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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

Gourds

Rav Kahana said: I was sitting at the end of my teacher Rav's lecture and heard him repeatedly mention "gourds," but I did not know what he meant. After Rav arose, I asked the students, "To what did Rav refer in his repeated mention of gourds?" They answered me, "This is what Rav meant: If a man gives money to a gardener for gourds, and ten gourds of a span's length (*half of an amah*) are priced (*in the market*) at a *zuz*, and the gardener says to him, 'I will give you ten gourds, each an *amah* long (*if you pay me the money now*),' if he actually has them in his possession, it is permitted, but if not, it is forbidden."

The *Gemara* asks: Is this not obvious? [*We have learned this halachah that one is permitted to pay in advance, provided that the seller is in possession of the items being sold!?*]

The *Gemara* answers: I might have thought that since the small gourds naturally grow large, it would be proper (*and the transaction will be valid even if he does not presently have the large gourds*). He therefore taught otherwise.

The *Gemara* asks: In accordance with whom (*that possessing the small gourds is not regarded as if he possesses the large ones*)? - It is in accordance with the following *Tanna*, for it has been taught in a *Baraisa*: If a farmer was going to milk his goats, shear his sheep, or remove the honey from his beehive, and his fellow met him, and the farmer says to him, "The milk which my goats will yield is sold to you (*and he specifies a price*); the wool sheared from my sheep is sold to you; the honey to be removed from my beehive is sold to you," it is permitted. [*It is a case where the buyer is buying in advance. Since the goods are not yet in his possession, it should be forbidden, for perhaps they will increase in price. However, since the seller did not specify the exact amount of goods that he is selling, it is possible that the buyer will lose as well – if it produces less than expected. In cases like this, when it is as close to a loss as it is to a profit, it is permitted.*] But if he said to him, "Such and such of my goats' milk yield is sold to you (*and he specifies a price*); such and such of my shearings is sold to you; or such and such of the honey which will be removed from the beehive is sold to you," it is forbidden (*for since he specified an amount, the buyer can only gain – if the value increases; paying in advance is therefore regarded as ribbis*).

Now, although such yield (*the milk, shearings or honey*) comes naturally, since it is non-existent when the transaction is made, it is forbidden.

There are others who say that Rava ruled with respect to the gourds that since they grow naturally, it is permitted (*for it is as if the buyer possesses the large gourds at the time of the transaction*).

The *Gemara* asks from the *Baraisa* (*cited above*) where it has been taught that in such a case, it would be forbidden!?

The *Gemara* answers: There (*by the milk, wool and honey*), the increase is not growing from the product itself, for the present yield is taken and another batch comes in its place; here, however, the large gourds are growing from the small gourds that he presently has in his garden, for if they are taken away, others do not grow in their place. [*It is therefore regarded as if the buyer has acquired the small gourds, and it is his gourds that are increasing in size.*] (64a1 – 64a2)

Profit and Loss

Abaye said: It is permitted for a buyer to say to a seller, "Here are four *zuz* for a barrel of wine (*which you will give me later*); if it turns sour, it is in your ownership (*and the sale is voided*); but if it appreciates or depreciates (*in value*), it belongs to me."

Rav Sheravya challenged Abaye: This is a case where it is close to a profit (*if it appreciates*) and far from a loss (*if it sours*)! [*It should therefore be forbidden, for he is obviously not buying it, since he is not taking responsibility if it gets sour – and if he is not buying it, the money should be regarded as a loan; if it increases in value, it will be interest!?*] Abaye answers: Since he accepts to suffer the loss of the depreciation as well, it is considered as if it is close to a profit and a loss (*and therefore not regarded as interest*). (64a2 – 64b1)

Mishnah

If one lends something to his fellow, he should not dwell in the borrower's courtyard for free, and he should not rent it from him for lower than the usual price, for it would be regarded as *ribbis*. (64b1)

Renting from the Borrower

Rav Yosef bar Manyumi said in the name of Rav Nachman: Even though one who dwells in someone else's courtyard without his knowledge is not required to pay (*since this falls in the category of zeh neheneh v'zeh lo chaseir – he is benefitting, for he might have paid rent to live in such a place, but the owner has not suffered any loss from it, for he was not intending to rent it out anyway*), if the courtyard is owned by his debtor, he must pay rent (*for otherwise, it would appear like ribbis*).

The *Gemara* asks: What is the novelty of Rav Nachman's teaching? Did we not learn like this in our *Mishnah*? If one lends something to his fellow, he should not dwell in the borrower's courtyard for free, and he should not rent it from him for lower than the usual price, for it would be regarded as *ribbis*.?

The *Gemara* answers: If we would have only our *Mishnah*'s teaching, I would have thought that the ruling only applies by a courtyard which is normally rented out (*where the owner is therefore suffering a loss*) and we are referring to a person who normally pays for his lodging (*and therefore he is gaining; this is why it would be regarded as ribbis*). However, in a case where the courtyard is not normally rented out and the person does not usually pay for lodging, perhaps the lender would not be required to pay the rent. Rav Nachman teaches us that even in this case, he must pay for the rent (*for otherwise, it has the appearance of ribbis*).

The *Gemara* cites another version: Rav Yosef bar Manyumi said in the name of Rav Nachman: Even though one who dwells in someone else's courtyard without his knowledge is not required to pay, if the owner tells him, "Lend me money and I will let you dwell in my courtyard," he must pay rent (*for otherwise, it would appear like ribbis; in this version, it was regarded as ribbis, for they arranged the deal at the time of the loan*).

Now, he who rules: [Even] if he had [already] lent him, [he must pay rent], will certainly hold the same if he proposed, "Lend me [etc.]." But he who rules, [if he says,]

"Lend me," [he must pay him rent], will, in the case where he has already lent him, hold that it is unnecessary. Why so? Since he did not originally lend the money for this purpose, there is no objection to it.[1]

The *Gemara* tells the story of the household of Rav Yosef Bar Chama who seized a slave from a debtor, and used it for work. Rav Yosef's son Rabbah asked his father why this was done, since benefiting from the work of this slave is tantamount to interest on the debt. Rav Yosef explained that this slave didn't even earn the value of the food Rav Yosef provided him, so Rav Yosef was not causing any loss to the debtor.

Rava countered that this would be true only of a slave like Rav Nachman's, who earned minimal wages as a jester, but most slaves earn more than the food provided them.

Rav Yosef responded: I am following that which Rav Daniel bar Katina said in the name of Rav, for he said: One who seizes a slave and works him does not pay the owner. Therefore, the work is not considered money, and is not interest.

Rava countered that Rav said this rule only when he is not holding a claim of money against the owner, but he did not say his rule when he is holding a claim of money against the owner (i.e., when one seizes his debtor's slave), since then it appears like interest. To prove this, Rabbah quotes Rav Yosef bar Manyumi who said in the name of Rav Nachman that even though one who dwells in someone else's courtyard without his knowledge need not pay, if the courtyard is owned by his debtor, he must pay rent. Rav Yosef agreed, and committed to change this practice. (64b1 – 65a1)

INSIGHTS TO THE DAF

What is Interest?

The *Gemara* states that living rent free in a debtor's house seems like interest, and is therefore forbidden.

Tosfos discusses the parameters of this prohibition. The *Gemara* states that living rent free is categorically prohibited, even if the debtor would have allowed the creditor to do so independent of the loan. Tosfos questions how a debtor can do any favors to his creditor, since these also would appear to be interest. Tosfos states that the prohibition only includes conspicuous activities, like living in someone's house, but not things like renting out tools.

The Shach (Y"D 166:1) rules that any inconspicuous favors that the debtor would have done anyway for the creditor may be done. In addition, if they were known to all to be such close friends that they would have allowed each other to dwell rent free, this also may be done.

The Maharshal, however, states that any conspicuous favor may not be done, even if all knew that they would have done this favor without the loan in place.

QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF

to refresh your memory

Q: If one first sold wheat at the current price, and when the buyer wanted to take ownership of the wheat, he converted the wheat debt to a wine debt, Rabbi Oshaya says that if the seller has wine at that time, he may convert it, but otherwise, it is considered a form of interest. Why?

[1] This version might hold that if the loan was made and then the lender lived in his courtyard, he would not be required to pay for the rent, because the loan was not given with such an intention.

A: Since he is paying the current price of the wine, while only receiving the wine at a later date.

Q: Is one allowed to collect the *value* of the fruits he bought in cash when he paid for the fruits based on their current price?

A: Rav and R' Yannai argue about this.

Q: Rav Nachman discusses the *halachah* when someone borrows an amount of coins from someone, and discovers that the creditor gave him extra coins. If the extra coins can be attributed to an error, he must return them, but if they are clearly not in error, he may assume they were given as a gift, and keep them. How can you tell if it was an error or not?

A: If the extra money is a multiple of five and ten, he must assume they were due to an erroneous count, but otherwise, he may assume they were consciously given as a gift.

DAILY MASHAL

A PUBLIC FAVOR

Rav Nachman says although if someone lives in his friend's courtyard without his knowledge he is exempt from liability, however, if he lent money to him he must pay rent. Even if the courtyard is not usually rented out he may not live there without paying rent. If it is forbidden for the borrower to do any favor at all for the lender even something that he would have done for him even if he never lent him money? Tosfos explains that it is permitted for the borrower to lend the lender items that he would have lent him even if he had not borrowed money from him and the reason why the lender may not live in his courtyard or grab his servant is because it is something that can't be done privately and since people will know about it is forbidden.

The Maharshal says that the borrower may not honor the lender with a Mitzvah by calling him to the Torah or buying Gelilah for him even if he would have done it even without the loan because it is done publicly and it is similar to living in a courtyard or grabbing a servant.

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