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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

Words of Comfort

A man once sold land to his fellow without a guarantee (*it was specifically written in the document that if creditors seize the land, the seller will not reimburse him*). Seeing that the buyer was sad, the seller said to him, "Why are you upset? Should it be seized from you, I will repay you out of my choice properties, even for your improvements and the produce (*that is still growing in the land at the time of the seizure*)." Ameimar said: They are merely words of comfort (*he is just trying to appease him, and they have no validity*).

Rav Ashi said to Ameimar: Why is this so? It is because the buyer (*if he really wanted such a condition*) should have been the one to make this stipulation, while here, the seller did so, and therefore you maintain that they were merely words of comfort.

But, Rav Ashi continued, we learned in the following *braisa*: If the buyer voluntarily says, "Whenever you have the money, I will willingly sell it back to you," it is permitted (*and it is not regarded as ribbis*). Now, surely there too, though the seller should have been the one to make this stipulation (*for he is the one who is gaining*), he did not, but rather, it was the buyer (*and the stipulation is nevertheless valid*). Yet when we asked: What is the difference between the first clause (*where the seller made the stipulation and the transaction was prohibited*) and the second, Rava answered: In the second clause, the buyer stipulates that he might return it (*depending on his will at the time; it is therefore not a binding condition*). Now, Rav Ashi infers from here, that if he would not have said that it would be depending on his will, we would not say that it was merely words of comfort!?

Ameimar replied: What Rava meant was that a condition made by the buyer is regarded as though he had stipulated that it should be depending on his will at the time. (65b4 – 66a1)

A certain seriously ill man wrote a *get* to his wife (*in order that if he should die, his wife will not fall to yibum*). He then groaned and sighed (*feeling sad that he was losing his wife even if he should recover; this was because he chose to unconditionally divorce her*). His wife (*upon seeing that he was upset*) said to him, "Why are you sighing? Should you stay alive, I am yours." Rav Zevid said: These were mere words of comfort (*she is just trying to appease him, and they have no validity*).

Rav Acha of Difti asked Ravina: And what if they were not ruled to be mere words of comfort? Does it lie within her power to insert a condition in the *get*? Surely it is the man alone who has the prerogative to give the *get* on a condition!?

The *Gemara* answers: I might have thought that he himself meant to give the *get* in accordance with her terms. Rav Zevid therefore teaches us otherwise. (66a1 – 66a2)

Asmachta

The *Mishnah* had stated: If someone lends someone else using his field as security (and said to him, "If you do not pay me back within three years, the field (*which is worth more than the value of the loan*) will belong to me (*the lender*)," this is permitted).

Rav Huna said: If this stipulation (*to give up the field*) was made at the time of the loan, he (the lender) acquires it all

(*if he defaults on the loan – even if the field is worth more than the amount of the loan*). [*This is not regarded as an asmachta (some type of commitment that a person undertakes only to convince the other party that he is serious regarding the deal). Rav Huna is of the opinion that an asmachta is not legally binding; however, here, when the borrower is benefitting from the lender, we assume that he is serious regarding his forfeiture of the field should he default on the loan.*] If, however, the stipulation was made after the money was already given, he does not acquire anything unless the stipulation (of acquiring the field) was corresponding to the money that was lent. (*If he stipulated that he will acquire the part of the field equivalent to the value of the loan, he will acquire that part of the field if the borrower defaults on the loan; otherwise, he acquires nothing – Tosfos*). Rav Nachman said: Even if the stipulation was made after the lending of the money, he acquires the entire field.

Rav Nachman issued a practical decision in the house of the Exilarch (*his father-in-law*) in accordance with his ruling. Rav Yehudah (*when the lender presented him with the document that the field should belong to him*), however, tore up the document. The Exilarch said to Rav Nachman: Rav Yehudah has torn up your document. He replied: Did a child tear it up? It was a great man who tore it up. He must have seen something wrong in it which was grounds to invalidate it, and he therefore tore it up. Another version (*of Rav Nachman's response*): He replied: A child has torn it up, for in civil law, everyone is a child compared to me.

Afterwards, Rav Nachman retracted and ruled that even if the stipulation was made at the time of the loan, the lender does not acquire anything (*for it is regarded as an asmachta*).

Rava asked Rav Nachman from our *Mishnah*: If a lender said to the borrower, "If you do not pay me back within three years, the field will belong to me," it is his (*if the borrower defaults*). [*Evidently, such a deal is binding, and it is not regarded as an asmachta!?*]

Rav Nachman responds: I initially maintained that an *asmachta* is not binding, but Manyumi, who held that an *asmachta* is binding, convinced me to retract my opinion (*so it is up to him to answer the challenge from the Mishnah*).

The *Gemara* answers: Either you can say that the *Mishnah* follows Rabbi Yosi's opinion, who holds that an *asmachta* is binding (*and Manyumi and Rav Nachman hold like the Tanna who argues*).

Alternatively, you can answer that the *Mishnah*'s case is where the borrower said to the lender to acquire the field "from now" (*if he defaults on the loan; this is not an asmachta, but rather, it is a sale right away – it is just contingent on the borrower's default of the loan*).

Mar Yenuka and Mar Keshisha the sons of Rav Chisda said to Rav Ashi: The Nehardeans said in the name of Rav Nachman: Regarding an *asmachta* - within its time, it is binding; after its time, it is not binding.

Rav Ashi asked them: Every contract can be binding only in its proper time, but not otherwise!?

Rav Ashi suggests the following explanation: Perhaps Rav Nachman meant that if the borrower meets the lender within the period of repayment and says to him, "Take possession of the field (*because I will not be repaying the debt*)," he acquires it (*for it is evident that the borrower is serious; for otherwise, why would he have said anything at all*); if he met him after the time period of repayment and he says to him, "Take possession of the field (*because I will not be repaying the debt*)," he does not acquire it. Why is that? He said that only because he was embarrassed that he could not pay.

The *Gemara* concludes that this is incorrect, for even if the stipulation was within the time period, the lender does not acquire it, and as for his saying, "Take possession of the field (*because I will not be repaying the debt*)," he merely is

thinking, "When the time for repayment comes, he will not bother me" *(but in truth, he does intend on giving him the field*). (66a2 – 66b1)

Rav Pappa said: An *asmachta* is sometimes binding and sometimes not. If the lender found the borrower (*on the date that the loan was due*) drinking beer (*at a tavern*), it is binding (*for he clearly does not care about the forfeiture of his field*); if, however, he was trying to procure money, it is not binding.

Rav Acha from Difti asked Ravina: Perhaps he was drinking to dismiss his anxiety (*that he could not pay the loan*), or perhaps someone else had assured him of the money (*to repay it*)?

Rather, Ravina said that if (*on the due date*) the borrower is steadfast about the full value of his possessions (*and he is not willing to sell them for any less – thus, he cannot come up with the money to repay the debt*), the lender certainly acquires the field (*for he is demonstrating that he does not intend on redeeming his field*).

Rav Acha from Difti asked Ravina: Perhaps the borrower is concerned that his land will lose its worth (*if people see him discounting all of his other possessions*)?

Rather, Rav Pappa said that if the borrower is particular about (*selling*) his land (*or other possessions – even for its real worth*), the lender certainly acquires the field (*for he is demonstrating that he does not intend on redeeming his field*). (66b1 – 66b2)

Rav Pappa rules: Although the Rabbis ruled that an asmachta is not binding, yet it creates a mortgage from which payment may be exacted.

Rav Huna the son of Nassan said to Rav Pappa: Did he then say to him, "Let it be yours for the exaction of your debt"?

Mar Zutra, the son of Rav Mari, objected before Ravina: But even if he had said, "Let it be yours for the exaction of your debt" — would the lender indeed acquire it? After all, it is an asmachta, and an asmachta is not binding.

But when did Rav Pappa rule that it creates a mortgage? — If the borrower says ["Take this field if I do not repay the debt within three years," the lender does not acquire the field; however, if besides for that he says,] "This field should be an *apotiki* (*you can collect only from here*)," it is valid (*and the portion of the field equivalent to the loan is acquired by the lender*). (66b2)

A man once sold land to his fellow with a guarantee. The buyer said to him, "If your creditors will seize this from me, will you repay me from your fields that are the best of the best which you possess?" He replied, "I will not repay you out of the best of the best, as I want them for myself, but I will repay you out of other best (*better quality than an average field*) which I possess." Subsequently, it was seized from him. Then there came a flood and swamped the best of the best of his land. Rav Pappa thought to rule that he is obligated to give him the best land which he currently possesses, for that is what he promised him.

Rav Acha from Difti asked Ravina: But the seller can claim, "When I promised to repay you from the best, the best of the best was existent; but now that the best of the best has been destroyed, the best has replaced the best of the best (*and I wish to keep the best land and give you the average land*)." (66b3)

Rav bar Shaba owed money to Rav Kahana. He (Rav bar Shaba) said to him: If I do not repay you by such-and-such a date, you may collect your debt out of this wine. [*Subsequently he did not pay and the wine increased in value.*] Rav Pappa thought to rule that an *asmachta* is not binding only in respect of land, which is not usually sold, but as for wine, since its purpose is to be sold, it is just the same as money (*and the deal should be binding*).

Rav Huna the son of Rabbi Yehoshua said to Rav Pappa: It is stated in Rabbah's name that all deals beginning with the word "if" are not binding. (66b3)

INSIGHTS TO THE DAF

A municipal regulation that caused a halachic dilemma

Our sugya lists instances where someone mistakenly renounces his claim to a debt or privilege owed him and discusses if an erroneous forgoing (mechilah beta'us) is valid, or if the person who waived his right may still claim whatever purported to be owed him. The Rishonim disagree as to the interpretation of the conclusion of our sugya. Rashi (s.v. "Hacha halvah") holds that mechilah beta'us is valid. (See Ashri's commentary as to Rashi's distinction between mechilah beta'us and erroneous purchae [mikach ta'us]). Tosfos and others maintain that mechilah beta'us, like mikach ta'us, is invalid and the halachah was ruled accordingly (Remo, C.M. 241:2). The following story serves to exemplify the parameters and application of mechilah beta'us.

Reuven bought an apartment from Shimon, a contractor, and paid its whole price before moving in. As customary, Shimon signed a declaration that he had no more financial claims and, if any debt be discovered, he thereby cancelled it. After a while, Reuven got a letter from Shimon's lawyer demanding payment for installing street lights next to the building. Angry at this new demand, he refused, of course, to pay.

Who must pay for installing street lights? The litigants were heard from afar as they presented their arguments before the beis din (Piskei Din Yerushalayim, Dinei Mamonos, I, p. 151). Reuven excitedly waved Shimon's signed declaration canceling any further claim on his part while Shimon vociferated that the municipal regulation that contractors must install new street lights next to homes they build was effected just after he signed. As, he asserted, he could not expect this regulation, his cancellation of future claims was mechilah beta'us and the homeowners must bear these costs which were not reckoned in the prices of their apartments.

If, though, we examine the idea behind the halachah that mechilah beta'us is invalid, we see that this reasoning does not apply here. Someone may assert he was unaware of certain facts when he cancelled a claim but were he then aware thereof, he would not have cancelled it. His assertion is reasonable as he based his cancellation on an error. What, though, is the halachah if someone forgives another's debt because he pities his awful poverty and, a day alter, the debtor gets rich? May he reasonably claim that his canceling the debt was mechilah beta'us? Of course not! At the time he cancelled the debt he was not in error as he cannot claim he was unaware of facts: facts yet to be can't be forgotten. Reuven is right in asserting that Shimon's forgoing was not mechilah beta'us as he was not unaware of any facts: the regulation was effected after his cancellation. The mechilah is valid and the homeowners don't have to pay for the installation.

This reasoning applies if the law commands contractors to install street lights among their other duties to the city, such as land tax, etc. The obligation is then Shimon's and he may not therefore demand to raise the price of apartments: the prices were already finally stated. If, however, the law requires homeowners to install street lights and contractors just do the work, Reuven has no claim: If Shimon would not install the lighting, the city would demand such from Reuven, who could claim nothing from Shimon who never assumed the responsibility to do the work. Reuven must therefore pay Shimon the costs for doing a task demanded of the homeowners which has nothing to do with the sale of apartments.

DAILY MASHAL

Asmachta by Har Sinai

It is written in Parshas Yisro [24, 9 – 11]: And Moshe and Aaron, Nadav and Avihu, and seventy of the elders of Israel

ascended, and they perceived the G-d of Israel etc., and they perceived G-d, and they ate and drank.

Rashi cites the *Medrash* Tanchuma: They gazed and peered and because of this were doomed to die, but the Holy One, Blessed be He, did not want to disturb the rejoicing of this moment of the giving of the Torah. So He waited to kill Nadav and Avihu until the day of the dedication of the Mishkan, and for the elders until the following incident: *And the people were as if seeking complaints… and a fire of Hashem broke out against them and devoured at the edge (the leaders) of the camp*.

We can ask: What happened by the sin of the complainers that precisely then, Hashem chose to destroy the elders?

The Chasam Sofer answers based upon our *Gemara*: Rav Pappa said: An *asmachta* is sometimes binding and sometimes not. If the lender found the borrower (*on the date that the loan was due*) drinking beer (*at a tavern*), it is binding (*for he clearly does not care about the forfeiture of his field*); if, however, he was trying to procure money, it is not binding.

Rav Acha from Difti asked Ravina: Perhaps he was drinking to dismiss his anxiety (*that he could not pay the loan*), or perhaps someone else had assured him of the money (*to repay it*)?

Similarly, it can be said regarding the Jewish people's acceptance of the Torah when they said, "we will do and we will listen." Seemingly, this should be regarded as an *asmachta*, and therefore not binding – they were coerced into saying that by the fact that the mountain was placed on top of them.

Accordingly, we can say as follows: When the elders ate and drank, this was a demonstration that they were completely at ease with their decision; they were displaying happiness and joy with the acceptance of the Torah, and that it wasn't an *asmachta* at all. So, on the contrary – they were acting properly, and not deserving of a punishment at all! However, by the sin of the complainers, it is written: *They travelled from the mountain of Hashem*. Rashi explains that they ran away like a child runs when he is leaving school. They were fleeing in order not to receive any more laws. This would then indicate that when they were eating and drinking by Mount Sinai, it was not a sign of happiness, but rather, they were dispelling their anxiety. This was a cause for their demise, and that is why Hashem waited until the time that they demonstrated what their true intentions were.

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

Q: If the lender received a cloak as a payment of *ribbis*, what is taken away from him?

A: Abaye – money; Rava – cloak.

Q: If someone was owed twelve *zuz* of interest by his friend, and his friend rented him a place for these twelve *zuz* that was really only worth ten *zuz*, when we take away the interest, how much do we take away?

A: Twelve *zuz*.

Q: When is the money for a rental due?

A: At the end (*according to our Gemara*).