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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

Erroneous Waiver

Rav Nachman said: Now that the Rabbis have said that an *asmachta* is not binding, if the lender would take the field (*from the borrower based upon the asmachta agreement*), he must return the field and its produce (*which he took*).

The *Gemara* notes: We can infer from here that Rav Nachman maintains that a waiver in error is invalid (*for the borrower, in permitting the lender to possess its produce, has obviously renounced his own rights; however, he did this erroneously, not knowing that the lender's title is invalid, and Rav Nachman rules that the produce must be returned*).

But, it was stated: If a person sold (*with a kinyan*) the dates that would (*hopefully*) grow on his palm tree to his fellow before the fruit even appeared on the tree, Rav Huna maintains that the deal can be retracted (*by the seller*) before the fruits appear. Once the fruit appear, the transaction is automatically ruled to be valid. Rav Nachman, however, holds that the seller can retract from the transaction even after the fruits appear (*as the sale was done at a time when the goods were not extant*). Rav Nachman agrees that if the two appear to abide by their deal and the buyer starts eating the fruit, we don't take the fruit away from him. [*Evidently, this is because the seller erroneously renounced his rights to the produce thinking that the sale was valid!?*]

The *Gemara* answers: There it is a sale (*and he rules that a waiver in error is valid*); here it is a loan (*and if we would allow the lender to keep the produce, it would constitute ribbis*). (66b3 – 66b4)

Rava said: I was sitting before Rav Nachman (*when he stated that a waiver in error is valid*), and I wished to refute him from the law of *ona'ah* (*where it is not a valid waiver*), but observing my intentions, he preempted me by showing me a case (*to support him*) of an *aylonis* (*a barren woman*).

Rava proceeded to explain: Now, *ona'ah*, which is a case of a waiver in error (*where the buyer agrees to pay the seller's price*), nevertheless, it is not a valid waiver (*and the seller is required to return the overcharge*)!? But upon observing my intention, he showed me the case of an *aylonis*, for there also there is a waiver in error, and yet it is valid. For we learned in a *Mishna*: A minor girl who has refused her husband (*A girl whose father had died could be given in marriage while still a minor (under the age of twelve) by her mother or older brother. This marriage is only valid Rabbinically. As long as she has not attained the age of twelve, she may nullify the marriage by refusing to live with her husband. This act of refusal, referred to as mi'un nullifies the marriage retroactively.*); a woman who is a secondary *ervah* (*Rabbinically forbidden to marry this man*); and the *aylonis* (*a woman incapable of procreating*) have neither a *kesuvah*, nor the produce (*this refers to the fact that the husband will ransom her if she is taken captive, which is in exchange for his rights to her produce*), nor the support, nor the worn-out articles. [*From the*

halachos of an aylonis, we see that an erroneous waiver is indeed valid!?]

The *Gemara* notes that this is incorrect: The law of *ona'ah* is not a legitimate challenge to Rav Nachman and the law of an *aylonis* does not provide support for him. The law of *ona'ah* does not refute him, for the cheated party did not know that he was defrauded at all, that he should waive anything (*in contrast to the other cases where there was a mistake in halachah – thinking that the sale was valid*). Nor does the law of an *aylonis* support him, because she is happy to have been called a married woman (*and even if she knew that the marriage was void, she would still forego the rights to the property*). (66b4 – 67a2)

Seller Redeeming the Field

A woman once instructed a man, "Go and buy for me a piece of land from one of my relatives," and he went and did so. The seller said to her agent, "If I have available money, I want to have the option of buying the field back." He replied, "You and Navla (*the woman*) are relatives (*and you will work things out between you*). Rabbah bar Rav Huna said: Whenever one says, "You and Navla are relatives," the seller relies upon it (*and it is not regarded as a rejection of the seller's condition*), and he is agreeing to the sale only upon that stipulation.

[*This sale is prohibited because of ribbis, as the Gemara above taught us – if the seller would buy the land back, the money which he received from the buyer would retroactively be viewed as a loan; the buyer's eating of the seller's produce in the interim would constitute ribbis.*] The *Gemara* inquires: The land is returned to the seller (*if he redeems the field*); but what is the *halachah* with the produce? Is it regarded as prearranged interest, which can then be reclaimed in *Beis Din*, or perhaps it is only like "the dust of *ribbis*" (*Rabbinically forbidden interest*), and cannot be reclaimed?

Rabbah bar Rav Huna said: It stands to reason that it is only considered as "the dust of *ribbis*," and cannot be reclaimed. And like so did Rava say: It is considered as "the dust of *ribbis*," and cannot be reclaimed. (67a2 – 67a3)

Pledged Property

Abaye asked Rabbah: What would be the *halachah* regarding a pledged property (*the borrower gave the lender land as collateral on the loan, and the lender (without specific permission from the borrower) ate the produce*)? Is the reason by the other case (*where the seller redeemed the land*) because the *ribbis* was not prearranged (*and that is why it is only considered as "the dust of ribbis"*); then, in this case as well, it was not prearranged? Or perhaps the reason is because it was a sale; but here, it was a loan (*and therefore may be regarded as prearranged ribbis*).

Rabbah said to Abaye: The reason is because it was not prearranged, and that applies in this case as well (*and therefore the interest cannot be reclaimed*).

Rav Pappi said that Ravina once ruled that the produce (*of a field which was redeemed by the seller*) could be reclaimed (*from the buyer*) as well – unlike the ruling of Rabbah bar Rav Huna. (67a3 – 67a4)

Mar, the son of Rav Yosef, said in Rava's name: With respect to pledged property, in a place where it was customary to allow the borrower to remove the lender from the property if he paid early (*some places did not allow this*) - if the lender consumed the produce equal to the amount of the loan, he is removed from the property (*and that is considered his payment, for it was not specified that the produce should be regarded as interest*). However, if he consumed in excess of the loan, the surplus cannot be reclaimed (*for it is only "the dust of*

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ribbis"); nor can we balance one loan against another (*and say that the produce consumed should be regarded as payment for a different loan*). But when the pledged property belongs to orphans, if the lender consumed the produce equal to the amount of the loan, he is removed from the property (*and that is considered his payment, for it was not specified that the produce should be regarded as interest*). And if he consumed in excess of the loan, the surplus can be reclaimed (*for we protect the rights of the orphans more than an ordinary person*); and we can balance one loan against another (*and say that the produce consumed should be regarded as payment for a different loan*).

Rav Ashi disagrees: Now that you rule that if he consumed in excess of the loan, the surplus cannot be reclaimed (*for it is only "the dust of ribbis"*); then even if it is equal to the value of the loan, he cannot be removed from the land unless he is paid with money (*for the loan*). What is the reason for this? It is because to remove him without payment is tantamount to reclaiming the produce from him, whereas it is only "the dust of *ribbis*," which is not reclaimable by *Beis Din*.

Rav Ashi gave a practical decision in reference to minor orphans, and he treated them as if they were adults. [*This is in accordance with his ruling that since it is only avak ribbis, the lender cannot be removed from the field without money; there is therefore no reason to treat an orphan any different than an ordinary person.*]

Rava, the son of Rav Yosef, said in the name of Rava: With respect to pledged property, in a place where it was customary to allow the borrower to remove the lender from the property if he paid early - the lender should not consume the produce (*for it would be regarded as ribbis*) except with a reduction. [*The lender deducts a yearly amount from the loan for the rights to eat the produce. In essence, he is buying the right to eat the produce from the borrower. The fact that he is purchasing this right at a greatly discounted price does not constitute ribbis, for the lender could end up losing on the deal if the crops get ruined.*] A Rabbinical scholar should not consume the produce even with this reduction (*for it appears like ribbis, and he should be more scrupulous than others*).

The *Gemara* asks: How then can the Rabbinical scholar profitably consume the produce from such property?

The *Gemara* answers: It can be done with a stipulated time limit on the benefits (*the lender may only consume the produce for a specific amount of years*).

The *Gemara* asks: This can only be correct according to the opinion that holds that a stipulated time limit on the benefits is permitted; however, according to the one who holds that a stipulated time limit on the benefits is forbidden, what would we answer?

For it was stated: Rav Acha and Ravina argue if a stipulated time limit on the benefits is permitted or not.

The *Gemara* explains the characteristic of a stipulated time limit on the benefits: The lender says to the borrower, "For the first five years, I will eat the produce without any reduction; afterwards, I will calculate all the produce for you (*as a repayment of the debt*). [*The lenient opinion holds that this is a type of sharecropping arrangement, and it is therefore permitted. The lender works the field and receives the produce for the first five years; afterwards, the borrower has the rights to the produce. The other opinion maintains that that this arrangement is viewed purely as a lender taking the produce from the borrower's field; it is not offset by the fact that afterwards, he will receive nothing. This constitutes ribbis.*]

The *Gemara* cites an alternative version of the explanation of their dispute: Everyone holds that a stipulated time limit on the benefits without any

deductions is positively forbidden. The argument is only in the following case: The lender says to the borrower, "For the first five years, I will eat the produce with a reduction; afterwards, I will calculate all the produce for you (*as a repayment of the debt*).

The *Gemara* now explains how a Rabbinical scholar can profitably consume the produce. The one who maintains that the first arrangement (*where the lender is eating for the first five years without any reduction*) is forbidden would hold that the second arrangement (*where there is a deduction*) would be permitted (*even for a Rabbinical scholar*). However, the one who holds that the second arrangement is forbidden, how then can the Rabbinical scholar profitably consume the produce from such property?

The *Gemara* answers: It would be permitted if the pledge was given in the manner that was done in Sura, where the document was written as follows: When these years are finished (*the specific amount that the lender may enjoy the produce*), the land shall leave his possession without any money. [*The reason why this type of pledge is permitted is because it is worded as a sale for a specific amount of years; there are no yearly deductions mentioned, and when the time is completed, it reverts back to the borrower automatically.*]

Rav Pappa and Rav Huna, the sons of Rav Yehoshua, said: With respect to pledged property, in a place where it was customary to allow the borrower to remove the lender from the property if he paid early, the lender's creditor cannot exact his debt from it (*after the lender's death, for it is not regarded as belonging to the lender; if the lender would be alive, his debt can be collected even from his movable property and therefore could be exacted from the pledged field; it is only when the debt is collected from his heirs, where his creditor can only collect from real property, that this halachah would apply*); the firstborn (*of the lender*) does not receive a double portion from it (*for the father did not actually possess it; it was only potentially his, and is derived from a Scriptural verse that a firstborn's portion can only be from property which the father actually possessed*); and the *Shemittah* year cancels it the debt (*for it is still regarded as an outstanding loan*). But where it was customary not to allow the borrower to remove the lender from the property if he paid early, the lender's creditor can exact his debt from it (*for it is regarded as belonging to the lender*); the firstborn does receive a double portion from it; and the *Shemittah* year does cancel it.

Mar Zutra said in the name of Rav Pappa: With respect to pledged property, in a place where it was customary to allow the borrower to remove the lender from the property if he paid early - he can remove him by paying early. He may also prevent him from eating the dates that are already on the mats (*for it is not his field anymore*). If, however, he has already picked them up in baskets, they are his. And according to the view that the purchaser's utensils effect ownership for him even in the domain of the seller, even if they have not been picked up in baskets, they are his (*because they are resting on his mats*).

Now, it is obvious, in a place where it was customary to allow the borrower to remove the lender from the property if he paid early, but the lender stipulated (*when making the loan*), "I shall not be removed before the loan is due," then surely he has so stipulated (*and it is binding*). But what in a place where it was customary to not allow the borrower to remove the lender from the property if he paid early, and yet the lender promised, "I will allow myself to be removed," is it necessary for the borrower to make a *kinyan* (*acquisition act*) with the lender or not (*is it binding with his mere words or is a kinyan required*)? Rav Pappa said: It is unnecessary. Rav Sheishes the son of Rav Idi ruled: It is necessary. And the law is that he must perform a *kinyan*.

Now, if the borrower states, "I am going to bring you the money," the lender may not take any more produce. But if he said, "I will go and make an effort to obtain money and bring it to you," Ravina ruled: He may still eat the produce. Mar Zutra, the son of Rav Mari, said: He may not. And the law is that he may not eat the produce. (67a4 – 67b5)

Rav Kahana, Rav Pappa and Rav Ashi did not eat the produce from a pledged field even with a deduction. Ravina, however, did.

Mar Zutra said: What is the reason of the one who eats the produce when there is a deduction? It is because it is similar to the *halachah* of an ancestral field (*a field that one inherits, and then he donates to hekdesh; one who wishes to redeem it must pay fifty sela'im – if he redeems it forty-nine years before Yovel; every year closer to Yovel, the price of redemption is lowered*). Now, with respect to this, even though he (*the redeemer*) will be eating much produce from it, nevertheless, the Torah enables him to redeem it for four *zuzim* (*a sela*) per year (*which is much less than its true value*). So too here, it is no different (*and the lender may purchase the rights for the produce for each year for a nominal price*).

The one who prohibits this maintains that with respect to *hekdesh*, the Torah decided its redemption price. However here, it is a loan, and taking such a small deduction would appear like *ribbis*. (67b5 – 68a1)

INSIGHTS TO THE DAF

Concealing his True Stature

The Mordechai (*Gittin* 461) relates that Rabbeinu Tam once instructed a *Kohen* to pour him some water. This caused one of his students to inquire as to how he could allow a *Kohen* to serve him, being that the Yerushalmi states that whoever uses a *Kohen* for his own needs is in violation of the prohibition of *me'ilah* (*since the Kohen is sacred*). Rabbeinu Tam's response was that the *Kohen* who served him in 12th century France was without the clothing of the *Kohen* and, therefore, not a *Kohen (based upon the Gemara Sanhedrin 83b)*. The student persisted that if so, we shouldn't give a *Kohen* the first *aliyah*. Rabbeinu Tam remained quiet. Rabbeinu Peter then suggested that a *Kohen* can voluntarily forfeit the respect due to him as a *Kohen* and, therefore, there was no problem with Rabbeinu Tam's use of him.

The Ta"z asks that the *Kohen* is not permitted to forfeit his *kedushah* and marry a divorcee!? What is the difference between the two?

He answers that it is only permitted for the *Kohen* to forfeit the respect due to him with respect to something that he will be deriving benefit from – e.g. to be an attendant for Rabbeinu Tam. However, something that the Torah explicitly prohibits, such as – marrying a divorcee, there is no option to forfeit that *kedushah*.

The Ta"z adds that the reason Rabbeinu Tam was quiet was not because he did not know what to answer; but rather, it was because he did not want to be considered a Torah scholar, for that would be the only reason that it would have been permitted. He cites our *Gemara* and Tosfos as a proof to this. The *Gemara* stated: Rav Kahana, Rav Pappa and Rav Ashi did not eat the produce from a pledged field even with a deduction. Ravina, however, did. Tosfos asks: How could Ravina eat the produce from a pledged field even with a deduction? Didn't the *Gemara* say above that a Rabbinical scholar would not take produce in such an arrangement?

Tosfos answers that Ravina, due to his great humility, did not want to be regarded as a Rabbinical scholar. Ravina did not want people to be aware of his spiritual importance. The prohibition, which applied to other Torah scholars, did not apply to Ravina, for since he was

not known as a Torah scholar, his conduct would not necessarily serve as an example to others.

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

Q: If a woman made a stipulation in a *get*, what is the *halachah*?

A: It is meaningless.

Q: According to those that hold that an *asmachta* is not binding, how do they explain the *Mishna* which states: 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!?*]

A: Either you can say that the *Mishna* follows Rabbi Yosi's opinion, who holds that an *asmachta* is binding. Alternatively, you can answer that the *Mishna*'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*).

Q: What was stated in Rabbah's name regarding all deals beginning with the word "if"?

A: They are not binding.

DAILY MASHAL

Can you Learn the Daf?

Discrimination because of Paper Plates

A certain Rabbi, a leader of the Jewish back-to-the-roots (teshuvah) movement, has seen and heard so many phenomena that hardly anything surprises him. He has frequently dealt with strange cases and special missions. When he returned to Eretz Israel with what even he called "an interesting tale", his acquaintances' curiosity was piqued.

A rich American Orthodox congregation maintains a lively program of activities, including lectures by famous figures. This Rabbi was invited to speak at a gathering attended by about 70 people. They expressed general interest about events in Eretz Israel and particularly the various Orthodox communities. When the speaker finished, everyone warmly shook his hand, heartily thanking him for the successful evening.

"A man was waiting for me at the end of the queue", recounted the Rabbi. "His stare told me he had a question on the tip of his tongue and was already trying to guess my reply. 'I understand', he said, 'that you help many people to return to their roots. Could you tell me the age of the oldest person you ever helped back to tradition?'"

The Rabbi sat down and made a mental inventory of many images from different locations, colorful characters and strange events. Reviewing them all, he concluded that the oldest person who ever approached him had not passed his 65th birthday. "Apparently", he remarked, "older people don't like to change their lifestyle. They feel too much time has passed to revolutionize their ways." The stranger removed his expensive hat and sat opposite. "To tell the truth", he said, "I've never dealt in this area. I'm a good Jew, observe mitzvos and attend shul. Now and then I donate to organizations that encourage people to learn and observe mitzvos. I myself have nothing to do with such things. However, let me tell you a story that once happened with me.

To be continued…..

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