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Inheritance Equal to a Sale

Rav Adda bar Ahavah taught Rami bar Chama's statement in regards to the following *Baraisa*: If a father left to his children money accumulated from interest, even if the inheritors know that the money was taken as interest, they are not obligated to restore the money to the owners. Rami bar Chama states that the *Baraisa* indicates that the transfer of ownership accomplished by inheritance is equivalent to the transfer of ownership accomplished through a sale. [*This is why the inheritors can acquire the illegal payment of the interest, and they would not be required to return it to the borrower.*]

Rava disagrees: Perhaps the transfer of ownership accomplished by inheritance is ***not*** equivalent to the transfer of ownership accomplished through a sale. The reason why the inheritors are not required to return the illegal payment is because the Torah instructs only the lender to return the interest, not the lender's children.

Those who attach the argument to the Baraisa would certainly connect it also with the ruling of our Mishnah,[1] but those who attach to our Mishnah might maintain that regarding the Baraisa Rami bar Chama expounds it in the same way as Rava. (112a)

Stealing and Bequeathing

The *Gemora* cites a *Baraisa*: If one stole something and fed it to his children, they would not be liable to repay. If, however, he left it for them (*as an inheritance*), then if they are adults they would be liable to pay, but if they are minors, they would be exempt. But if the adults claimed, "We have no knowledge of the accounts which our father kept with you (*perhaps he paid you already*)," they also would be exempt.

The *Gemora* asks: But how could they become exempt merely because they claimed that they have no knowledge of their father's accounts? [*Their father definitely stole and it is uncertain if he repaid it, they should be liable to pay!?*]

Rava answers: What the *Baraisa* meant is as follows: If the adults claimed, "We know quite well the accounts which our father kept with you and we are positive that there was nothing of yours in his possession," they would be exempt.

Another *Baraisa* taught: If one stole something and fed it to his children, they would not be liable to repay. If, however, he left it for them (*as an inheritance*), then whether they are adults or minors, they would be liable to pay.

The *Gemora* asks: How could the minors be liable? Even if they were regarded as a damager, they would still be exempt!?

Rav Pappa answers: The *Baraisa* meant that if he left it intact before them and they had not yet consumed it, whether they were adults or minors, they would be liable. (112a1 – 112a2)

[1] Dealing with robbery where there is no apparent reason for the exemption except the view of Rami bar Chama.

Rava said: If their father (*after he died*) left them a cow which was borrowed by him, they may use it for the entire period for which it was borrowed. If it died, they would not be liable for the accident. If they had assumed that it was the property of their father, and they slaughtered it and consumed it, they would have to pay for the value of meat at the cheapest price (*two-thirds of the market value*). If their father left them real property, they would be liable to pay (*for the borrowed item*).

Some connect this last ruling with Rava's first ruling (*if the animal died, they would be liable to pay from the real property; accordingly, Rava must maintain that a borrower becomes liable for any accident that might happen at the time of the borrowing, and as a result from that, a lien is placed upon his real property to return the animal or its value*). Others, however, connect it with Rava's last ruling (*if they had assumed that it was the property of their father, and they slaughtered it and consumed it, they would have to pay full value*). Those who connect it with the first ruling would certainly apply it to the last ruling and thus differ from Rav Pappa (*for he maintains that a borrower only becomes liable for an accident that happens at the time that it actually happens*), whereas those who connect it with the last ruling would not apply it in the first ruling, and so he would be in agreement with the view of Rav Pappa. For Rav Pappa had stated: If one stole a cow before *Shabbos* and slaughters it on *Shabbos*, he will be liable to pay the penalty for slaughtering since he is responsible for the stealing from before *Shabbos* (*and the punishment of death does not exempt him from paying the penalty on account of the slaughtering*). If the cow was lent to him and he stole and slaughtered the cow on *Shabbos*, he will be exempt from paying the penalty, for the violation of *Shabbos* and the theft occurred simultaneously. [*Evidently, Rav Pappa is of the opinion that that a borrower only becomes liable for an accident that happens at the time that it actually happens, for if he would be liable from the time that he borrowed it, the halachah of kim leih bid'rabbah minei would not be applicable*). (112a2 – 112a4)

The *Gemora* cites a *Baraisa*: It is written: *And he shall return the stolen article that he stole*. What does it mean "*that he stole*"? It means that he shall return it as it was when he stole it. [*If it is not in existence, he is not obligated to return it – this is obviously referring to the children of the robber, for the thief himself must always return it.*] From here, they said: If one stole something and fed it to his children, they would not be liable to repay. If, however, he left it for them (*as an inheritance*), then whether they are adults or minors, they would be liable to pay. They said in the name of Sumchos: If they are adults, they will be liable, but if they are minors, they are exempt. (112a4)

Claim against a Minor

The son (*who was a minor*) of Rabbi Yirmiyah's father-in-law closed the door in the face of Rabbi Yirmiyah (*claiming that the property was his, for he inherited it from his father; Rabbi Yirmiyah claimed that he was the owner, for the father-in-law had sold it to him or had given it to him as a gift*). Rabbi Yirmiyah came to complain about this to Rabbi Avin. Rabbi Avin said to him, "Is he not merely asserting his right to that which is his?" But Rabbi Yirmiyah said to him, "I can bring witnesses to testify that I have a *chazakah* (*a presumption of ownership – this is accomplished by occupying the property for three years without anyone protesting*) of the property during the lifetime of the father." Rabbi Avin replied, "Can we accept witnesses where the other party is not present?" [*The Gemora is stating that we cannot accept testimony against a minor.*]

The *Gemora* asks: And why not? Was it not stated in a *Baraisa*: Whether they are adults or minors, they would be liable!?

Rabbi Avin repled: Is not the dissenting opinion of Sumchos at your side?

Rabbi Yirmiyah retorted: Has the whole world accepted to adopt the view of Sumchos just in order to deprive me of my property?

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

Meanwhile the matter rolled on until it came to the notice of Rabbi Avahu, who said to them: Did you not hear of what Rav Yosef bar Chama reported in the name of Rabbi Oshaya? For Rav Yosef bar Chama said in the name of Rabbi Oshaya: If a minor took his slaves and went down to another person's field claiming that it was his, we do not say, "Let us wait until he becomes an adult," but rather, we take it away from him immediately and when he becomes an adult, he can bring forward witnesses to support his allegation and then we will decide.?

The *Gemora* asks: But what comparison is there? In that case, we are entitled to take it away from him because he had no *chazakah* on it from his father (*we never knew that it belonged to the father*), but in a case where he has a *chazakah* from his father, this should surely not be so. (112a4 – 112b1)

Party not Present

Rav Ashi said in the name of Rabbi Shabsai: We accept witnesses even where the other party is not present. Thereupon Rabbi Yochanan remarked in surprise: Is it possible that we accept witnesses where the other party is not present?

Rabbi Yosi bar Chanina accepted from him (*Rabbi Yochanan*) that this would apply in the case where the plaintiff was seriously ill, or the witnesses were seriously ill, or where the witnesses were intending to go abroad, and the defendant was sent for, but did not come.

Rav Yehudah said in the name of Shmuel: We accept witnesses even where the other party is not present.

Mar Ukva said: It was explained to me from Shmuel that this is so only where the case has already been opened in the *Beis Din* and the defendant was sent for, but did not come, whereas if the case has not yet been opened in the *Beis Din*, he may claim, "I prefer to go to the High Court."

The *Gemora* asks: If so, even after the case had already been opened, why should he similarly not be able to claim that he wishes to go to the High Court?

Ravina answered: This claim could not be put forward when the plaintiff is holding a letter from the High Court (*ordering the other court to judge the case; if however, they had not begun the case, he may go to the High Court – despite the letter*). (112b1 – 112b2)

Certifying a Document

Rav said: A loan document can be certified (*that the signatures are authentic; then, the witnesses may travel abroad*) even when the borrower is not present. Rabbi Yochanan said that a document cannot be certified if the borrower is not present.

Rav Sheishes said to Rabbi Yosi bar Avahu: I will explain to you the reason of Rabbi Yochanan. Scripture says: And testimony has been given against it in the presence of its owner and he did not guard it; the Torah thus lays down that the owner of the ox has to appear and stand by his ox [when testimony is borne against it].

Rava said: The *halachah* is that a document may be certified even if the borrower is not present; and even if he protests and screams that the document is a forgery. But if he says, "Give me time so that I can bring witnesses, and I will invalidate the document," we give him time. If he appears, he has appeared, but if he does not appear, we wait until the following Monday and Thursday and Monday. If he still does not appear we write a bill of excommunication against him, and that remains in effect for ninety days. For the first thirty days, we do not take possession of his property, as we say that perhaps he is occupied trying to borrow money. During the middle thirty days, we also do not take possession of his property, as we say that perhaps he was unable to borrow and is therefore trying to sell his property. During the last thirty days, we again cannot take possession of his property,

as we say that the purchaser himself is trying to get money. If he still does not appear, we then write a seizure warrant on his property.

This procedure is only if he has said that he is coming, whereas if he said, "I am not coming," we immediately write the seizure warrant on his property.

This procedure is only in the case of a loan, whereas in the case of a deposit, we immediately write the seizure warrant on his property.

A seizure warrant can be written only with respect to land (*we allow him to collect land from the defendant*), but not to movables, because the lender might meanwhile consume the movables and if the borrower subsequently appears and bring witnesses which invalidates the document, he would find nothing from which to recover payment. But if the lender has land, we may write the seizure warrant even upon movables.

This, however, is not correct. We do not write the seizure warrant upon movables even though the lender possesses land, for we are concerned that his property may deteriorate.

Whenever we write a seizure warrant, we notify the borrower. This is true if he resides nearby, but if he resides far away, this is not done. And even where he resides far away, if he has relatives nearby or if there are caravans which go to where he is and return, we wait another twelve months until the caravan goes there and comes back, as Ravina made Mar Acha wait twelve months until a caravan went to Bei Chozai and came back.

The *Gemora* notes: This, however, is no proof for in that case, the creditor was a powerful man, so that should if the seizure warrant would have come into his hand, it would have been impossible to get it back from him (*even if the loan document was proven to be false*), whereas in regular cases, we do not wait for him unless the messenger from the court could go on Tuesday to let him know and come back on Wednesday, so that on the Thursday he can stand in court.

Ravina said: The messenger of court is as credible as two witnesses (*if he reports back that the defendant does not wish to comply with the court's instructions*). This applies only to for excommunication (*for not listening*), but in the case of a bill of excommunication, seeing he will suffer a monetary loss because he must pay for the scribe, this would not be so (*the messenger is not relied upon*). (112b2 – 112b4)

INSIGHTS TO THE DAF

Borrower Lending to Another

Rava said: If their father (*after he died*) left them a cow which was borrowed by him, they may use it for the entire period for which it was borrowed.

The commentators ask: How are the heirs permitted to use it? The *halachah* is that a borrower is not permitted to lend the item out to anyone else, for the owner can say, "I do not want my deposit to be in the hands of someone else"!?

The Hagahos Mordechai answers that since it is self-understood that a borrower will give the item to his wife and children, this would be permitted even after the borrower's death.

The Machaneh Efraim asks on this interpretation that if so, it should only be permitted by the borrower's sons and only if they are supported by the father!? Otherwise, it should be forbidden, and from the *halachah*, this does not appear to be the case!?

Reb Akiva Eiger answers that the *halachah* that a borrower is not permitted to lend the item out to anyone else is only *l'chatchilah*; however, once he lends it out, the owner cannot take it away from him. Therefore, in this case, where

the children took possession of it through an act of Heaven, they are permitted to use it.

The Erech Shai answers that the owner may be particular only to say that he did not intend to lend it out to someone else; however, with respect to the death of the borrower, which is not such a common occurrence, he cannot say that if I would have known that my cow would end up by the inheritors, I would not have lent it in the first place. The heirs therefore are permitted to use it.

The gabbai who wanted to leave this world with a clean conscience

Our sugya explains that according to all opinions (even according to those who hold that an heir is like a purchaser), children who inherit stolen goods from their father must return them to their owners, though they have acquired the goods by "change of ownership" (shinuy reshus). This responsibility stems from their obligation to honor their father for if they use the stolen goods, neighbors will take notice and remember the father as a thief.

The difference between guarding one's father's honor and dishonoring one's father: The Rosh (Kesubos 9, 14) discusses the sons' obligation to deduct from their inherited capital to honor their father and states that our sugya implies we must force the sons to return stolen goods. He raises the question, however, that we do not force someone to honor his father, as the Gemara (Chulin 110b) explains that we do not force someone to observe a mitzvah whose reward is explicitly mentioned by the Torah. Hence, a son who does not pay his father's debts, though he has a mitzvah to do so, cannot be forced. If so, why are the sons forced to return stolen goods? The Rosh explains that though children are not forced to honor their parents, the failure to return stolen goods may bring dishonor.

Tzemach David (68) proves from our sugya that, in regard to all matters concerning the father's dishonor, a son must even spend his own money to prevent disgrace as the stolen goods never belonged to the father and the son acquired them only by shinuy reshus. However, why must he prevent his father's disgrace with his own money? The halachah is that "one must honor one's father using his father's capital" (Shulchan Aruch, Y.D. 240:5). It is thus clear that in all matters of dishonor, a son must also use his own money. See Tzemach David, who concludes the issue as needing further examination.

DAILY MASHAL

Careless records of the distribution of charity: On his death-bed, the gabbai of a charity fund confessed to his sons that sometimes, mostly inadvertently, he had misrecorded contributions and some of the funds had entered his private account. He therefore asked them to put a certain amount in the charity account to enable him to leave this world without sin. After the shivah the sons unanimously decided to disobey their father, claiming that repaying the fund would be construed as admitting that their father had been dishonest. They claimed that they had to guard his honor and prevent any gossip that could soil his reputation.

However, Rabbi Yehuda Assad ordered the sons to quickly obey their father. (The decision is mentioned in his responsa Yehuda Yaaleh, II, 47). Among other reasons, if they care for their father's honor, they should not consider him as a total liar and ignore his request. After all, he explicitly told them that he made some errors and if they ignore him, his honor would be disgraced. He advised them to do as their father wished and tell people that their honest father requested so in order to enter the World to Come without the slightest sin.