (*for the king's soldiers take the animal on their journey until they find another animal to replace it*). If, however, they were traveling in a different direction, the owner must provide the renter with another animal. Obviously, the *Tanna Kamma* does not make this distinction!?

Shmuel could answer that he holds like Rabbi Shimon ben Elozar.

Alternatively, we can explain the *braisa* as if it would be missing words, and the entire *braisa* is in accordance with Rabbi Shimon ben Elozar as follows: If one rented a donkey and it became blind, or it became demented (*and it is still fit to transport a load*), the owner says to him, "What is yours is before you!" If it died or it was pressed into service of the king, the owner must provide him with another donkey. These words are true only if the animal was taken in a different direction in which he was traveling. If, however, they were traveling in the same direction, the owner can say, "What is yours is before you." These are the words of Rabbi Shimon ben Elozar, for Rabbi Shimon ben Elozar had stated: If the animal was taken in the same direction in which he was traveling, the owner can say, "What is yours is before you" (*for the king's soldiers take the animal on their journey until they find another animal to replace it*). If, however, they were traveling in a different direction, the owner must provide the renter with another animal.

The *Gemora* asks: How can we say that the entire *braisa* follows the opinion of Rabbi Shimon ben Elozar? But the first part of the *braisa* states: If one rented a donkey and it became blind, or it became demented (*and it is still fit to transport a load*), the owner says to him, "What is yours is before you!" But Rabbi Shimon ben Elozar states in a different *braisa*: If one rented a donkey to ride upon it and



it became blind, or it became demented (*and it is still fit to transport a load*), the owner must provide the renter with another animal!?

Rabbah bar Rav Huna answers that it is different in this case, for he rented it to ride upon it (*and due to its injuries, the owner will not be able to ride it safely*).

Rav Pappa notes: Renting a donkey to transport glass vessels is like renting it to ride upon (*for a slight mishap will break the vessels*). (78b – 79a)

### INSIGHTS TO THE DAF

#### ***The Designation of Money and the Timeliness of a Mitzvah***

The *Gemora* cited a *braisa*: The Purim collections must be distributed for Purim (*and nothing else*). The local collections belong to that town only, and we are not required to be so precise in the matter (*how much is needed for Purim, and how much the poor of the city needs*), but calves are purchased in abundance, slaughtered and eaten, and the surplus goes to the charity fund. Rabbi Eliezer said: The Purim collections must be used for Purim only, and the poor may not even buy straps for their shoes, unless it was stipulated in the presence of the townspeople that such shall be granted; these are the words of Rabbi Yaakov, who said it in the name of Rabbi Meir. Rabban Shimon ben Gamliel is lenient in the matter (*and allows the poor person to use the charity funds for other uses besides the Purim feast*). [We may derive from here that Rabbi Meir holds that we cannot deviate from the owner's intent.]

The *Gemora* notes that this *braisa* does not prove that (*whoever deviates from the owner's stipulation is regarded as a thief*), for perhaps there too, the reason is that the donors gave the charity only that it should be used for Purim, and not for any other purpose?

[Regarding charity funds, there is a significant difference between the two purposes, whereas the two routes discussed in our case are not significantly different than each other, for one is not more dangerous in any way than the other.]

The Chavos Yair quotes a *Sefer Chasidim*, who derives from this *Gemora* that if one sends his fellow a gift of food to be eaten on *Shabbos*, it is forbidden for the recipient to eat it during the weekdays. If he has leftover, he should let the rest of household partake in it, but only on *Shabbos*. If the donor explicitly stipulated that he should be the only one to eat from it, he may not give it to others.

It would seem from our *Gemora* that this is not merely an act of piousness; but rather, it is halachically mandated. We can extrapolate further that if one gives money or wine to his fellow and he tells him that it should be used for Kiddush, he must use it for Kiddush, and nothing else. It would be forbidden to buy fish for *Shabbos* with this money, for Kiddush is a Biblical *mitzvah*, and eating fish on *Shabbos* is merely a Rabbinic one.

However, according to the prevailing custom that money is given to Torah scholars, and they are told to use it for *Shabbos* and Yom Tov, that is only out of respect, but they are not actually being particular as to what it should be used for; in such cases, they could use the money for whatever they desire.

Reb Yosef Engel cites the following *Yerushalmi*: If one vows to bring a flour-offering on Yom Tov, he should not bring it on a weekday. This is why the *seforim* write that a transgression committed on *Shabbos* is more severe than one committed on a weekday, for the holiness of the day plays a role. So too it may be said regarding the performance of a *mitzvah*; There will be a greater reward for a *mitzvah* performed on *Shabbos* or Yom Tov.



## QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF

to refresh your memory

Q: If one hired workers to irrigate his field and it rained, is he obligated to pay them?

A: No.

Q: If one hired workers to draw water from a river and irrigate his field, and the river stopped flowing in the middle of the day, when is it the employer's loss, and he would still be obligated to pay them in full?

A: If the river usually stops flowing and the workers are not residents of the city (*and therefore they should not have known*).

## DAILY MASHAL

I saw the following in a recent publication: I am zoche to learn Daf Yomi with a very special Yerushalmi Rov. During the sugya of Ribis, the Rov mentioned that many years ago, when he was a young avreich, he went to one of the local Israeli banks to pay a bill.

[This was at a time in Eretz Yisroel when most people who were makpid on Hilchos Ribis patronized the British Barclay's Bank, which was not under Jewish ownership, since most of the Israeli banks did not have formal heter iskas in place as they do now.]

In any event, it was a rather benign and uneventful experience. As he exited through the glass door of the Israeli bank, he was met by a young man whom he knew well: Rav Chaim Kroyzer Shlit"a, son of the great Rav Zundel Kroyzer Zt"l. Rav Chaim went over to him and gently asked, "What were you doing in the treif butcher shop?" The young avreich stammered and said that all he did was pay a bill, an act that didn't require any financial

interactions that would entail encroaching on the halachos of ribis. Rav Kroyzer mentioned, "Chas v'Shalom, I didn't think for a moment that you would. But would you walk into a treif shop to buy kosher meat?"

I found the context of their conversation to be interesting and relevant as a mashal for my work environment. I decided to look at the "butcher shop" on my desktop and see whether it reeked of unkosher blandishments. We wouldn't consider putting the Burger King double-whopper or the pork chops from Mario's Meat Market on our tabletops. Are we as horrified at the thought or even proximity of other issurim on our desktops?