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Bava Basra Daf 86

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Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h

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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

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.

The *Gemora* cites a *Mishna*: Properties that have responsibility (*real property, such as land or a house; they are called “property that has responsibility” because a lender can always collect his debt from the borrower’s land, even if he subsequently sells it*) can be acquired through money, a document, or *chazakah* (*a proprietary act; one that demonstrates that he owns it, such as plowing the field or locking the gate*). Properties that have no responsibility (*movable properties*) are only acquired through “pulling it near” (*meshichah*). (86a)

Meshichah and Hagba’ah

In Sura, they stated the following *halachah* in the name of Rav Chisda; in Pumbedisa, they stated it in Rav Kahana’s name, and others say that it was stated in the name of

Rava: This (*that movable properties are acquired through meshichah*) was only taught with respect to items that are not normal to be lifted; however, with respect to items that are not normal to be lifted, they will be acquired through *hagba’ah* (*lifting*) and not with *meshichah*.

Abaye sat and related the above *halachah*. Rav Ada bar Masnah asked him from the following *braisa*: [*There is a halachah of kim leih bid’rabbah minei -whenever someone is deserving of two punishments, he receives the one which is more severe.*] If one steals a purse on *Shabbos*, he is obligated to pay for the purse as well, as he had already stolen before he had been liable to be stoned (*for desecrating Shabbos*). If he was dragging the purse little by little out of the original owner’s domain, he is exempt from paying for the purse, as the act of desecrating *Shabbos* and the act of stealing happened at the same time. Now, a purse is something that is normal to be lifted, and nevertheless, it is acquired through *meshichah*!?

Abaye answered: It is referring to a purse that is tied by a string.

Rav Ada (*thinking that Abaye meant that it was small*) asked him back: I also understood it to be referring to a small purse (*and that is why I asked my question that it should not be acquired through meshichah; rather, through hagba’ah*)!?

Abaye responded: It is referring to a purse that needs a string attached to it (*due to its large size, it can only be dragged; not lifted*).

The *Gemora* asks from the *braisa* cited above: If the item being sold is resting in the seller's domain, the purchaser does not acquire it until he lifts it or takes it out of his domain. It emerges that something that is normal to be lifted can be acquired through *hagba'ah* or through *meshichah*!?

Rav Nachman bar Yitzchak answers: The *braisa* is referring to two different items: Something that is normal to be lifted is acquired through *hagba'ah*, and something that is normal to be dragged is acquired through *meshichah*.

The *Gemora* asks from our *Mishna*: If one is selling produce to his fellow and the fellow pulls them (*the fruits*) but they were not measured, he has acquired them. Now, produce is something that is normal to be lifted, and nevertheless, it is acquired through *meshichah*!?

The *Gemora* answers: The *Mishna* is referring to large containers (*filled with produce that is too heavy to be lifted*).

The *Gemora* asks: But if so, let us consider the latter ruling: If one is buying flax from his fellow, he does not acquire it until he moves it from this place to another place (*through hagba'ah*). Now, is flax not tied in large bundles (*and if so, it should be acquired through meshichah*)!?

The *Gemora* answers: Flax is different, for it slips out of the knots (*and therefore is tied in small bundles only*).

Ravina asked Rav Ashi from the following *Mishna*: A large animal is acquired through "handing it over" (*but not through "pulling it near"*). A small one is acquired through lifting it (*but not through "pulling it near"*); these are the

words of Rabbi Meir and Rabbi Eliezer. The *Chachamim*, however, say that a small animal is acquired through "pulling it near." Now, a small animal is something that is normal to be lifted, and nevertheless, it is acquired through *meshichah*!?

The *Gemora* answers: A small animal is different, for its feet cling to the ground (*and does not let itself be lifted; therefore it is acquired through meshichah*). (86a – 86b)

Measures

Rav and Shmuel both said: If a seller says to a buyer, "I am selling you a *kor* (*thirty se'ah*) for thirty *sela'im*," he can retract even at the last *se'ah* (*for he said, "I am selling you a kor," not thirty se'ah*). But if he says, "I am selling you a *kor* for thirty (*sela'im*), a *sela* per *se'ah*, then as the buyer takes each *se'ah* (*and makes a kinyan*), he acquires it (*and the seller cannot renege on the deal*).

The *Gemora* asks from the *braisa* cited above: If the measure was the property of one of them (*the buyer or the seller*), the owner of the measure acquires successive possession of every single bit as soon as it is put in. Surely this law applies even in a case where the measure had not been filled (*even though a specific amount was specified*)!?

The *Gemora* answers that this law refers only to a case when the seller said to the buyer, "I am selling you a *hin* for twelve *sela'im*, each *log* for a *sela*. And, as Rav Kahana said (*with respect to the libations in the Temple*): There were markings in the *hin*; so too, in this case, there were markings on the measures (*and when one of those markings was reached, the buyer acquires it*). (86b)



INSIGHTS TO THE DAF

Normal Way of Carrying

Abaye sat and related the above *halachah*. Rav Ada bar Masnah asked him from the following *braisa*: [There is a *halachah* of *kim leih bid'rabbah minei* -whenver someone is deserving of two punishments, he receives the one which is more severe.] If one steals a purse on *Shabbos*, he is obligated to pay for the purse as well, as he had already stolen before he had been liable to be stoned (for desecrating *Shabbos*). If he was dragging the purse little by little out of the original owner's domain, he is exempt from paying for the purse, as the act of desecrating *Shabbos* and the act of stealing happened at the same time. Now, a purse is something that is normal to be lifted, and nevertheless, it is acquired through *meshichah*!?

Abaye answered: It is referring to a purse that is tied by a string.

Rav Ada (thinking that Abaye meant that it was small) asked him back: I also understood it to be referring to a small purse (and that is why I asked my question that it should not be acquired through *meshichah*; rather, through *hagba'ah*)!?

Abaye responded: It is referring to a purse that needs a string attached to it (due to its large size, it can only be dragged; not lifted).

Tosfos asks: How could the *Gemora* think that the *braisa* is referring to a small purse which can be lifted? If so, he should not be liable for violating the *Shabbos*, since it is not the normal way of carrying something!?

Tosfos answers that although with respect to acquisitions, the item can only be acquired through lifting, for this is its normal mode of transport; nevertheless, with respect to

Shabbos, it is regarded as normal.

HALACHOS OF THE DAF

Selling with a Measurement

In an instance where the seller is selling items that require measurement (i.e. fruits), using his own utensils, in a *simta* (alleyway), or even in the buyers property, the *halachah* will depend on how the sale was phrased.

If the seller said, "I'm selling you thirty pounds for thirty dollars," then the buyer may retract, as long as the seller did not yet measure the entire thirty pounds. The reason is because we consider the expression "thirty pounds for thirty dollars" to be one big sale. Therefore since the seller did not finish measuring, the buyer had not yet bought anything, and may retract.

According to the Mechaber, if the fruits were being measured with the buyers utensils, then we say that whatever was already measured, the buyer may not retract, since the sale is taking place in the buyers property, and his utensils are being used, we understand that the buyer agrees to immediately acquire whatever was measured. However the Rema maintains that even if the buyer's utensils were used, since the expression "thirty pounds for thirty dollars" was used, the buyer wants to get the full thirty pounds for his thirty dollars. Therefore he may retract until the entire thirty pounds was measured.

If the seller said, "I'm selling you thirty pounds at a dollar a pound" (or if he said, "I'm selling you at a dollar a pound, thirty pounds"), then we consider each pound to be a separate sale. In a case where the buyer's utensils were used and the sale is taking place in the buyers property (or even in a *simta*), then as soon as they decided on the price, even before measuring, the buyer has acquired the fruits and may not retract. The Rema disagrees and holds



that even in such an instance, if the buyer did not yet pay,
then he may not retract.