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DAF Notes
Insights into the Daily Daf
Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Bava Kamma Daf 90

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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

Who Owns it?

The *Gemora* (89b) was discussing the enactment of the Sages in Usha (*Takanas Usha*) that if a woman sold her *melog* property (*in which she owns the principle, and her husband receives any profits*), and then predeceased her husband, her husband can seize these assets from the buyer. This enactment curtails the rights of the wife, and makes her less of an owner of these assets. The *Gemora* had quoted two *braisos* that discussed a slave who was a *melog* property of a wife. The *braisos* differed on who is considered the slave's owner, insofar as the slave going free when its owner damages an eye or tooth (*shain v'ayin*). The first *braisa* identified the wife as the owner, and the second one said that neither was the owner. According to both *braisos*, the husband is not considered the owner, since he owns only the profits. However, the wife should logically be the owner, since she owns the principle. The *Gemora* had suggested that the two *braisos* disagree on whether *Takanas Usha* was operable, but then gave a number of alternate explanations. (89b)

Breaking a Lien

One explanation given was that both *braisos* accept the enactment of *Usha*, and are also discussing the time period after the enactment was instituted. Therefore, the *braisa* which states that neither the husband nor the wife is regarded as the owner is a logical result of *Takanas Usha*. Since *Takanas Usha* precludes her from making a final sale of the principle, she also is not considered the slave's owner. The other *braisa*, however, states that the slave goes free when the wife strikes him, not due to ownership, but based on the principle of Rava. Rava states that three things can remove a lien on an item:

1. *Hekdesh* (*consecration*): If someone consecrated an item on which someone had a lien, the consecration takes effect, and the lien holder loses his claim to the item.
2. *Chametz* (*the prohibition of chametz ownership on Pesach*): If someone had a lien on their *chametz*, when Pesach arrives, the *chametz* is considered their property, and must be destroyed.
3. *Shichrur* (*freeing a slave*): If someone had a lien on a slave, and the owner frees the slave, the lien is removed.

Takanas Usha gave the husband only a lien on the slave. Therefore, when the woman struck the slave – a form of freeing - the lien was removed, and the slave goes free.

The *Gemora* questions whether Rava's statement is therefore subject to a dispute of *Tannaim*. The *Gemora* says that an alternate explanation can be that all the *Tannaim* can agree with Rava's statement, but the first *braisa* holds that the Sages strengthened a husband's lien more than a regular lien, preventing the woman's freeing of the slave from removing it. (90a)

Product Ownership

The *Gemora* continues with an alternative explanation of the dispute between the two *braisos*: Both *braisos* do not accept the *Takanas Usha*, but differ on whether ownership of products is considered full ownership. If the husband's ownership of products is full ownership, this

degrades the wife's ownership, and prevents her from freeing the slave through striking. If ownership of products is not considered full ownership, the wife is the sole owner, and her striking him sets him free.

The *Gemora* brings a parallel dispute of *Tannaim* regarding the rule of *yom o yomaim*. The Torah says that if an owner hits his slave and the slave dies, if the slave lived for *yom o yomaim – one or two days* (*24 hours*) after the hit, the owner is not punished. This is a leniency reserved for the owner of a slave, since, generally, if one kills someone and the victim dies as a result, the murderer is punished, even if the victim lived for more than twenty-four hours. The case discussed by the *Tannaim* is someone who sold his slave, but reserved the slave's work for himself for thirty days. During that period, the seller has ownership of products (*service of the slave*), but the buyer has ownership of the principle (*the slave*).

Four *Tannaim* dispute who gets the leniency of *yom o yomaim*:

Tanna	Seller	Buyer	Rationale
Rabbi Meir	Yes	No	Product ownership is ownership
Rabbi Yehudah	No	Yes	Product ownership is not ownership
Rabbi Yosi	Yes	Yes	Unsure whether product ownership is ownership; therefore, we cannot kill either buyer or seller after 24 hours
Rabbi Eliezer	No	No	The Torah applies this only to "*kaspo*" – his full property, and neither fully owns him

[Tosfos cites an alternate reading of the Gemora, which decouples these opinions from the general dispute of product ownership being ownership – see Insights.]

The *Gemora* says that Ameimar's statement that a man and woman cannot sell *melog* property – even if they sell it together – is following Rabbi Eliezer, who holds that ownership is only when one owns both principle and products.

The *Gemora* quotes a *braisa* that states that a slave owned by partners, or one who is half free, does not go free when struck by his master. The *Gemora* states that this *braisa* is also following Rabbi Eliezer, and just as Rabbi Eliezer required full ownership for *yom o yomaim* from the word *kaspo – **his** property* , so he will require full ownership for *shain v'ayin* from the word *avdo – **his** slave*. (90a)

Mishna

The *Mishna* discusses the rules of *boshes (disgrace)* damages in more detail. The *Mishna* lists *boshes* payment amounts for different types of embarrassments:

1. If one hits (*or, according to some, blows a trumpet in*) someone's ear, he must pay a *sela*. Rabbi Yehudah quotes Rabbi Yosi as saying a *maneh*. The *Gemora* will discuss which value is greater.
2. If one slaps someone across the face, he must pay 200 *zuz*.
3. If he slapped with the back of his hand (*which is more degrading*), he must pay 400 *zuz*.
4. If he pulled someone's ear, pulled his hair, spat on him, pulled off his clothes, or uncovered a woman's hair in public, he must pay 400 *zuz*.

The *Mishna* then makes a number of general statements. The *Mishna* says that the rule for all *boshes* estimations is that the amount depends on the honor of the person. Rabbi Akiva says that even a poor person is estimated as

a rich person who has lost his fortune, since all Jews are descendants of the majestic forefathers.

The *Mishna* tells a story of a man who uncovered a woman's hair in public. The woman brought the man to Rabbi Akiva's court, and Rabbi Akiva obligated him to pay 400 *zuz*. The man asked for time to pay. During that time, the man waited for a moment when the woman was in front of her house, and then broke a jug of oil in front of her. She proceeded to remove her head covering, and rub the oil into her hair. The man summoned witnesses to this woman's actions, and brought them to Rabbi Akiva's court to prove that he didn't cause her any embarrassment that she wouldn't cause to herself. Rabbi Akiva refused to exempt the man, since just as a person who harms himself or his property has not forfeited damages from someone else who does the same harm to him, so does embarrassing oneself not give others license to embarrass him. (90a – 90b)

How much is a Maneh?

The *Gemora* questions what type of *maneh* Rabbi Yehudah meant. There were two currency systems in use in the *Mishna*'s time – the Tyrian currency, and the general provincial currency. The Tyrian currency was eight times larger than the provincial currency. If Rabbi Yehudah meant a Tyrian *maneh*, it would be twenty-five *selas*, whereas if he meant a provincial *maneh*, it would be one-eighth of that value. [*The Gemora 36b already stated that the sela in our Mishna is a provincial sela.*]

The *Gemora* proves that the *maneh* is a Tyrian one from a story in which Rabbi Yehudah Nesia obligated someone a Tyrian *maneh* for this type of damage. When the man was brought in front of Rabbi Yehudah Nesia, Rabbi Yehudah Nesia said to him – "Here I am, and here is Rabbi Yosi HaGelili - now pay him a Tyrian *maneh*!"

The *Gemora* discusses what Rabbi Yehudah Nesia meant by his statement about him and Rabbi Yosi HaGelili. The *Gemora* suggests that Rabbi Yehudah Nesia meant as follows: I saw you hit the victim, and Rabbi Yosi HaGelili says such an assault must pay a Tyrian *maneh*. The *Gemora* objects to this option, since a witness cannot also judge the same case, so Rabbi Yehudah Nesia could not simultaneously act as the witness (*by saying, "I saw you..."*) and the judge (*by obligating him to pay*). The *Gemora* quotes a dispute of Rabbi Akiva and Rabbi Tarfon to prove that a witness cannot simultaneously act as the judge. Rabbi Akiva and Rabbi Tarfon discuss a case of a *Sanhedrin* court that witnessed a murder. Rabbi Tarfon says that some of the judges may act as witnesses, and the remainder may judge the case, and thereby sentence the murderer to death. Rabbi Akiva, on the other hand, states that since they all witnessed the murder, and therefore can all potentially testify, they may not judge this case. The *Gemora* says that even Rabbi Tarfon, who allows people who witnessed a crime to judge it, does not allow anyone who actually testifies on a case to also be the judge. Therefore, all would disqualify Rabbi Yehudah Nesia from simultaneously testifying and judging the attacker. The *Gemora* resolves this by limiting the dispute of Rabbi Akiva and Rabbi Tarfon to a case where the judges witnessed the act at night. Since they can only adjudicate the case in the day time, they would have to testify when deciding the case, simultaneously acting as judge and testifying witness. However, if the act was witnessed in the day time, they are not playing the role of witnesses, but simply deciding on the basis of their seeing the act at the time of judgment. If judges can adjudicate a case based on hearing a witness's testimony, they can definitely do so on the basis of their actually seeing it, bypassing the need for witnesses, per se. [*Rashi says this resolution is only according to Rabbi Tarfon, but Tosfos maintains that it is also according to Rabbi Akiva.*]

The *Gemora* gives an alternative explanation of Rabbi Yehudah Nesia's statement, which avoids any issues of simultaneously testifying and judging. Rabbi Yehudah Nesia was saying that both he and Rabbi Yosi HaGelili hold that damages for such an act are a Tyrian *maneh* - and

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there are also witnesses to the act - and therefore the attacker should pay. (90b)

Testifying and Judging

The *Gemora* now returns to Rabbi Akiva and Rabbi Tarfon's dispute, and questions whether Rabbi Akiva holds that a witness cannot be act as a judge. The *Gemora* brings a *braisa* that discusses the verse the Torah uses in describing a murderer: *v'hika ish es rayayhu b'even o b'egrof – and a man struck his friend with a stone or fist*. Shimon HaTimani says that this verse is telling us that a murder case can be only adjudicated if the murder weapon can be evaluated by the court – similar to a stone or fist - since only striking with a lethal weapon is punishable in court. However, if the murder weapon was lost, even though the witnesses saw it, the court cannot adjudicate the murder case. Rabbi Akiva challenges this requirement, and points out that even if the court inspects the murder weapon, that does not suffice, since they did not witness the actual act of murder. Even a potentially lethal weapon can be used in a non lethal blow, in which case the murderer is not executed. Furthermore, if the victim was pushed from a building, the court cannot evaluate the lethality of the situation. Even if they could visit the murder scene, if the building was razed, they could not evaluate it directly. Therefore, in all cases, the court may rely on the witnesses' estimation of the lethality of the situation, and decide based on their testimony. The only requirement the verse is imposing is that the *witnesses* be able to evaluate the situation, which excludes a case where the murder weapon was lost before the witnesses could inspect it. When Rabbi Akiva objected to Shimon HaTimani, he asked, "Did the court see the murder occur, such that they could know it was a lethal blow?" This would indicate that if they did see it, they could judge based on their testimony, which contradicts the earlier *braisa*. The *Gemora* answers that Rabbi Akiva was only challenging Shimon HaTimani, based on Shimon HaTimani's own opinion, and not according to his ruling. (90b)

Multiple Damages

The *Gemora* brings a *braisa* that states that a *tam* ox that killed a person, and then damaged a person, is judged on the capital case (*of killing*), and not on the monetary case (*of damaging*). A *mu'ad* ox that did the same is first judged on the monetary case, and then on the capital case. If the court instead began with the capital case, they may not return and judge the monetary case. The *Gemora* questions why they may not return to judge the monetary case, if the owner of the ox is liable for both. [*Rabbi Akiva Eiger raises a challenge to this possibility based on the Gemora 13b that requires the ox to have damaged and be judged under the same ownership, and not when it is ownerless.*] Rava says that he encountered the Rabbi's of Rav's *Beis Medrash*, and they said that this *braisa* is the opinion of Shimon HaTimani, who says that judges must directly inspect evidence to judge on a case. Therefore, if the court already sentenced the ox to death, we don't delay the implementation to give the court a chance to inspect the ox for the monetary case. Rava says that he told these Rabbis that the *braisa* can also be true according to Rabbi Akiva, in the case where the owner of the ox has fled. In such a case, the only assets we can collect monetary damages from are the ox itself, but it will now be killed. Even though we do not adjudicate a monetary case without the presence of the defendant, in the *braisa*'s case, the court received testimony on the monetary case before the owner fled. In the case of a *mu'ad* ox, we would first finish adjudicating the monetary case, pay the victim from money earned through the ox's work, and then adjudicate the capital case, and kill the ox. However, monetary payment due to a *tam* ox's damage are only collected from the ox itself. In the case of a *tam* ox, we cannot pay the victim from the money earned by the ox's work, since the ox's work is considered additional assets of the ox's owner, and not the ox itself. (90b – 91a)

INSIGHTS TO THE DAF

Hekdesh vs. Lien

The *Gemora* cited Rava's statement, that a lien can be broken by three mechanisms: *hekdesh* (*consecration*), *chametz* on Pesach, and *shichrur* (*freeing a slave*). The Rishonim discuss the parameters of *hekdesh* breaking a lien.

Type of Hekdesh

Rashi states that this is only true for *hekdesh haguf* – consecration of an item itself, and not just its value. If someone consecrates an animal as a sacrifice, the animal itself is to be used for the sacrifice, and is therefore considered *hekdesh haguf*. If someone consecrates other items, they will be sold, with their value being used by *hekdesh*. This is called *hekdesh damim* (*monetary consecration*).

Tosfos explains that since *hekdesh haguf* is not redeemed (*unless the animal becomes unfit*), once it applies to an animal, a lien does not remove it. However, just as *hekdesh damim* can be removed via redemption, it is removed by the lien.

The Rambam (Malve v'lo've 18:7) holds that both types of *hekdesh* remove a lien.

Rabbeinu *Tam* (Tosfos Gittin 40b *hekdesh*) says that on movable items, both types of *hekdesh* remove a lien, but on real estate, only *hekdesh haguf* removes a lien, since real estate is considered to currently be property of the lien holder.

The Meiri states that the type of *hekdesh* is immaterial, and the only issue is whether the borrower has any more assets for the lien holder to collect from. If there are more assets, the *hekdesh* removes the lien, but if there are no more assets, the *hekdesh* does not affect the lien.

How?

Tosfos (Gittin 40b *hekdesh*) state that Rava is consistent with his opinion (Pesachim 30b) that a creditor is considered an owner of property he collects only from the time of collection. Therefore, until that time, the assets are still the property of the borrower, and he has the power to consecrate it.

Konam

The Rishonim discuss whether forbidding an item through a *konam* (*vow*) can also break a lien, inasmuch as a *konam* is akin to a personal consecration. Most Rishonim say that only a *konam* that forbids everyone from benefiting from the item can break the lien, since such a *konam* is similar to consecration in it universal application. Some Rishonim (Meiri, Ran, Nimukei Yosef) hold that even a *konam* only prohibiting the creditor from benefit breaks a lien, but we pressure the borrower to undo his *konam*, since he unfairly has harmed the creditor alone by his action.

Partners – Full or not?

The *Gemora* (90a) discusses the opinions of the *Tannaim* regarding *yom o yomaim* for a slave whose principle is owned by one, but products are owned by another. The *Gemora*, in our version, states that the *Tannaim* hold their positions, based on how they view ownership of products, as explained above.

Tosfos (90a Rabbi Meir) raises an issue with this logic. According to this explanation, Rabbi Meir says that the seller, who owns the products only, is considered the owner for the purposes of *yom o yomaim*. The *Gemora* is assuming that considering product ownership full ownership confers rights exclusively to the product owner. However, earlier the *Gemora* had stated that the *braisa* that said neither the husband nor the wife were the owner regarding *shain v'ayin* also held that ownership of products is ownership. This assumes that considering product ownership full ownership only *prevents* the principle owner from full ownership rights, and leaves neither owner with full rights.

Tosfos answers that in the case of freeing a slave, the co partner's ownership prevents the freeing, since he still

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retains rights. However, in the case of *yom o yomaim*, we simply need to identify who is the owner, not to remove any other owner's rights, but to apply the rule of *yom o yomaim*. There, we identify the one who owns products as the owner, since the Torah refers to the owner who the slave is *tachtav* – under him.

The Rivam, however, states that the introduction of this dispute about *yom o yomaim* is an alternative explanation, which does not refer to the dispute of product ownership. Rabbi Meir would hold that both the husband and wife would have the rule of *shain v'ayin*. The authors of the two *braisos* above are Rabbi Yehudah (*only the wife has the rule of shain v'ayin, since she owns the principle*) and Rabbi Eliezer (*neither have the rule of shain v'ayin, because both types of ownership are necessary to get ownership rights*).

The *Halachah* rules like Rabbi Eliezer, who says that neither owner is the full owner for *yom o yomaim*.

The *Gemora* applies Rabbi Eliezer to two more situations.

Husband and Wife Sale

Ameimar says that if a husband and wife sell *melog* property, the sale is invalid. The *Gemora* says that this is following the opinion of Rabbi Eliezer.

Rashi states that Ameimar's *halachah* is true in all cases - even if the couple both sold the same property together.

The Ra'avad says it is true even if they both sold it, but only if they sold it separately. If they sold it together, they can pool their ownership to accomplish full ownership.

The Meiri goes further and says that Ameimar only meant that each one cannot sell their ownership, but if they both sold the property, even not simultaneously, the sale is valid.

Rashi is based on the reasoning found in our *Gemora*, that Ameimar is following the opinion of Rabbi Eliezer, and therefore neither the husband nor wife can be considered owners. However, the Ra'avad and Meiri hold that the *Gemora*'s association of Ameimar with Rabbi Eliezer is only within the statement that both *braisos* do not accept *Takanas Usha*. That statement led the *Gemora* to discuss and explain the *Tannaim*'s opinions about the halacha of *yom o yomaim*. However, we accept *Takanas Usha*, and therefore Ameimar is not following Rabbi Eliezer per se, but rather is limiting the individual ownership rights of the husband and wife, due to the presence of their spouse's ownership. Once their ownerships work in concert for the sale, it is valid.

Slave Ownership

The *Gemora* identifies a *braisa* about joint slave ownership regarding shain v'ayin as Rabbi Eliezer's opinion. The *braisa* states that a slave owned by two masters or half free does not go free as a result of *shain v'ayin*.

Tosfos and Rashi say that this *braisa* is only in a case where the partnership splits principle and profit, just like Rabbi Eliezer's case. However, in a normal case of partnership, where each partner has partial quantitative ownership, of both principle and products, each partner is considered a full owner of his share.

The Ra'avad says that this *braisa* is even in the case of a regular quantitative partnership. Joint ownership of a slave is different than other joint ownerships, since a slave cannot be split, so part ownership does not confer ownership rights to either partner.

Judging and Testifying

The *Gemora* (90b) introduces the concept of *ain aid naaseh dayan – a witness cannot become a judge.* , quoting a dispute between Rabbi Akiva and Rabbi Tarfon on the extent of this restriction. This concept occurs in a number of other contexts in Shas, and the Rishonim discuss both the reason and parameters of this *halachah*.

Tosfos (90b k'gon) brings three possible reasons given for this *halachah*:

1. It is a technical issue. Witnesses are only valid if it is possible to refute them. Since the witnesses are the judges, the court will not hear testimony that would refute the witnesses, since it would incriminate the judges themselves. Tosfos objects that such reasoning would invalidate witnesses who are related to judges. Instead, Tosfos says that since another court may accept refuting witnesses, this suffices to consider the witnesses valid.
2. The Rashbam says it is from the verse that describes testimony – *v'amdu shnei haanashim … lifnei Hashem – the two men (witnesses) … will stand in front of Hashem (in court)*. The implication of the verse is that the subjects of the two parts of the sentence (*the witnesses vs. the court*) must be different people.
3. The R"i says it is from the way the Torah phrased the topic of inheritance. The Torah stated that *b'yom hanchilo es banav* – on the day when he will give inheritance to his sons. The *Gemora* learns from here that the people who witness the inheritance can adjudicate it. The fact that the Torah stated that it will be in daytime indicates that at night, this would not be the case. The reason is, as our *Gemora* indicates, because witnessing at night necessitates testimony, which cannot be done by the judges.

Tosfos (R"H 26a d'rachmana) delineates three levels of separation between testifying and judging:

1. Capital crimes – even just seeing invalidates them as judges (*according to Rabbi Akiva*).
2. Non capital testimony mandated by the Torah (*e.g., seeing the new moon*) – the judges are invalidated only if they testify, but not just by seeing (*according to everyone*).

Rabbinic testimony (*e.g., validating witnesses signature on contracts*) – judges can testify and judge.

DAILY MASHAL

The Viznitzer Rebbe once asked someone who lost his way in Yiddishkeit: What happened to you? The young man replied: What should I do? The yetzer hara is so strong, and I cannot free myself from him. The Rebbe responded by quoting our Gemora: Consecration releases from a lien. If one consecrates himself (he makes himself holy), he can be released from his Evil Inclination.