11 Adar 5777
March 9, 2017

DAF Notes
Insights into the Daily Daf
Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Bava Basra Daf 46

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 Chazakah of a Worker

[*Rabbah holds that if there is no evidence that the cloak came into the craftsman's possession as a deposit, he would be believed to say that he purchased it.*]

Rav Nachman bar Yitzchak asks on Rabbah from our *Mishna*: A craftsman cannot establish a *chazakah* (*by the fact that it is in his possession*). It can be inferred from here that another person would establish a *chazakah*. What are the circumstances? If there are witnesses (*that it came into his possession as a deposit*), why would there be a *chazakah*? It must be referring to a case where there were no witnesses, and nevertheless, the *Mishna* rules that a craftsman does not establish a *chazakah*. This is indeed a refutation of Rabbah's opinion! (46a)

The *Gemora* cites a *braisa*: If a man receives another person's garments instead of his own from a craftsman's shop, he may use them until the other person comes and claims what is his. If they have become exchanged in a mourner's house or at a party, he must not use them, but rather, he must wait until the other person comes and claims them.

The *Gemora* explains why the rulings are different: Rav said: I was sitting before my uncle (*Rabbi Chiya*) and he said to me, "Is it not a usual thing for a man to say to the craftsman, 'Sell my garment for me'" (*and we can assume that he sold the wrong cloak; he may use this one until the craftsman rectifies his mistake*).

Rav Chiya the son of Rav Nachman said: This is only true where the craftsman himself gave him the cloak, but if it was given to him by his wife or sons, he may not use it (*for they probably made a mistake*). And even where the craftsman gave it to him, he may not use it unless the craftsman says, "Here is a cloak" (*for it is then that we assume that he realizes that he is giving him the wrong one and intends to rectify his mistake*), but if he says, "Here is your cloak," he must not use it, because this is not his cloak (*and he probably gave him the wrong one by mistake*).

Abaye said to Rava: Come and I will show how the cheating craftsmen of Pumpedisa act. If a man will say to his craftsman, "Give me back my cloak that I gave you to repair," the other will say, "You never gave me anything at all." And if the owner will say, "I will bring witnesses that they saw it in your possession," he will reply, "That was someone else's cloak." If the owner will then say to him, "Bring it out and let us see," he will reply, "I will not bring it out (*for I do not want to show you someone else's object*)."

Rava said to him: That which the craftsman says (*that he does not want to show it*) is correct, seeing that the *braisa* stated that the owner must see it in the hands of the craftsman (*and only then may he demand it from the craftsman*).

Rav Ashi said: If the owner is clever, he will gain a sight of it by saying to the cheater, "Why are holding on to my cloak? Is it not because I owe you money (*he will say quietly in order that he should not be charged with this admission*)? Then bring it out and have its value assessed so that you can take what is yours and I can take what is mine!"

Rav Acha bar Rav Avya said to Rav Ashi: The cheater (*if he is clever*) can respond to him, "I do not require your assessment; it has already been valued by people before you

L'zecher Nishmas HaRav Raphael Dov ben HaRav Yosef Yechezkel Marcus O"H

(*and it has been determined that it is not worth more than the debt of which you owe me*)." (46a – 46b)

Sharecropper's Chazakah and Testimony

The *Mishna* had stated that a sharecropper cannot establish a *chazakah*.

The *Gemora* asks: Why is this so, seeing that at first he consumed only half the produce, and now for three years he has consumed the entire produce?

Rabbi Yochanan said: We are dealing here of hereditary sharecroppers (*who have worked for this family for generations and cannot be removed, and it is very common for them to consume the produce for several consecutive years and the owners will eat the next few years*).

Rva Nachman said: A (*hereditary*) sharecropper who installs other sharecroppers in his place (*and he does not work with them*) establishes a *chazakah*, because a man will not usually allow sharecroppers to be installed in his field and say nothing (*for they might ruin it; and he should have protested*).

Rabbi Yochanan said: A (*hereditary*) sharecropper who assigns parts of his field to other sharecroppers (*for he cannot perform all the work himself*) does not establish a *chazakah*. This is because we may presume that permission was given to him to do so.

Rav Nachman bar Rav Chisda sent the following inquiry to Rav Nachman bar Yitzchak: Would our teacher teach us, whether a sharecropper can testify on behalf of his employer or not?

Rav Yosef was sitting before him, and said to him: Shmuel has ruled that a sharecropper may testify for him.

The *Gemora* asks: But it has been taught that he may not testify?

The *Gemora* answers: There is no difficulty. He may not testify in a case where there is produce on the land (*that he did not yet receive his portion from*), and he may testify in a case where there is no produce on the land (*and he did not work on the field this year; he is therefore not relevant to the testimony*). (46b)

Relevant to the Testimony

(Mnemonic: AMaLeK)

The *Gemora* cites a *braisa*:

1. A guarantor may testify on behalf of the borrower (*that a certain plot of land belongs to him*), provided that the borrower has other land (*besides that which is being claimed from him, for then he is not deemed to be a noge'a*).
2. And similarly, a lender may testify on behalf of a borrower (*that a certain plot of land belongs to him*), provided that the borrower has other land (*besides that which is being claimed from him, for then he is not deemed to be a noge'a*).
3. A first purchaser may testify on behalf of a second purchaser (*that a certain plot of land belongs to him*), provided that he (*the second purchaser or the seller*) has other land (*besides that which is being claimed from him – so that the seller's creditors can collect from first, for then he is not deemed to be a noge'a*).
4. There are those who say that a guarantor called a *kablan* can give testimony for a borrower, and there are those who say that he may not. [*A kablan is a grantor which gives permission to the lender to collect from his property even if the borrower has land. If a third party contests land belonging to the borrower, the kablan might be considered as having a vested interest in the case. A regular guarantor is not considered to have an interest in a case involving the party he guaranteed if the borrower has other land which can be used as collection for the loan. A kablan, however, might be considered different because a lender can collect from him even if the*

borrower has land. The halachah is that a loan should be paid back with middle quality land (benonis). The kablan might be considered as having an interest in having the borrower maintain ownership of a second piece of land if the first land is of poor quality (zeboris). In such a case the lender, who is interested in better quality land, probably would collect directly from the kablan.] There are those who say a *kablan* has the same *halachah* as a regular guarantor, and there are those who say a that a *kablan* prefers if the borrower has two pieces of land (*one average and one inferior*) and is therefore considered an interested party. (46b – 47a)

INSIGHTS TO THE DAF

Taking another's Coat in a Synagogue

Our *sugya* explains that if a person hung his coat somewhere, found it missing and, next to that place, discovered a similar garment, he must not use it, even knowing his own was removed by mistake, as no one may use another's property without permission (*Shulchan Aruch, C.M. 136:2*).

Taking another's Footwear at a Mikveh or Bathhouse

The Gaon of Buczacz zt'l, author of *Kesef HaKodoshim* on *Shulchan Aruch* (ibid) devoted much discussion to the topic of people taking each other's clothes at a *mikveh*, bathhouse or – to update the context – sauna or swimming pool. Till a few decades ago, streets in many European towns were unpaved and at the entrance of public buildings a place was provided for people to leave their muddy galoshes. HaGaon Rav Y.M. Epstein, author of *Aroch HaShulchan* (ibid), relates: "In places frequented by the public, where they leave their galoshes at the entrance and often inadvertently exchange them, they don't mind and each one wears the other's till being able to return them. There is no reason to consider this as thievery since their custom proves mutual consent."

Is other wear regarded differently?

People usually don't mind temporarily switching galoshes. Concerning more personal or representative wear, though, such as shoes or a coat, a person may resent another's donning them. However, HaGaon Rav Shemuel HaLevi Wosner (*Shevet HaLevi, VI, 38*) mentions that boys in large yeshivos often unwittingly take each other's hats. By the logic expressed in *Aroch HaShulchan*, they may wear each other's hats till having a chance to return them, and even never having a chance, we assume that the original owner harbors no resentment.

Rav Moshe Feinstein, though, treated the question of jackets switched in a synagogue (Responsa *Igros Moshe, O.C.* V, 9) and asserted that *Aroch HaShulchan* permits their temporary use where the custom proves mutual consent. Where there is no definite custom, however, we must apply the *Gemora* forbidding using another's property without permission.

A notice to allow one who took your garment to use it: Rav Feinstein further stresses that the leaders of every congregation should record and publicize a community regulation, displayed on a prominent bulletin board that people who inadvertently exchange clothing allow each other to use it until returned.

The Chazon Ish's cane:

To cite an appropriate anecdote, the Chazon Ish zt"l once noticed that someone had switched canes with him. Wanting to use the other's temporarily, he hung a notice in shul, saying "I beg permission to use your cane till you have an opportunity to return mine" (II, Letter 155).

Getting the Wrong Clothes from a Dry Cleaner

The members of our *beis midrash* became engrossed in an unusual *din Torah* because of its direct connection to our *sugya*. Reuven collected his suit from a dry cleaner and paid for it but was shocked to discover that the suit was not his!

L'zecher Nishmas HaRav Raphael Dov ben HaRav Yosef Yechezkel Marcus O"H

He asserted that he was quite sure it wasn't his and demanded compensation, whereas the cleaner insisted that Reuven had given him the very same suit to be serviced.

The *beis din* hearing the case based their verdict on our *sugya:* Our *Gemora* addresses the possibility of a person, similar to our Reuven, giving a garment to a worker, such as a cleaner, dyer or tailor, to be professionally serviced. If the professional returns him another's article, claiming it's Reuven's, the latter must not use it.

Rambam adds that he must not use the other's belongings till that person "returns the missing item and takes his own" (*Hilchos Gezeilah VaAveidah*, 6:6). In other words, Reuven may take the article home but must not use it, and should wait for its owner to appear with his missing property.

Now, if Reuven is forbidden to use the article, why must he take it home? Why can't he blame the professional for losing his garment and demand compensation? Surely he recognizes his clothing better than anyone, so why don't we believe his claim?

Still, the general rule of torts applies even here: "Anyone demanding payment or property must produce evidence." Reuven must show clear proof that the article is his and the cleaner, having been paid for his usual service, does not have to remunerate him. Nonetheless, Reuven is forbidden to use the item: He knows it's not his and must not use another's property without permission (*Piskei Din Yerushalayim, Dinei Mamonos Uveirurei Yahadus,* V, p. 141).

DAILY MASHAL

AMaLeK Serves as a Mnemonic Aid

Amalek's name as an acronym for remembering Tamudic topics:

The *Gemora* sometimes offers acronyms, acrostics or other sorts of words or phrases as devices to remember subjects, rulings or the like having some common denominator. Our *Gemora* links the topics of a guarantor (***a**rev*), who may testify for a debtor; a lender (***m**alveh*), who may testify for a debtor; a purchaser (***l**okeach*), who may testify for another purchaser from the same vendor; and a joint principal debtor (***k**ablan*), who – according to one opinion – may testify for a debtor (*all depending on certain conditions*) and connects them, rather controversially using the letters of ***AmaLeK*** as a mnemonic aid.

In his commentary on our *sugya*, Rabbi Yaakov Emdin wonders how the *Gemora* could thus use Amalek, whose memory we are commanded to erase (Devarim 25:19), and asserts that we may use the name to memorize Torah, "extracting the spark of holiness in him." Indeed, he contends, the verse hints we may do so: "…Erase the memory of Amalek from under the sky; do not forget!" (ibid). The verse seems to indicate we may use Amalek's name to prevent forgetting the details of Torah. The *Gemora* in Gittin 57b also alludes to Amalek's spark of holiness: Haman descended from Agag, king of Amalek (Esther 3:1; Shemuel I, 15:8) but "Haman's grandchildren learned Torah in Benei Berak" (*see the expanded version of Rabbi Y. Emdin's commentary in the Wagschal edition of the Gemora*).

Apropos Haman, *Beis Yosef* (*O.C.* 690) cites Rabbi Aharon of Luneil, author of *Orchos Chayim*, that the children's custom to scrawl Haman's name on stones and knock them together while hearing the Megillah comes from a *midrash* on the verse "…I shall erase the memory of Amalek" (Shemos 17:14): "Even," stresses the Midrash, "off the trees and stones." Hence, he concludes, we must not ridicule the custom.

Erasing Amalek while testing pen:

Kav Hayashar (Ch. 99) recounts that HaGaon Rav Heshel of Krakow would test his quill by writing *Amalek* or *Haman* and striking the name out as a reminder of the commandment to erase his memory.

L'zecher Nishmas HaRav Raphael Dov ben HaRav Yosef Yechezkel Marcus O"H