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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

**1. In your Utensils – where?**

Rav and Shmuel say that one acquires items placed in his utensils, unless they are in a public area. Rabbi Yochanan and Rish Lakish say that he acquires items placed in his utensils, even if they are in the public area. Rav Pappa explains that they do not disagree. Rav and Shmuel were referring to a public street, where people have no right to leave their items, while Rabbi Yochanan and Rish Lakish are referring to a small alleyway off the public street, where people have the right to place their items. Since a small alleyway is not a private area, Rabbi Yochanan and Rish Lakish referred to it as a public area.

The *Gemora* supports Rav Pappa from a statement of Rabbi Avahu, who quotes Rabbi Yochanan saying that one acquires items placed into his utensils wherever he has permission to place them. This qualification excludes a true public area, indicating that Rabbi Yochanan agrees to Rav and Shmuel’s statement.

The *Gemora* attempts to disprove the exclusion of a public area for acquisition in a utensil from a *braisa*. The *braisa* lists four categories of acquisitions of merchandise in a utensil:

Acquisition	Whose Utensil?	Domain
Until the utensil is filled, belongs to seller Once the utensil is filled,	Neither buyer or seller	Public area or area not owned by

belongs to buyer		seller or buyer
As it’s put into the utensil, belongs to owner of utensil	Seller or buyer	
Buyer, when he removes it from its current domain		Seller’s
Buyer , when the seller agrees to the sale		Buyer’s
[Buyer, when he rents or gets permission to use the domain		Third party]

[The last category is equivalent to the third, as both are acquired when the buyer removes the impediment of someone else’s domain.]

The *Gemora* notes that the first two categories, which describe an item being acquired by one’s utensils, are in effect even in a public area. This seems to disprove Rav and Shmuel’s limitation.

The *Gemora* deflects this by saying that the *public area* in the *braisa* means small alleyways next to a public street.

The *Gemora* objects, since *public area* is put together with *an area not owned by the buyer or seller*, indicating that it is an area where neither buyer nor seller have permission to place their items, i.e., a public street.



The *Gemora* answers that the area *not owned by either* is actually an area not owned *exclusively* by either, but owned jointly. Both buyer and seller have permission to place their items in such an area, similar to alleyways near the public street.

Rav Sheishes asked Rav Huna whether a buyer's utensils acquire items placed in it when the utensil is in the seller's domain.

Rav Huna responded that the *Mishna* in Gittin can resolve this. The *Mishna* says that if a man threw a *get* to his wife's clothing or basket, she acquires the *get*, and is divorced. Since the *Mishna* says that she acquires the *get* when it reaches her basket, even if she's in the domain of her husband, it proves that a buyer's utensils acquire items in them, even in the seller's domain.

Rav Nachman objected that this *Mishna* is not a good proof, since the case is qualified by many *Amoraim*:

1. Shmuel: the basket is hanging on the wife, and not on the floor.
2. Rish Lakish: the basket is attached to the wife.
3. Rav Ada bar Ahavah: the basket is on her lap.
4. Rav Mesharshia brai d'rav Ami: her husband sells baskets, and doesn't mind her keeping her basket in his domain.
5. Rabbi Yochanan: a husband doesn't mind the space a woman takes for her lap and basket.

Therefore, we cannot resolve from here the general question of whether a buyer's utensils acquire items in them when in the seller's domain.

Instead, the *Gemora* attempts to resolve this from the *braisa* quoted above. The third category was when the sale was done in the seller's domain, and the *braisa* said that the sale occurs only when the buyer raises the items or removes from their location. The *Gemora* assumes that

the utensils are the buyer's, and nonetheless the buyer does not acquire the item in them.

The *Gemora* objects and says that the case is the seller's utensils.

The *Gemora* says that the last category (*where the sale is in the buyer's domain*) will then also be a case of the seller's utensils, in which case the sale should not be effective as soon as the seller agrees.

The *Gemora* says that the last category is a case of the buyer's utensils. The *Gemora* explains that generally the utensils in a domain are those of the domain's owner, so the *braisa* chose a case of the seller's utensils in his domain, and the buyer's utensils in his domain.

Rava attempts to resolve this from a *braisa*. The *braisa* says that if a buyer led his donkey drivers or workers, who were holding merchandise, into his house, the sale is not effective, and both buyer and seller can back out. This is true whether they only settled on a price without measuring, or measured without settling on a price. If the buyer or seller unloaded the merchandise, and then brought it into the buyer's house, and they agreed on a price, the sale is effective, and neither can back out. If the merchandise was only measured, but they didn't agree on a sale price, the sale is not effective. The *Gemora* assumes that the merchandise was in the seller's utensils, and the buyer still acquires the merchandise as soon as they enter his domain and they agree on a price. This indicates that the acquisition follows the domain and not the utensils. Thus, just as merchandise in a seller's utensils are acquired by a buyer when they are in his domain, a buyer would not acquire items in his utensils in the seller's domain.

Rav Nachman bar Yitzchak says that the *braisa* is discussing a case where the merchandise was poured out of its utensils onto the domain of the buyer, posing no



barrier for the acquisition.

Rava objected, since the *braisa* says that the merchandise was unloaded, not spilled.

Mar bar Rav Ashi says the *braisa* is discussing bundles of garlic, which are not stored in sacks, but are still unloaded.

Ravina explains the last section of the *braisa*. Even when the merchandise is in the domain of the buyer, until they agree on a price, it is not acquired, since the buyer does not rely on the sale until he knows the price is acceptable. (84b – 86a)

## 2. Seller's Acquiescence

Ravina attempted to prove to Rav Ashi that a buyer's utensils acquire merchandise for him even in the seller's domain from Rav and Shmuel's statement that one's utensils acquire merchandise in them "anywhere". The inclusive term "anywhere" indicates that it acquires merchandise even in the seller's domain.

Rav Ashi deflects this by saying that it only includes the seller's domain when the seller told the buyer, "go acquire", indicating his consent to the buyer acquiring merchandise in his domain. (86a)

### INSIGHTS TO THE DAF

#### Which Four Categories?

By: Rabbi Yechezkel Khayyat

The *Gemora* quoted a *braisa* that listed four categories of acquisition, which depend on whose utensils and domain are used for the transfer.

The Rashbam explains that categories are the four methods of acquisition:

1. At the end of filling the utensil.
2. As merchandise is placed in the utensil.
3. When merchandise is removed (or when the domain is temporarily transferred, by rental or permission).
4. Whenever seller agrees.

Tosfos (85a Arba) says that the four categories are four utensils that can be used for a transfer:

1. A utensil owned by a broker, which can be used by seller and buyer.
2. The seller's utensil.
3. The buyer's utensil.
4. A third party's utensil, which the buyer must explicitly rent or receive permission, in order to acquire.

Rabbeinu Gershom says that the four categories are four domains:

1. A domain owned by neither buyer nor seller.
2. Seller's domain.
3. Buyer's domain.
4. Third party's domain.

See Tosfos for the objection to Rabbeinu Gershom's categorization.

#### Whose Utensils, Whose Domain?

The *Gemora* attempts to resolve whether a buyer's utensils acquire merchandise in a seller's domain, but does not definitively prove one side.

The Rosh (15) rules that this remains an unresolved question. Therefore, we default to the original ownership of the merchandise, both in a case of a buyer's utensils in the seller's domain, and a seller's utensils in the buyer's domain.

The Rif, however, had a text of the *Gemora* in which Rav



Sheishes replied to Rav Huna that the buyer does not acquire merchandise placed in his utensils, while in the seller's domain. As a follow up to this statement, the *Gemora's* dialogue proceeded to attempt to find a source for this case in the *braisa's* cited. However, even though the proof is unresolved, we remain with the original answer of Rav Sheishes, and therefore definitively rule that a buyer's utensils do not acquire when in the seller's domain.

The Bais Yosef (C" M 200) explains that the Rif requires that the buyer own the utensil, and have permission for it to be in its current domain, in order to acquire merchandise. Therefore, even if the seller's utensils are in the buyer's domain, the buyer will not acquire the merchandise.

The Rambam (Mechirah 4:1-2) also rules like the Rif on this question.

The Bais Shmuel (E" H 139: 16) explains that the distinction between the Rif and Rambam, who rule definitively that the buyer does not acquire when his utensils are in the seller's domain, and the Rosh, who rules so only due to an unresolved question, is in a case of *get*. If a husband gave his wife a *get* in a situation where he does mind her presence in his domain (e.g., *on a short bed*), this is a case of a buyer's utensils in the seller's domain. According to the Rif and Rambam, such a transfer is not effective, and the wife is not divorced. However, according to the Rosh, such a transfer is in doubt, and the wife is therefore in an unresolved state. She may not remarry, but if someone marries her, she must be divorced.

See Ktzos Hachoshen (C" M 200:6) for a discussion of buyer's utensil in a seller's utensil, in the buyer's domain.

Rav Ashi says that if the seller told the buyer, "go acquire," then he acquires in his utensils, even in the seller's domain.

The Tur (C" M 200) quotes the Rema who says that the seller must verbally tell the buyer to acquire, in order for the transfer to be effective.

However, the R"i Migash says that the seller may simply give the buyer permission to place his utensils in his domain.

The Bais Yosef (in Bedek Habayis) objects to the formulation of the Tur, and says that the R"i Migash and Rema do not argue, but were each simply providing an instance where the buyer's utensils can acquire merchandise in the seller's domain.

The Bach agrees that the Rema and R"i Migash disagree, and rules like the R"i Migash. The Shach (C" M 200:7) rules like the Bach, while the Nesivos (C" M 200:8) rules like the Rema.

### ***When the Seller Agrees***