



Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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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

Explaining Ma’amad Shlashtan

Rav Ashi offers an alternative answer (*as to why ma’amad shlashtan will be effective by a loan*): It is because it is advantageous to the borrower to have a new loan (*to the third party*) rather than the old loan (*to the original lender; because now he can delay somewhat the paying up of the debt*). With this benefit in mind, he decides to pledge himself to the new creditor.

Huna Mar the son of Rav Nechemiah said to Rav Ashi: But if the loan was given to someone similar to the Bar Elyashiv family, who force their debtors to pay at once, would he not acquire ownership of the loan (*for in this case, there is no benefit to the borrower*)? And if you will respond that in this case, it is not effective, it will emerge that you are applying different standards to the rule (*and generally speaking, the Rabbis issued uniform decrees*)!?

Rather, Mar Zutra said: This is one of three *halachos* that the Rabbis decreed arbitrarily without providing a reason (*similar to a halachah l’Moshe mi’Sinai*). The first (of these three *halachos*) is this one. The second of these *halachos* is that which Rav Yehudah said in the name of Shmuel: If a deathly ill person writes over all his possession to his wife, he has merely appointed her as the caretaker (*this was done with the power of hefker Beis Din hefker in order to ensure that the children will not lose their inheritance*). The third matter is that which Rav Chananiah said: If a man celebrates the marriage of his eldest son in a special house, the son becomes the owner of the house. (13b – 14a)

Ma’amad Shlashtan Incidents

Rav said to Rav Acha Bardela: “I have a *kav* of saffron by you, give it to So-and-so. And I am telling you in his presence that I will not retract.”

The *Gemora* asks: Are we to understand from this that if he had desired to retract, he could have done so? [*Since he transferred it over through a ma’amad shlashtan, he cannot retract!*]

The *Gemora* answers: What Rav meant was that this cannot be retracted (*because the transfer was effective through the ma’amad shlashtan*).

The *Gemora* asks: Rav already said this one time, since Rav Huna said in the name of Rav: If one said, “You have a *maneh* of mine in your hand; give it to So-and-so,” if this was said in the presence of the three of them, he acquires it!?

The *Gemora* answers: If it were only for Rav’s first ruling, I might have supposed that this rule applies only to a big gift, but that for a small one, it is not necessary for the third party to be present. Rav’s second ruling (*the kav of saffron, which is a small amount*) teaches us that this is not so.

There were some gardeners who were calculating their (*partnership*) accounts with one another, and found that one had five *isterei zuzim* too much. The other gardeners

told him in the presence of the owner of the land, "Give the extra money to the owner of the land," and he made a *kinyan* (an act of acquisition) from him. Afterwards, he made his own calculation and realized that he had nothing extra. He went to Rav Nachman. Rav Nachman said to him: What can I do for you? For one thing, there is the *halachah* established by Rav Huna in the name of Rav (that *ma'amad shlashtan effects a kinyan*) and for another thing, he made a *kinyan* from you.

Rava said to him: Does this man mean to say that he is unwilling to pay? He is claiming that he does not owe the money! Whereupon, Rav Nachman said: If so, the *kinyan* was made in error, and in such a case, the *kinyan* is ruled to be null and void. (14a)

May the Sender Retract?

It has been stated: If a man says to an agent, "Take to So-and-so the *maneh* which I owe him," Rav says. He continues to be responsible for it (if something should happen to it, until it reaches the lender's hand), and he may not retract the commission, whereas Shmuel says that since he is still responsible on it, he may retract (until it reaches the lender's hand).

The *Gemora* comments: May we presume that the point at issue between them is this: Rav is of the opinion that "take" is equivalent to "acquire" (and therefore the sender may not retract; he nevertheless, is still responsible on the money, for the lender did not authorize that the money should be sent through this agent). And Shmuel is of the opinion that "take" is not equivalent to "acquire."

The *Gemora* disagrees: No! Both opinions hold that "take" is equivalent to "acquire" (in other cases, where there is no responsibility, like by a gift), but the point at issue here is this: Rav is of the opinion that we do not say "since (he is still responsible on it, he may retract)" and Shmuel is of the opinion that we do.

The *Gemora* cites a *braisa* which supports Rav: If a man says to an agent, "Take to So-and-so the *maneh* which I owe him"; or "Give So-and-so the *maneh* which I owe him"; or "Take to So-and-so the *maneh* which he has given me as a deposit"; or "Give So-and-so the *maneh* which he has given me as a deposit," he remains responsible for the money, yet if he wishes to retract the commission, he may not do so.

The *Gemora* asks: By the deposit, the sender should be able to retract by claiming the following: The depositor does not desire that his money should be in the hand of someone else!?

Rabbi Zeira answered: The *braisa* is referring to a case where the custodian has been established to be a liar. (14a)

Rav Sheishes had some money owed to him in Mechuza for some cloaks (which he had sold there). He said to Rav Yosef bar Chama (who was going there), "When you return from there, bring the money with you." Rav Yosef went (there and met with them), and they gave him the money. They said to him, "Let us acquire from you (through an act of chalifin – that we will now be released from any liability for any losses that may transpire on the way)." He said to them, "Yes," but afterwards, he excused himself (from any obligations). When he returned (and told Rav Sheishes what transpired), Rav Sheishes said to him, "You acted correctly, by not making yourself a borrower who is the servant of the lender." According to another version he said to him, "You acted correctly, because (they, the debtors, are those who should be) a borrower is the servant of the lender." (14a)

Frightening Custodian

Rabbi Achi the son of Rabbi Yoshiyah deposited a silver vessel with custodians in Nehardea. He said to Rabbi

Dustai the son of Rabbi Yannai and to Rabbi Yosi the son of Kippeir, who were on their way there, “When you come back from Nehardea, bring me the vessel back.” They went and got it from the custodians. The custodians said to them: “Make with us a *kinyan* (that we will thereby be exempt from any further responsibilities)!” They said, “No (we do not want the liabilities)!” “Then, give it back,” they said. Rabbi Dustai the son of Rabbi Yannai was willing, but Rabbi Yosi the son of Kippeir refused. The custodians started to hurt Rabbi Yosi the son of Kippeir (in order to get the vessel back). They said to Rabbi Dustai, “See what your friend is doing.” He replied, “Beat him up good!” When they returned to Rabbi Achi the son of Rabbi Yoshiyah, Rabbi Yosi said, “Look, master, not only did he not assist me, but he even said to them, ‘Beat him up good!’” Rabbi Achi the son of Rabbi Yoshiyah asked Rabbi Dustai, “Why did you act in that manner?” He replied, “Those people are very tall and their hats are very tall, and their voices comes from their midsection (since they had very deep voices), and their names are frightening - Arda and Arta and Phili as their leader. If they give instructions, ‘Tie him up,’ they tie him up; if they instruct, ‘kill him,’ you are killed. If they had killed Dustai, who would have given Yannai, my father, a son like me?” Rabbi Achi the son of Rabbi Yoshiyah asked Rabbi Dustai, “Are these men connected with the government?” He replied, “Yes.” Do they have horses and mules that run behind them?” He answered, “Yes.” Rabbi Achi the son of Rabbi Yoshiyah asked Rabbi Dustai, “If that is so, you acted properly.” (14a – 14b)

Is “Take” Equivalent to “Acquire”?

If a man said to an agent, “Take a *maneh* to So-and-so,” and he went and looked for him, but did not find him (because he had died), one *braisa* rules that he must return the money to the sender, and another *braisa* rules that he must give it to the inheritors of the man to whom it was sent.

The *Gemora* comments: Shall we say that the point at issue between them is that one is of the opinion that “take” is equivalent to “acquire” (and therefore it is given to the recipient’s heirs) and the other holds that it is not!

Rabbi Abba bar Mamal: No! Both opinions hold that “take” is not equivalent to “acquire.” The explanation of the two *braisos* is as follows: One *braisa* speaks of a sender who is healthy (and “take” is not equivalent to “acquire”) and the other *braisa* is referring to one who is deathly ill.

Rav Zevid offers an alternative explanation: Both *braisos* are discussing a deathly ill person, but one *braisa* is referring to a case where the recipient is alive at the time when the money was given to the agent, and the other *braisa* is speaking about a case where he was not alive at the time.

Rav Pappa offers a third explanation: Both *braisos* are discussing a healthy person, but one *braisa* is referring to a case where the recipient died while the sender was still alive, and the other *braisa* is speaking about a case where the sender died while the recipient was still alive. [This is based upon the principle that it is an obligation to carry out the wishes of the deceased.]

The *Gemora* notes: May we presume that the issue of whether “take” is equivalent to “acquire” is one on which there was a difference of opinion among the *Tannaim*, as it has been taught in the following *braisa*: If a man said to an agent, “Take a *maneh* to So-and-so,” and he went and looked for him and did not find him (because he had died), he must return the money to the sender. If the sender has also died meanwhile, Rabbi Nassan and Rabbi Yaakov say that he should return it to the inheritors of the sender. And some say that he should return it to the inheritors of the person to whom the money was sent.



Rabbi Yehudah HaNasi said in the name of Rabbi Yaakov, who said it in the name of Rabbi Meir: It is an obligation to carry out the wishes of the deceased (*and therefore the money should be given to the recipient's inheritors*).

The *Chachamim* say that the money should be divided.

Here in Bavel, they said that the agent should use his own discretion. [*He should try to ascertain what the intentions of the sender were.*]

Rabbi Shimon HaNasi said: I was an agent with a case of this kind, and it was decided that the money should be returned to the inheritors of the sender.

The *Gemora* explains each opinion: The *Tanna Kamma* is of the opinion that “take” is not equivalent to “acquire” (*and that is why he rules that he must return the money to the sender*).

Rabbi Nassan and Rabbi Yaakov were of the same opinion, and they also held that even where the sender has died (*it should be returned to the sender's inheritors*), for there is no obligation to carry out the wishes of the deceased.

And “some say” is of the opinion that “take” is equivalent to “acquire” (*and that is why he returns it to the inheritors of the person to whom the money was sent*).

Rabbi Yehudah HaNasi, who said in the name of Rabbi Yaakov, who said it in the name of Rabbi Meir holds that “take” is not equivalent to “acquire,” but where the sender has died, there is an obligation to carry out the wishes of the deceased.

The *Chachamim*, who say that the money should be divided are in doubt (*if “take” is equivalent to “acquire” or not, and they are also uncertain if there is an obligation to carry out the wishes of the deceased or not*).

Those in Bavel hold that relying on the agent's discretion is the preferable method to decide this case.

And Rabbi Shimon HaNasi was coming to tell us that an incident occurred with him.

The *Gemora* rejects this explanation: If the sender is healthy, everyone would agree (*that “take” is not equivalent to “acquire”*). Here, however, we are discussing a case where the sender is deathly ill and the dispute here is actually a dispute between Rabbi Elozar and the *Chachamim*. For we learned in the following *Mishna*: If a man verbally divides his property among his inheritors, Rabbi Elozar says that whether he is healthy or dangerously ill (*he is required to make a formal kinyan to transfer his property*), real property (*land*) can be transferred only by money payment, by document, or by an act of possession (*chazakah; displaying ownership*), and movable property may be transferred only by pulling (*a kinyan meshichah*). The *Chachamim* say that transference of ownership (*by a deathly ill person*) can be accomplished in both cases by his mere word of mouth. The *Chachamim* said to him: There is the case of the mother of the sons of Rocheil who was ill and said, “Let my brooch be given to my daughter; it is worth twelve *maneh*.” She then died and the *Chachamim* carried out her instruction! He replied: The sons of Rocheil — may their mother bury them! [*They were sinners and no proof can be brought from them.*]

The *Gemora* now explains the opinions of the *braisa*: The *Tanna Kamma* holds like Rabbi Elozar (*that the words of a deathly ill person are not effective*).

Rabbi Nassan and Rabbi Yaakov also hold like Rabbi Elozar. However, although the owner dies, there is no obligation to carry out the wishes of the deceased.

And “some say” hold like the *Chachamim* (*that the words of a deathly ill person are effective immediately*).

Rabbi Yehudah HaNasi, who said in the name of Rabbi Yaakov, who said it in the name of Rabbi Meir holds like Rabbi Elozar. However, where he had died in the meanwhile, he applied the principle that there is an obligation to carry out the wishes of the deceased.

The *Chachamim*, who say that the money should be divided are in doubt (*if the halachah is like Rabbi Elozar or the Chachamim, and they are also uncertain if there is an obligation to carry out the wishes of the deceased or not*).

Those in Bavel hold that relying on the agent's discretion is the preferable method to decide this case.

And Rabbi Shimon HaNasi was coming to tell us that an incident occurred with him. (14b – 15a)

INSIGHTS TO THE DAF

Dangerous Custodians

Rabbi Achi the son of Rabbi Yoshiyah deposited a silver vessel with custodians in Nehardea. He said to Rabbi Dustai the son of Rabbi Yannai and to Rabbi Yosi the son of Kippeir, who were on their way there, "When you come back from Nehardea, bring me the vessel back." They went and got it from the custodians. The custodians said to them: "Make with us a *kinyan* (*that we will thereby be exempt from any further responsibilities*)!" They said, "No (*we do not want the liabilities*)!" "Then, give it back," they said. Rabbi Dustai the son of Rabbi Yannai was willing, but Rabbi Yosi the son of Kippeir refused. The custodians started to hurt Rabbi Yosi the son of Kippeir (*in order to get the vessel back*). They said to Rabbi Dustai, "See what your friend is doing." He replied, "Beat him up good!" When they returned to Rabbi Achi the son of Rabbi Yoshiyah, Rabbi Yosi said, "Look, master, not only did he not assist me, but he even said to them, 'Beat him up good'!" Rabbi Achi the son of Rabbi Yoshiyah asked Rabbi

Dustai, "Why did you act in that manner?" He replied, "Those people are very tall and their hats are very tall, and their voices comes from their midsection (*since they had very deep voices*), and their names are frightening - Arda and Arta and Phili as their leader. If they give instructions, 'Tie him up,' they tie him up; if they instruct, 'kill him,' you are killed. If they had killed Dustai, who would have given Yannai, my father, a son like me?" Rabbi Achi the son of Rabbi Yoshiyah asked Rabbi Dustai, "Are these men connected with the government?" He replied, "Yes." Do they have horses and mules that run behind them?" He answered, "Yes." Rabbi Achi the son of Rabbi Yoshiyah asked Rabbi Dustai, "If that is so, you acted properly."

*** It is evident from the *Gemora* that halachically, they were not obligated to return the vessel to the custodians. The Tosfos Harosh explains: The *Gemora* above had stated that unless the custodian has been established as a liar, he could claim that the depositor does not want that his deposit shall be in someone else's hands (*and therefore, it should be returned to the custodian*). Here, the custodian cannot make such a claim. For Rav Achi explicitly instructed them to return the vessel to him.

*** Rashi cites two explanations as to what Rav Dustai said when the custodians were hurting Rabbi Yosi. Either he said, "Beat him up good (*in order that he should return the vessel to them*)!" Or, he said, "He is deserving of this (*since he is not returning the vessel*)." Some Rishonim derive from here that it is permitted to save oneself with someone else's body, for Rav Dustai was telling them to hit Rabbi Yosi because he was terrified that he would get hit.

*** Rabbi Dustai excused his actions by saying, "Those people are very tall and their hats are very tall, and their voices comes from their midsection, and their names are frightening - Arda and Arta and Phili as their leader." Rashi explains that they were men of great

dimensions and they wore awesome clothing. And since they had very deep voices, it appeared as if their voices were coming from their midsections. The Maharsha brings an alternative explanation according to the simple reading of the *Gemora*: They were one cubit tall and their hats were one cubit tall. It was because of this that their voices appeared to emanate from their midsections.

*** Rabbi Dustai concluded, "If they had killed Dustai, who would have given Yannai, my father, a son like me?" The Vilna Gaon states that it may be gleaned from here that when a son adds an honorable title to his father's name, he is permitted to say his father's name. It is only forbidden for one to say his father's name without a title.

DAILY MASHAL

The Two Guarantors

"When you will lend money to My people, to the poor person who is with you, do not act towards him as a creditor" (Shemos 22:24). The Midrash relates this to two verses in Mishlei – "He who is gracious to a poor man lends to Hashem (19:17) ...and a borrower is a slave to a lender (22:7)".

The Mishlei Yaakov explains that the Midrash is giving us advice not to demand the repayment of a loan from a pauper, and elaborates with the following mashal: A poor man once borrowed money, and was required to provide two guarantors who would guarantee the loan for him. One of the guarantors he provided was exceedingly wealthy and well-known to be a generous philanthropist, whereas the second guarantor was a pauper with no resources. The loan guarantee was structured so that the creditor would be able to request repayment from either of the two guarantors. There is no doubt that the creditor would ask the wealthy philanthropist for the repayment and would not waste his time asking the poor guarantor.

The verse in Mishlei is telling us that when a person lends money to a poor man, it is as if Hashem Himself is a guarantor, and it is far more sensible to ask Hashem, the Master of the Universe, for the repayment, rather than asking the pauper.