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Bava Basra Daf 88

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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

Reverting to the above text. Shmuel said: He who takes a vessel from a craftsman to examine it, and an accident happened [while it was] in his hand, is liable.

The Gemora notes: This law [applies only to the case] where the price had been fixed.

Once a person entered a butcher's shop [and] lifted up a thigh of the meat. A rider came while he was holding it up [and] snatched it away from him. He came before Rav Yeimar [who] ordered him to pay its price.

The Gemora notes: But this law is [applicable only to the case] where the price has been fixed.

A person once brought gourds to Pum Nahara, [when] a crowd assembled [and] everyone took a gourd. He called out to them, “Behold these are dedicated to God.” [When] they [the buyers] came before Rav Kahana he said to them: No one may dedicate a thing which is not his.

The Gemora notes: But this [applies only to the case] where the price is fixed, but [when] the price is not fixed, they remain in the possession of their owner who may rightly dedicate them.

Our Rabbis taught in a braisa: A person, [who comes] to buy herbs in the market, and picks out and puts down, even all day long, does not acquire possession [of the herb] nor does he become liable to give [its] ma’aser. [If] he has made up his mind to buy it, he acquires possession

and becomes liable to give the ma’aser. [If he desires to withdraw,] he cannot return it [to the seller], for it has become subject to ma’aser, and he cannot separate ma’aser [before returning] because he would thereby reduce their value. How then [is he to proceed]? — He gives the ma’aser and [returning the remainder] pays [to the seller] the price of the ma’aser.

The Gemora asks: Does one, then, acquire possession and become liable to give ma’aser because he has made up his mind to buy?

Rav Hoshaya replied: We deal here with [the case of] a God-fearing man like Rav Safra, for instance, who applied to himself: *And speaks truth in his heart.*

A wholesaler must clean his measures once in thirty days, and a householder once in twelve months. Rabban Shimon ben Gamliel says: the statement is to be reversed. A storekeeper must clean his measures twice a week, wipe his weights once a week and cleanse the scales after every weighing. Rabban Shimon ben Gamliel said: These laws apply only to moist [commodities], but in [the case of] dry [ones] there is no need [for the cleaning].

And [a storekeeper] must allow [the provision scale] to sink a handbreadth [lower than the scale of the weights]. [If] he (the seller) gave him the exact weight he must allow him the [following] additions: a tenth in [the case of] liquids and a twentieth in [the case of] dry [provisions].

Where the usage is to measure with a small [unit], one must not use a big measure; [if the usage is to measure] with a big [unit], one must not use a small measure. [If the usage is] to strike [the measure], [one must] not heap [it up]. [If the usage is] to heap [it up], one must not strike it.

The Gemora asks: From where [is] this law [to be inferred]?

Rish Lakish said: Scripture says: A perfect and just measure [shall you have]. [This means], make [your weight] just by giving of your own (a little extra).

The Gemora asks: If so, explain the latter clause. [It reads]: [if] he gave him the exact weight, he must allow him the [following] additions. Now, if giving overweight is a Biblical injunction, how is [he allowed] to give him the exact weight [only]?

But, [came the reply], the earlier clause [is not based on a Biblical injunction, but speaks] of a place where there was the practice [of giving overweight], and the statement of Rish Lakish has been made with reference to [what has been said, not in the earlier, but in] the latter clause, which reads: [if] he gave him the exact weight, he must allow him the [following] additions [and with reference to this it has been asked]: From where [is] this law? — [And] Rish Lakish said: Scripture says: and just, [which means], make [your weight] just, by giving him of your own.

And how much must be added to the weight? — Rabbi Abba bar Mamal said in the name of Rav: In [the case of] liquids, a tenth of a pound for [every] ten pounds.

The Mishna had stated: A tenth in [the case of] liquids, and a twentieth in [the case of] dry, etc.

The question was raised: Does this mean, a tenth of the [unit of the] liquids for [every] ten [units] of the liquid, and a twentieth of [the unit of] dry [provisions] for [every]

twenty [units] of dry; or [does it], perhaps, [mean] a tenth [of the unit] for [every] ten [units] of liquid and [a tenth of the unit] for [every] twenty [units] of dry [provisions]? — The matter stands undecided.

Rabbi Levi said: The punishment for [false] measures is more rigorous than that for [marrying] forbidden relatives; for in the latter case it has been said: *el* (for all these abominations), but in the former *eileh* (all who do these).

From where can it be shown that *el* [implies] rigor[ous punishment]? — For it is written: And the mighty [elei] of the land he took away.

The Gemora asks: Isn't *eileh* written also in the case of forbidden relatives?

The Gemora answers: That [*eileh* has been written] to exclude [the sin of false] measures from the punishment of kares.

The Gemora asks: [In] what [respect], then are [the punishments for giving false measures] greater [than those for marrying forbidden relatives]?

The Gemora answers; There, repentance is possible, but here, repentance is impossible.

Rabbi Levi further stated: Ordinary robbery is worse than the robbery of holy things, for [in] the former [case] 'sin' is placed before 'trespass' while in the latter, 'trespass' is mentioned before 'sin.'

Rabbi Levi further stated: Come and see [how] the attributes of the Holy One, Blessed be He, differ from that of mortals. The Holy One, Blessed be He, blessed Israel with (all) twenty-two [letters] and cursed them [only] with eight. He blessed them with twenty-two, from: *If [you walk] in My decrees* (where the first word begins



with an alef) to [I led you] erect (which ends with a tav, the last letter of the alef, beis); and He cursed them with eight, from: *And if you shall consider My decrees loathsome to and their spirit rejected My decrees.* But Moshe our teacher blessed them with eight and cursed them with twenty-two. He blessed them with eight, from: *And it shall come to pass, if you shall hearken diligently, to to serve them,* and cursed them with twenty-two, from: *But it shall come to pass, if you wilt not hearken, to And no man shall buy.*

INSIGHTS TO THE DAF

The public reading of the retributions in *Bechukosai*

Rabbi Levi says that Hashem is merciful, blessing us with 22 letters and cursing us with only eight: The blessings in *Bechukosai* (Vayikra 26:3-13) start with *alef* in verse 3, "*Im bechukasai,*" and end in *tav* in verse 13, "*komemiyus,*" while the curses begin with *vav* in verse 15, "*v'im*" and end with *mem* in verse 43, "*nafshom*" - from *vav* to *mem*, inclusive, being eight. The curses are not read in public as loudly as the rest of the Torah as "words of the wise are heard in a still voice". That is, warnings and admonitions are more effective if pronounced quietly and calmly (*Sefer HaMat'amim*, p. 144).

Where do the curses start? The current custom is to read softly from verse 14: "And if you don't listen to Me". The *Tzemach Tzedek* rules that they begin with verse 16: "I shall also do this to you" (Responsa, 56) but *Elijah Rabah* (428:13) remarks that our *sugya* starts counting the eight letters from verse 15: "And if you despise My statutes..." In his *Shoel Umeshiv* (2nd ed., I, 48), HaGaon Rav Yosef Shaul HaLevi Natanson adds that verse 15 **must** be included in the curses as they can't be construed as a mere list of punishments: verse 15 is a warning that retribution will ensue "if you despise My statutes", an accursed situation in itself which should also therefore be read softly.

For many generations the relevant '*aliyah*' has connoted anxieties, dissuading people from wanting to be called to the Torah for fear that the curses would affect them personally. Indeed, the suspicion may sometimes not be entirely unfounded. In his *Or Zaru'a* (I, *Hilchos Sheliach Tzibur*, 114), Rabbi Yitzchak of Vienna cites Rabbi Yehudah HeChasid, that if a person knows the *ba'al korei* dislikes him, he should refuse to be called to the '*aliyah*' of the curses, lest he be harmed.

A *ba'al korei* must have no one in mind: A *ba'al korei* must never think of applying any passage he reads in public to any individual - even a blessing and surely not a curse (*Mishnah Berurah*, O.C. 53, S.K. 58). Still, many communities developed a custom to pay an indigent person to accept the said '*aliyah*' in *Bechukosai*. The *gabai* would announce "Let whoever who wants come up", without mentioning a name, and the poor person would accept the '*aliyah*'. In other communities the *ba'al korei* would assume the *aliyah* and pronounce the blessings without his name being called (see *Remo*, O.C. 428:6; *Mishnah Berurah*, *ibid*, S.K. 17, and *Beur Halachah*, s.v. *Bapesukim*).

Reading the Torah without a *berachah*? Sometimes, though, even the poorest member of a congregation refused to be called to the dreaded '*aliyah*' and the *gabaim* then searched for a person, maybe drinking in the local tavern and agreeing to accept the '*aliyah*' for payment. Meanwhile, the *sefer Torah* lay in disgrace and some communities therefore required the *ba'al korei* to read the portion containing the curses without anyone pronouncing a *berachah* before or after, with the excuse that no one had been called up (the custom is mentioned in Responsa *Machaneh Chayim*, III, O.C. 16). The *poskim*, though, banned the custom as the public Torah reading must always be accompanied with a *Beracha* before and after. (see Responsa *Igros Moshe*, O.C., II, 35; etc.). Rabbi Yosef ben Moshe was the foremost pupil of Rabbi Yisrael

ben Pesachyah Isserlein, author of *Terumas HaDeshen*, and recorded his mentor's customs in the historic work *Leket Yosher*. He mentions (*O.C.*, p. 55) the revered gaon's custom to personally bless anyone accepting the said *'aliyah* with a special *Mi shebeirach*: "...He will bless [the person's name] for having harkened to the admonition of the Torah and will prosper him therefor".

HALACHOS OF THE DAF

If he struck it, he is responsible for it

The Torah says that if you see, for example, your brother's (fellow Jew's) ox apparently lost, you must not ignore it but return it to him (Devarim 22:1). The Gemara in Bava Metsi'a derives from the word "*v'his'alamta*" that an elderly person **may** ignore a find if he feels his handling it would disgrace him. In our *sugya*, though, Rabah asserts that if he struck a lost animal, he made an act similar to taking it and must assume the responsibility to return it.

Now, if the Torah exempts him, why does his handling the article reverse the situation? The Acharonim suggest that we try to define whether returning lost items is a **mitzvah** between Hashem and ourselves or an **obligation** toward another person. *Kerias shema*, for instance, is in the first category while repaying a theft is a financial debt. Is returning a lost article a mitzvah between Hashem and ourselves, in that he wants us to prevent another's loss, or a property-related obligation toward the article's owner? (See *Birkas Shemuel*, *Even HaAzel*, etc.). Indeed, both perspectives are correct. As soon as you see a lost item, **Hashem** commands you to prevent another's loss but once you handle it, you assume an **interpersonal** obligation, similar to returning a theft. If you lose it, for example, you must compensate its owner (see Bava Kama 56b and Bava Metzi'a 29a). An elderly person, then, is initially exempt from the mitzvah but if he handles the article, he becomes responsible toward another and can no longer exempt himself (as for the other reason

mentioned in our *sugya*, see *Even HaAzel*, *Hilchos Gezeilah VaAveidah*, 11:4, and *Chazon Yechezkel* on Bava Metzi'a, 2-9).

DAILY MASHAL

Measure for Measure

Chazal stress that Hashem refrains from punishing people for their sins till they "fill their measure" whereas for selling with a reduced measure, He punishes forthwith. Why is the reaction so harsh?

In his *Ahavas Yehonasan*, HaGaon Rav Yehonasan Eibeschitz zt"l explains that Hashem punishes people measure for measure. If someone, then, measures inexactly and pretends his measure is honestly full, Hashem also regards his measure of sin as already being full and punishes him immediately (*Ta'amei HaMinhagim*, 539).