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Acquiring for his Fellow

Both Rav Nachman and Rav Chisda say: If a man picks up a found object for his fellow, the fellow does not acquire it. What is the reason for this? It is because it is like one who seizes a debtor's property on behalf of a creditor, thereby causing loss to the debtor's other creditors and he who seizes a debtor's property on behalf of a creditor and thereby causes loss to other creditors does not legally acquire it.

Rava asked Rav Nachman from the following *Baraisa*: A worker's find (*of a lost object*) belongs to himself. This ruling only applies to a case where the employer said to the worker, "Weed for me today," or "dig for me today" (*he gave him a specific task to do*). But if he said to him, "Work for me today," the worker's find belongs to the employer!? [*We see that someone can pick up something for his fellow and the fellow acquires it!?*]

Rav Nachman replied: A worker is different, as his hand is like the hand of his employer.

The *Gemora* asks: But didn't Rav say: A worker may retract even in the middle of the day!? [*Evidently, the worker is not owner by the employer!?*]

Rav Nachman responded: As long as he does not retract and he continues working for him, he is like the hand of the employer. He can retract for another reason, for it is written: *For to me, Bnei Yisroel are servants*, and not servants to servants.

Rabbi Chiya bar Abba said in the name of Rabbi Yochanan: If a man picks up a found object for his fellow, the fellow does acquire it. And if you will challenge this from our *Mishna* (*which seems to say that he does not acquire it*), the explanation is because the rider said, "Give it to me," but he did not say, "Acquire it for me" (*and that is why the rider doesn't automatically acquire it*). (10a2 – 10a3)

Mishnah

If someone saw a lost object and he fell upon it and someone else comes and grabs it, the one who grabbed it has acquired it. (10a3)

Four Amos

Rish Lakish said in the name of Abba Kohen Bardela: A man's four *amos* acquires for him in any place (*if an ownerless object is within four amos of a person, he is entitled to acquire it*). The Rabbis instituted this in order that people should not quarrel with each other.

Abaye said: Rabbi Chiya bar Yosef asked on Rish Lakish from a *Mishnah* in Pe'ah. Rava said: Rabbi Yaakov bar Idi asked on Rish Lakish from a *Mishnah* in Nezikin (*our Mishnah*).

Abaye said: Rabbi Chiya bar Yosef asked on Rish Lakish from a *Mishnah* in Pe'ah: If a poor man took some *pe'ah* and threw it over the rest of the gleanings, he does not acquire anything. [*The Rabbis penalized him even on the part which he legally acquired*.] If he fell upon it, or if he spreads his cloak upon it, he may be removed from it (*for he did not make a valid kinyan*). The same *halachah* applies to a forgotten sheaf (*shich'chah - one or two bundles that are*

mistakenly left behind during the gathering of the bundles are left for the poor). Now if you say that a man's four *amos* acquire for him in any place, let the four *amos* of the poor man acquire the *pe'ah* for him!?

The *Gemora* answers: The *Mishnah* is dealing with a case where the man did not say, "I wish to acquire it (*with the "four amos" kinyan*)."

The *Gemora* asks: If the Rabbis instituted this *kinyan*, what difference does it make if he did not say anything?

The *Gemora* answers: Since he fell upon it, he made his intention clear that he wished to acquire it by falling upon it, but he did not wish to acquire it by means of four *amos*.

Rav Pappa answers: The Rabbis instituted the *kinyan* of four *amos* only in a public place (*such as a recessed area next to a public thoroughfare*), but the Rabbis did not institute this *kinyan* in a private person's field. And although the Torah gave the poor person a right in this field, it gave him the right to walk in it and take the *pe'ah*, but the Torah did not give him the right to regard it as his courtyard.

Rava said: Rabbi Yaakov bar Idi asked on Rish Lakish from a *Mishnah* in Nezikin (*our Mishnah*). If someone saw a lost object and he fell upon it and someone else comes and grabs it, the one who grabbed it has acquired it. Now if you say that a man's four *amos* acquire for him in any place, let his four *amos* acquire for him!?

The *Gemora* answers: The *Mishnah* is dealing with a case where the man did not say, "I wish to acquire it (*with the "four amos" kinyan*)."

The *Gemora* asks: If the Rabbis instituted this *kinyan*, what difference does it make if he did not say anything?

The *Gemora* answers: Since he fell upon it, he made his intention clear that he wished to acquire it by falling upon it, but he did not wish to acquire it by means of four *amos*.

Rav Sheishes answers: The Rabbis instituted the *kinyan* of four *amos* only in a recessed area, which is not crowded with people, but the Rabbis did not institute this *kinyan* in a public place, where it is crowded with people.

The *Gemora* asks: But didn't Rish Lakish say that the *kinyan* of four *amos* is effective in any place?

The *Gemora* answers: He meant to include the sides of the public thoroughfare. (10a3 – 10b1)

Minor Girl's Courtyard

And Rish Lakish said in the name of Abba Kohen Bardela: A girl who is still a minor does not have the right to acquire an object by means of her courtyard, nor does she have the right to acquire an object by means of her four *amos*. And Rabbi Yochanan said in the name of Rabbi Yannai: A girl who is still a minor does have the right to acquire an object by means of her courtyard, and she does have the right to acquire an object by means of her four *amos*.

Let us say that the point at issue between them is this: Rabbi Yochanan holds that acquiring (*a get*) through a courtyard is derived from "her hand," and just as she can become divorced with her hand (*if the husband places the get in her hand*), she can become divorced with her courtyard as well. And Rish Lakish holds that her courtyard is derived from the concept of agency, and just as she cannot appoint an agent, she cannot acquire something by means of a courtyard.

The *Gemora* asks: Is there an opinion who holds that her courtyard is derived from the concept of agency? But we learned in a *Baraisa* regarding a thief: It is written: *If the stolen object is found in his hand* (*he shall pay double*). This would imply that he would only pay double if it is found in his hand. How do we know that he would be required to pay double if he stole it with his roof, his courtyard or his enclosure? Since the Torah wrote: *being found it will be found*, we learn that he pays double no matter how it was

found to be stolen (*even if it wasn't through his hand*). Now if you will say that a courtyard is derived from the concept of agency, it will emerge that we have found a case where one can be an agent for an act of transgression (*since it is as if his courtyard is stealing for him*), and we have established that there cannot be an agent for an act of transgression!?

Ravina answers: We say that there is no agent for an act of transgression only when the agent is subject to the law prohibiting the act, but in regard to a courtyard, which is not subject to the law prohibiting the act of stealing, the sender (*the owner*) is liable (*for the theft*).

The *Gemora* asks: But if so, what if one says to a woman or a slave, "Go and steal for me"? Would we say that since they are not subject to the law prohibiting the act of stealing, the sender should be liable?

The *Gemora* answers: A woman and a slave are subject to the law prohibiting the act of stealing. It is only that they are temporarily unable to pay, as we learned in a *Mishnah*: When the woman (*who damaged when she was married*) has been divorced and the slave set free, they are obligated to pay (*for until then, her assets belong to her husband*).

Rav Sama offers an alternative answer: We say that there is no agent for an act of transgression only when the agent is at liberty to choose if he wants to execute his assignment or not. But in regard to a courtyard, where it has no will but to receive that which is deposited therein, the sender (*the owner*) will be liable (*for the theft*).

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

The *Gemora* answers: They differ in a case where a *Kohen* says to a *Yisroel*: Go and betroth for me a divorced woman," or where a man says to a woman, "Cut around the corners of the hair of a minor." According to the version which says that whenever the agent is at liberty to choose if he wants to execute his assignment or not, the sender is not liable, here also, the agent has the choice to execute his assignment and not to execute it. Therefore, the sender will not be liable. But according to the version which says that whenever the agent is not subject to the law prohibiting the act, the sender is liable, in these cases also, since the agents are not subject to the laws prohibiting the acts, the sender is liable.

The *Gemora* asks: Is there an opinion that holds that her courtyard is not derived from her acquisition through her hand? But we learned in a *Baraisa*: *And he places it in her hand*. This would imply that the *get* is only valid if it is placed into her hand. How do we know that the *get* would be valid if it was placed in her roof, her courtyard or into her enclosure? Since the Torah wrote: (*he places it*) *in her hand* (*and not: in her hand places it*), we learn that the *get* is valid anywhere (*as long as it is in her domain*).

The *Gemora* answers: With regard to a divorce, everyone agrees that her courtyard is derived from her acquisition through her hand. The difference of opinion exists only with regards to a found object: Rabbi Yochanan holds that we learn out the *halachos* of a found object from the *halachos* of a divorce. Rish Lakish holds that we do not derive the *halachos* of a found object from the *halachos* of a divorce.

Alternatively, the *Gemora* answers: Everyone agrees with regard to a minor girl that we learn out the *halachos* of a found object from the *halachos* of a divorce. They disagree with respect to a minor boy. Rabbi Yochanan holds that we learn out the *halachos* of a minor boy from the *halachos* of a minor girl. Rish Lakish holds that we do not derive the *halachos* of a minor boy from the *halachos* of a minor girl.

Alternatively, the *Gemora* answers: Rabbi Yochanan and Rish Lakish do not argue at all. [*Rish Lakish states the law regarding a found object — that it is not acquired by her courtyard, and Rabbi Yochanan states the law regarding a get — that it is acquired by means of her courtyard.*] (10b1 – 11a1)

INSIGHTS TO THE DAF

Shliach l'dvar Aveirah

The *Mishnah* had stated: If someone says: "Give this *Get* to my wife" or "Give this document freeing my slave to my slave," if he wants to retract the document (*before it gets to his wife/slave*) he may. These are the words of Rabbi Meir. The *Chachamim* say: He can retract by the *Get* of his wife, but not by the document freeing his slave. This is because a person can have someone else acquire something beneficial for him when he is not present, but not something that is a liability for him when he is not present.

The Acharonim ask: One who frees his Canaanite slave has violated a Biblical commandment! If so, the agent who is being sent to deliver the emancipation document is an agent for an *aveirah*! There is a well established principle that one cannot be an agent for an *aveirah*!?

There are those who prove from here that although one is not permitted to serve as an agent to commit an *aveirah*, the agency, nevertheless, is not negated because of it. Tosfos in Bava Metzia (13b), however, states clearly regarding one who was sent to serve as an agent for an *aveirah*, the agency is negated and his actions are null and void.

The Noda BeYehudah answers that since the agent is acquiring the document for the slave, he is serving as an agent of the slave and not as an agent of the master. He is therefore not regarded as being an agent for an *aveirah*, because the *aveirah* is for the master to set him free; not for the slave to gain his freedom.

One can also answer that we are discussing a case where it was a *mitzvah* to free the slave (*a tenth man was needed for a minyan*), and therefore, there was no *aveirah*.

Shliach l'dvar Aveirah

By: Rabbi Avi Lebowitz

The *Gemora* explains that the parameters of when we say that one can be an agent for an act of transgression to make the sender liable for the action, is either that the agent is not subject to this particular prohibition, or that the agent has no ability of choosing to execute his assignment or not. Both approaches rely on the fact that the principle that there is no agent for an act of transgression is predicated on the premise that Rashi points out: If you hear the words of your Master (*Hashem; telling you not to commit this transgression*) and the words of the student (*the sender*), who should you listen to? This means that when the agent is subject to this prohibition and has the choice to do it or not to do it, the argument can be made that he shouldn't have done it and therefore he takes responsibility for his actions. But in a case where the agent is not subject to this prohibition, there is no reason for him to abstain from doing it, so the sender cannot make the argument that the agent should not have done it. Certainly, if the agent is forced to do it and does not make his own choice, he is merely an extension of the arm of the sender, so that the sender will be liable.

Tosfos is bothered by why we consider a *Yisroel* who is acting as a agent of a *Kohen* to betroth a divorcee, as one who is not subject to this prohibition. Although the *Yisroel* is not included in the prohibition of betrothing a divorcee, he is certainly in violation of *lifnei iver* by assisting the *Kohen* in performing the *kiddushin* and should be regarded as one who is subject to a prohibition (*which would result in the fact that the Yisroel is in violation rather than the Kohen*).

Tosfos rejects this concern that we don't determine if the agent is subject to the prohibition by whether he is committing a transgression; rather, we determine it by whether the transgression that he is doing for the *Kohen* is applicable to him (*and there isn't any transgression on him to marry a divorcee*).

The Nodeh B'yehuda (*quoted by Maharitz Chayus*) points out that Tosfos could have simply rejected the transgression of *lifnei iver* causing the agent to be considered subject to

the prohibition, because it is not "two sides of a river" (*meaning that the Kohen could have done the transgression without the Yisroel*), so it is only a Rabbinical transgression of assisting one in doing a prohibited act, and the Mishneh L'melech (*Hilchos Rotzeiach*) holds that on a Rabbinical transgression, we hold that one ***can*** be an agent for an act of transgression.

From the fact that Tosfos doesn't say this implies that Tosfos holds that even on a Rabbinical transgression, we hold that one cannot be an agent for an act of transgression.

QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF
to refresh your memory

Q: Is a *kinyan* performed on Shabbos effective?

A: Yes (although it is not preferable).

Q: Why doesn't one acquire an animal if he was riding in the city?

A: This is because a person does not normally ride within the city.

Q: If a person was sailing in a boat and fish jumped into the boat, why would we not say that the boat is a moving courtyard and therefore he would not acquire the fish?

A: A boat is considered a stationary object, and is just being moved by the water.

DAILY MASHAL

Pidyon to the Tzaddik

Both Rav Nachman and Rav Chisda say: If a man picks up a found object for his fellow, the fellow does not acquire it. What is the reason for this? It is because it is like one who seizes a debtor's property on behalf of a creditor, thereby causing loss to the debtor's other creditors and he who seizes a debtor's property on behalf of a creditor and thereby causes loss to other creditors does not legally acquire it.

Pardas Yosef cites from the Gaon HaKadosh from Dizikov that this is the explanation why one gives a 'pidyon' (money) to a tsaddik when requesting a brachah. Tanchuma says that HaKadosh Baruch Hu does not give anything from His own; rather He takes from one and gives to another. Accordingly, when a tzaddik davens on behalf of a Yid that Hashem should bestow upon him parnassah and hatzlachah, it is 'chav' to others (for someone will be losing) and the halachah is that one who seizes a debtor's property on behalf of a creditor and thereby causes loss to other creditors does not legally acquire it. However, if he is hired as an agent, it can be effective even when others lose out, as the Sha"ch rules in Choshen Mishpat (105:1); accordingly, that is why we give the pidyon to the tsaddik when we are asking for parnassah and hatzlachah.