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Bava Kamma Daf 12

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Daf Notes is currently being dedicated to the neshamot of

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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

### ***Slaves: Land or Movables?***

The *Gemora* relates: There was an incident in Nehardea and the judges collected a debt from the slaves of the orphans (*for they maintained that slaves are regarded as land*).

There was an incident in Pumbedisa and Rav Chana bar Bizna collected a debt from the slaves of the orphans (*maintaining that slaves are regarded as land*).

Rav Nachman (*who held that slaves are regarded as movables*) said to them: Return the slaves to their original owner, and if not, I will seize your mansions (*and pay them with that*).

Rava said to Rav Nachman: There is Ulla, Rabbi Elozar, the Nehardean judges and Rav Chana bar Bizna, who all maintain that slaves are regarded as land. Who do you hold like?

Rav Nachman replied: I know the following *braisa*: Avimi taught: *A pruzbul (after shemitah all debts are cancelled unless the lender wrote a pruzbul; a document which transfers all of one’s personal loans to the Beis Din, and their debts are not cancelled after shemitah) can take effect only if the debtor has land (for then it can be regarded as if the debt was paid up*

*before shemitah)*, but it does not take effect upon slaves. Movables can be acquired together with land (*by making a kinyan on the land, one automatically acquires the movable property; this is called a kinyan agav*), but not with slaves. [*This braisa holds that slaves are regarded as movable items.*]

The *Gemora* suggests that this dispute is actually the same as the following argument among the *Tannaim*: When one sells slaves and lands to a purchaser, if he made a propriety act on the slaves, he has not acquired the land, and similarly, by making a *kinyan* on the land, he has not acquired the slaves. In the case of lands and movables, if he made a propriety act on the land, he has acquired the movables, but by making a *kinyan* on the movables, he has not acquired the land. In the case of slaves and movables, if he made a propriety act on the slaves, he has not acquired the movables, and similarly, by making a *kinyan* on the movables, he has not acquired the slaves. But it was taught in another *braisa*: If he made a propriety act on the slaves, he has acquired the movables. Now, is this not the argument between them: The latter *braisa* maintains that slaves are considered as land, whereas the former *braisa* is of the opinion that slaves are regarded as movables?



Rav Ikka the son of Rav Ami, however, said: All the *Tannaim* agree that slaves are regarded as land. The former *braisa* stating that the transfer of movables is ineffective may maintain that the land required (to *acquire movables*) is such that resemble the fortified cities of Judah, which do not move. [Although slaves are regarded as land, they cannot acquire slaves with them. This is derived from a Scriptural verse.]

There are some who reported another version: Rav Ikka the son of Rav Ami said: All the *Tannaim* agree that slaves are regarded as movables. The latter *braisa* stating that the transfer of the movables is effective deals with the case when the movables sold were on top of the slaves (and they are acquired through the *kinyan* of "courtyard").

The *Gemora* asks: Why should this be? The slave is a moving courtyard, and a moving courtyard cannot effect an acquisition for its owner!? And if you reply that we are discussing a slave who is standing still, has not Rava laid down that things which do not effect an acquisition when moving, do not effect an acquisition when standing or sitting?

The *Gemora* answers: Rava's ruling is applicable when the slave is bound (since he presently cannot move).

The *Gemora* asks from a different *braisa*: If he made a propriety act on the land, he has acquired the slaves!?

The *Gemora* answers: There, the slaves were standing on the land.

The *Gemora* notes: This implies that the first *braisa* which stated that the transfer of the slaves is ineffective deals with a case where the slaves were not standing on the land. That is all very well according to the version that Rav Ikka the son of Rav Ami said that slaves are regarded as movables; that if why if they were standing on the land, the transfer is effective, otherwise, it is ineffective. But according to the version which understands that slaves are regarded as land, why would it be necessary for the slaves to be standing on the land? But Shmuel said: If someone is sold ten properties in ten different countries, he acquires all of them once he makes a propriety act on one of them.

The *Gemora* replies: And according to the version that slaves are regarded as movables, is it any better? Why do we need the slaves to be standing in the field? Have we not established that the movables are not required to be piled on the land in order to be acquired together with the land?

The answer must be that there is a distinction between movable items that can move themselves and movable items that cannot move. Likewise there must be a distinction between land that moves and land that doesn't move. Since slaves are land that moves, they cannot be acquired with land unless they are standing on it. However, in Shmuel's ruling, the entire earth is connected in one body (and therefore a *kinyan* on one parcel of land is sufficient for all the others). (12a – 12b)



### **Kodshim Kalim**

The *Mishna* had stated: One is liable for damages only on property that is not subject to the *halachos* of *me'ilah* (one who has unintentionally benefited from *hekdesh* or removed it from the ownership of the *Beis Hamikdosh* has committed the transgression of *me'ilah*, and as a penalty, he would be required to pay the value of the object plus an additional fifth of the value; he also brings a *korban asham*).

The *Gemora* infers from the *Mishna* that one may be liable for damaging consecrated property as long as it is not subject to the *halachos* of *me'ilah*?

The *Gemora* asks: Who is the *Tanna* that holds like that?

Rabbi Yochanan answers: It is discussing *kodshim kalim* and it is in accordance with the opinion of Rabbi Yosi HaGelili. He says in a *braisa*: It is written: "If he will commit a treachery against Hashem (by lying to his fellow)." This includes *kodshim kalim*, which are considered his money.

The *Gemora* asks from a *Mishna*: If a *Kohen* betroths a woman with his portion of the *korbanos*, whether it was from *kodshei kodoshim* or *kodshim kalim*, the *kiddushin* is invalid. Let us say that this *Mishna* is not in accordance with Rabbi Yosi HaGelili?

The *Gemora* answers: Our *Mishna* could even be according to Rabbi Yosi HaGelili. Rabbi Yosi might only hold that *kodshim kalim* that is alive is considered a person's own money. However, after it is slaughtered, it is not, because the person now has

it given to them (*the Kohanim and the owner*) "from the table of Hashem" (*the altar*).

The *Gemora* challenges this from a *Mishna* dealing with a *bechor*, but answers that Rabbi Yosi HaGelili would admit that the *Kohanic* gifts are not the property of the *Kohen*, for they acquire it "from the Table of Hashem." (12b – 13a)

### **INSIGHTS TO THE DAF**

#### **Mobile Courtyard**

The *Gemora* states that a moving courtyard cannot effect an acquisition for its owner. The *Rishonim* disagree as to the reason for this. *Rashi* and *Tosfos* maintain that since the *halacha* that a courtyard can effect an acquisition for its owner is derived from the *halacha* of acquiring through one's hand, a moving courtyard, which does not resemble to a hand (*which is stationary*), cannot effect an acquisition for its owner.

The *Ritva* and the *Ran* suggest a different reason for this. They say that since the courtyard can be a great distance away from the owner, it is not considered protected by the owner, and therefore it is disqualified from effecting an acquisition for the owner.

The *Divrei Mishpat* notes that the following case would be a difference between them: If a lost object would fall on his animal which is in his courtyard. If a mobile courtyard is excluded because it does not resemble a person's physical hand, he will not acquire this lost object, for the animal is a moveable



object. If, however, a mobile courtyard is disqualified from effecting an acquisition because it is not guarded from intrusion by the owner, here, he will acquire the lost object because the object is protected.

### ***Kinyan Agav***

The *Gemora* rules that the movable property does not need to be piled on the real property in order for the *kinyan agav* (by making a *kinyan* on the land, he automatically acquires the movable property) to be effective.

The Rishonim ask: If the *halachah* would be that *kinyan agav* is effective only if the movable property is piled on the land, why would it be necessary to use *agav*? The movable property should be acquired because it is resting in his courtyard!?

The Ritv"א answers: The *Gemora* is referring to a case where the courtyard is not protected and therefore it cannot be used to make a *kinyan*. That is why *agav* is necessary.

The Shitah Mekubetzes answers that a courtyard can acquire for a person movable property that entered it only after it became his. However, a courtyard cannot acquire property that was in it before the courtyard became his.

The Steipler Gaon writes that the Shach states this *halachah* only with respect to the acquisition of a courtyard without the knowledge of the owner. However, if he intends to use the courtyard to acquire the movable property which is found in it, it

will be effective even if the property entered the courtyard before it became his.

### **DAILY MASHAL**

#### **Swaying**

Our Daf deals with various manners of acquisition. Torah is also something that is acquired. Once it (the Torah) is acquired, it becomes part of us.

Harav Yehudah Halevi in his classic *Sefer Hakuzari* (Kuzari 2 79) written more than 9 centuries ago addresses the question why is it that Klal Yisroel sway their entire bodies while learning Torah. The truth is that the Zohar (Parshas Pinchos 218b) already makes mention of this custom. The Rishonim write that this concept was first seen at matan Torah as the Possuk (Yisro 20 14) writes "וינועו ויעמדו מרהוק" [see Ba'al Hatorim (Parshas Yisro 20 15)]. This custom also found its way into the Remoh (OC 48 1) who writes "ונהגו המדקדקים להתנועע בשעה שקורין בתורה".

Why is it that universities are still as stone, but the visitors of botei medrash are always, swinging and swaying.

The answer to this is that the universities are busy with *הכמה* but we are busy with Torah. Torah effects our very beings, not just our brains! Torah changes who we are and not just what we know!