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Gittin Daf 52

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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

Mishna

If orphans relied on a householder, or if their father appointed a guardian for them, he (the householder or guardian) is required to separate *ma’aser* from their produce.

A guardian appointed by the father of the orphans must swear (*that he didn’t take anything from the orphans*). If he was appointed by *Beis Din*, he is not required to swear. Abba Shaul says the opposite is the rule. (52a)

Ma’aser from your own Property

The *Gemora* asks: This *Mishna* contradicts the following *braisa*: It is written: *You shall separate your own ma’aser*. It is derived from there that only “you” shall separate your *ma’aser*, but not your partners (*without your permission*), and not your sharecroppers, and not your guardians. This is because one cannot separate *ma’aser* from produce that is not his own.?

Rav Chisda replied: There is no difficulty. Our *Mishna* is referring to a case where the produce was meant for consumption. The *braisa* is referring to a case where the produce was meant for storing. [*The orphans can separate ma’aser from this produce when they become adults.*] The *Gemora* cites a *braisa* which supports this distinction: Guardians separate *terumah* and *ma’aser*

to feed (the orphans), but not to leave (the extra produce). (52a)

Restrictions on the Guardians

The *braisa* continues: The guardians can also sell on their behalf - animals, slaves, male and female, houses, fields and vineyards in order to purchase food with the money, but he may not sell these items to put aside the money (*for it might get stolen over time*). They can also sell on their behalf produce, wine, oil and flour in order to purchase other food with the money, but he may not sell these items to put aside the money. They can make for them a *lulav* (*for the mitzvah of taking the four species on Sukkos*), *aravah* (*for the mitzvah on Hoshanah Rabbah*), a *sukkah* and *tzitzis* and anything else which has a limit. This includes a *shofar*. They can buy for them a Torah scroll, *tefillin* and *mezuzos* and anything else which has a limit. This includes a *Megillah*. They cannot, however, pledge to give charity on their behalf, or to redeem captives, or to do anything else which has no limit. This includes comforting mourners. Guardians are not allowed to enter into lawsuits on behalf of the orphans’ property, whether it is to lose or to win.

The *Gemora* asks: Why can they not win on their behalf?



The *Gemora* answers: It means that they cannot lose even if their intent was to win.

The *braisa* continues: The guardians are not at liberty to sell their distant field in order to purchase one that is nearby, or to sell a bad field with the intention of buying a good one.

The *Gemora* asks: What is the reason for this?

The *Gemora* answers: Since there is a risk that the new crops may become ruined.

They are not permitted to sell fields and buy slaves with the proceeds (*for they can get sick and die*), but they can sell slaves and buy fields with the proceeds. Rabban Shimon ben Gamliel says that they may not even sell slaves and buy fields, since there is a risk that people might claim that the field did not belong to the seller. The guardians are not empowered to emancipate slaves. They may, however, sell them to others who can emancipate them. Rebbe says: I say that the slave himself can pay his own purchase price and gain his freedom, because the owner is selling him (*the slave*) to himself.

The guardian must make a reckoning with the orphans at its close. Rabban Shimon ben Gamliel, however, says that this is not necessary.

Women, slaves and minors should not be made guardians. If, however, the father of the orphans chooses to appoint one, he is at liberty to do so.

There was a certain guardian in the neighborhood of Rabbi Meir who was selling land belonging to the orphans and buying slaves with the proceeds, but Rabbi Meir forbade him to do so. The Heavenly court showed

him in a dream, "I want to destroy (*for their father obtained this land through illegal methods*), and you wish to build!?" Even so, however, he paid no attention to it, saying, "Dreams are of no effect either one way or the other."

There were two men who, being incited by the Satan, quarreled with one another every Friday afternoon (*towards sunset*). Rabbi Meir happened to come to that place and stopped them from quarrelling there Friday afternoons. When he made peace between them, he heard the Satan say, "Woe for this man (*the Satan*), whom Rabbi Meir has driven from his house!"

A certain guardian in the neighborhood of Rabbi Yehoshua ben Levi was selling land belonging to the orphans and buying cattle with the proceeds. The Rabbis said nothing to him, being of the same opinion as Rabbi Yosi, as it has been taught in the following *braisa*: Rabbi Yosi said: All my life I have never called my wife my "wife," nor my ox my "ox," but my wife my "house" (*for she manages the entire house*) and my ox my "field" (*due to its importance; therefore he was permitted to buy oxen with the land*).

Certain orphans, who relied on an elderly woman to take care of their properties, had a cow, which she took and sold for them. Their relatives appealed to Rav Nachman saying, "Who gave her a right to sell it?" He said to them: We learned in our *Mishna*: If orphans relied on a householder. But, they said, the cow is now worth more than what she sold it for (*and they should be entitled to the new price*)!? He replied: It has become more valuable in the possession of the purchaser (*it no longer belongs to the orphans*). But, they said, they have not yet received the money (*so, it should still belong to the orphans*)!? Rav Nachman replied: If so, we can apply the rule of Rav Chanilai bar

Idi, who said in the name of Shmuel. For Rav Chanilai bar Idi said in the name of Shmuel that the property of orphans is similar to the property of *hekdesch*, and it is not acquired except by giving money (*and not with meshichah, drawing it into one's possession*).

The wine of Rabbana Ukva, the orphan, was drawn into the possession of the purchasers who bought it at (*the price of*) four zuz per barrel. The price of wine subsequently rose, so that it was now worth six zuz. The case was brought before Rav Nachman, who said: Here the rule of Rav Chanilai bar Idi applies. For Rav Chanilai bar Idi said in the name of Shmuel that the property of orphans is similar to the property of *hekdesch*, and it is not acquired except by giving money.

The *Gemora* issues rulings regarding the sale of orphans' property. If purchasers have drawn the produce of orphans (*without paying*), and the price subsequently rises, the rule of Rav Chanilai bar Idi applies. If the price drops, then surely an ordinary man should not be more privileged than *hekdesch*. [*If purchasers from an ordinary seller cannot void a sale after making a meshichah, then certainly a purchaser from an orphan, whose property is regarded like hekdesch, cannot void the sale.*] If the guardians bought produce for the orphans by drawing it into their possession, and the price subsequently rose, then we say that an ordinary man should not be more privileged than *hekdesch*. If the price drops, the students were inclined to think that here the rule of Rav Chanilai bar Idi would apply (*and the orphans would have the right to void the sale*). However, Rav Shisha the son of Rav Idi said to them: This would be detrimental to them, since they may one day require produce and no one will sell to them unless they pay money first. [*Therefore, they must suffer the loss in this case in order to protect them for the future.*] If the orphans gave money for the

produce (*but did not take possession of it*) and the price subsequently drops, then we say that an ordinary man should not be more privileged than *hekdesch* (*and they may retract*). If it rises, the students were inclined to think that the rule of Rav Chanilai bar Idi would apply, but Rav Shisha the son of Rav Idi said to them: This might be detrimental to them, since the sellers would be able to say to them, "Your wheat has been burnt in the storehouse." [*The sellers would not attempt to save the wheat from being destroyed by the fire.*] If purchasers gave money to the orphans for produce (*but they did not take possession of it*) and the price rises, then we say that an ordinary man should not be more privileged than *hekdesch* (*and they may retract*). If the price drops, then the students thought that here the rule of Rav Chanilai bar Idi would apply, but Rav Shisha the son of Rav Idi said to them: This might be detrimental to them, for they might sometimes need money, and no one will give them before they actually delivered the produce.

Rav Ashi said: Rav Kahana and I signed as witnesses to the deed of sale of the mother of the orphan Zeira, who sold some land in order to pay his head-tax without a proclamation (*and the Rabbis ruled that a proclamation must be made for thirty days prior to selling property belonging to an orphan in order for there to be competitive bidding*). [It was allowed in this case] for the Nehardeans have ruled that for the orphans' head-tax, for food and for burial, land may be sold without a proclamation.

Amram the dyer was the guardian for some orphans. The relatives came to Rav Nachman and claimed that he was buying clothes for himself from the money belonging to the orphans. Rav Nachman said: He is dressing in this manner in order that his words shall be heard. But, they complained, he eats and drinks, and

as he is not a man of means (*so he is probably stealing from them*). Rav Nachman said: Perhaps he found a valuable object. But, they said, he is ruining their property (*by cutting down the trees*). He said: Bring evidence that he is ruining it and I will remove him. For Rav Huna our colleague said in the name of Rav: If a guardian ruins the property of the orphans, we may remove him. For it has been stated: If a guardian ruins the property, Rav Huna says in the name of Rav that we remove him, while the students of Rabbi Shila's Beis Medrash said that we do not remove him. The law, however, is that we do remove him. (52a – 52b)

Imposing an Oath on the Guardian

The *Mishna* had stated: A guardian appointed by the father of the orphans must swear (*that he didn't take anything from the orphans*).

The *Gemora* explains the reason for this: If he did not derive some benefit from the father, he would not have become a guardian, and he will not be deterred by the requirement of an oath.

The *Mishna* had stated: If he was appointed by *Beis Din*, he is not required to swear.

The *Gemora* explains the reason for this: He assumes the position only to oblige the *Beis Din*, and if an oath is to be imposed on him, he would refuse.

The *Mishna* had stated: Abba Shaul says the opposite is the rule.

The *Gemora* explains the reason for this: If the *Beis Din* appointed him, he is required to swear, because for the sake of the benefit he derives from the reputation of being a trustworthy man on whom the *Beis Din* relies,

he is not deterred by the prospect of taking an oath. If, however, the father of the orphans appoints him, he is not required to swear, as it was simply a friendly action between the two, and if you impose an oath on him, he would refuse to become their guardian.

Rav Chanan bar Ami said in the name of Shmuel: The law follows Abba Shaul.

It has been taught in a *braisa*: Rabbi Eliezer ben Yaakov said that both should take an oath, and so is the *halachah*. Rav Tachlifa of the West stated a *braisa* in the presence of Rabbi Avahu: A guardian who was appointed by the father of the orphans is required to swear, because he receives a fee. Rabbi Avahu said to him: Did you bring a *kav* and measure it out for him? [*It would seem from the entire Gemora that they were not paid; did you pay them?*] Rather say that he is required to swear because he is like one who receives a fee (*since he received benefit from their father*). (52b)

DAILY MASHAL

One's Wife is his "Home"

By: Rabbi Moshe Newman of Ohr Sameyach

Rabbi Yosi said, "I never called my wife my "wife," but my wife my "house" (*for she manages the entire house*)

Rashi explains that his wife handled all the needs of the home and that she was the mainstay of their home. We similarly find that the women are called "bayis" or "home" at the time of the giving of the Torah: "Moshe ascended to God, and Hashem called to him from the mountain, saying, "So will you say to the house ("beis") of Yaakov, and tell the sons of Yisrael. Rashi, in



explaining this verse, cites the Mechilta that teaches that “Beis Yaakov” refers to “the women”.

I have also heard another explanation for referring to the wife as the home. We find in Mesechta Sotah (17a) that Rabbi Akiva states: If a married man and woman are meritorious, the Divine Presence is with them. Rashi writes: God took His Name (of Yud and Heh) and divided it, and caused it to dwell with both of them — the letter Yud in “ish” (man, i.e., husband), and the letter Heh in “isha” (woman, i.e., wife).” A man alone does not an ideal home make. Only if the man is with a wife, living in marital peace and harmony, is there a true Jewish home, blessed with the Divine Presence.

QUESTIONS AND ANSWERS FROM YESTERDAY’S DAF

to refresh your memory

Q: What are the two possible reasons as to why compensation for produce consumed and for the improvement of the land (*when someone bought stolen land that is now being returned to its original owner*) is not taken from mortgaged property?

A: Either because it is not written in the sale document, or because the amount of produce (*that will grow by the buyer*) is not fixed.

Q: What is the distinction between the case where the owner claimed that the finder found two purses tied together (*and he is only returning one*), and the case where he claimed that the finder found two oxen tied together?

A: It is because oxen can get loose from one another, but purses cannot (*and therefore the owner has a definite claim that if the finder found one, he found the other as well*).

Q: Why did the Torah say that one who admits part of a claim must swear?

A: It is because we assume that no man would be so insolent to deny his obligation in the face of his creditor. He would wish to deny the whole debt, but he does not do so because no one is so insolent. (*This is why he is required to swear on the remainder.*) Indeed, he would like to admit to the entire claim, only he does not do so in order to evade the creditor for the moment, and he thinks, “As soon as I will have money, I will repay the debt.” This is why the Torah said: Impose an oath on him, so that he should admit to the entire claim.