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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

Rava said: Both Scripture and a Baraisa support Rish Lakish (who holds that the payment of money is not the Biblical manner of acquisition in the sale of movables): 'Scripture' - for it is written: *and he falsely denies his obligation in the matter of deposit or a loan or a robbery, or he has oppressed his fellow [by withholding the wages due him]*. '*Regarding a loan*' - said Rav Chisda, if, for example, he [the debtor] assigned a utensil to him [the lender] for [the collateral of] his loan (for then, the loan is equivalent to a case of deposit, where he swears falsely on an item specific to the claimant). '*Or he has oppressed*' - said Rav Chisda, if, for example, he [the employer] assigned a utensil to him [the employee] for [the collateral of] his withheld wages.

Now, when Scripture repeated it [in the passage dealing with restoration to the owner], it is written: *Then it shall be, if he has sinned and recognizes his guilt, then he shall restore that which he took by robbery, or the wages that he withheld, or the deposit that was deposited with him [or the lost object that he found]*; but '*the [case] of the loan*' is not repeated. What is the reason for that? Is it not because it (the utensil used as collateral) lacked meshichah (and therefore never really belonged to the creditor). [This proves that by Biblical law meshichah (and not money) is necessary for effecting ownership.]

Rav Pappa said to Rava: But perhaps that (the return of a loan) follows from the case of the withheld wages, which Scripture did repeat?

Rava answered him: The circumstances here (by the case of the withheld wages) are, e.g. that he [the employee] took it [the collateral utensil] from him [the employer] and then redeposited it with him (so that the worker has actually acquired the item through meshichah). [This is in contrast to the case of the loan, where meshichah was not preformed, and that is why the Torah does not repeat it.]

The Gemara asks: But this (explanation of the case of the withheld wages) is identical with the case of deposit?

The Gemara answers: There are two kinds of deposits.

The Gemara asks: If so, the case of the loan should also be repeated, and it could [likewise] be applied to the case where, e.g.,he [the lender] had taken it [the utensil assigned for repayment] from him [the debtor], and then redeposited it with him?

The Gemara answers: Had Scripture repeated it, it would have been neither a refutation nor a support (for what the Biblical acquisition is); since, however, Scripture did not repeat it, it supports him [Rish Lakish].

The Gemara asks: But didn't Scripture repeat the case of the loan? But it was taught in a Baraisa: Rabbi Shimon said: From where do we know that what was stated above is to be applied to what is stated below? [The law of returning applies to all items that were stated above even if they were not repeated below.] It is because it is written: *Or all that about which he has sworn falsely*. And Rav Nachman said in the name of Rabbah bar Avuha in

the name of Rav: That is to extend the law of restoration to the case of a loan!?

The Gemara answers: Even so, Scripture did not explicitly repeat it.

The Gemara asks: Where is the Baraisa (that supports Rish Lakish)?

The Gemara answers: For it has been taught in a Baraisa (in actuality, it is a Mishnah): [If one took a *perutah* of *hekdesh*, he is not guilty of misuse (*me'ilah*), for he has not yet spent the money on a mundane use. If he bought a garment with the money, he is guilty of misuse.] If one used money of hekdesh to pay entrance to a bathhouse, he is liable for misuse (*me'ilah*) [even before he bathes, as getting the right to bathe is already a benefit]. And Rav said regarding this: This holds true only of a bath-attendant, since no meshichah is lacking (for he is merely purchasing the right to use the bathhouse), but [if he gave it for] any other object, which requires meshichah, he is not guilty of misuse until he does draw it into his possession (for only then does the recipient acquire the sacred coin). [This proves that meshichah is required by Biblical law, for if it were only a Rabbinic measure, while by Scriptural law the recipient acquires the sacred coin, the treasurer would always be guilty of misuse, no matter for what he gave the perutah, since a Rabbinical enactment cannot free a person from an obligation that lies upon him pursuant to Scriptural law.]

The Gemara asks: But has it not been taught in a Baraisa: If he gave it to a barber, he is guilty of misuse. Now in the case of the barber, he [the treasurer] needs to draw the scissors into his possession?

The Gemara answers: The reference here is to a non-Jewish barber, to whom the law of meshichah does not apply.

The Gemara notes: It has been taught likewise in a Baraisa: If he [the treasurer] gave it [the perutah of hekdesh] to a barber, boatman, or to any artisan, he is not guilty of misuse until he takes possession. Now, these are self-contradictory!? But this must surely prove that one refers to a non-Jew and the other to a Jewish barber. This proves it.

Rav Nachman ruled likewise: By Biblical law, [the delivery of] money effects a title, and Levi sought [the source of this ruling] in his Baraisa [collection] and found it: If he [the treasurer] gave it to a wholesale provision merchant, he is guilty of misuse.

The Gemara asks: But this refutes Rish Lakish!

The Gemara answers: Rish Lakish can answer you: That is on the basis of Rabbi Shimon's ruling. (48a1 – 48b1)

The Mishnah had stated: But they said: He Who exacted retribution etc.

It has been stated: Abaye said: He is [merely] told this. Rava said: He is cursed.

'Abaye said: He is [merely] told this' because it is written: And you shall not curse the ruler of your people. 'Rava said: He is cursed' because it is written: of your people, implying [only] when he acts as is fitting for 'your people'.

Rava said: From where do I know it? For [it once happened that] money was given to Rabbi Chiya bar Yosef [in advance payment] for salt. Subsequently salt rose in price. On his appearing before Rabbi Yochanan, he ordered him, "Go and deliver [it] to him [the purchaser], and if not, you must submit to [the curse]: He who punished." Now if you say that one is merely informed, did Rabbi Chiya bar Yosef require to be told?

The Gemara explains the other opinion: Did Rabbi Chiya bar Yosef come to submit to a curse of the Rabbis? But [what happened was that] only a deposit had been paid to Rabbi Chiya bar Yosef. He thought that he [the purchaser] was [morally] entitled only to its value, whereupon Rabbi Yochanan told him that he was entitled to the whole [of the purchase].

It has been stated: A deposit — Rav said: It effects a title [only] to the extent of its value. Rabbi Yochanan ruled: It effects a title to the whole purchase.

An objection is raised: If one gives a pledge to his fellow and says to him, "If I retract; my pledge shall be forfeited to you," and the other stipulates, "If I retract, I will double your pledge," the conditions are binding; this is Rabbi Yosi's view. Rabbi Yosi is following his general ruling that an asmachta (an exaggerated promise that a person makes to back up a commitment) acquires title. Rabbi Yehudah [however] maintained: It is sufficient that it effects a title to its value. Rabban Shimon ben Gamliel said: When is that? If he [the depositor] said to him, "Let my pledge effect the purchase," but if one sold a house or field for a thousand zuz, of which he paid him five hundred, he acquires title [to the whole], and must repay the balance even after many years. Now surely the same ruling applies to movables, viz., [if a deposit is given] without specifying [its purpose], possession is gained of the whole!

The Gemara answers: No; as for movables, an unspecified deposit does not effect possession [of the whole].

And what is the difference? - They differ regarding real estate, which is actually acquired by [the delivery of] money, is entirely acquired; movables, which are acquired [by the delivery of money] only in respect of submission to [the curse]: 'He who punished,' are not acquired entirely.

The Gemara asks: Shall we say that this is disputed by Tannaim? [For it has been taught:] If one makes a loan to his fellow against a pledge and the year of release arrived (Shemittah), even if it [the pledge] is worth only half [the loan], it [Shemittah] does not cancel [the loan]; this is the ruling of Rabban Shimon ben Gamliel. Rabbi Yehudah ha-Nasi said: If the pledge corresponds to [the value of] the loan, it does not cancel it; otherwise, it does.

What is meant by Rabban Shimon ben Gamliel's statement, 'It does not cancel [the loan]'? Shall we say it means 'to its value'? Therefore, it follows that in the opinion of Rabbi Yehudah ha-Nasi, even that half too is cancelled! For what purpose then does he hold the pledge? Surely then this proves that by 'it does not cancel it,' Rabban Shimon ben Gamliel means that it does not cancel it at all, while by 'It does cancel it,' Rabbi Yehudah refers to the half against which he holds no pledge, and they differ in this: Rabban Shimon ben Gamliel holds that it [the pledge] effects a title to the whole [of the loan], while Rabbi Yehudah ha-Nasi holds that it effects a title only to its value!

The Gemara rejects this: No. By 'It does not cancel [the loan],' Rabban Shimon ben Gamliel means that half against which he holds a pledge. Then it follows that in Rabbi Yehudah's opinion even the half against which he holds a pledge is also cancelled!

The Gemara asks: But [if so], what is the purpose of the pledge?

The Gemara answers: As a mere record of fact. (48b2 – 49a1)

DAILY MASHAL

The curse "He who punished" (Mi shepara')

No one wants to face a beis din that would apply to him the classic curse known as Mi shepara': "He who punished the generations of the Flood, the Tower of Babel, Sedom and Amorah and the Egyptians by the sea will punish those who do not keep their word". Chaza"l formulated this curse and meant it to apply to one who cancels a transaction. We shall briefly relate to the source of this decree (takanah) and major opinions as to its application.

As we said, according to Rabbi Yochanan, the Torah decrees that chattels may be acquired with money but Chaza"l annulled this method. One who pays for something, therefore, does not acquire it until he pulls or lifts it. Many Rishonim (Rambam, Hilchos Mechirah, 7; see Rashba on our sugya who has his doubts) hold that Chaza"l instituted the curse at the time they disqualified acquisition of chattels with money to deter people from reneging on transactions agreed upon and paid for in order to prevent commercial chaos.

A son who summons his father to a din Torah: Poskim have always defined Mi shepara' as a most serious curse. Maharsham (Responsa, I, 40) even ruled that if a father sells something to his son and, after being paid, wants to cancel the deal, the son must not ask a beis din to curse his father as he is commanded to honor him. He can only ask a beis din to inform his father that one who behaves so is usually cursed with Mi shepara'. Lack of space prevents us from exploring all the parameters of the takanah. We can, though, examine its meaning according to Noda' Bihudah (Responsa, 1st ed., Y.D. 69) who suggests two possible explanations as to how it functions (according to opinions cited in Shulchan 'Aruch):

i) The curse is the alternative to upholding transactions: Acquisition by means of money is valid as long as he who wants to cancel the deal does not accept the curse. If he wants to cancel it, he must accept the curse upon himself.

ii) Acquisition with money is still not binding but Chaza"l decreed the curse to press the person wanting to retract on his word to carry out the agreement.

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