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Gittin Daf 38

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Daf Notes is currently being dedicated to the neshamot of

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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

Idolater Acquiring a Slave

The *Gemora* asks: Now according to Rava that the *Mishna* is referring to a case where the owner has given up hope on recovering the slave and that the slave if ransomed for the purpose of being a slave becomes enslaved to the second master, from whom does the second master acquire him? It must be said that he is acquiring him from the captor. Is the captor himself his rightful owner? Yes, the *Gemora* answers. He was his owner in respect of his labor.

The *Gemora* proves that the captor owns the rights to the labor of the captive. For Rish Lakish has said: How do we know that an idolater can own another in respect of his labor? It is written: *And also from the children of the sojourners, who dwell among you in the land of Canaan, from them shall you acquire slaves.* This verse indicates that you may acquire from them (*a Jew may acquire an idolater as a slave*), but they cannot acquire from you (*an idolater cannot acquire a Jew as a slave*), nor can they acquire from one another (*an idolater cannot acquire another idolater as a slave*). Perhaps I shall say that they cannot acquire slaves from one another as far as their person is concerned (*he becomes free without an emancipation document, or so that if he escapes, he will be permitted to marry a Jewess*). Shall I say also that they cannot acquire each other for their labor? You may conclude that this is not so through the following *kal vachomer* (*literally translated as light and heavy, or lenient and stringent; an a fortiori argument; it is one of the thirteen principles of biblical hermeneutics; it employs*

the following reasoning: if a specific stringency applies in a usually lenient case, it must certainly apply in a more serious case): An idolater may acquire a Jew for his labor; he should certainly be able to acquire another idolater for his labor!

The *Gemora* asks: But perhaps this acquisition can only be by purchasing him with money (*since that is the method that the is stated in the Torah for an idolater to acquire a Jew*), but not with a *chazakah* (*by performing acts of servitude for the master; a Jew can acquire an idolater as a slave through chazakah, and that we derive as follows: A Jew may acquire land with a chazakah and a slave is compared to land; an idolater, however, cannot acquire land with a chazakah, only with money, so perhaps the idolater cannot acquire the slave with chazakah either*)?

Rav Pappa answers: Some of the territory of Ammon and Moav became purified for acquisition by the Jewish people through the conquest of Sichon. [*The Jews were forbidden to occupy the territory of Ammon and Moav. Sichon, the Emorite king, had captured a portion of the land of Moav, and this the Jews were permitted to occupy. Evidently, an idolater can acquire ownership through a chazakah. So too, an idolater can acquire a slave with a chazakah.*]

The *Gemora* asks: This only proves that an idolater can acquire another idolater through a *chazakah*. How do we know that an idolater may acquire a Jew (*who is more difficult to acquire, fro he is obligated in mitzvos*) in the same manner?



The *Gemora* answers: It is from the verse: *And he took some of them captive.* [By the fact that the Torah refers to the Jews captured by the Canaanites as captives, this indicated that a captor may indeed acquire a Jew.] (37b – 38a)

Escaped Slave

Rav Shemen bar Abba said in the name of Rabbi Yochanan: A Canaanite slave who (*was imprisoned after being captured by idolaters*) escapes from prison becomes a free man, and not only that, his master is forced to write an emancipation document for him.

The *Gemora* asks from our *Mishna*: Rabban Shimon ben Gamliel said: It makes no difference what the purpose of the ransom was for; he can anyway be enslaved. And Rabbah bar Chanah said in the name of Rabbi Yochanan that whenever Rabban Shimon ben Gamliel is mentioned in the *Mishna*, the law always follows him besides in three cases, one regarding a guarantor, Tzidon and one regarding a last proof? [These are referring to three different cases in the Talmud.] [Why would the escaped slave be different that the ransomed one?]

The *Gemora* notes: According to Abaye (*that the Mishna is referring to a case where the master has not yet given up hope of recovering the slave, there is no difficulty*), we can answer that the case of the escaped slave is referring to a master who has given up hope on recovering his slave (*and that is why he gains his freedom*). However, according to Rava, who holds that the *Mishna* is also dealing with a case where the master has given up hope, there is a contradiction between the two statements of Rabbi Yochanan!?

Rava can reply: What is Rabban Shimon's reason? It is on account of Chizkiyah (*he remains a slave in order to ensure that slaves should not go and throw themselves into the*

hands of bandits and free themselves from their masters). But this would not apply to one who escapes. For since he risks his life to escape, is it likely that he will throw himself into the hands of the bandits in the first place? (38a)

Taken Captive

The *Gemora* cites an incident: A slavewoman of Shmuel was taken captive. Some Jews ransomed her for the purpose of remaining a slave and sent her back to Shmuel, along with the following message, We hold according to Rabban Shimon ben Gamliel (*that he remains enslaved anyway*), but even if you hold with the *Chachamim*, you may keep her as a slave, because we have ransomed her for that purpose.

The *Gemora* notes: They thought that Shmuel had not yet given up hope of recovering her, but this was not correct, as he had given up hope (*and therefore, following Abaye's explanation of the Mishna, she must be set free*), and Shmuel not only refrained from making her a slave again, but he did not even require her to obtain an emancipation document.

In this, Shmuel followed his own reasoning, for Shmuel said: A master who declares his slave ownerless, the slave goes out to freedom and it is not necessary to write a document of emancipation. This is because it is written: *And every man's slave that is bought with money.* Does this mean the slave of a man and not of a woman? No! Rather it means that a slave over whom his master still has control is called a slave, but a slave over whom his master has no control is not called a slave.

The *Gemora* cites another incident: A slavewoman of Rabbi Abba bar Zutra was taken captive. A certain idolater from Tarmud ransomed her for the purpose of marrying her. The Rabbis sent a message to Rabbi Abba saying, "If you wish to help her out, send her an emancipation document."



The *Gemora* discusses the message. What was the case? If they were able to redeem her (*the idolater was willing to free her*), what was the necessity of the emancipation document? And if they were not able to ransom her, what benefit would emerge from it?

The *Gemora* answers: It was possible for them to ransom her, and if he would send them an emancipation document, they (*the Jews of the town*) would join together and collect the money to ransom her. [*For they did not hold of Rabban Shimon ben Gamliel that it is always a mitzvah to ransom slaves, even if they would remain a slave.*]

Alternatively, you can say that they were not able to ransom her, but if the master would send her an emancipation document, she would be degraded in the eyes of the idolater, and he would consent to her ransom.

The *Gemora* asks: But haven't we learned that the idolaters like the cattle of Jews (*for intercourse*) more than their own wives? [*Why would he free her just because she is a slave?*]

The *Gemora* answers: It is beneath their dignity to display their desires in public. (38a)

Freeing a Slave

The *Gemora* relates another incident: There was a certain slave woman in Pumbedisa who was used by men for sinful acts. Abaye said: Were it not that Rav Yehudah has said in the name of Shmuel that whoever emancipates his Canaanite slave violates a positive commandment, I would compel her master to write an emancipation document for her.

Ravina said: In such a case, Rav Yehudah would agree that this is proper, in order to prevent the immorality.

The *Gemora* asks: Shouldn't Abaye permit this as well? But Rav Chanina bar Rav Katina has said in the name of Rabbi Yitzchak: There was an incident regarding a certain woman who was half slave woman and half free woman (*she had two masters, and one of them freed her*), and they forced her master to make her a free woman. And Rav Nachman bar Yitzchak said: It was because people were acting immorally with her!?

The *Gemora* answers: In that case, she was not suitable to marry a slave or a free man; here, they could have designated a slave for her, and he would have protected her (*therefore, there is no reason to free her*).

We had stated above: Rav Yehudah said in the name of Shmuel: Whoever emancipates his Canaanite slave violates a positive commandment, for it is written: *You shall work them forever.*

The *Gemora* asks from the following *braisa*: There was an incident with Rabbi Eliezer, who upon entering a Synagogue, found only nine men. He freed his slave to complete the quorum of ten!?

The *Gemora* answers: If it is being done for the sake of a *mitzvah*, it is different.

The *Gemora* cites a *braisa*: *You shall work them forever.* Rabbi Yishmael says that this is optional (*one is permitted to buy the son of a man from other nations, not from the seven Canaanite nations, who marries a Canaanite as a slave*), while Rabbi Akiva says that this is obligatory.

The *Gemora* asks: Perhaps Rabbi Eliezer held like the one who said that is optional (*but there is no prohibition against freeing a slave*)!?

The *Gemora* answers: We cannot think like that, for Rabbi Eliezer stated explicitly that it is an obligation.

Rabbah said: For these three offences wealthy people become impoverished: For emancipating their Canaanite slaves, for inspecting their property on *Shabbos*, and for arranging their *Shabbos* meal at the hour when the discourse is being given in the *Beis Medrash*. For so Rabbi Chiya bar Abba said in the name of Rabbi Yochanan, that there were two families in Yerushalayim, one of which used to arrange their meal on *Shabbos* (*at the hour when the discourse is being given in the Beis Medrash*) and the other on the Friday evening (*in order that they should be able to attend the discourse on Shabbos; nevertheless, it was not proper, for the main Shabbos meal should be on Shabbos day; alternatively, they ate their meal before Shabbos began*) and both of them became extinct. (38a – 38b)

Consecrating a Slave

Rabbah said in the name of Rav: If a man sanctifies his slave, he becomes a free man (*and he is not sanctified*). What is the reason? It is because his body cannot become sanctified (*for he cannot be brought as a korban and he is not suitable for the Temple treasury*), nor did he say that he is sanctified in respect of his worth. He obviously meant that he is to become a member of the ‘holy people’ (*i.e. the Jewish people; therefore, he gains his freedom*).

Rav Yosef, however, reported Rav as saying: A master who declares his slave ownerless, the slave goes out to freedom.

The *Gemora* notes: The one who applies this rule where the slave is sanctified would certainly apply it where he declared him ownerless; but the one who applies it where the slave is declared ownerless, would not necessarily apply it where he is sanctified, because the master may have been referring to his worth.

The *Gemora* inquires: In the above cases, does the slave require an emancipation document? The *Gemora* resolves this from that which Rav Chiya bar Avin said in the name of Rav: In both cases, the slave gains his freedom, and he requires an emancipation document.

Rabbah states: We can ask on our own ruling (*that a slave who is sanctified gains his freedom*) from the following *braisa*: If a man consecrates his property and some slaves are included in it, the Temple treasurers are not allowed to emancipate them (*they do not own their bodies; just their value*), but they must sell them to others (*and the proceeds belong to the treasury*), and these others are allowed to emancipate them. Rebbe says: I say that the slave himself can pay his own purchase price and gain his freedom, because the treasurer is selling him (*the slave*) to himself!?! [Evidently, when the master consecrates a slave, he is intending that the slave’s value should belong to the Temple treasury!?!]

The *Gemora* answers: Rav is himself considered a *Tanna* and therefore, he is allowed to differ with the *braisa*. (38b)

INSIGHTS TO THE DAF

Missing his Hand

Shmuel said: A master who declares his slave ownerless, the slave goes out to freedom and it is not necessary to write a document of emancipation.

The *Ketzos Hachoshen* (200:5) asks: If, according to Shmuel, an emancipation deed is not necessary, even to permit him to marry a Jewish woman, why then, in an ordinary case of emancipating a slave through a document, would it be necessary for the deed to be written for the sake of this particular slave? It should be regarded as if he was granting his slave to another owner through a document, where definitely, the *halachah* would not



require that it should be written *lishmah*, for it is merely an acquisition document!?

He answers that if the document would only be regarded as an acquisition document, the slave would not have the ability to acquire it, for his hand is like his master's hand. It is only when the master hands over to the slave a deed of emancipation, then he is granting him "his hand" to acquire the document at the same time.

Half and Half

The *Gemora* relates an incident: There was a certain slave woman in Pumbedisa who was used by men for sinful acts. Abaye said: Were it not that Rav Yehudah has said in the name of Shmuel that whoever emancipates his Canaanite slave violates a positive commandment, I would compel her master to write an emancipation document for her.

Ravina said: In such a case, Rav Yehudah would agree that this is proper, in order to prevent the immorality.

The *Gemora* asks: Shouldn't Abaye permit this as well? But Rav Chanina bar Rav Katina has said in the name of Rabbi Yitzchak: There was an incident regarding a certain woman who was half slave woman and half free woman (*she had two masters, and one of them freed her*), and they forced her master to make her a free woman. And Rav Nachman bar Yitzchak said: It was because people were acting immorally with her!?

The *Gemora* answers: In that case, she was not suitable to marry a slave or a free man; here, they could have designated a slave for her, and he would have protected her (*therefore, there is no reason to free her*).

The *Minchas Chinuch* (§ 347) asks from this *Gemora* on the Rashba, who holds that there is no prohibition against freeing a half slave, half free man because of his "free

half." If so, what is the *Gemora* asking on Abaye from the case of the half slave woman and half free woman? Abaye would concede there that it is permitted to free her because she is already half free!?

The *Oneg Yom Tov* (§ 51) answers that the Rashba said that only regarding a slave, where his free half is obligated in more *mitzvos* than his slave half, for if he gains his freedom, he will have the ability to fulfill the *mitzvah* of procreation. The Torah, therefore, did not obligate the master to work him forever. However, by a slave woman, who will not have the *mitzvah* of procreation even if she gains her freedom, the prohibition against emancipating her remains!

QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF

to refresh your memory

Q: Why does *shemita* does not cancel the loan when it is written with a *mashkon* (*collateral*)?

A: For the lender acquires the *mashkon*.

Q: Would someone be believed to say that he had a *pruzbul*, but he lost it?

A: Yes.

Q: For what two purposes can you ransom a slave that has been taken captive?

A: Either for a slave, or as a free man.