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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

Assessments

Shmuel said: No assessment was made for a thief or a robber (*if the stolen animal dies by them, they cannot use the carcass as part of the payment – they must pay for the animal in full*). *Beis Din* assesses (*the worth of the carcass*) only in cases of damages. I, however, maintain that the same *halachah* applies to a borrower as well (*the Gemora will explain*), and Abba (*Rav*) agrees with me.

They inquired: Did Shmuel mean to say that "the law of assessment does apply to a borrower, and Abba agrees with me," or did he perhaps mean to say that "the law of assessment does not apply to a borrower, and Abba agrees with me"?

Come and hear from the following: A person borrowed an ax from his neighbor and (*through negligence*) broke it. He came before Rav, who said to him: Pay the lender for a good ax (*and the borrower should keep the broken one*). Evidently, Rav holds that the law of assessment does not apply to a borrower (*and that must be Shmuel's opinion*).

The *Gemora* asks: On the contrary! Since Rav Kahana and Rav Assi asked Rav, "Is this truly the *halachah*?" and he kept quiet, we can conclude that the law of assessment does indeed apply.

It has been stated: Ulla said in the name of Rabbi Elozar: Assessment is made for a thief or a robber. Rav Pappi said that no assessment is made. The *halachah* is: No assessment is made for a thief or a robber, but assessment is made in cases of borrower, in accordance with Rav Kahana and Rav Assi. (11a1 – 11a2)

Ulla in the Name of Rabbi Elozar

The *Gemora* cites another ruling from Ulla in the name of Rabbi Elozar: When a placenta comes out from a woman (*during a miscarriage*) partly on one day and partly on the next day, the counting of the days of *tumah* (*even without blood; if it is a male child, she is tamei for seven days – for a female, it is fourteen*) begin with the first day (*when the placenta starts to emerge*).

Rava asked him: What is in your rationale? Is it because you hold that we should rule stringently (*for perhaps the majority of the fetus emerged on the first day*)? But is this not a stringency that will lead to a leniency, since you will rule her *tahor* on the first day (*for any flow of blood experienced after the seven or fourteen days will be ruled tahor, when in truth, it might really be the last day of tumah*)?

Rava therefore said: Since we are concerned (*that the majority of the fetus emerged on the first day*), we rule

her to be *tamei* from the first day, but the actual counting only begins with the second day.

The *Gemora* asks: What is the novelty that Rava is teaching us? It cannot be that even a portion of an emerging placenta contains part of a fetus in it, for we have already learned in a *Mishnah*: If a partial placenta came out of an animal (*before it was slaughtered*), the entire placenta is unfit for consumption. This is because the placenta is a sign of a fetus in a woman and it is similarly a sign of a fetus in an animal (*and we are concerned that a majority of the fetus emerged from the animal; accordingly, we would consider that the fetus was born already and it will not be permitted for consumption by the slaughtering of the mother*).

The *Gemora* answers: If we would only have known the *Mishnah*, I might have thought that it is possible for a placenta to emerge without any of the fetus inside of it, and the reason why the *Mishnah* forbids it for consumption is because of a Rabbinic decree that we should not confuse this case with a case where the entire placenta emerged. Ulla therefore teaches us that this is not the case (*and whenever the placenta emerges, we know that part of the fetus emerged as well*). (11a2 – 11b1)

The *Gemora* cites another ruling from Ulla in the name of Rabbi Elozar: A firstborn son who has been killed within thirty days of his birth does not need to be redeemed. [*It would not be necessary to state that if he dies before thirty days that he does not need to be redeemed, for then, he was not viable; it is regarding a case where the son was killed where a novelty exists.*]

Rami bar Chama taught the same: It is written: *You shall surely redeem*. One might think that this would apply even when the firstborn was killed within thirty days of his birth; the Torah inserted the term *"but"* to exclude it. (11b1)

The *Gemora* cites another ruling from Ulla in the name of Rabbi Elozar: A large animal is acquired through "pulling it near"?

The *Gemora* asks: But didn't we learn in a *Mishnah* that it is acquired through "handing it over"?

The *Gemora* answers: Ulla ruled according to the *Tanna* cited in the following *Baraisa*: The *Chachamim* say: Large animals and small animals are acquired through "pulling it near." Rabbi Shimon said: They are acquired through lifting. (11b1)

The *Gemora* cites another ruling from Ulla in the name of Rabbi Elozar: In the case of heirs who are about to divide the estate among themselves, whatever is worn by them will [also] be assessed [and taken into account], but that which is worn by their sons and daughters is not assessed [and not taken into account]. Rav Pappa said: There are circumstances when even that which is worn by the heirs themselves is not assessed. This exception applies to the eldest of the heirs, as it is in the interest of them all that his words should be respected. (11b2)

The *Gemora* cites another ruling from Ulla in the name of Rabbi Elozar: If one custodian gave over an object he was watching to another custodian, the first custodian is not obligated to pay (*if something happens to the deposit by the second custodian; the fact that he gave it over to another person is not regarded as a negligence*). It is not necessary to state the case where an unpaid custodian gave it over to a paid custodian, where he upgraded the level of the watching. Rather, even if a paid custodian gave it over to an unpaid

custodian, where he decreased the level of the watching, he would still not be obligated to pay. This is because he gave it over to a competent person.

Rava, however, says: If one custodian gave over an object he was watching to another custodian, the first custodian is liable to pay (*if anything happens to the deposit by the second custodian, even if it was an unavoidable accident*). It is not necessary to state the case where a paid custodian gave it over to an unpaid custodian, where he decreased the level of the watching. Rather, even if an unpaid custodian gave it over to a paid custodian, where he upgraded the level of the watching, he would still be obligated to pay. This is because the owner can tell the first custodian, "You I trust to take an oath (*with respect to what happened to the deposit*); however, I do not trust the other person." (11b2)

The *Gemora* cites another ruling from Ulla in the name of Rabbi Elozar: The *halachah* is that a creditor may collect his debt from the debtor's slaves.

Rav Nachman asked Ulla: Did Rabbi Elozar say this *halachah* even with respect to collecting from the orphans (*are slaves regarded as land, for only inherited land can be seized from an orphan, not movables*)?

Ulla answered: No; he was referring to the debtor himself.

The *Gemora* asks: But a creditor is even allowed to take the cloak off the debtor's shoulders to collect his debt (*what then is the novelty of this halachah*)?

The *Gemora* answers: We are discussing a case where the debtor made the slave an *apotiki* (*A person may designate any type of property as security to the creditor without placing it in the possession of the creditor. The creditor has a lien on this property, and if the debt is not otherwise repaid, the creditor can collect his debt from the security. This security is called an apotiki.*) and then he sold him. This is in accordance with Rava, who says: If the debtor designated his slave as an *apotiki* and then he sold him, the creditor may still collect his debt from the slave. If, however, he designated his ox as an *apotiki*, he may not collect his debt from the ox. This is because the public will hear about the slave being designated as an *apotiki* (*and the purchasers should be wary of buying the slave*); however, the public does not hear about the designation of the ox as an *apotiki*.

The *Gemora* continues the discussion: After Rav Nachman left, Ulla said to those that were sitting there: Rabbi Elozar said: The slaves may be collected by the creditors even from the orphans (*for he holds that slaves are regarded as land*). Rav Nachman said: Ulla slipped away from me. [*Ulla did want to rule that slaves are regarded as land in front of Rav Nachman, for he knew that Rav Nachman maintained that slaves are regarded as movable items.*] (11b2 – 12a1)

INSIGHTS TO THE DAF

Assessing for a Borrower and a Custodian

The *Gemora* concludes that if one steals an item and ruins it, he is not able to simply return the broken item and pay for the damage; rather, he has to pay in cash for the entire item, or replace it with an equivalent item. However, when one damages, or borrows an item and it gets damaged by accident, he can simply return the item and pay the depreciation amount. Why? Tosfos explains that when one steals an item, they immediately acquire the item by removing it from the

domain of its owner, and therefore are liable to reimburse the owner for the entire item (*not just the difference from the time it was stolen and the time it is returned*). But, when one damages, he is only responsible for the amount that the item depreciated due to the damage, but whatever remains still belongs to the original owner. Based on this, a borrower, who is responsible if an accident happens, since he is regarded as acquiring the object when he borrows it, he therefore is responsible for the entire item.

Why do we say that a borrower is making a *kinyan* and acquiring the object at the time that he accepts responsibility? Just as a paid custodian is only responsible for what was stolen but he can return whatever remains and just pay the difference, a borrower should be able to do the same? Tosfos understands that since a borrower is responsible for unavoidable accidents, his responsibility cannot begin at the time that the accident occurs because one cannot be liable for a complete accident. The only way that a borrower can be responsible for an accident is because he makes a *kinyan* on the object when he borrows it. Based on this, there is a major difference between the liability of a (*paid or unpaid*) custodian and that of a borrower. A custodian is responsible for their negligence in not protecting the object, and that obligation begins at the time of the incident. A borrower, on the other hand, is not responsible for the incident, but responsible at the moment he borrows it to return the item as it is at that moment.

DAILY MASHAL

Dispute on the Tracks

When R' Yechezkel Abramsky zt"l was a young man, he had the occasion to take a train ride with the Rosh Yeshiva of Slabodka, R' Moshe Mordechai Epstein zt"l. Their conversation led to a discussion of the story in our Gemara of the borrowed axe. One of them recounted the story, saying that the borrower damaged the axe. The other one disagreed, and his recollection of the Gemara was that the axe broke by itself. Being on the train without access to the text, they were unable to confirm one way or the other, and each one remained firmly convinced his version was the correct one.

When they reached the terminal, they immediately rushed to the nearest Beis Midrash, four kilometers away, to find a Gemara and resolve their dispute. Peace reigned when they discovered that they were both correct, as this story is quoted in two different places. In our Daf, Bava Kama 11a, the story is presented that the borrower broke the axe, but in Bava Metzia 96b, the same story is quoted, however there, the version is that that the axe broke by itself.

L'zecher Nishmas HaRav Raphael Dov ben HaRav Yosef Yechezkel Marcus O"H