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Bava Basra Daf 150

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Retaining Land

The *Mishna* had stated: If the *shechiv me’ira* left for himself land of any size, his gift is effective (even if he later recovers).

The *Gemora* asks: How much is “any size”?

Rav Yehudah answers in the name of Rav: Land which will be sufficient for his sustenance. Rabbi Yirmiyah bar Abba said: Even if left for himself only movables that will be sufficient for his sustenance.

Rabbi Zeira said: How accurate are the reported teachings of the elders! What is the reason in the case of land? It is because he will rely on it for his sustenance if he should recover. In the case of movables also, it may be assumed that he will rely on it for his sustenance if he were to recover.

Rav Yosef asked: Where is the accuracy? How can one say “movables” when the *Mishna* specifically stated “land”? And how can one say that “any size” means “sufficient for his sustenance” when the *Mishna* states “any size”?

Abaye said to him: Do you think that wherever “land” is stated, it means only land? Did we not learn the following: If one writes in a document: “All of my possessions are hereby given to my slave,” the *halachah* is that the slave goes free (because the slave is also one of his possessions;

and certainly, the slave now owns all of his possessions). However, if he left over for himself any amount of land, the slave does not go free. [This is because the master retained some property for himself. We can therefore assume that he intends to keep the rights to the slave as well. It follows that the slave does not acquire any of the property, for while he is a slave, he is not able to acquire anything for himself. It emerges that he acquires nothing; the document was written just to display favor towards the slave.] Rabbi Shimon says: He always goes free unless the master says, “All of my possessions are hereby given to my slave except for one portion in ten thousand.” [In such a case, we assume that the master intends to retain the rights to the slave. However, if he only said, “except for land,” we may assume that he intends to free the slave.] And Rav Dimi bar Yosef said in the name of Rabbi Elozar: They considered leaving over some movable objects regarding a slave significant, but not regarding a *kesuvah*. [The *Rashbam* explains that just as someone who leaves over some land has not really released his slave when he writes, “All of my possessions are given to my slave besides a small amount of land,” the law would be the same if he substituted movable objects for land. However, if he gave his wife a small amount of movable objects while giving his sons the rest of his possessions including all of the land, she does not give up her rights to the land when it comes to collecting her *kesuvah*. This is as opposed to him giving her a small amount of land. If she does not protest, it shows she waives her rights to the rest of the land. This proves Abaye’s point that land does not always mean only land, and is therefore a question on Rav Yosef.]

Rav Yosef answers: [*Land always means only land.*] The reason that the *Mishna* you quoted says “land” is because of the first part of the *Mishna*. Rabbi Akiva says: Rabbi Akiva says that even a small amount of land obligates one in *pe’ah* (*leaving a corner of the land that bears produce for the poor*) and *bikkurim*. One can also write a *pruzbul* on such land. [*A pruzbul is a document instituted by Hillel whereas one can avoid having loans owed to him being made null and void after the Shemittah year, as stated by the Torah, by giving his loans over to Beis Din in this document. The borrower must own a small amount of land for this to take effect.*] One can also acquire movable possessions along with a small amount of land with money, documents, and a *chazakah*. This is why the second part of the *Mishna* also stated “land.” (149b – 150a)

Kol She’Hu

The *Gemora* asks: Is it true that whenever a “*kol she’hu*” -- “a little bit” is mentioned, there is no minimum amount? Doesn’t the *Mishna* say: Rabbi Dosa ben Hurkinas says that five sheep with a total of sixty *sela’im* of wool (*in weight, see Meiri*) from each one make one obligated in giving *reishis ha’gez* (*the first shearings*). The *Chachamim* say: Five sheep with even a “*kol she’hein*” of shearings. And we said: What is a “*kol she’hein*?” Rav says: This means sixty *sela’im*, but they must be distributed evenly amongst the sheep. [*In other words, the Chachamim hold that each sheep must provide twelve sela’im of wool on its own, not that there must simply be a total of sixty sela’im.*]

The *Gemora* answers: It is true that this *Mishna* really should not say “*kol she’hein*.” However, because the first *Tanna* (*Rabbi Dosa*) said a large amount and the *Chachamim* followed with a small amount, it says “*kol she’hein*.”

The *Gemora* says: It is obvious that if a person on his deathbed says, “My movable possessions should go to So-and-so,” that indeed all of his possessions are acquired besides wheat and barley (*for they are called “grain”*). If he

said, “All of my possessions should go to So-and-so,” the person acquires his wheat and barley, as well as his upper grindstone (*that is more portable*), besides his lower grindstone. If he said, “Anything of mine that is carried,” he even includes the lower grindstone. (150a)

Are Slaves Like Land?

They inquired: Are slaves considered like land (*regarding giving presents*) or like movable objects?

Rav Acha the son of Rav Avya said to Rav Ashi: Come and hear a proof to the following answer. The *Mishna* says: One who sells a city includes in the sale pits, ditches, caves, bathhouses, birdhouses, olive presses, and irrigated fields. Movable property is not included. If one says he is selling the city and everything in it, even animals and slaves are included in the sale. If you say that slaves are considered like movable objects, it is understandable why they were not included originally. However, if you say they are like land, why weren’t they included in the original deal? It must be that they are like movable objects.

The *Gemora* rejects this proof in the following manner. Why, then, does it say, “even animals etc.?” It must be that there is more of a novelty in saying that objects that move on their own are acquired than objects that are stationary unless moved. If the above difference is true, we can similarly answer that land that moves is different than land that does not otherwise move (*and slaves can be considered as land*).

Ravina said to Rav Ashi: Come and hear a proof from a *Mishna* above: If one writes in a document: “All of my possessions are hereby given to my slave,” the *halachah* is that the slave goes free (*because the slave is also one of his possessions; and certainly, the slave now owns all of his possessions*). However, if he left over for himself any amount of land, the slave does not go free. [*This is because the master retained some property for himself. We can*

therefore assume that he intends to keep the rights to the slave as well. It follows that the slave does not acquire any of the property, for while he is a slave, he is not able to acquire anything for himself. It emerges that he acquires nothing; the document was written just to display favor towards the slave.] Rabbi Shimon says: He always goes free unless the master says, "All of my possessions are hereby given to my slave except for one portion in ten thousand." [In such a case, we assume that the master intends to retain the rights to the slave. However, if he only said, "except for land," we may assume that he intends to free the slave.] And Rav Dimi bar Yosef said in the name of Rabbi Elozar: They considered leaving over some movable objects regarding a slave significant, but not regarding a *kesuvah*. And Rava asked Rav Nachman: What is the reason for this law? Rav Nachman replied: A slave is a movable object, and a movable object in contrast to other movable objects is considered leaving something (i.e. part of his possessions) behind. A *kesuvah* of a woman deals with land, and movable objects in contrast to land is not considered leaving something over. [This clearly shows Rav Nachman holds that a slave is considered a movable object regarding the giving of presents.]

Rav Ashi answered Ravina (text of Rashbam): Actually, a slave is like land (unlike the opinion of Rav Nachman). Being that we require "*kerisus*" -- "cutting off (i.e. completely)" from the master in order for the slave to be considered freed, even if a small amount of movable objects are left, it is considered as if the slave is also not freed.

Rava says in the name of Rav Nachman: Five people who give presents have a different law when they give all of their possessions from when they give away part of their possessions. They are: A *shechiv mei'ra* (sick person on his deathbed), his slave, his wife, his sons, and a *mivrachas* (i.e. a woman who is having her possessions "escape" her husband, as will be explained later).

This is true regarding a *shechiv mei'ra* as explained in the following *Mishna*. The *Mishna* states: If a *shechiv mei'ra* wrote that all of his possessions should go to others but he kept some for himself, the presents are valid even if he recovers. If he gave away everything, they are not valid.

This is true regarding his slave as explained in the following *Mishna*. The *Mishna* states: If one writes in a document: "All of my possessions are hereby given to my slave," the *halachah* is that the slave goes free (because the slave is also one of his possessions; and certainly, the slave now owns all of his possessions). However, if he left over for himself any amount of land, the slave does not go free.

This is true regarding his wife as explained by Rav Yehudah in the name of Shmuel. He says: Whoever writes that all of his possessions should go to his wife has only made her an administrator over them (and has not given them to her as a present).

This is true regarding his sons as explained in the following *Mishna*. The *Mishna* states: If someone wrote that all of his possessions should go to his sons, and he left his wife only a small amount of land, she has lost the right to claim her *kesuvah* from the land (if she agreed to this arrangement).

This is true regarding a *mivrachas* as explained by Mar. Mar states: A *mivrachas* (woman who wants to ensure that the man she is about to marry does not gain control of her possessions) must write that all of her possessions go to someone else. [If she left some of her possessions out, we assume it was a real present and she cannot get her possessions back from that person.]

Regarding all of the cases above, leaving out movable possessions is also considered significant. The exception to this is the case of a woman's *kesuvah*, where she only loses the rights to collect from land if she was given a small amount of land, not of movable objects. This is because a



kesuvah is based on collecting from land, not movable objects.

Ameimar says: If there are movable objects stated in the *kesuvah* and they are present, they are also significant enough to cause forfeiture of her ability to collect land.

If someone says, "My possessions go to So-and-so," his slaves are included, as they are called possessions. This is as the *Mishna* states: If one writes in a document: "All of my possessions are hereby given to my slave," the *halachah* is that the slave goes free (*as well as getting all of the possessions*).

Land is called possessions. This is indicated from the *Mishna's* statement, "Possessions that one is responsible for (*i.e. meaning land*) are acquired through money, documents, and *chazakah*."

A cloak is called possessions. This is apparent from the *Mishna's* statement, "And those (*possessions*) that one is not responsible for (*after the sale*) are only acquired through pulling."

Money is called possessions. This is apparent from the *Mishna's* statement, "And those (*possessions*) that one is not responsible for are acquired together with possessions one is responsible for through money, document, or *chazakah*."

This last law is illustrated from an incident where Rav Pappa was owed 12,000 zuz by people in Bai Chozai. He transferred the money to Rav Shmuel bar Abba along with his door post (*which is real estate*), using *kinyan agav* (*acquiring movables through a valid acquisition in land*), and when Rav Shmuel bar Abba returned with the money, Rav Pappa (*who was extremely happy*) went out to greet him all the way to Tavach.

Documents are called possessions. This is as Rabbah bar Yitzchak states: There are two laws regarding a document. If someone states, "Acquire this field for So-and-so and write for him a document," he can retract the writing of the document but not the giving of the field. If he says, "(*Acquire this field for So-and-so*) on condition that you write him a document," he may retract both the giving of the field and the writing of the document. [*In the first case, the document merely recorded the gift. In the second case, the gift was only supposed to be given through the acquisition enacted by giving the document.*] Rav Chiya bar Avin said in the name of Rav Huna: There are three laws regarding documents. Two of them have just been mentioned. A third is if the seller wrote the sale document before the actual transaction. This is legal, as we have learned that we allow such a document to be written up for a seller even if the buyer is not present. In such a case, once the buyer takes hold of the land, he automatically acquires the document wherever it is located. And this is what we learned: And those (*possessions*) that one is not responsible for are acquired together with possessions one is responsible for through money, document, or *chazakah*. (150a – 151a)

INSIGHTS TO THE DAF

Comparing Slaves and Land

1.

The Torah has a *hekesh* which equates slaves with land. Our *Gemora* says that although slaves might be considered as land, there are differences between the two stemming from the fact that slaves are movable and land is not. Therefore, our *Gemora* says that even if people consider slaves like land, they don't mean to include them in the sale of the city. All real land is included in the sale.

There are other instances where the actual difference between slaves and land causes them to have different *halachos* as well. Rav Chaim HaLevi quotes a Raavad who differentiates between these two categories. If one steals a



slave and the owner gives up hope of retrieving him, the owner loses ownership of him. This is not the case with land. Why should there be a difference? Rav Chaim answers that if giving up hope is related to the ability the Torah gives thief to acquire a stolen object, there would be no difference between the two. Anytime an object is out of the possession of the owner, and the owner has lost hope of retrieval, he relinquishes ownership. It doesn't matter whether the object was lost or stolen. Therefore what matters is whether the object in reality is out of the owner's possession. Slaves, which move, can be considered out of the owner's possession. Land, which is stationary, is always considered in the owner's possession. Thus, even though there is a *halachic* comparison between the two categories, sometimes the different properties of each will determine differences in *halachah*.

HALACHOS FROM THE DAF

Slave - Karka or Mitaltilin

The *Gemora* inquired: When a *shechiv mei'ra* gave his movables as a gift, does a non Jewish slave have the status of *karka* (*property, real estate*), or movables (*lit. movable objects, i.e. possessions that are not property*)? Rashbam points out, that for Biblical laws there is no question that they are considered *karka*, however, here we need to ascertain what the *shechiv mei'ra* had in mind when he gave a gift of movables - did he mean to include the slave or not.

One of the cases mentioned in Rashbam where a slave has the status of *karka* is by *kinyan*. The Shulchan Aruch (Choshen Mishpat 196:1) rules: A slave has the same laws as *karka*, therefore he can be acquired via money, document or *chazakah* (*he may also be acquired through kinyan suddar and meshicha, ibid*). In order to be acquired via *chazakah*, the slave needs to serve his master, for example - he should tie or untie his shoes; he should carry the masters clothing to the bathhouse or do any of the

myriad other chores which he is expected to do once he is officially his slave.

There is a *machlokes Rishonim* how to rule. The *Gemora* did not answer this question; therefore, the Rema says that the slave is not included in the gift, since the burden of proof is on the one exacting money from his fellow. The Rif, Rosh and Rambam, however, rule that the slave is included.

The Shulchan Aruch (Choshen Mishpat 248:10) rules that the slave is included.

DAILY MASHAL

A Copier's Error

HaGaon Rabbi Ben-Tziyon Bruk zt"l, *rosh yeshivah* of Beis Yosef-Novardok in Yerushalayim, recounted an anecdote about the Steipler, HaGaon Rav Yaakov Kanievsky zt"l, from the days when he was a pupil at the Novardok Yeshivah in Bialystok in northeastern Poland. The Steipler would always make various efforts to instill faith in his colleagues and once, on Purim, he hung up an originally composed page of Gemara in the spirit of the holiday, complete with a made-up column of "Rashi".

"We don't put faith", said the Steipler's mishnah, "in property that can be relied on (real estate), in chattels or in money but only in Hashem who by His word created the world" and the Gemara continued: "Rav Novardoka said, '**Property that can be relied on** is a heretic's error'" (*ta'us kofer*, a play of words on *ta'us sofer*, "a copier's error"). The Steipler's Rashi then commented, "He who relies on property is a heretic" (*Peninei Rabeinu Kehilos Ya'akov*, p. 18).