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Selling Large Animals

The *Mishnah* had stated: One may not sell large animals to idolaters anywhere.

The *Gemara* asks: What is the reason for this prohibition?

The *Gemara* answers: Though there is no fear of bestiality (*for they are concerned that the animal should not become sterile*), there is the concern of his making the animal work on *Shabbos*.

The *Gemara* asks: Then let him work it; since he has purchased it, he owns it!? [*There is no concern for "lifnei iver" – causing someone else to sin, for an idolater is not commanded to observe the Shabbos!*]

The *Gemara* answers: The prohibition is a decree because of lending and because of renting. [*If the animal is borrowed or rented by the idolater, it cannot be used to work on Shabbos, for it still belongs to the Jew, and he is commanded to rest his animal on Shabbos.*]

The *Gemara* asks: But, surely, when he borrows it, he acquires it (*for the duration of the borrowing period, for if an accident happens, the idolater is responsible*); or when he rents it, he acquires it (*during the rental period; and therefore, the Jew should not be obligated to make sure that the animal rests*)!?

Rather, Rami the son of Rabbi Yeiva, said: The prohibition of selling the animal to an idolater is because of "testing." The *Gemara* explains: Sometimes the Jew might happen to sell it to him close to sunset on the eve of *Shabbos*, and the idolater might say to him, "Come now, and let us give it a test (*to see if it can carry a load well*)" (*and by the time sunset has passed, the seller will instruct it to go*), and upon hearing the owner's voice, it will walk because of him, and he is indeed pleased that it walked (*for then, the idolater will buy it*), so that he is inadvertently leading his animal on *Shabbos*, and one who inadvertently leads his animal on *Shabbos* is liable to bring a *korban chatas*.

Rav Sheisha the son of Rav Iddi asked: But does renting constitute an acquisition? Have we not learned in a *Mishnah*: [*We cannot rent houses to idolaters in Eretz Yisroel*] And even in a place (*outside of Eretz Yisroel*) where it was permitted to rent to them, it was not permitted in regard to a dwelling house, because he will bring idols into it. [*We can rent to them houses for them to utilize it for a storehouse for wood.*] Now, if you would think that renting constitutes an acquisition, then whatever the idolater brings in (*to the house that he rented*), he is bringing into his own house (*so why would there be a prohibition*)!?

The *Gemara* answers: Idolatry, which is a very serious matter, is different (*and the prohibition of "bringing idols in" would apply even to a rented house, for it is still referred to as the "house of the Jew"*), for it is written:



And you shall not bring an abomination into your house.

Rav Yitzchak the son of Rav Mesharshiya asked: But does renting constitute an acquisition? But we learned in a *Mishnah* (*Terumos 11:9*): If a *Yisroel* rents a cow from a *Kohen*, he may feed the cow with legumes of *terumah* (a type of beans that is only consumed by animals). However, a *Kohen*, who rents a cow from a *Yisroel*, although the *Kohen* is responsible to sustain it, he is not permitted to feed it legumes of *terumah*. Now, if you would think that renting constitutes an acquisition, then why can he not feed it *terumah*; surely, the cow belongs to him!?

The *Gemara* concludes from here that renting does not constitute an acquisition.

The *Gemara* notes: Now that we have concluded that renting does not constitute an acquisition, the prohibition (of selling large animals to idolaters) is both because of “renting,” and because of “lending” and because of “testing.”

Rav Adda permitted to sell a donkey to an idolater through a Jewish agent (for all the decrees do not apply in this case): As for “testing,” it is not familiar with the agent’s voice that it should walk because of him; and as to “lending” or “renting,” since it is not his donkey, he will neither lend it out nor rent it out; and furthermore (the agent will not even want to lend or rent it out) lest the idolater will find some blemish in it (and he will not wish to buy it; the agent bought it in order to sell it).

Rav Huna sold a cow to an idolater. Rav Chisda challenged him from our *Mishnah*. Rav Huna replied: Since he did not specifically mention that he plans to maintain it, it is permitted, for perhaps he intends on slaughtering it (and our *Mishnah* only forbids non-kosher animals, or kosher

animals that he specifies that he intends on maintaining it).

The *Gemara* asks: And how do we know to apply such a logic (that we can rule leniently based on a “perhaps”)?

The *Gemara* answers: It is based upon the following *Mishnah*: Beis Shammai says: One should not sell a plowing-cow during the *Shemittah* Year (to a fellow who is suspect of violating the *Shemittah*, for the seller will be transgressing the prohibition of “*lifnei iver*”); but Beis Hillel permits it, because he may possibly slaughter it.

Rava asked: How can the two cases be compared? There, one is not commanded to let his animal rest on the *Shemittah* Year (so there is no concern for “testing,” “lending” or “renting”; it is only *lifnei iver*, and for that, we can be lenient); whereas here, one is commanded to let his animal rest on *Shabbos*!?

Abaye said to him: And whenever one is commanded regarding something, is he forbidden to sell it? But regarding a field, where one is commanded to let his field lie fallow on the *Shemittah* Year, and yet it has been taught in a *Baraisa*: Beis Shammai says: One may not sell a plowed field on the *Shemittah* Year, but Beis Hillel permits it, because it is possible that the purchaser will let it lie fallow during the year!?

Rav Ashi challenged Rabbah: And whenever one is not commanded regarding something, is he permitted to sell it (and that is why Beis Hillel allows the selling of the cow during *Shemittah*)? But regarding farming tools, where one is not commanded to let his tools rest on the *Shemittah* Year, and yet it was taught in a *Mishnah*: The following are the tools which one is not allowed to sell in the *Shemittah* Year: the plow and all its accessory vessels, the yoke, the shovel and the hoe. [All these were probably



purchased to use during this year – a Shemittah one; evidently even though he is not commanded that these tools should rest on Shemittah, and there is only a slight basis to assume that he purchased it for the next year, nevertheless, we do not rely on this assumption.]

Rather, says Rav Ashi, wherever there is a strong reason for the assumption for a leniency, we assume it, even though a commandment is involved, and wherever there is not a strong reason for such an assumption, we do not assume it, even where there is no commandment involved.

Rabbah once sold a donkey to a Jew who was suspected of selling it to an idolater. Abaye asked him: Why did you do this? He replied: It is to a Jew that I have sold it. Abaye retorted: But he will go and sell it to an idolater (and you are therefore violating the prohibition of “lifnei iver”)? Rabbah replied: Why should he sell it to an idolater and not sell it to a Jew? [We therefore can make such an assumption, and rule leniently.]

Abaye asked him from the following *Baraisa*: In a place where it is the custom to sell small cattle to Cutheans (converts to Judaism after an outbreak of wild animals in Eretz Yisroel and their conversion was debated as to its validity; they observed some commandments, but not others), it is permitted to sell, but where the custom was not to sell, they did not permit it. Now, what could be the reason for the prohibition? It cannot be because they are suspected of bestiality, for it not been taught in a *Baraisa*: One may not place cattle in inns of idolaters - even male animals with male idolaters and female animals with female idolaters, and it is not necessary to state that female animals with male idolaters and male animals with female idolaters are forbidden (for they are suspect of committing bestiality and sodomy); nor may one hand over cattle to one of their shepherds; nor may one be

secluded with them (for they are suspect of murder); nor may one entrust a child to them to be educated, or to be taught a trade (for he might try to proselytize the child, or he might sodomize him). One may, however, place cattle in inns of Cutheans - even male animals with female Cutheans and female animals with male Cutheans, and it is not necessary to state that male animals with male Cutheans and female animals with female Cutheans are permitted; so also may one hand over cattle to one of their shepherds and be secluded with them, or hand over a child to them to be educated or to be taught a trade. Evidently, they are not to be suspected (of bestiality, and nevertheless, it is forbidden to sell them small animals in a place where that was the custom; accordingly, the prohibition against selling them large animals is not dependent upon the custom; we can therefore not explain the prohibition on account of bestiality, but rather, it is because they will sell it to idolaters and transgress the Rabbinical decree; it emerges that the Jew is violating the prohibition of “lifnei iver”; we see from here that if one is suspect of selling to an idolater, we do not assume any leniency that perhaps he will sell to a Jew)!!?

And further proof to this can be brought from the following *Baraisa*: One should not sell them either weapons or accessories of weapons, nor should one sharpen any weapon for them, nor may one sell them either stocks (for tying someone’s feet) or neck collars or shackles, or iron chains (so that they shouldn’t harm the Jews with them) - neither to idolaters nor to Cutheans. Now, what is the reason (in regards to the prohibition of selling these things to the Cutheans)? It cannot be because they are suspected of murder, for we have just said that one may be secluded with them! It must be only because they might sell it to an idolater.

Should you rebut this by saying that whereas a Cuthean will not repent (and will sell these forbidden items to an



idolater), a Jew will repent; but surely Rav Nachman said in the name of Rabbah bar Avuha that just as it was said that it is forbidden to sell to an idolater, so is it forbidden to sell to a Jew who is suspected of selling it to an idolater!

Rabbah thereupon (*when he heard these proofs against him*) ran three *parsaos* after the buyer of his donkey; and some say that it was one *parsa* in the sand, but failed to overtake him. (15a1 – 15b4)

INSIGHTS TO THE DAF

A person who was mochel his rented premises

A person who had lived in a rented apartment for years managed to find a home a month before the end of his rental contract. He informed the landlord that he forgoes (*mochel*) his right to reside there in the remaining month. Two weeks later his daughter married and by a quirk of fate, the couple had nowhere to live. He remembered his old apartment and asked the owner to allow the couple to live there but the owner claimed that the renter had relinquished all his rights thereto. Is he right? This question concerns the very core of acquisition by rental.

Two types of holding on property: Possession is expressed in two ways. The **first** is **ownership** of property, sometimes including all the components of the property and sometimes only one component, such as a person who buys a date-palm only for its fruit. The **second** includes only monetary **rights** – such as debts, mortgages and the like – which also belong to a person and may be bequeathed.

The **difference** between ownership of property and monetary rights is expressed by the possibility to forgo one's rights (*mechilah*). In other words, a person who

wants to relinquish ownership of certain property cannot do so by *mechilah*, which is not so in the case of a debt and other rights, which may be forgiven.

We now must determine the nature of rental. Does the renter become an owner of property as regards to its use, like a person who buys a tree for its fruit, or is he only renting the property for the “right” to use it without any ownership thereof? Returning to the renter who wanted to give his young couple use of the rented apartment for the remaining two weeks: If the renter only has **rights** to use the house, his right dissolved as soon as he was *mochel* it but if he acquired **ownership** of the property for the right to use it, his *mechilah* does not forego his ownership, just as a person cannot announce *mechilah* regarding his home.

In the opinion of many Rishonim, this essential doubt forms the basis of our *Gemara's* discussion whether rental **acquires** property. In other words, does the renter acquire the property for its use or does he only get the right to use it? As the *Gemara* concludes that rental does **not** acquire, a renter has only the right to use the property but does not own it (*Kehilos Ya'akov*, 9, referring to Tosfos, Bava Basra 21b, s.v. *Vehashta*; *Ran* on Nedarim 46b; and see *Kovetz He'aros*, §53).

However, Ramban (in *Kuntres Acharon* on Kesuvos) and *Tosfos Rabeinu Elchanan* (on our *sugya*) believe that according to all opinions, a renter acquires ownership of property for its use but that the *Gemara* discusses whether, despite that ownership, the name of the original owner remains on the property (*Kehilos Ya'akov*, *ibid*). In other words, the question is whether rental acquires property to such an extent that is not regarded as being the owner's, or not.

A tenant who pays in advance becomes an owner:



HaGaon Rav Elchanan Wasserman zt"l writes that according to the Yerushalmi and some Rishonim, even if regular rental only procures rights, a tenant can acquire property for its use if he pays rent **before** using the property. Since payment was collected in advance for use of the property, we must say that the owner and renter agreed that the latter **acquires** the property for its use. The renter wouldn't pay in advance just for future use (*Kovetz He'aros*, ibid, and see *Kehilos Ya'akov*, Arachin, §5).

A rented apartment destroyed by an earthquake: If we want to ascertain the *halachah* concerning this question, we can do so by means of the following case. A tenant paid in advance and during the rental period the apartment was destroyed by an earthquake. Must an owner return payment for that part of time in which the apartment is unusable? The decision depends on the above difference of opinions. If the renter is considered **owner** of the property as regards its use, he is like someone who bought an apartment which was destroyed a day after its purchase and he can demand nothing from the previous owner (see *Kovetz He'aros*, ibid, os 3). But if he is paying only for the use of the property, the owner must compensate him.

The *Remo* (C.M. 312:17) rules that **in any case** an owner must provide the renter with an alternative dwelling (see ibid in the *Sema'* and, at any rate, the *halachah* is so in case of a regional earthquake). We see then, that a renter is never regarded as the owner, even if he pays in advance. (We emphasize that all the above is according to *Kovetz He'aros* and *Kehilos Ya'akov*. However, there are other opinions on our *sugya*. See *Chazon Ish*, Bava Kama, §23, S.K. 10, and *Avi 'Ezri*, *Hilchos Sechirus*, Ch. 6. Also, concerning the renter's *mechilah*, there is a broad discussion by the *poskim*: see *Responsa Rivash*, 510, that the renter's *mechilah* has no effect without an act of

acquisition. Some Acharonim disagree and see a lengthy discussion in *Pischei Choshen*, *Hilchos Sechirus*, Ch. 4, S.K. 7).

DAILY MASHAL

Yosef's Chariot

After Yosef interpreted Pharaoh's dream, he was appointed second-in-command and given a "double chariot" (*mirkeves hamishneh*). What is a double chariot? According to Maharil Diskin zt"l in his commentary on the Torah, this chariot had two horses, as it is forbidden to urge on an animal on *Shabbos* and holidays. As Yosef was released from prison on Rosh HaShanah, he commanded that two horses be hitched to his chariot for according to some *poskim*, if two do a *melachah* – even animals – the person is exempt from punishment.

Which Animals Did Yaakov Give to Eisav?

Our *Gemara* forbids selling steers to gentiles. The animal might refuse to work on *Shabbos* and the gentile might call its previous owner to whisper in its ear to work. Tosfos (s.v. *Eimur*) explain that this *halachah* is not valid if the animal does not recognize its previous owner's voice. This is the meaning of the verse referring to Yaakov: "and he took from **what came into his hand** a gift for Eisav his brother" (Bereishis 32:14). What is the meaning of "what came into his hand"? These were the new animals, just acquired, that didn't recognize his voice, and these he gave to Eisav (*Ta'ama Dikera*).