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Gittin Daf 42

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Partial Emancipation

[Rebbe and the Chachamim disagreed regarding a partial emancipation. Rabbah and Rav Yosef argue as to when this dispute applies. Rabbah held that the argument is only where the master has written for him a deed of emancipation. Rebbe holds that just as with money, the slave can acquire either the half or the whole of himself, so too, with a deed, he can acquire either the half or the whole of himself. The Chachamim, however, hold that emancipating half the slave will not set him free. However, regarding money, both agree that he can acquire himself through a partial redemption. Rav Yosef, after his initial opinion was refuted, maintains that they argue by both cases.]

The Gemora analyzes our Mishnah, which discusses a case of half-slave, half-free man. According to Rabbah, we can explain that our Mishnah is referring to a case where he was half-redeemed by money, and it will be in accordance with all opinions (for Rabbah maintains that everyone agrees that a slave may acquire himself through a partial redemption). However, according to Rav Yosef, shall we say that the Mishnah is only in accordance with Rebbe, and not the Chachamim?

Ravina answered: The Mishnah is referring to a case where the slave belonged to two partners and one of them emancipated him. In this case, they all agree that he acquires his partial freedom. (41b3 – 42a1)

Rabbah says: The dispute between Rebbe and the Chachamim is where the master frees half his slave and keeps the other half, but if he frees half and sells the other half or gives the other half as a gift to someone, since the entire slave left his ownership, both Rebbe and the Chachamim would agree that he acquires the half of himself.

Abaye said to him: And do they not differ even where the master released the slave completely? But we learned in a Baraisa: If a man in writing gives away his property to two of his slaves simultaneously (by giving the documents to an agent, who acquires it for both of them at the same time), they acquire ownership (of half of his possessions) and may emancipate one another. [It would seem from here that a partial emancipation is effective, for we are saying that each one of the slaves acquires half of the other one.] And yet, it has been taught by another Baraisa: If a man says, “All of my property is given over to my slaves So-and-so and So-and-so,” they do not acquire ownership, even of themselves!? It must be explained that the first Baraisa concurs with Rebbe (that a partial emancipation is effective) and the other with the Chachamim (that a partial emancipation is not valid, even when he is releasing the slave completely)!? [This explanation would be difficult according to Rabbah, who maintains that they do not argue in such a case!?!]

The Gemora answers: No! Both Baraisos can concur with the Chachamim’s viewpoint (that a partial emancipation is effective when the master is releasing the slave completely). The reason for the inconsistency between

the *Baraisos* is because the first one is referring to a case where the master gave away his entire property to both slaves (*and therefore, they each acquire half of the possessions and then they free the other one*), while the second *Baraisa* refers to the case where the master said, “Half to you and half to you.” [*If he gave this document to them at different times, in which case they were not completely released from his ownership, the partial emancipation is certainly not effective. But even if he presented both of the deeds at the same moment, it still would not be effective, because it is possible that he assigned the same half of his property to both, and so half of each of them would still be left enslaved.*]

The *Gemora* asks on this interpretation: But the latter clause of the *Baraisa* states: If the master said, “Half to you and half to you,” they do not acquire ownership. Does not this indicate that the first clause of the *Baraisa* refers to the case where he said, “My entire possessions are given to you”?

The *Gemora* answers: This second clause is explaining the previous one. The first clause concluded by stating that they do not acquire ownership, even of themselves. The *Baraisa* asks: When is this so? The *Baraisa* answers: It is in a case where the master said, “Half to you and half to you,”

The *Gemora* notes: This supposition is reasonable, since if we assume the first clause [to refer to the case] where he says ‘the entire’, seeing that where he says ‘the entire they do not acquire ownership, is it necessary [to tell us that they do not do so] where he says ‘half and half’? — This is not a conclusive argument. [It may be that] the second clause was put in to make clear [the reference in] the first: lest you might think that the first clause [refers to] where he said half [to one] and half [to the other], leaving us to infer that where he said ‘the entire’ they acquire ownership, he adds in the second clause, ‘where he says half and half,’ which shows that the first clause

[speaks of the case] where he says ‘the entire,’ and even so they do not acquire ownership.

The *Gemora* offers an alternative explanation of the two *Baraisos*. There is no difficulty: The second *Baraisa* is speaking of a case where there was only one document (*in which case they would not gain their freedom, just as two women cannot be divorced with one get*), and the first *Baraisa* is dealing with a case where he gave two documents.

The *Gemora* asks: If it is speaking of one document, what is the reason to discuss a case where he said, “Half to you and half to you”? Even if he would have said, “My entire possessions are given to you,” they would not acquire ownership?

The *Gemora* answers: This in fact is what the *Baraisa* is saying: They do not acquire even themselves. This is only so if he gives them only one document. If, however, he gives out two documents, they do acquire ownership. And if he says, “Half to you and half to you,” even if he gives out two documents, they do not acquire ownership.

The *Gemora* offers another explanation of the two *Baraisos*. There is no difficulty: The first *Baraisa* is discussing a case where the two documents were given simultaneously, and the second *Baraisa* is discussing a case where the documents were given one after the other.

The *Gemora* asks: If that is so, I can understand why the second slave does not acquire ownership, because the first has already become his owner; but why doesn’t the first slave acquire both himself and the other? Rather, it is clear that the previous resolutions are better.

Rav Ashi answers: The second *Baraisa* is different, because the master called them “my slaves.” [*In the document, they are referred to as “his slaves,” hence it is*

to be assumed that he had no intention of releasing them, but merely to give them his property, which, however, as slaves they cannot acquire.]

Rafram asked Rav Ashi: Perhaps the master meant, “My former slaves”? Have we not learned in the following *Mishnah*: 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.*]

Now the reason for Rabbi Shimon is that he added the words, “except for one portion in ten thousand.” Otherwise, he would gain his freedom. But, why does he go free, seeing that the master called him “my slave”? Obviously he means, “my former slave,” so too here, he meant “my former slaves.” (42a1 – 42a3)

Damaging a Half-slave, Half-free Man

If a half-slave, half-free man is gored by an ox (*and he gets injured*), if it is on a day on which he is to work for the master, the payment for the damages goes to the master. If it occurred on the day when he belongs to himself, it goes to himself.

The *Gemora* asks: If that is so, then on his master’s day, he should be allowed to marry a slave-woman, and on his own day, he should be permitted to marry a free woman?

The *Gemora* answers: We do not apply this principle where a prohibition is involved. [*The division of each day is only a monetary arrangement. In truth, he is always a half-slave, half-free man.*]

The *Gemora* asks on this from the following *Baraisa*: If an ox kills one who is a half-slave, half-free man, the (ox) owner gives half the fine (*if the ox is a habitual gorer, the owner must pay thirty shekels as a penalty*) to his master and half the *kofer* payment (*the value of the victim as determined by what price he would have fetched at the slave market; this serves as an atonement for the owner of the ox*) to the slave’s heirs. Why should this be? Let us say that if it occurred on his master’s day, the entire money should go to his master, and if it happened on his own day, the money should go to himself?

The *Gemora* answers: The case is different here, because the principal is completely depleted (*the slave has died, and therefore it is logical that they should share the loss equally*).

The *Gemora* asks: What is a case is where the principal is not completely depleted?

The *Gemora* answers: If, the ox hit him on his hand, causing it to shrivel, but in a way that it will eventually be healed.

The *Gemora* asks: This answer is satisfactory if we accept the view of Abaye, who said that (*in cases where an injured person is expected to fully recover*) he is compensated both for the larger disability (*the fact that presently, his market value has diminished*) and the smaller disability (*the loss of work that he incurs from the*

fact that he is laid up in bed because of the pain). But according to Rava who said that he is only compensated for his day to day losses, since in this case we are dealing with an ox, the owner should only be liable for payment of damage (*not the disability payments*)!?

The *Gemora* answers: The *halachah* mentioned will only apply when the blow was given by a person.

Alternatively, we can answer that the ruling above is only a statement (*it is not a Mishnah or a Baraisa*), and it is one with which Rava does not hold. (42a3 – 42b2)

Fines by a Slave who needs his Emancipation Document

The *Gemora* inquires: Concerning an emancipated slave who has not yet received his deed of emancipation (*e.g. the owner consecrated the slave; the owner declared him ownerless; a half-slave, half-free man*), is a fine (*if the slave was killed by an ox*) to be paid for him (*to the master*) or not? It is written: *Thirty shekels of silver he shall give to his master*, and this man is not his master; or do I say that since the slave is still lacking his deed of emancipation, we do call him a master?

Come and hear from the following *Baraisa*: If an ox kills one who is a half-slave, half-free man, the (ox) owner gives half the fine (*if the ox is a habitual gorer, the owner must pay thirty shekels as a penalty*) to his master and half the *kofer* payment (*the value of the victim as determined by what price he would have fetched at the slave market; this serves as an atonement for the owner of the ox*) to the slave's heirs. Now presumably, this ruling is so even on the basis of Beis Hillel's later teaching in the *Mishnah* (*that we force the master to free the half-slave, half-free man, and therefore he is someone who is lacking a deed of emancipation, and we see that the master does get the fine*)!

The *Gemora* rejects the proof: No! This ruling is so only on the basis of Beis Hillel's earlier teaching (*that he still works for the master every other day*).

Come and hear from the following *Baraisa*: If a master knocks out his slave's tooth and then he blinded his eye, the slave goes free on account of the tooth (*for the Torah expressly states that if the master knocks out his tooth or eye, he must set him free*) and the master must compensate him for the eye (*in the same manner as he would pay for blinding the eye of an ordinary Jew*). Now, if you say that a fine must be paid for him (*for a slave who is lacking his emancipation document*) and the fine belongs to his master, why would it be that when others injure him they pay the master, and when the master himself injures him, he is required to pay to the slave!?

The *Gemora* answers: Perhaps this *Baraisa* concurs with the opinion who says that he (*a slave whose tooth or eye was knocked out by the master*) does not need a deed of emancipation (*and that is why the payment goes to the slave*), for we learned in the following *Baraisa*: For all these losses (*of the tips of any member of his body*), a slave gains his freedom. He requires, however, a deed of emancipation from his master; these are the words of Rabbi Yishmael. Rabbi Meir says: He does not require one. Rabbi Eliezer says: He does require one. Rabbi Tarfon says: He does not require one. Rabbi Akiva says: He does require one. Those who determine the rulings between the *Chachamim* say: The opinion of Rabbi Tarfon is apparently correct in the case of a tooth and an eye, because the Torah expressly states that he gains his freedom in those cases, but the opinion of Rabbi Akiva seems more correct in the case of the other members, because the freedom in that case is a fine derived by the Sages.

The *Gemora* asks: A fine, you call it? They deduce it from the text of the Scripture!? — Let us say, therefore, because it is a deduction of the Sages. (42b2 – 42b3)

Terumah to a Slave who needs his Emancipation Document

The *Gemora* inquires: Concerning an emancipated slave who has not yet received his deed of emancipation (e.g. *the owner consecrated the slave; the owner declared him ownerless; a half-slave, half-free man*), does he eat *terumah* (if his master was a *Kohen*), or not? It is written: *The acquisition of his money (eats terumah)*, and this slave is no longer his acquisition, or perhaps, since he still needs his deed of emancipation, he is still regarded as the *Kohen's* acquisition of money?

Come and hear from that which Rav Mesharshiya said: We learned in a *Mishnah*: If the child of a *Kohenes* became intermingled with her slavewoman's child, they may both eat *terumah* (for even a slave of a *Kohen* is permitted to eat *terumah*), but they share one portion at the granary (this will be explained in the *Gemora*). When they grow up, they freed each other (but until then, they may eat *terumah*, even though they are lacking a deed of emancipation)!

The *Gemora* rejects the proof, for in the *Mishnah's* case, if *Eliyahu* would arrive and inform us that this one is the slave, would he not be considered an acquisition of money? [Of course, he would; that is why he can eat *terumah*!] However, here, he might not be considered his acquisition of money at all! (42b3 – 42b4)

Selling his Slave just for the Fine

The *Gemora* inquires: If a man sells his slave in respect of the fine only (the thirty shekalim that the master would receive if he was killed by an ox), is he sold or not sold? The question is applicable whether we accept the opinion of Rabbi Meir or whether we accept that of the *Chachamim*. It is a question for Rabbi Meir, since it may be said that when Rabbi Meir ruled that a man can

transfer something which does not yet exist, that was only in cases such as the fruit of a date tree which is usual to come into existence later, but in this case, who can tell if the slave will actually be gored? And even if he is gored, how can we be certain that the owner of the ox will pay? Perhaps he will admit and be exempt from paying (as is the rule by fines)! It is also a question for the *Chachamim* since it may be said that when the *Chachamim* said that a man cannot transfer something which does not yet exist, that was only in cases such as the fruit of a date tree which presently does not exist, but in this case, the ox and the slave exists. What is the *halachah*? (42b4 – 43a1)

DAILY MASHAL

Afflictions Purge a Person's Sins

The *Gemora* states that if a master knocks out the tooth of his slave, or if he blinds his eye, he must release the slave.

It is noteworthy that Rabbi Yochanan in the *Gemora* in *Brochos* (5a) derives from here that a person is considered fortunate if Hashem inflicts him. It is taught through a *kal vachomer* as follows: If the loss of a tooth or an eye, which is only one of the limbs in a person's body, nevertheless, a slave gains his freedom because of it, then afflictions, which cleanse the person's entire body, should certainly free a person from sin because of them!

Rish Lakish derives this same lesson from a different source. He says: The word *covenant* is written with respect to salt and the word *covenant* is written with respect to afflictions. Just as salt sweetens the meat, so too, afflictions will cleanse a person from his sins.

The Bobover Rebbe in *Kedushas Tziyon* notes that there is a distinction between the two expositions. According to Rabbi Yochanan, the afflictions will only cleans a person if they emanate from Heaven, similar to the *halachos* of a



slave, where he will only be set free if his master knocks out his tooth or eye. He will not gain his freedom if someone else injures him. However, according to Rish Lakish, any type of afflictions will cleanse him, in the same manner as the salt sweetening the meat. It makes no difference as to who applies the salt.

Based upon this, Rav Tzvi Pesach Frank explains the following. It is written [Shmos 6:5]: *And also, I heard the moans of the children of Israel, whom the Egyptians are holding in bondage, and I remembered My covenant.* The Jewish people thought that the Egyptians were their masters and they were those who were afflicting them. They did not realize that their suffering was decreed from Heaven. Because they didn't know who was causing them their hardships, they did not gain their freedom. It was only because Hashem remembered His covenant, that all afflictions cleanse a person from his sins, that was the reason they were released from the bondage.

Reb Meir Shapiro adds to this: If a slave does not come to court and testify that his master knocked out his tooth or eye, he will not gain his freedom. If he says that it happened by happenstance, he will not go free. So too, it is with afflictions. If a person does not believe with complete faith that the afflictions are affecting him because of Divine Providence, the afflictions will not purge him of his sins. However, if this principle was derived through the *gezeirah shavah* from salt, it would not make any difference.

The Rashba was asked the following question: If a slave initiates a fight with his master and strikes the first blow, and the master counters with some strikes of his own and knocks out the slave's tooth, will the slave gain his freedom?

He replied that the slave goes free. The proof is from the aforementioned *Gemora*, where Rabbi Yochanan derived that afflictions will cleanse a person from his sins through

a *kal vachomer* from the laws of the slave. How can the two be compared? Afflictions come to a person because he has sinned! It was his own fault! Perhaps, then, those afflictions will not purge him from his sins!?! Evidently, we see that a slave also gains his freedom, even if he was the one who initiated the fight!

QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF to refresh your memory

Q: What are the two explanations in the *machlokes* between the *Tanna Kamma* and Rabban Shimon ben Gamliel as to who is require to write the note for the slave's value?

A: If one is liable for damaging the lien of his fellow, or if an unrecognizable damage is considered an actual damage.

Q: If one made his field as an *apotiki* and it got flooded, can the lender collect from his other properties?

A: In a regular case – yes. But if he said, “You can only collect from here” – no.

Q: What are the two ways that a master can free “half of his slave”?

A: Either through a deed of emancipation, or through redemption.