

12 Nissan 5777  
April 8, 2017



Bava Basra Daf 76

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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

### **Modes of Acquisition**

It has been stated: In the case of a ship, Rav said: The buyer has acquired legal ownership as soon as he pulls it, even a little bit; whereas Shmuel said: He cannot become its legal owner until he has pulled its full length.

The *Gemora* asks: Do they differ on the same principles as the following *Tannaim*? For we have learned in a *braisa*: How is an animal given over (as a mode of acquisition)? If he grabbed its hooves, hair, saddle, load, bit, or bell on its neck, he acquires it. How does he acquire it through pulling? If he calls it and it comes, or he hits it with a stick and it runs before him, once its hand and hoof moved from its spot, he acquires it. Rabbi Achi, and some say Rabbi Acha says: Until it walks before him a full length (of its body size). Must it be said that Rav follows the *Tanna Kamma* and Shmuel follows Rabbi Acha?

The *Gemora* answers that Rav can tell you that his opinion can be valid even according to Rabbi Acha, for that which Rabbi Acha holds (that he does not acquire it until it walks before him a full length) is applicable only to an animal. When an animal has merely moved a foreleg and a hind leg, it remains in the same place; but in the case of a ship, when a small part of it moves, the entire ship moves. And Shmuel can tell you that his opinion can be valid even according to the *Tanna Kamma*, for that which the *Tanna Kamma* holds (that he acquires it once its hand and hoof moved from its spot) is applicable only to an animal. When one foreleg and one hind leg have been moved, the other legs stand to be moved as well, but in the case of a ship,

if he pulls its full length, he acquires possession; otherwise, he does not.

The *Gemora* asks: Do they differ on the same principles as the following *Tannaim*? For we have learned in a *braisa*: A ship is legally acquired by *meshichah* (pulling it). Rabbi Nassan said: A ship or letters (notes of indebtedness) are legally acquired by *meshichah* and a document (that a document was written for the purchaser that he has acquired the ship or the note of indebtedness).

The *Gemora* (to explain the *braisa*) asks: Who mentioned “letters”? [In other words, why did Rabbi Nassan start discussing the acquisition of letters when the *Tanna Kamma* had not mentioned them at all?]

The *Gemora* answers: It is as if the *braisa* is missing words, and means to say the following. A ship is acquired by pulling, and letters are acquired by giving them over. Rabbi Nassan says: A ship and letters are acquired by pulling and by giving a document.

The *Gemora* asks: Why would one acquire a ship through a document? It is not effective, as a ship is a movable object that cannot be acquired through documents!?

Rather, the *braisa* means as follows: A ship is acquired through pulling, and letters are acquired through giving them over. Rabbi Nassan says: A ship is acquired through pulling, and letters are acquired by giving over a document (a document stating that he is selling the letters).



The *Gemora* asks: If he is saying that a ship is acquired through pulling, it is the exact same thing as stated by the *Tanna Kamma*!? [Why did he need to say this if he agrees?] It must be that they share the same argument as Rav and Shmuel.

The *Gemora* answers: No. Everyone could hold like either Rav or Shmuel, and there is indeed no argument regarding ships. The argument is regarding letters. Rabbi Nassan is saying the following to the *Tanna Kamma*. I agree to you about the ship. However, regarding the sale of letters, it is only valid if there is a separate sale document.

The *Gemora* notes: This argument is the same argument as the following *Tannaic* argument. The *braisa* states: Letters are acquired through being given over. These are the words of Rebbe. The *Chachamim* say: Whether he wrote (and gave) the documents selling the letters and did not actually give the letter that was sold, or whether he did give the letter that was sold but did not write a document recording the sale, the transaction is not valid. It is only effective if both a sale document was written (and given) and the letters sold were given over.

The *Gemora* asks: Who does the *Tanna Kamma* of the first *braisa* hold like? He holds like Rebbe's opinion in the second *braisa*. Why shouldn't he hold that a ship can also be acquired by being given over? This is as the *braisa* states: A ship is acquired by being given over. These are the words of Rebbe. The *Chachamim* say: It is not acquired until it is pulled or he rents the place where it is resting. [If the *Tanna Kamma* agrees with Rebbe that letters must be given over, he should also agree with Rebbe that a ship can be given over!?!]

The *Gemora* answers: One case is regarding a ship in the public domain (where *meshichah* does not work, and therefore it must be given over - *mesirah*), and one is

regarding a ship in a *simta* (an alley, i.e. a side area of a public domain where the public uses occasionally; since it is not a public domain, *meshichah* is effective there).

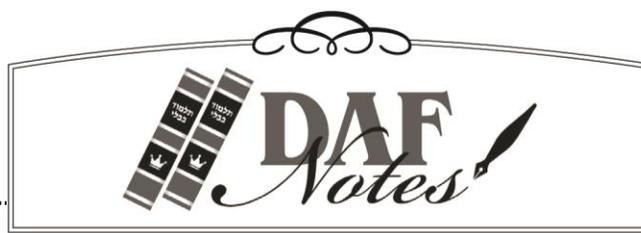
The *Gemora* asks: What is the case of the second *braisa*? It must be in the public domain. However, the second part of that *braisa* states that the *Chachamim* say one can only acquire it through pulling or renting its place. If the ship is in the public domain, from whom can he rent the place of the ship?

And furthermore, does *meshichah* work in the public domain? Abaye and Rava say: Giving over (*mesirah*) is effective (as a mode of acquisition) in the public domain and in a yard that does not belong to either of them. Pulling is effective on a side street and in a yard that they both own. Picking up can be used anywhere. [This clearly implies that pulling is not effective in the public domain!] How, then, can the *Chachamim* say, "It is not acquired until it is pulled or he rents the place where it is resting?"

The *Gemora* answers: They mean until one pulls it from the public domain to a side street. And if the area is owned by someone else, one must rent the area from the owner.

The *Gemora* asks: This implies that Abaye and Rava hold like Rebbe! [Why don't they rule like the *Chachamim* who are the majority?]

Rav Ashi answers: If the owner of the ship said to the buyer, "Go, hold, and acquire the ship," everyone agrees he would acquire it (with *mesirah*). The case is, however, where he said, "Go, pull, and acquire the ship" (and the purchaser did *mesirah*, not *meshichah*). The *Chachamim* say that he meant that the buyer should only acquire it through pulling (and not any other way). Rebbe holds that he was just informing him as to its location (instructing him to acquire it in any manner possible). [The *Rashbam* explains that he meant that he could even pull it right now



into his own domain. However, the Chachamim agree that pulling when instructed will work. Therefore, Abaye and Rava could still hold like the Chachamim.] (75b - 76b)

### **Acquiring a Document**

Rav Pappa says: If someone is selling a document to his friend, he must write: "It is acquired to you, including any lien in it."

Rav Ashi says: I said this over to Rav Kahana and I asked him: It is only acquired if you write this, but if you do not write this, he does not acquire the loan (*in the document*)!? Do you think he is buying the document in order to use it to stuff the opening of a bottle?

Rav Kahana answered: Yes, he will stuff the opening of a bottle with it (*and therefore this phrase is required*). (76b)

### **INSIGHTS TO THE DAF**

#### ***Selling a Contract***

There are two basic approaches when it comes to selling contracts. Tosafos writes in many places that the entire concept of selling or purchasing the right to collect, is only d'rabonon, because on a torah level one can only sell something that is tangible. With this Tosafos explains why the lender even after selling the contract, retains the ability to be mochel the contract. Since the lender remains the "owner" on a torah level, he has the ability to be mochel the money that he is owed. The Ran, Ritva and Rosh in kesubos all quote Rabbeinu Tam who holds that the ability to transfer the ownership of the contract is really d'oraysa. The rationale as to why the lender can still be mochel the contract is that every contract has 2 shi'budim: 1. a lean on the borrower himself. 2. a lean on the property of the borrower. The lender only has the ability to sell and transfer ownership of #2, the lean he has on the borrowers property, which will enable someone else to collect from it. But, the lender cannot transfer the lean on the borrower himself. Since the

lender retains the lean on the borrower himself, he can be mochel that lean, thereby undermining the right of the buyer to collect from the borrowers property. The Shach (c.m. 66:1) has a very long discussion where he cites many opinions who hold like tosafos that mechiras shtaros is only d'rabonon, but ultimately paskens that it is d'oraysa (he has an elaborate discussion arguing that the shita of the Ri"f is that it is d'oraysa).

Tosafos 66b is troubled that according to their opinion that mechiras shtaros is only d'rabonon, why do we need a pasuk to exclude shtaros from o'na'ah. The entire concept of ona'ah only exists when one sells a contract, and the whole concept of selling isn't d'oraysa? Tosafos answers that we need the pasuk for a case where the lender lost the contract, and the finder overcharges when he sells it back to the lender. The ketzos 66:1 struggles with trying to understand what tosafos means. If the torah doesn't recognize the ability to transfer ownership of contracts, then the lender will always legally be the one who has the right to collect with the contract. So, how can the finder actually "sell" the contract back to the lender, the debt of the contract always belongs to the lender, not the finder. The ketzos explains that we are speaking about a case where the lender was meya'esh on the contract. Through the yi'ush of the lender, the finder is zocheh in the ability to collect with this contract which he then sells back to the lender (and overcharges - the pasuk excludes this case from ona'ah). Why does yi'ush work to entitle the finder to collect using this contract, whereas selling the contract doesn't work to allow the buyer to collect? The ketzos explains based on Tosafos that the inability to sell a contract stems from the fact that the money that is owed is not in the reshus of the seller (lender), and one cannot sell something that is not in their reshus. However, yi'ush works by lost objects that aren't in the owners reshus, therefore yi'ush works to remove the rights of the lender and allows the finder to be the new "owner" of the contract.



The approach of the ketzos is a big chiddush. Simply speaking, Tosafos holds that the lender who is the holder of the contract has no ability to transfer his ownership to anyone else. If the ketzos is correct that he can be me'ya'esh on the contract enabling the finder to collect with it, even when he sells the contract we should interpret the sale as a yi'ush (since he recognizes that he won't ever be able to collect with it) which enables the buyer to now own the rights of collection? The nesivos disagrees with the ketzos. Although one can be meya'esh from something not in his possession, the Nesivos argues that the finder would not become the new "owner", rather the borrower would own it by not having to pay. Therefore, the Nesivos explains that Tosafos holds that the lender has the ability to sell the paper of the contract to a buyer who will then be able to decide whether to sell it to back to the lender, or sell it to the borrower so that the lender cannot legally collect from him. Therefore, if the lender loses the contract and is me'ya'esh, the finder is zocheh in the paper of the contract and now has the ability to sell it either to the lender or to the borrower. This type of sale would be d'oraysa, and therefore yi'ush would also work m'doraysa, therefore we need a pasuk to exclude it from ona'ah.

#### HALACHOS OF THE DAF

(Choshen Mishpat Siman 197, 198)

As mentioned previously, in order for an object to be transferred into someone else's ownership, a kinyan is required.

Mesirah means that it was given over. The buyer simply holds onto the object, and without lifting or pulling it, he has acquired the object, via the kinyan of mesirah.

Aside from animals, which can be acquired either through mesirah or meshicha – pulling, mesirah is a valid kinyan, only when one can't make meshicha. An example would

be, if one were to acquire a ship, which can't be dragged. All other movable objects can not be acquired through mesirah.

Mesirah can only be valid in a Reshus Harabim, or a property which is not owned jointly by the seller or the buyer, nor do they have permission from the owner to enter.

In order to acquire an animal via mesirah, the buyer can do any of the following:

Hold onto its; leg, hair, caddle, load, muzzle, or bell.

The seller need not actually hand over the object, rather as long as the buyer holds onto the object in front or on the command of the seller, the mesirah is valid.

#### DAILY MASHAL

##### *The Frog, the Snake and the Raven*

Rabbah bar bar Chanah saw a frog as big as a town with sixty houses. A huge snake swallowed it and an enormous raven devoured the snake and flew to a branch of a tree which, despite the bird's weight, did not break.

Ritva comments that the tale is a metaphor for the Arabian empire, which assimilated and mixed a number of ethnic groups: Mohammed and his followers conquered and united the peoples of southwest Asia, North Africa and Iberia and then ruled over a great percentage of our people. The living tree is Hashem's constant miraculous care and concern which give us the strength to survive: "The tree is sturdy enough", concludes the Ritva, "to enable us to live with the Arabs and observe the Torah among them. Were we not seeing this with our own eyes, we would never believe it!"