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Gittin Daf 44

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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

### **A Seized Slave**

The *Gemora* cites a *Baraisa*: If an idolater seizes the slave of a Jew because of money owed to him, or if he is taken by extortionists, he does not gain his freedom (*because the master did not agree to this*).

The *Gemora* asks: Is this correct? It would seem to contradict what we learned in the following *Baraisa*: If the king’s family seized a Jew’s granary, if it is on account of a debt due from him, he must separate ma’aser for it (*because it is regarded as if he sold the produce*), but if it caused him a loss, he is not required to take ma’aser for it. [*Evidently, something that is taken from a Jew by force, if it was on account of a debt, it is regarded as if he sold it; so by the slave, the halachah should be that he goes free!?*]

The *Gemora* answers: There, it is different, because there is some advantage to him. [*He benefited by the fact that the produce in the granary was used to pay off his debt. He gained nothing by the fact that the idolaters seized his slave.*]

The *Gemora* asks from that which Rav said: If a man sells his slave to a blackmailing idolater, he gains his freedom!? [*This is in conflict with the Baraisa mentioned above that if the slave was taken by force, he does not go free!?*]

The *Gemora* answers: In Rav’s case, he should have persuaded him to take something else, and he did not do so (*therefore it is regarded as a voluntary sale*).

It was stated above: Rav said: If a man sells his slave to a blackmailing idolater, he gains his freedom.

The *Gemora* asks: what should he have done?

The *Gemora* answers: He should have appeased him with something else, and he did not do so (*therefore it is regarded as a voluntary sale*). (44a1)

### **Rabbi Yirmiyah’s Inquiries**

[The *Mishnah* had stated: If one sold his slave to an idolater, he goes free.] Rabbi Yirmiyah inquired: Suppose he only sold him for thirty days, what would be the *halachah*?

Come and hear from that which Rav said: If a man sells his slave to a blackmailing idolater, he gains his freedom. [*And seemingly, that is a case where he only sold him for a specific amount of time.*]

The *Gemora* answers: In Rav’s case, we are dealing with a blackmailing idolater who is not likely to return him.

Rabbi Yirmiyah inquires further: If he sells him for all purposes (*his children will belong to the idolater*) except for work (*and therefore he will still have time to perform the mitzvos and observe Shabbos*), what would be the *halachah*?

If he sells him for all purposes with a stipulation that he cannot force him to violate any *mitzvos*, what is the *halachah*?

If the seller stipulated that the slave cannot perform any labor on *Shabbos* and *Yom Tov*, what is the *halachah*?

If he sells him to a resident convert (*ger toshav; a gentile living in Eretz Yisroel who has accepted not to eat neveilos or*

serve idolatry), or to a Jewish apostate, or to a Cuthean, what is the *halachah*?

The *Gemora* responds: One of these questions may be resolved from the following *Baraisa*: A resident convert is regarded as an idolater.

Concerning a Cuthean and a Jewish apostate, some say he is regarded as an idolater, and some say that he is regarded as a Jew. (44a1 – 44a2)

#### **Accepting Payment in a Forced Case**

They inquired of Rabbi Ami: If a slave throws himself into the hands of bandits and his master is unable to procure his return through Jewish law, or an idolatrous court, may he receive payment for him (*if they are willing to compensate him; will that be regarded as selling him*)?

Rabbi Yirmiyah said to Rabbi Zerika: Go outside and look through your notes of the Mishnayos and see if you can resolve this. He went out, looked, and found the following *Baraisa*: If a man sells his house in *Eretz Yisroel* to an idolater (*something which he is forbidden to do*), the money paid for it is forbidden. If, however, the idolater forcibly takes a house from a Jew, and he is unable to recover it through Jewish law, or an idolatrous court, he may accept payment for it and he may make out a deed for it and present it to an idolater court, since this is like rescuing money from their hands.

The *Gemora* notes a possible distinction between the cases: Perhaps this applies only to a house, because since a person cannot do without a house, he will not sell it in the first place, but since a person can do without a slave, we are concerned that he might come to sell the slave (*if we would allow him to accept the payment*). Or perhaps, we should not be concerned for this?

Rabbi Ami sent back the following answer: From me, Ami son of Nosson, this ruling is issued to all Israel that if a slave throws himself into the hands of bandits and his master is

unable to recover him either through Jewish law, or an idolatrous court, his master is permitted to accept payment for him, and he may make out a deed and present it in an idolater court, because this is like rescuing money from their hands. (44a2 – 44a3)

#### **Amount of the Penalty**

Rabbi Yehoshua ben Levi said: One who sells his slave to an idolater; we penalize him and force him to buy him back for up to one hundred times the value of the slave.

The *Gemora* asks: Is he being precise, or is he exaggerating?

The *Gemora* brings a proof from that which Rish Lakish said: If one sells a large animal to an idolater (*which the Rabbis prohibited, lest he come to lend or rent them to him, and they will work with these animals on Shabbos, which is prohibited*), we penalize him and force him to buy back the animal for up to ten times the value of the animal. [*And we should say that the same applies to a slave.*]

The *Gemora* rejects this comparison: Perhaps a slave is different because every day he keeps him away from observing *mitzvos* (*and therefore he must pay more to get him back*).

The *Gemora* cites another version of this discussion: Rabbi Yehoshua ben Levi said: One who sells his slave to an idolater; we penalize him and force him to buy him back for up to ten times the value of the slave.

The *Gemora* asks: Is he being precise, or is he exaggerating?

The *Gemora* brings a proof from that which Rish Lakish said: If one sells a large animal to an idolater, we penalize him and force him to buy back the animal for up to one hundred times the value of the animal. [*And we should say that the same applies to a slave.*]

The *Gemora* rejects this comparison: Perhaps a slave is different because the slave will not be returned to him when

he redeems him (*for he gains his freedom, and therefore he pays less to redeem him*).

The *Gemora* asks: But why do we penalize the one who sold the animal to an idolater so high? Is it just because the animal is returned to him? Would it have not been sufficient to penalize him one more time (*for a total of eleven times its value*)?

Rather, the *Gemora* states that the distinction between the two is that it is not so common to sell a slave to an idolater, and regarding such unusual occurrences, the Rabbis did not impose such a high penalty. (44a3 – 44a4)

### **Penalizing the Son**

Rabbi Yirmiyah inquired of Rabbi Assi: If someone sold his slave to an idolater and then he died, do we penalize his son to buy him back?

Even if you will say that if a *Kohen* cuts the ear of a firstborn animal (*and thus disqualifies it for being brought as a korban, enabling himself to eat it*) and then dies, his son is penalized after him; that may only be because he has violated a Biblical transgression, whereas here we are dealing with a Rabbinical prohibition.

And even if you will say that if one scheduled his work for *Chol Hamoed* and then he died, we do not penalize the sons as we would to the father and they are not compelled to surrender the profits; that may only be because the father had not committed any transgression.

What is the *halachah* in this case? Did the Rabbis only penalize the seller of the slave, and he is not here any longer? Or perhaps, they penalized his assets, and they are still here?

Rabbi Assi said: There is a proof from the following *Baraisa*: If a field has been cleared of thorns during *shemitah* (*which is a Rabbinical prohibition*), it can be sown during the eighth year. [*Although it emerges that he is benefiting from the*

*work which he did during shemitah, since it is only a Rabbinical prohibition, the Rabbis did not penalize him.*] If, however, he fertilized the field, or if he fenced in cattle there (*in order for the field to be manured*) during the *shemitah* year, it must not be sown during the eighth year (*for this work is considered significant*). And Rabbi Yosi the son of Rabbi Chanina said: It has been established that if he fertilized it and then died, his son may sow it. Evidently, the Rabbis penalized him, but not his son.

Abaye said: It has been established that if a man intentionally contaminates stuff belonging to another which he desired to keep ritually clean, and then dies, the Rabbis did not penalize his son after him. What is the reason? Damage which is not recognizable is not (*Biblically*) reckoned as damage, and the penalty for it is Rabbinical in origin, and the Rabbis only penalized the man who does the damage, but they did not penalize his son. (44a4 - 44b2)

### **Selling a Slave Abroad**

The *Mishnah* had stated: If someone sells a slave to someone living outside of *Eretz Yisroel* (*from Eretz Yisroel*), he goes free.

The *Gemora* cites a *Baraisa*: If someone sells a slave to someone living outside of *Eretz Yisroel* (*from Eretz Yisroel*), he goes free (*the second master may not work him*), but he requires a deed of emancipation from his second master (*in order to be permitted to marry a Jewish woman*). Rabban Shimon ben Gamliel says: Sometimes he goes free and sometimes he does not. For instance, if the master says, "I have sold my slave So-and-so to So-and-so an Antiochian," he does not become free. [*He is only saying that that is where he was born, but he does not presently reside there, and therefore, he may assume that he was not purchased with the intent of leaving Eretz Yisroel. He therefore does not gain his freedom. Even if the second master takes him abroad, we can assume that his intention is to bring him back.*] If, however, he says, "I have sold my slave So-and-so to So-and-so to an Antiochian in Antioch," he does become

free (for this language implies that he presently resides there).

The *Gemora* asks: But we learned in the following *Baraisa*: If a man says, "I have sold my slave So-and-so to So-and-so an Antiochian," he becomes free, but if he says, "I have sold my slave So-and-so to So-and-so an Antiochian who lives in Lod (a city in Eretz Yisroel)," he does not become free!?

The *Gemora* answers: There is no difficulty. In the first *Baraisa*, we are dealing with a case where he has a (permanent living) house in Eretz Yisroel (and therefore we can assume that he plans on keeping the slave there, even though he said "an Antiochian"), whereas in the second *Baraisa*, we are dealing with a case where he only has a place to stay in Eretz Yisroel (but not a place of dwelling). [The assumption must be that he does not intend to keep the slave in Eretz Yisroel; he therefore goes free.]

Rabbi Yirmiyah inquires: If a Babylonian Jew marries a woman from Eretz Yisroel and she brings him in male and female slaves (*nichsei tzon barzel* - ironclad property) - the property which the wife brings in to her husband in the dowry, and which the husband records in the *kesuvah*) and his intention is to return to Bavel, what is the *halachah*? [Do we consider her marriage to him as if she sold them to him, and they would go free, for the husband is regarded as a purchaser of his wife's property, or not?] This is a question whether we accept the view that the wife has the right, or whether we accept the view that the husband has the right. [In case of a divorce, there is a difference of opinion among the *Amoraim* whether she has the right to claim the return of the original property, or whether he has the right to give her its value in money.] We inquire on the view that the wife has the right: Shall we say that since she has the right to demand the return of the slaves, they are regarded as hers (and therefore they will not go free), or perhaps since they are pledged to the husband (he can work with them and he can prevent her from selling them), they are regarded as his? The inquiry can equally be asked on the view that the husband has the right: Seeing that he has the right to keep the slaves,

are they to be regarded as his, or since he does not acquire the complete ownership of their bodies, they are still regarded as hers?

The inquiry remains unresolved.

Rabbi Avahu said: Rabbi Yochanan taught me the following: If a slave (willingly) accompanies his master to Surya and his master sells him there, he becomes free.

The *Gemora* asks: But Rabbi Chiya taught us that he loses his right (to gain his freedom, because he left willingly)!?

The *Gemora* answers: There is no difficulty: Rabbi Yochanan is dealing with a case where his master intended to return, and Rabbi Chiya is discussing a case where he did not intend to return, as it has been taught: A slave must leave Eretz Yisroel with his master for Surya.

The *Gemora* interjects: Must leave, you say? Assuredly he need not leave, seeing that we have learned in a *Mishnah*: A husband or master cannot compel his wife or slave to leave Eretz Yisroel!?! The *Baraisa* meant: If a slave accompanies his master from Eretz Yisroel to Surya and his master sells him there, if it was his master's intention to return, he is compelled to emancipate him, but if it was not his intention to return, he is not compelled to emancipate him.

Rav Anan said: I heard from the master Shmuel two rulings. One was this one (concerning the selling of a slave outside Eretz Yisroel). And the other was as follows: If a man sells his field in a *Yovel* year (if the field was sold before *Yovel*, it would be returned to the original owner by *Yovel*), Rav says that it is sold, but it must be immediately returned, whereas Shmuel says that it is not sold at all. Rav Anan continued: In one case he said that the purchase money is returned, and in the other case, it is not returned, but I do not know regarding which one is which.

Rav Yosef said: Let us see. Since we learned in the *Baraisa* that if a man sells his slave outside of Eretz Yisroel, he



becomes free and requires a deed of emancipation from his second master, we may infer from there that the second master became his owner, and that the purchase money is not returned. And therefore, when Shmuel said in the other case that the field is not sold at all, the money is returned.

The *Gemora* notes that Rav Anan did not know this proof, for he never heard this particular *Baraisa*.

And as far as Shmuel's ruling regarding the field, he could not infer from there that the field is not sold, and yet the money is returned, for perhaps, though the field was not sold, the money should be regarded as a gift. This would be similar to the *halachah* regarding a man who betroths his sister. For it has been stated: If a man betroths his sister, Rav says that the betrothal money is to be returned, while Shmuel says that it is to be regarded as a gift. (44b2 – 45a1)

#### DAILY MASHAL

##### **Three Hundred Pieces of Silver**

The *Gemora* in Megillah expounds the following verse [Breishis: 45:22]: *He [Yosef] gave them all changes of clothes, and to Binyamin he gave three hundred [pieces of] silver and five changes of clothes.* The *Gemora* asks: Is it possible that Yosef would stumble on the precise action that caused him to suffer? Yaakov had given Yosef a nice woolen garment which caused the brothers to become jealous and prompted them to sell him to Mitzrayim. Should Yosef now favor Binyamin over the other brothers? Rabbi Binyamin bar Yefes answers: Yosef was hinting that a descendant of his will go in front of a king dressed in five royal garments (*referring to Mordechai*).

The commentators ask: Why didn't it bother the *Gemora* that Yosef gave to Binyamin three hundred pieces of silver, and none to the other brothers? Wouldn't that have caused jealousy as well?

The Chasam Sofer answers based upon our *Gemora*, which states: Rabbi Yehoshua ben Levi said: One who sells his slave

to an idolater; we penalize him and force him to buy him back for up to ten times the value of the slave.

An ordinary slave is worth thirty silver coins, as we know from the *halachah* in the Torah that if an ox gores and kills a slave, the owner must pay the master thirty silver coins.

Accordingly, the brothers who sold Yosef should have been obligated to pay the penalty of ten times Yosef's value in order to redeem him. Since they did not redeem him, they therefore owed to Yosef three hundred silver coins ( $30 \cdot 10 = 300$ ). This is why Yosef did not give them the three hundred silver coins that he gave to Binyamin. Binyamin, who was not involved in the selling at all, rightfully deserved this amount, and therefore, Yosef was not concerned that this would be a cause for jealousy.

#### QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF

to refresh your memory

Q: What is the *halachah* if an ox kills one who is a half-slave, half-free man?

A: 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.

Q: What is the *halachah* if a man is *mekadesh* a half-slavewoman, half-free woman?

A: *Machlokes* if the *kiddushin* is valid or not.

Q: Is a woman obligated in the *mitzvah* of *peru u'revu* (*procreation*)?

A: According to Rabbi Yochanan ben Berokah – yes.