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Forcibly Consecrating

[The *Gemora* returns to address the question of the disputed bathhouse, which was consecrated by one of the litigants.] What is the ruling regarding the bathhouse? Come and hear from that which Rabbi Chiya bar Avin said: There was a case of a consecrated disputed bathhouse that was brought to Rav Chisda. Rav Chisda consulted Rav Huna, and the question was resolved by the statement of Rav Nachman, who said that money which cannot be retrieved in court cannot be consecrated. [Therefore, this bathhouse, which neither party was able to retrieve in court, cannot be consecrated by either one.]

The *Gemora* challenges the implication of Rav Nachman's statement - that if one can retrieve an item in court, he may consecrate it, even though he had not taken it. But Rabbi Yochanan said: If an item is stolen, neither the thief nor the owner can consecrate it, since consecration can only be done by one who has both de jure and de facto ownership to consecrate. Do you think that the case under discussion is of a bath that is movable? [No.] The discussion concerns a bathhouse which is immovable property, and therefore, where it can be reclaimed by legal proceedings, it is [regarded as being] in the possession of [the claimant].[1] (7a1 – 7a2)

How Much to Split

[The *Gemora* discusses the details of splitting the clothing between the two litigants.] Rav Tachlifa from the West taught the following Baraisa in front of Rabbi Avahu: Two [people] clutching a garment; [the decision is that] one takes as much of it as his grasp reaches, and the other takes as much of it as his grasp reaches, and the rest is divided equally between them. Rabbi Avahu gestured (upwards) that they still must swear to receive their parts. - But, [if so] our Mishnah, which teaches that [the value of the garment] shall be divided between [the two litigants], and which does not teach that each takes as much of it as his grasp reaches — to what particular case does it refer? — Rav Pappa said: It refers to a case where each party is holding onto only the fringes of the clothing [and therefore have no portion in their direct possession].

Rav Mesharshiya explains that Rav Tachlifa's statement indicates that holding on to part of a garment is possession of that portion. Therefore, if one holds onto a 3x3 *tefach* area of a garment for a *chalipin* (exchange) acquisition, that is sufficient, since that fulfills the verse *vnasan l'rayayhu – and he gives [the chalipin] to his friend*. - And why is [this case] different from that of Rav Chisda? For Rav Chisda says: When the *get* is in her hand, and the cord [to which it is tied] is in his hand, then if he is able to snatch [the get out of her hand by means of the cord] and

[1] The *Gemora* explains that Rabbi Yochanan's statement only applies to movable items, which are physically removed from the possession of their owner. However, Rav Nachman is referring to real estate, which cannot be removed from the original owner's possession. Therefore, once the owner can retrieve it in court, he has full ownership, and can consecrate it.

to pull it to himself, she is not divorced, but if not she is divorced? — When a husband divorces his wife, a get must remove any connection between them, so the wife must have full possession of the get. Therefore, if the husband can pull the get to him, even if the woman is grasping the get, she is not divorced. (7a2 – 7a3)

Rava says that if the garment is gold, the two parties split it. – Is this not obvious? - The *Gemora* explains that Rava is teaching us that even if each is holding part of the garment, and the golden section is in the middle. – But is that also not obvious? - It is necessary [to state this] when [the gold] is nearer to one side. You might assume that one could say to the other, "Divide it this way;" therefore we are informed that the other may say to him, "What makes you think of dividing it this way? Divide it the other way." (7a3)

Splitting a Contract

The *Gemora* introduces a *Baraisa* that discusses the rules of a contract whose status is unknown. The *Baraisa* first discusses a debtor and creditor that are both grabbing the debt contract, with the creditor claiming the contract is his and is in force, and the debtor claiming that the contract is in his possession, since he paid the debt. Rebbe says that the creditor must validate the contract's signatures, while Rabban Shimon ben Gamliel says that the two must split the contract. If it falls to the hands of a judge, it should never be given to either party. Rabbi Yosi says that the contract retains its current status.

The master said above: [The validity of] the bill has to be established by its signatories. - Does he mean that the creditor may demand payment of the whole amount, and does he disapprove of the Mishnah: Two hold a garment etc.? — Rava replied in the name of Rav Nachman: If the contract is validated, all agree that the creditor and debtor split the contract. The dispute is when the contract has not been validated. Rebbe holds that even if a debtor admits that a contract is genuine, its signatures must be validated. Therefore, if the creditor cannot validate the contract, the debt cannot be collected, so the debtor receives the contract. For what reason? It is merely a shard. Who renders the document valid? [Only] the borrower. But he says, "It is paid!" Rabban Shimon ben Gamliel holds that once a debtor agrees that the contract is genuine, it need not be validated. Therefore, in the *Baraisa*, since the debtor agrees the contract is genuine, even if the contract is not validated, the debtor and creditor split it.

If it [the bill] fell into the hands of a judge, it must never be produced again. - Why is it different [if the bill fell] into the hands of a judge? — Rava says: The meaning [of the clause] is this: If a third person finds a bill which has already been in the hands of a judge, that is, when it bears a legal endorsement, it must never be produced again. And [thus we learn that a found bill] must not be returned [to the claimant] not only when it bears no legal endorsement, so that it can be assumed that it was written for the purpose of securing a loan but the loan did not take place, but even when it bears a legal endorsement, as when it has been verified [in court], because we are concernedd that payment may have been made. (7a4 – 7b1)

But Rabbi Yosi says: It retains its validity — and we are not concerned that payment may have been made. – But doesn't Rabbi Yosi maintain that we are concerned that payment may have been made? Has it not been taught [in a Baraisa]: In the case of a kesuvah found in the street, if the husband admits [that he has not paid her the amount specified in the contract] it shall be returned to the wife, but if the husband does not admit it, it must not be returned either to him or to her; Rabbi Yosi says that if the wife is still with the husband it shall be returned to her, but if she has become a widow or has been divorced, it must not be returned either to him or to her?

The *Gemora* gives three possible resolutions to this contradiction:

1. If [a bill] fell into the hands of a judge, it must never be produced again; this is the view of Rabbi Yosi. And the Sages say that it retains its validity. - But if so, the two opinions of the Rabbis contradict each other!? — [The Baraisa which deals with] the [lost] kesuvah [conveys] in its entirety [the view of] Rabbi Yosi, but a clause is omitted, and [the Baraisa] should read as follows: If the husband does not admit [that he has not paid the wife the amount specified in the kesuvah] it must not be returned either to him or to her. This, however, only applies to [the case of] a widow or a divorced woman, but [in the case of a wife] who is still with her husband it shall be returned to the wife; this is the view of Rabbi Yosi; for Rabbi Yosi says: If the wife is still with the husband, it shall be returned to her; but if she has become a widow or has been divorced, it must not be returned either to him or to her.

2. Rav Pappa says: There is really no need to reverse [the Baraisa]; Rabbi Yosi only states the case in accordance with the views of the Rabbis [and he says to them:] According to me we are not concerned that payment may have been made even in the case of a widow or a divorced woman, but according to you — admit at least that when the wife is still with the husband [the kesuvah] should be returned to her, as she is not entitled to receive payment [as long as she is his wife]. But the Rabbis answered him: Say, he handed her over bundles [of valuables] as security [and she has retained them]!

3. Ravina says: By all means reverse the first [Baraisa], and the reason why the Rabbis decide here [that if the husband does not admit liability, the kesuvah must not be returned either to him or to her] is that we are concerned [lest the wife had] two kesuvos. And as to Rabbi Yosi — he is not concerned [lest the wife had] two kesuvos. (7b1 – 7b2)

What part of the Contract?

[A contract contains two portions. The *tofes* is the generic form section, which is the same for all contracts, while the *toref* is the essence (containing the parties, time, etc.), which is different for each contract.] Rabbi Elazar says that the dispute in the case of a contract being held by both parties is when both are holding on to the form section and the essence of the contract. However, if one is holding the form section, and one is holding the essence, each only gets the section they are holding. Rabbi Yochanan says that even in this case, the contract is split.

Even if one clings to the form and the other to the essence? Was it not taught in a Baraisa: Each one takes as much as his hand grasps? — [Yes.] But it is necessary [to have Rabbi Yochanan's decision] in a case where the essence is contained in the middle [of the document]. - But if so, what need is there to state it? — It is necessary [to state it that it may be applied to a case] where [the essence] is nearer to one [of the claimants]. You might assume that one could say to the other, "Divide it this way," therefore we are informed that the other may say to him: "What makes you think of dividing it this way? Divide it the other way."

Rav Acha of Difti said to Ravina: According to Rabbi Elazar, who says: One takes the form [of the bill] and the other takes the essence — of what use are [the parts] to either of them? Does one need them to use as a stopper for one's bottle? — He [Ravina] answered him: [It is] its estimated value [that has to be considered]. We estimate how much a dated document is worth as compared with one undated: with a dated document a debt may be collected from mortgaged property, but with the other [document] no debt can be collected from mortgaged

property — and one gives the other the difference [in the value of the two documents].

Also [the decision previously given in the words]: They shall divide, as quoted, refers to the value [of the bill]. For if you do not assume this, [how explain:] Two hold a garment [etc.]? Would you say that here also they divide [the garment] in halves? They would surely render it useless! — This presents no difficulty, as it would [still] be suitable for children. - But what of the case of Rava, who said that [even] if the garment was embroidered with gold it should be divided? Could they here also divide [the garment] in halves? They would surely render it useless! — This presents no difficulty [either], as it would still be suitable for royal children. - But [there is] the clause in our Mishnah: If two ride on an animal [etc.]. Would you say that here also they divide [the animal] in halves? They would surely render it useless! Although it may be granted that in the case of a kosher animal [its carcass] may be [cut up and] used for food — what if it is a non-kosher animal? They would surely render it useless [by killing it and cutting it up]? It must therefore be said that it is the value [of the animal] that is divided. So here also: it is the value [of the bill that is divided]. (7b3 – 8a1)

INSIGHTS TO THE DAF

Ownership

The *Gemora* discusses the status of a disputed bathhouse, and whether either claiming party can consecrate it. The *Gemora*'s conclusion is that the power needed to consecrate an item depends on the type of item. If the item is real estate, anyone who can retrieve the item in court may consecrate it, even before retrieving it. However, a movable item can only be consecrated when the one consecrating has de facto and de jure possession.

The Baal Hamaor and the Ramban (BK 18 in Rif pages) discuss why one may not consecrate an item which was stolen from him. The Baal Hamaor says this is simply because it is out of his reach, and an item must be accessible to be consecrated. The Ramban says it is because the thief has certain liability for the item, and therefore has acquired some ownership by his theft.

Based on the Ramban's opinion, Rabbi Akiva Eiger (BM 7 bemasusa) asks how our *Gemora* reaches its conclusion. The *Gemora* distinguishes between stolen real estate and movable items, since real estate is immutable, and cannot be acquired through the standard acquisitions of theft. However, this distinction seems irrelevant in the case of the bathhouse, where neither party did any acquisition.

Rav Elchanan Wasserman (Kovetz Shiurim BK #9) points out that the Baal Hamaor brings our *Gemora* as a proof to his opinion. He therefore states that the Ramban agrees that inaccessibility precludes consecration, but adds that the partial ownership acquired by theft also blocks consecration. In our *Gemora*, where the bathhouse is inaccessible, both Rishonim agree that neither can consecrate it.

The Ramban and Baal Hamaor only disagree about a thief who is ready to hand over the item, but has not yet done so. (In fact, that is the context for their discussion of the rules of consecration).

Rav Elchanan therefore answers Rabbi Akiva Eiger's question by explaining that the distinction of acquisition between real estate and movable items is only relevant when the consecration is prevented by theft acquisition. However, when the consecration is prevented by sheer inaccessibility, if one can retrieve a real estate asset in court, he may consecrate it, since the one holding the real estate cannot truly hide the item from its owner. If he cannot retrieve it in court, he cannot consecrate it, since it is still inaccessible.

Grabbing vs. Holding

The *Gemora* states that the *Mishna*, which evenly splits a garment held by two parties, is a case where each side is only grabbing a fringe, which doesn't confer any possession. Therefore, they swear and take half. However, the *Baraisa* of Rav Tachlifa discusses a case where each party is holding a segment of the garment. In that case, each party takes what they are grabbing, and then split the rest.

The Rishonim point out that the word used in the *Mishna* is *ochazin – holding on to*, since the parties are only holding onto the edge. However, Rav Tachlifa uses the word *adukin – attached*, since the parties are grabbing a segment of the garment. The *Gemora* says Rabbi Avahu indicated that the split in the adukim case is done with each side swearing.

The Rosh (1:13) and Tosfos (7a Machvei) say that they must swear on everything that they will take, including the portion they are grabbing. The Rosh proves this from the statement of the *Gemora* on 3a that the oath in the *Mishna* is to prevent people from forcibly grabbing other people's garments. This logic applies to the whole garment, including the portion they are currently grabbing.

The Ramban agrees, and proves it from the language of the *Gemora*, which says that Rabbi Avahu *machvei – showed* – that the split should be with an oath. Rabbi Avahu was physically showing that the *whole* garment is subject to an oath.

The Rambam (To'ain v'nit'an 9:9) says that the oath is only on the section that they are not grabbing, but each can cause the other party to swear on the part they are grabbing through *gilgul – an ancillary oath*.

The Shulchan Aruch (HM 138:3) rules like the Rambam. The Gra (12) supports this position from the *Gemora*'s statement that holding on to a portion of the garment is sufficient for *chalipin*, indicating that grabbing a section of a garment is full ownership, with no need for proof or swearing. The Shach (5) and Sma (11) dispute this, and rule like the Rosh.

The Shita discusses why the *Gemora* didn't resolve the contradiction by stating that the *Mishna* was a case of each grabbing exactly half the garment. The Shita quotes a number of answers:

1. They wouldn't swear in this case, since they are not splitting anything out of their direct possession. This answer follows the Rambam's ruling above.
2. It is a rare (even impossible) case, and therefore not a good answer.
3. The *Mishna* would not need to tell us such an obvious halacha in that case.

How to Split a Contract?

The *Gemora* cited statements of Rabbi Elazar and Rabbi Yochanan about splitting a contract held by the debtor and creditor. Rabbi Elazar said they only split it evenly when they are both holding the detail and form section of the contract, but if one is holding the details and one the form, they each get the section they are holding. Rabbi Yochanan said that they also split the contract evenly when the detail and form section are in the section not held by either side.

The Rif and Rambam do not cite these opinions and limitations on the rules of splitting a contract, and the Shulchan Aruch (HM 65:15) follows their ruling in the first version of this halacha.

The Rosh does cite the statement of Rabbi Elazar, and the Shulchan Aruch cites this opinion as well.

The Gra explains that this dispute depends on the understanding of how a split is done when each is holding the detail or form section. The *Gemora* says that the

advantage of holding the detail section is the increased value a date adds to a contract. Rashi (7b Shtara) states that Rabbi Elazar is discussing Rabban Shimon ben Gamliel's statement that we split the contract, even if the signatures were not validated, since Rabban Shimon ben Gamliel does not require validation of the signatures. Therefore, the value of the detail section is not in the signatures, since they need not be validated. The value is not in the names of the parties, since those are repeated in the form section. The only element which is crucial in the detail section is the date of the contract, and that is the increased value of that section.

Tosfos (7b d'is) disagrees, and says that elements of each section that would render the contract unfit are not included in the possession gained by grabbing, since each party doesn't want the counter party to remove such elements. The only element which is nonessential is the date.

According to Rashi, the statement of Rabbi Elazar, and the discussion following it, are only according to Rabban Shimon ben Gamliel's opinion, that a contract that is not forged need not have its signatures validated. We, however, rule like Rebbe, and therefore will not hold of Rabbi Elazar's statement. However, according to Tosfos, Rabbi Elazar's statement is in accord with Rebbe as well, and therefore halacha includes it. See Gra HM 65:45 and Note 1 on the Rosh for further discussion.

DAILY MASHAL

Tehillim in Hunger

A distinguished Benei Berak family hosted a sheva berochos dinner for relatives and gave each an original souvenir: a copy of a testimony handwritten by their grandfather, relating a wondrous event that occurred over 100 years ago:

"One Friday morning, shortly after daybreak, I came home from shacharis at the old beis midrash, tired and hungry after learning diligently all night with the other yeshiva students. Our study session lasted 14 hours as the month was Teves. I found my parents standing and contemplating the nigh impossibility of preparing the Sabbath meals. When I asked for bread and something else to ease my hunger, they started to have a slight disagreement. My mother proposed going to the baker for some more loaves on credit but my father said that we already owed the maximal amount of 15 rubles. He suggested saying some Tehillim and simply trusting in HaShem. Weak and hungry, I embraced the Tehillim. My father read sweetly with an ancient, arousing tune to make me forget my hunger but my body had its own demands. From time to time I asked him what could happen. 'Wait, my dear son,' he replied, 'HaShem, who sustains every creature, will not forsake us.'

Suddenly the door opened and in walked Reb Moshe, a simpler villager from Binkon, covered with snow from head to foot, with an exuberant cry of 'Good morning, Rebbe!' As always, my father greeted him warmly and brought him toward the stove. The guest announced that he had for us on his sledge three loaves of bread, a sack of potatoes and a bag of groats. I danced for joy when I heard of the miraculous occurrence and Father told me that HaShem helps those who fully believe in him."

The writer, Rav Yechiel HaLevi Yisre'eli zt"l, passed away in 5706. He reveals a splendid light which shone in a poor hut, somewhere in our exile among pure and simple people who had the merit to raise their children to a life of Torah and good deeds. As a young boy, he would learn 14 hours non-stop and tells us this fact with astounding nonchalance