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Kiddushin Daf 43

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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

Agency by Transgressions

[The Gemora above had said that we cannot derive from *me'ilah* that *shlichus* can be effective by transgressions because there is another transgression that is also an exception, namely, *shlichus yad*, which is when a custodian uses the object he was supposed to watch for his own purposes and we cannot learn from two verses when they teach the same *halachah*.] The Gemora asks: What is the source that teaches us that an agency is effective by misappropriation?

The Gemora cites a *braisa*: It is written: *for every matter of liability*. Beis Shamai maintains that this teaches that a custodian is liable on account of unlawful intention just as he would be liable for an unlawful act. But Beis Hillel says: He is not liable until he actually uses it for his own purposes, for it is said: *if he did not put his hand upon his neighbor's goods*. Beis Shamai said to Beis Hillel: But it is already stated: *for every matter of liability!*? Whereupon Beis Hillel retorted to Beis Shamai: But it has already stated: *if he did not put his hand upon his neighbor's goods!*? If so, why does the Torah say *for every matter of liability*? Beis Hillel responds: For I might have thought that a custodian is only liable if he misappropriated himself; how do I know that he is liable if he instructed his servant or his agent to use it? The Torah therefore states: *for every matter of liability*.

The Gemora asks: It is understandable according to Beis Hillel (*why we don't derive the concept that shlichus is effective by a transgression from me'ilah because we have another verse by shlichus yad*), but according to Beis Shamai, who uses the verse to teach us that a custodian is liable on account of unlawful intention just as he would be liable for an unlawful act, let us learn out from *me'ilah* that an agency is effective even by transgressions!?

The Gemora answers: It is because there is another transgression that is also an exception. If a thief slaughters or sells (*a lamb or an ox, he is required to pay four or five times the amount*) through an agent, he is liable to pay. We cannot learn from two verses when they teach the same *halachah*.

The Gemora asks: What is the source that teaches us that an agency is effective by the *halachos* of “slaughtering and selling”?

The Gemora answers: It is written: *and he slaughters or sells it*. Just as the selling involves another person (*the buyer*) so too, the slaughtering can be through another person (*if he instructs an agent to slaughter it*).

In the Beis Medrash of Rabbi Yishmael they learned: The word “*or*” includes the slaughtering through an agent.



In the Beis Medrash of Chizkiyah they learned: The word “instead” includes the slaughtering through an agent.

The *Gemora* asks: This (*that we do not learn that shlichus should apply by all transgressions*) is understandable according to those opinions that hold that we do not derive from two verses where the same rule is stated. However, according to the opinions that we do derive from such a source, why don't we derive (*from me'ilah and shlichus yad, or me'ilah and tevichah and mechirah*) that agency will be effective by all transgressions?

The *Gemora* answers: The Torah has revealed by the verse dealing with the prohibition against offering a *korban* outside the Beis HaMikdash (*shechutei chutz*) that there is no agency with respect to transgressions. It is written: *It shall be regarded as bloodshed for that person – he has shed blood. “That person”* will be liable, but not his agent.

The *Gemora* asks: Why should we learn from *shechutei chutz* that agency does not apply by transgressions? Let us learn from the other sources (*from me'ilah and shlichus yad, or me'ilah and tevichah and mechirah*) that it does apply!?

The *Gemora* answers: It is written (*by shechutei chutz*): *and that person shall be cut off (kares)*. Since this verse is extra, it is used to teach us regarding the rest of the Torah (*that agency does not apply by transgressions*).

The *Gemora* asks: according to the opinion, who does not learn out from two verses that state the same thing, what does he use the word “*that (person)*” for?

The *Gemora* answers: One time, it teaches us that one is liable to bring a *korban chatas* for slaughtering a consecrated animal outside only if he did it himself, but if two people held the knife together, they will not be liable. The other instance of the word “*that*” teaches us that he is not liable if he was forced, or if he unwittingly slaughtered the animal (*without knowing that it was consecrated*), or if he was tricked into it. (42b – 43a)

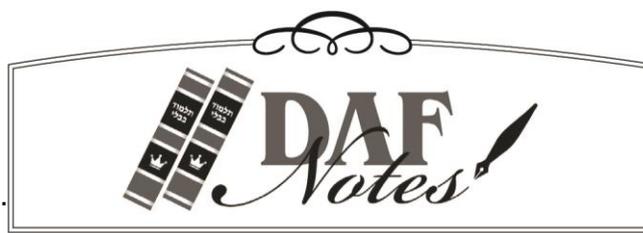
Transgression via an Agent

The *Gemora* asks from a *braisa*: If someone says to his agent, “Go and kill that person,” the agent is liable and the sender is exempt. Shamai the Elder said in the name of Chaggai HaNavi that the sender is liable, for it says (*after Dovid had sent a message that Uriah should be placed in the front lines of the battle with Ammon, so he should be killed, Nassan HaNavi told him the following*): *You have killed him with the sword of the Ammonites*. What is the rationale for this?

The *Gemora* answers: He holds that you can learn out from two verses which are teaching the same thing (*and he therefore derives from me'ilah and tevichah and mechirah that agency applies by transgressions*) and he does not expound the extra letter in “*that (person)*” by *shechutei chutz*.

Alternatively, he does expound the extra letter in “*that (person)*” by *shechutei chutz* (*that agency does not apply by transgressions*), and when he says that the sender is liable, he means that he is liable under the laws of Heaven.

The *Gemora* asks: Does this mean that the *Tanna Kamma* holds that the sender will be exempt completely, even under the laws of Heaven!? How can that be?



The *Gemora* answers: Shamai the elder was of the opinion that the sender is fully liable and he will be judged harshly, whereas the *Tanna Kamma* considers the sender as having indirectly caused the murder and accordingly, he will be judged lightly.

Alternatively, that case is different, for it is written: *You have killed him with the sword of the Ammonites.*

The *Gemora* asks: How does the *Tanna Kamma* understand this verse?

The *Gemora* answers: Nassan HaNavi was telling Dovid as follows: Uriah's death is comparable to the deaths caused by the swords of the Ammonites. Just as you (*Dovid*) cannot be punished for those deaths, so too, you cannot be punished for Uriah's death. The reason is because he rebelled against the kingdom, when he replied to Dovid as follows: *And my master Yoav and all the servants of the king are camped in the field. [He should not have referred to the general, Yoav, as "my master" in front of Dovid; for this, he deserved to be put to death.]*

Rava states: Even if Shamai holds that agency applies by transgressions, he would admit that the agent is liable and the sender is exempt in the following case: If one tells his agent, "Go and cohabit with a forbidden relative," or "Go and eat this forbidden fat." The reason is because we do not find in the Torah that one person will benefit from the sin and a different person should be liable for that act. (43a)

Agent and a Witness

Rav states: An agent can serve as a witness as well (*the person who was sent to be mekadesh a woman or to*

repay a debt can be a witness to the transaction as well). In the Beis Medrash of Rabbi Shila they said: An agent cannot serve as a witness.

The *Gemora* explains: Rav holds that an agent can also serve as a witness because (*the fact that he was also the agent*) strengthens his testimony. The Beis Medrash of Rabbi Shila maintained that an agent cannot serve as a witness, for since we have said that an agent of a person is like the person himself, just like the person cannot testify about himself, so too, the agent cannot testify on his behalf.

The *Gemora* rules that an agent may serve as a witness as well.

Rava said in the name of Rav Nachman: If a man tells two people, "Go and betroth for me this woman," they are his agents and they are also his witnesses. The same halachah applies by divorce as well. It also applies by monetary laws (*if a fellow said, "Go to my creditor and repay my debt for me"*).

The *Gemora* notes that it is necessary to teach this *halachah* in all three cases, for if it would only be said with respect to *kiddushin*, we might have thought that only there can the agents serve as witnesses as well, for they are coming to prohibit the woman to the entire world (*including themselves*); but by a divorce, perhaps they have set their eyes upon her (*and that is why they are testifying that she is divorced, even though she isn't*). And if it would only be said with respect to divorce, we might have thought that only there can the agents serve as witnesses as well, for a woman cannot be married to two men at one time (*and therefore they won't both gain by testifying falsely*); but by money, perhaps they intend to divide the money between themselves.



The *Gemora* asks: What does Rav Nachman hold? If he holds that in a case where a person lends money to someone else in the presence of witnesses, the money must be repaid in front of witnesses as well, then these witnesses will be biased to their testimony, for if they testify that they did not pay the lender, they will have to repay the borrower themselves!?

Rather, the *Gemora* concludes that Rav Nachman maintains that in a case where a person lends money to someone else in the presence of witnesses, the money does not need to be repaid in front of witnesses. The reason the agents are believed in this case is as follows: Since they can say that they returned the money to the borrower, they are also believed to say that they paid the lender.

The *Gemora* rules that now that the Rabbis have instituted that anyone denying a claim against them must take an oath (*shevuas hesess*), the witnesses will be obligated to swear that they gave the money to the lender, and the lender will swear that he did not receive it, and the borrower will be forced to pay the lender. (43a – 43b)

A Na'arah's Hand

The *Mishna* had stated: A man can accept *kiddushin* for his daughter when she is a *na'arah*, both by himself or via an agent.

The *Gemora* cites a *Mishna*: A betrothed *na'arah* and her father can accept a *Get* (for the *na'arah*). Rabbi Yehudah says: Two hands cannot both accept as one, but rather her father alone can accept the *Get*. Anyone who cannot guard over her *Get* cannot get divorced.

Rish Lakish said: Just like they argue with respect to divorce, so too, they argue with respect to *kiddushin*. Rabbi Yochanan says: they only argue by divorce, but by *kiddushin*, everyone agrees that the father accepts her *kiddushin*, but not her.

Rabbi Yosi the son of Rabbi Chanina explains the opinion of the Rabbis according to Rabbi Yochanan: By a divorce, the *na'arah* is bringing herself back to the authority of her father, so she or her father can accept the *get*. However, with respect to *kiddushin*, where she is removing herself from the authority of her father, only her father can accept the *kiddushin*, but not her.

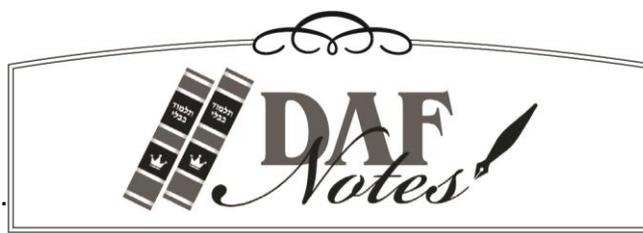
The *Gemora* asks: But with respect to *ma'amar* (when a *yavam* betroths his *yevamah*; it is regarded as a Rabbinical *kiddushin*), where she is removing herself from the authority of her father, and yet we learned in a *braisa* that *ma'amar* can be performed with a *na'arah* either by her consent or with her father's consent? (43b – 44a)

DAILY MASHAL

The Snake's Claim

It is written [Breishis 3:14]: And Hashem said to the snake, "Because you have done this, cursed be you more than all the cattle and more than all the beasts of the field; you shall walk on your belly, and you shall eat dust all the days of your life."

Rashi cites a *Gemora* in *Sanhedrin* (29a): From here we can derive that we may not intercede in favor of one who persuades people to commit idolatry, for had Hashem asked him, "Why did you do this?" the snake could have answered, "The words of the teacher and the words of the student; whose words do we listen



to?" [Adam and Chavah should have obeyed Hashem rather than the snake!]

The Perashas Derachim cites a Medrash: Rabbi Chanina says: Under the Nohadite laws a murderer will be sentenced to death even if there is only one witness, even with only one judge, even without a proper warning and even if he killed via an agent. Evidently, the logic of "the words of the teacher and the words of the student; whose words do we listen to?" does not apply under Nohadite law! If so, what would it have benefited the snake by claiming that Adam and Chavah should not have listened to him? Under Nohadite laws, this would not have been a valid excuse!?

He answers based upon our *Gemora*, which states: Even if Shamai holds that agency applies by transgressions, he would admit that the agent is liable and the sender is exempt in the following case: If one tells his agent, "Go and cohabit with a forbidden relative," or "Go and eat this forbidden fat." The reason is because we do not find in the Torah that one person will benefit from the sin and a different person should be liable for that act. Accordingly, by the sin of the Tree of Wisdom, where the sin was the eating, the snake's claim would have been valid, for we do not find that one person will benefit from the sin and a different person should be liable for that act.

The Shach asks that although we hold that there is no agency by transgressions, but the sender is nevertheless liable under the laws of Heaven. If so, what would it have benefitted the snake by this claim? He would anyways be liable under the laws off Heaven!?

The Mishnah Lamelech answers that since in this case the sin involved eating, the sender would not be liable

even under the laws of Heaven. This is because we do not find in the Torah that one person will benefit from the sin and a different person should be liable for that act.