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Power of Attorney

The Nehardeans said: We do not write a power of attorney on movables (*to collect properties which are possessed by another*). Rav Ashi said to Ameimar: For what reason? He replied: It is because of Rabbi Yochanan’s viewpoint, For Rabbi Yochanan said: If someone stole an object, and the owner had not despaired of retrieving it, neither the thief nor the owner can consecrate the object. The thief cannot because it is not his, and the owner cannot because it is not in his possession. [*The explanation is as follows: In order for an agent to represent the plaintiff in Beis Din, he must be regarded as the owner of the property. By movables, where it is not in the possession of the plaintiff, he cannot transfer ownership to his agent.*]

The *Gemora* cites another version: The Nehardeans said: We do not write a power of attorney on movables that the custodian already denied. The reason is only because the claim was denied, as the power of attorney document would then appear to be a lie (*for how can the plaintiff be transferring ownership of the movables which are in the defendant’s possession, when the defendant has already denied that he has this property*), but where it was not denied, we would be able to write.

And the Nehardeans further said: A power of attorney which does not contain the words, “Go and take legal action, win the case so that you may secure the claim for yourself” is of no validity, for otherwise, the defendant might say to him, “You have no claim against me.”

But Abaye said: If it is written, “You will be entitled to a half or a third or a fourth of the claim,” it would be valid, for since

he is entitled to litigate regarding half the claim, he is also entitled to litigate regarding the whole.

Ameimar said: If the agent (*after winning the case for the plaintiff*) seized the winnings for himself, we cannot take it away from him.

But Rav Ashi said: Since he writes for him, “I accept upon myself to pay for all the expenses regarding the case,” it is obvious that he was appointed only as an agent (*and therefore the agent cannot keep the winnings for himself*).

Some, however, say that it is obvious that the agent is being made a partner.

The *Gemora* asks: What is the practical difference between them?

The *Gemora* answers: The difference would be in a case where he seized half the winnings for himself.

The *Gemora* rules: The *halachah* is that he is appointed only as an agent. (70a1 – 70a2)

Mishnah

If according to two witnesses he stole (*an ox or a sheep*) and according to them, or according to another two, he slaughtered or sold it, he pays the fourfold or fivefold payments.

If a person stole and sold it on *Shabbos*; or he stole and sold it for idolatry; or he stole and slaughtered it on Yom Kippur; or he stole from his father and slaughtered or sold it and his

father later died; or he stole and slaughtered it and later consecrated it, he pays the fourfold or fivefold payments.

If he stole and slaughtered it for medicine purposes, or for dogs to eat; or if he slaughtered it and it was found to be *tereifah*; or if he slaughtered a nonconsecrated animal in the Temple Courtyard, he pays the fourfold or fivefold payments. Rabbi Shimon exempts in these last two cases (*for he maintains that a slaughtering which does not render the meat fit to be eaten is not regarded as a slaughtering*). (70a2 – 70a3)

Half a Matter

The *Mishnah* had stated: If according to two witnesses he stole (*an ox or a sheep*) and according to them, or according to another two, he slaughtered or sold it, he pays the fourfold or fivefold payments.

The *Gemora* notes: The *Mishnah* is seemingly not following Rabbi Akiva's opinion, for he said that when the Torah said (*regarding witnesses testimony*), "*a matter*," it means that they must testify regarding a complete matter, and not about half a matter. For it was taught in a *Baraisa*: Rabbi Yosi said: When my father, Chalafta, went to Rabbi Yochanan ben Nuri to study Torah, or, as others recorded: When Rabbi Yochanan ben Nuri went to study Torah by my father, Chalafta, he said to him: Suppose a man occupied a piece of land for one year as testified by two witnesses, for a second year as testified by two other witnesses, and for a third year as testified by still two other witnesses (*totaling three years, constituting a chazakah; if one occupies land for three years without the original owner making a formal protest in Beis Din, it is regarded as a chazakah – a presumption of ownership; he can claim that the field is his even if he does not produce a document attesting to that fact*), what is the *halachah*? He replied: This is a proper *chazakah*. He said to him: I also say like that, but Rabbi Akiva disagrees, for Rabbi Akiva used to say: When the Torah said (*regarding witnesses testimony*), "*a matter*," it means that they must testify regarding a complete matter, and not about half a matter.

[*Therefore, in our Mishnah, Rabbi Akiva would have ruled that he would not be required to pay the fourfold or fivefold payments, for the testimony regarding the slaughtering is ineffective without the testimony regarding the theft.*]

Abaye, however, said: You may even say that this is in accordance with Rabbi Akiva. For would Rabbi Akiva not agree in a case where two witnesses testify that a certain person had betrothed a woman and two other witnesses testify that another person had subsequently cohabited with her, for although the witnesses regarding the cohabitation would not be relevant without the testimony regarding the betrothal, nevertheless, since the testimony regarding the betrothal is relevant even without the testimony regarding the cohabitation, each testimony should be considered "*a matter*" (*complete by itself*)! So too here, although the testimony regarding the slaughter is not relevant without the testimony regarding the theft, nevertheless, since the testimony regarding the theft is relevant even without the testimony regarding the slaughter, each testimony should be considered "*a matter*" (*complete in itself*)!

The *Gemora* asks: But according to the Rabbis, what will the exposition of "*matter*," "*but not half a matter*" be excluding?

The *Gemora* answers: It will exclude a case where (*in an attempt to prove that a girl has become an adult*) one witness testified that there was one hair on her back and the other testifies that there was one hair on her stomach.

The *Gemora* asks: But since each hair is testified to by only one witness, would this not be both half a matter and half a testimony (*for there are not two witnesses testifying on each hair*)?

The *Gemora* answers: It excludes a case where two witnesses testify that there was one hair on her back and two other witnesses state that there was one hair on her stomach, and the reason that it is regarded as "*half a matter*" is because one set is testifying that she is a minor and the other is similarly testifying that she is a minor. (70a3 – 70b2)



Kim Leih Bid'rabbah Minei

The *Mishnah* had stated: If a person stole and sold it on *Shabbos*, he pays the fourfold or fivefold payments.

The *Gemora* asks from a *Baraisa* which stated that he is exempt from paying in this case!?

Rami bar Chama answers: He is exempt in a case where the buyer said to the thief, "Cut a fig off of my tree, and I will acquire that which you have stolen." [*He is liable for death at the same time that he sold it; accordingly, he would be exempt from paying based upon the rule of kim leih bid'rabbah minei - whenever someone is deserving of two punishments, he receives the one which is more severe.*]

They said: But the sale should not be regarded as a sale, for if the buyer will demand the animal from the thief, *Beis Din* will not force him to give the animal, for he is liable for death (*at that time*)!?

Rather, Rav Pappa answers: He will be exempt from paying in a case where the buyer said to the thief, "Throw that which you stole into my courtyard, and the stolen item will be acquired by me."

With whom does this *Baraisa* then accord? It would seem that this would reflect only Rabbi Akiva's opinion, for he maintains that something which is contained in the air space of a certain domain is equivalent to coming to rest upon the ground (*and therefore the liability for Shabbos and the acquiring of the item happens simultaneously*); for according to the Rabbis, he would acquire it at the moment it reached the airspace of his courtyard, but he will not be liable for *Shabbos* until it actually lands on the ground (*and accordingly, he would be liable to pay as well*).

The *Gemora* rejects this proof: The *Baraisa* can be referring to a case where the buyer said that he will not be acquiring the stolen item until it rests on the ground.

Rava answers: In truth, the *Baraisa* can be explained in the manner in which Rami bar Chamah said (*the buyer said to the thief, "Cut a fig off of my tree, and I will acquire that which you have stolen"*), and the sale is still valid. For just as the Torah forbade a harlot's wage (*to be used on the Altar*) even in a case where one consorted with his mother, even though he would not be obligated to pay her if she would sue him in *Beis Din* (*for he is liable for death for cohabiting with his mother*). Evidently, even though we cannot force the payment, it is regarded as a payment if he gives it to her. So too here, the sale is valid even though we cannot force the thief to give the animal or return the fig. (70b2 – 71a1)

DAILY MASHAL

Vort

That which it is accustomed to refer to the celebration of a successful shidduch as a "vort" is because the term "vort" connotes the completion of the matter. This is based upon our *Gemora* which states: Rabbi Akiva used to say: When the Torah said (*regarding witnesses testimony*), "davar" - "a matter," it means that they must testify regarding a complete matter, and not about half a matter. And so is true regarding a shidduch; up until this time, they (the chosson and the kallah) were each regarded as "half a person" (as it is explained in the *Zohar*), and like the *Gemora* in *Kiddushin* states: This is akin to someone who loses something. Who is the one searching for the object? Obviously the owner seeks to find his lost object. [*And since the woman was created from the man's lost bone, it is he who searches for her.*] They now become complete, and together, they are a "davar" – a "vort."