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Bava Basra Daf 13

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“Buy Me Out, Or I Will Buy You Out”

The *Mishna* had stated: And not the castle etc.

The *Gemora* asks: What if the castle is not big enough to force an even separation?

Rav Yehudah says: One of the partners can demand, “Either buy my portion or I will buy your portion.” Rav Nachman argues: Nobody can (*halachically*) demand this from his partner.

Rava says to Rav Nachman: According to you, what do a firstborn and a regular son do with a slave or unkosher animal that was bequeathed to them by their father? [*It would be a lot of bother for them to share them in a workable manner.*]

Rav Nachman answered: I say that he should be a slave for the regular son for one day, and then be a slave for the firstborn son (*who has a double portion for two, and so on*).

The *Gemora* asks a question on Rav Yehudah from a *braisa*. The *braisa* states: If someone is half slave and half free-man (*he was jointly owned by two men, and one of them set him free*), he serves his master for one day and then is free for one day (*and so on*). Beis Shammai says: You have fixed the problem for his master, but you have not solved his own problem. He cannot marry a Canaanite slavewoman (*as his free side is a freeman, who is forbidden to marry a slavewoman*) and he cannot marry a regular Jewish girl (*who cannot be with his slave half*)! Should he simply not marry? The world was created to be populated, as the verse says: *The world was not created by G-d to be empty; it was created to be populated!* Rather, we force his master to free his other

half as well, and we have the slave write for the master a document stating that he owes the master the rest of his value. Beis Hillel retracted their opinion, and agreed with Beis Shammai. [*This implies that the only reason Beis Hillel agreed was due to the slave’s need to have children. Otherwise, they would not have said that one of the parties can demand to be bought out or to buy out.*]

The *Gemora* answers: The case of the *braisa* is different, as the master does not have the option to buy the free side of the slave (*as he can no longer sell himself as a Canaanite slave, only as a Jewish servant who is sold for six years*). [*One explanation in Tosfos understands that he cannot even sell himself as a Jewish servant at all, as a Jewish servant must be able to go back to his family, and he is essentially a convert without family.*]

The *Gemora* attempts to bring a proof (*to Rav Nachman*) from a *Mishna*. The *Mishna* states: If two brothers, one who is rich and one who is poor, inherit from their father a bathhouse or an olive press; if they made for renting, they should split the profits. If they are for private use, the wealthy son can say to the poor son, “Buy servants and bathe in the bathhouse, and buy olives and use the press.” [*This implies that the poor son does not have the option to say, “Buy me out, or I will buy you out.”*]

The *Gemora* answers: This case is not proof, as while the poor person wants his rich brother to buy him out, he cannot buy his brother’s portion, as he has no money.

The *Gemora* asks a question on Rav Nachman from a *braisa*. The *braisa* states: Anything that can be split, and the halves would still retain its original name (*i.e. a bathhouse*), one

may force the other to divide. If it would not retain its name, it should be evaluated and sold. [*This implies that we do say "Buy me out, or I will buy you out," as this must be why it is being evaluated.*]

The *Gemora* answers: This is in fact an argument among the *Tannaim*. The *braisa* states: If one of the partners says, "Take four cubits for yourself (*from their jointly owned yard that is less than eight cubits*), and I will take less (*i.e. the rest*)," he must be listened to. Rabban Shimon ben Gamliel says: We do not listen to him.

The *Gemora* asks: What is the case? If it is as stated, what is Rabban Shimon's reasoning? [*Why should he not be allowed to take the smaller portion?*] It must be that the *braisa* means as follows: If one of the partners says, "Take four cubits for yourself, and I will take less," he must be listened to. If he says, "Buy me out or I will buy you out," he also must be listened to. Rabban Shimon ben Gamliel says: We do not listen to him (*in this second case*).

The *Gemora* rejects this proof: This is incorrect. The *braisa* should be read as it is stated. Rabban Shimon ben Gamliel's reasoning is that the recipient of the four cubits can say that if he expected to pay for his slightly larger portion, he has no money to pay. If he is expected to take it as a present, he does not want to accept a present, as the verse states: *And one who hates presents will live.*

Abaye said to Rav Yosef: Rav Yehudah's position is actually that of Shmuel. The *Mishna* states: Holy Scriptures (*i.e. a sefer torah*) should not be divided even if both owners want to divide them.

Shmuel says: This is only if it is written in one scroll. However, if it is written in two separate scrolls, they may be divided (*one to one, and the other to the other*). If Shmuel does not hold of the principle, "Buy me out or I will buy you out," one of them should not even be allowed to force a split with two scrolls!?

Rav Shalman explained: Shmuel only holds this way if both partners agree to split the two scrolls.

[*Therefore, there is no proof that Shmuel holds one can say, "Buy me out, or I will buy you out."*]

Ameimar says: The law is that one can say, "But me out, or I will buy you out."

Rav Ashi said to Ameimar: What about the position of Rav Nachman?

He replied: I have not heard it, meaning that he did not agree with it.

The *Gemora* asks: Do we indeed discount the opinion of Rav Nachman in this matter? Rabbah and Rav Dimi, the sons of Chinena inherited two maidservants from their father. One knew how to bake and cook, and the other knew how to sew and weave. They came before Rava, and he said that one cannot force the other to buy him out or be bought out! [*Rashi explains that one wanted to force the other to let him take the more valuable maidservant and pay extra money, or that the other should take the more valuable servant and he would get the extra money.*]

The *Gemora* answers: The case that came before Rava was different, as each one needed both servants. Forcing them to each take one (*and the one who receives the more valuable servant will pay money*) is not a case of, "buy me out, or I will buy you out."

The *Gemora* asks: In the case of the Holy Scriptures, both need the Scriptures, and Shmuel still said that this claim (*buy me out etc.*) does not work with one volume, but it will work with two!?

The *Gemora* answers: Rav Shalman already answered that Shmuel only holds this way if they agreed to split them.

The *braisa* states: Rabbi Meir says that one is allowed to put the *Chumash, Nevi'im (Prophets), and Kesuvim (Writings)* all



in one scroll. Rabbi Yehudah says: Each have to be in a separate scroll. The *Chachamim* say: Every book of *Nevi'im* and *Kesuvim* should be in their own volume.

Rav Yehudah says: Beissus the son of Zunin had eight separate books of *Nevi'im* bound in one scroll based on Rabbi Elozar ben Azaryah's ruling. Some say: He had each book in a separate scroll.

Rebbe said: There was an incident where someone brought before us a scroll that had the entire *Chumash*, *Nevi'im*, and *Kesuvim*, and we said it was valid.

Between each *Chumash* (*Bereishis*, *Shemos* etc.) should be a separation of four blank lines. Between each book of prophets, including between the prophets in *Trei Asar* (book of twelve different prophets) should be a separation of three lines. One can end a book at the bottom of the page, and immediately start the next book at the top (without indenting three lines at the top). (13a – 13b)

INSIGHTS TO THE DAF

Half Slave and Half Free

The *braisa* states: If someone is half slave and half free-man (he was jointly owned by two men, and one of them set him free), he serves his master for one day and then is free for one day (and so on). Beis Shammai says: You have fixed the problem for his master, but you have not solved his own problem. He cannot marry a Canaanite slavewoman (as his free side is a freeman, who is forbidden to marry a slavewoman) and he cannot marry a regular Jewish girl (who cannot be with his slave half)! Should he simply not marry? The world was created to be populated, as the verse says: *The world was not created by G-d to be empty; it was created to be populated!* Rather, we force his master to free his other half as well, and we have the slave write for the master a document stating that he owes the master the rest of his value. Beis Hillel retracted their opinion, and agreed with Beis Shammai.

The Sfas Emes discusses the verdict regarding a half-slave and half free person that he must go free, and the slave writes a document to the remaining partner for half of his value. This is because the slave has no money. Essentially, by the first partner's freeing his half, the second partner lost his slave as well, as the law is that he must set him free. Can the second partner demand that the first partner should take the bond from the slave, while the first partner should pay him the monetary equivalent?

The Sfas Emes concludes that being that the damage is not direct, as it is only a consequence of the first person's action, *Beis Din* will not force the first owner to pay the second owner. [However, it should be noted that usually indirect damage makes a person liable to pay according to "Heavenly law (meaning what is viewed as right and wrong by Hashem)," despite the fact that *Beis Din* will not make him pay. Accordingly, if the person freed his half of the slave knowing full well that this would indirectly damage the second owner, he should compensate him to ensure Heaven (Hashem) will not hold it against him.]

Half Slave and Half Free

Tosfos (d.h. shene'emar) asks: Why does the *Gemora* choose to cite the verse of "*The world was not created by G-d to be empty; it was created to be populated*" to justify the importance for the half-slave half-freeman to be able to procreate, rather than the more well known verse in the Torah of *P'ru U'rvu* (*Be fruitful and multiply*)?

My understanding of Tosfos answer in the name of the R"l is that the *mitzvah* of *P'ru U'rvu* is really a *ma'aseh mitzvah* like any other, where we have exemptions for *o'nes* (a case where he has no choice). Therefore, citing the verse of *P'ru U'rvu* wouldn't justify forcing the master to free the slave, since at the present time, the half-free side of the slave is exempt as an *o'nes* because he is incapable of performing the *mitzvah*. But by citing the verse of "*The world was not created by G-d to be empty; it was created to be populated*," the *Gemora* is pointing to the root and purpose of the *mitzvah* of *P'ru U'rvu*. This verse illustrates that the purpose

of *P'ru U'rvu* is to occupy the world and therefore we don't follow the regular system that we do by other *mitzvos*, because even if he is exempt due to *o'nes*, the world will still remain empty. Although the *Gemora* means to use the verse in the torah as *P'ru U'rvu* as the source, it chooses to quote an alternate verse that would justify why *P'ru U'rvu* should apply even in a circumstance where he is an *o'nes*.

This approach is very *meduyak* in the language of Tosfos where the entire focus is on the verse chosen by the *Gemora*, rather than using language that indicates that *P'ru U'rvu* isn't at all applicable since he is an *o'nes*. Tosfos language implies that *P'ru U'rvu* is truly the source that compels us to force the master to free the slave, but we cite the verse that explains why *P'ru U'rvu* should apply even to a circumstance of *o'nes*.

Furthermore, this approach would complement, rather than contradict the Turei Even in Rosh Hashanah (29a), who asks that since one who does a *mitzvah* when they are exempt doesn't fulfill their obligation, how can the *Gemora* in Yevamos say that if one had children as an idolater, and then he converts his whole family, he automatically fulfills the *mitzvah*? The *mitzvah* was done when he was exempt, so he should have to do it again!?

Turei Even answers that since the purpose of *P'ru U'rvu* is to populate the world, we disregard when the act of the *mitzvah* was done, so long as the world is being populated as a result of his actions.

If we were to understand Tosfos simply that only the *mitzvah* of "*sheves*" (*populating the world*) applies, but not *P'ru U'rvu*, then Tosfos would be holding that *P'ru U'rvu* is a standard *mitzvah* like any other, where *o'nes* is exempt and the *ma'aseh mitzvah* should have to be done when he is obligated in the *mitzvah*. But since we are explaining that according to Tosfos, the entire *mitzvah* of *P'ru U'rvu* is for the purpose of populating the world, Tosfos is essentially a support for the Turei Even's novel understanding that the time of the *ma'aseh mitzvah* is not relevant.

This also explains how in the very next Tosfos, they are able to ask that the *mitzvah* of *P'ru U'rvu* should override the prohibition of marrying a *kadeish* (*harlot*). How can Tosfos cite the *mitzvah* of *P'ru U'rvu* moments after saying that it doesn't apply here since he is *o'nes*? Clearly, Tosfos never meant to say that it doesn't apply here; rather, the meaning is that we wouldn't have realized that it does apply here, if not for the fact that we quoted the verse of "*sheves*."

As a side note, there is a famous discussion whether an *o'nes* is exempt, or actually obligated but unable to perform. Tosfos here seems to support the former. Tosfos explains that since the half freeman is an *o'nes* in his obligation of *P'ru U'rvu*, we wouldn't force the master to free him. Tosfos supports this claim from the fact that we don't force masters to free all regular slaves to enable them to keep *mitzvos*. Now, if *o'nes* is actually obligated but unable to perform, how can Tosfos prove their case from a standard slave who isn't even obligated at all in the *mitzvos*? Perhaps we don't free regular slaves because they aren't obligated, but we would free this half slave since his free side is obligated, just that he is an *o'nes*. Clearly, Tosfos holds that *o'nes* and not being obligated is exactly the same and can prove *o'nes* from the case of a regular slave.

DAILY MASHAL

Two Hearts

According to our gemara, "before someone eats or drinks, he has two hearts; afterwards, he has only one", meaning that before he eats and drinks he is not calm enough to make decisions. *Darchei Moshe* (O.C. 580) attests that the Maharash fasted on his sons' wedding days. The Tzanzer Rebbe zt"l (Responsa *Divrei Yatziv*, E.H. 74) asserts that we no longer observe this custom, perhaps relying on the Gemara: The couple's parents discuss the amount of the wedding contract (*kesubah*) on the wedding day and, without eating, might fail to agree and start to argue. The *Ben Ish Chai* adds that the letters of "two hearts", *lev velev*, also spell *bilbul* – "confusion" – as someone who has not eaten may make a confused decision.