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The Dilemma of the Dead Donkey

Rabbah bar Rav Huna said in the name of Rav: If someone rented a donkey to ride upon it, and it died halfway to his destination, he pays the owner half the rental fee, and only has complaints (*no further legal claims*).

The *Gemara* asks: What are the details of this case? If he can easily find another donkey to rent, why does he even have complaints? If he can't, should he (the renter) be required to pay a fee to him (the owner) at all!?

The *Gemara* answers: The case is where he cannot easily find another donkey to rent. However, the owner can claim as follows: If you would have only needed to get here (*where the donkey died*), you would clearly have been obligated to pay me in full. [*Tosfos explains that the Gemara means that he cannot find another donkey to rent for this cheap price, but he can find a donkey to rent for a slightly more expensive price. Being that the owner was the victim of forced circumstances, we do not say that he needs to compensate the renter for the slightly more money that he must pay to rent a more expensive donkey for the rest of the journey.*]

The *Gemara* asks: What are the other details of the case above? If the renter originally said that he wants to rent a donkey, it would seem that the owner is obligated to give him another donkey if this donkey dies! If the renter said that he wants to rent this specific donkey, then if the value of the carcass can buy him another donkey, he can

use the money to buy another donkey with which to finish his journey.?

The *Gemara* answers: The case is where the carcass of the donkey is not worth enough to buy another donkey.

The *Gemara* asks: If the value of the carcass can be used to rent another donkey, he can use the money to rent another donkey with which to finish his journey!?! [*This is because the body of this donkey is on lien to him to make sure he can finish his journey, even if it means to use the value of the carcass to rent a donkey.*]

The *Gemara* answers: Rav is basing himself on his opinion that one cannot use the value of the carcass for a rental. He can use it only to purchase another donkey, as he is not using up the donkey's value.

This is based on Rav's position in the following case: It was taught: If someone rented a donkey to ride upon it, and it died halfway to his destination, Rav says that if the value of the carcass can buy him another donkey, he can use the money to buy another donkey with which to finish his journey. However, he cannot use the value to rent another donkey. Shmuel says: He can even use the value to rent another donkey to finish his journey. What is the crux of their argument? Rav holds one cannot use up the capital (*i.e. the donkey's value*), and Shmuel holds he can.

The *Gemara* asks a question from a *Baraisa*. The *Baraisa* states: If the tree dried up or was cut, both the lender and borrower cannot use the wood. [*The case is where a*

borrower gave a lender a tree as collateral, and they made a condition that after a certain amount of years the tree would revert back to the borrower (see 67b). Rashi explains that if either of them would use it for firewood, they would be destroying the capital of the other.] What should be done with the (wood of) tree? It should be sold for land, and the fruits can continue to be eaten by the lender. The Gemara asks: This does not seem to be a good solution, as the land might go back to its original owner during *Yovel* (the jubilee year), and the borrower will then be left with no capital! [This is a question on Shmuel, who holds that we do not allow the capital to be used up.]

The Gemara answers: The case is where he (the owner) sold him the land for sixty years. This is as Rav Chisda states in the name of Rav Katina: How do we know that if someone sells a piece of land for sixty years that it does not go back during *Yovel*? The verse states, "And the land will not be sold for good." This implies that if not for *Yovel*, the land would be sold forever. [It is this type of land that *Yovel* gives back to the original owner.] This excludes land that would be given back to the original owner even without *Yovel* (as there is a time limit of sixty years).

The Gemara asks: This is still a question, as after sixty years the capital of the borrower will be gone, because the land will go back to its original owner.

The Gemara answers: Rather, the case here must be when *Yovel* does not apply. This is logical, as if it were during a time when *Yovel* did apply and we would rule that the lender had the right to finish off the capital, let him just cut it down now and use it for firewood!

The Gemara counters: This is not a proof that the case is when *Yovel* does not apply. It could be the case is where the collateral is up before *Yovel*. Alternatively, the case could be where the borrower would get money to redeem the tree four or five years before *Yovel*. [There is much

discussion regarding how to understand this second answer (see Rashba).] (79a1 – 79a3)

The Wine Boat

The *Baraisa* states: If someone rented a boat and it sank midway through the journey, Rabbi Nassan says that if the owner of the boat already collected the rent, the renter cannot claim anything. If the renter did not yet pay, he does not have to pay.

The Gemara asks: What are the details of the case? If one asked to rent a specific boat and said he was going to transport wine on it to his destination, why can't he have a claim? He should say, "Give me a boat that will transport my wine!"

Rather, the case must be that he rented a boat in general in order to transport specific cases of wine. If so, why shouldn't he have to pay if he did not yet pay? The owner of the boat can say that he will supply him with a boat if he recovers his wine. [Being that he cannot recover his wine, as it sank, and the deal was specifically regarding transporting these cases of wine, the owner of the boat should not have to supply another boat.]

Rav Chisda answers: The case is where the renter wanted a specific boat to transport specific cases of wine. However, if the renter asked for a boat to transport wine in general, they would split the money. (79a3 – 79b1)

The *Baraisa* states: If someone rented a boat to transport merchandise, and he ended up unloading the boat midway through the journey, he pays for half of the journey, and the owner of the boat can have only complaints (*not legal claims*).

The Gemara asks: What is the case? If the case is that the owner of the boat can easily find someone else to rent the boat, why does he even have a complaint against the

renter? If the case is that he cannot find someone else, the renter should need to pay the entire fee!?

The *Gemara* answers: The case is where he can find someone else to rent the boat (*for the rest of the journey*). He still has a complaint because unloading and loading packages wears out the boat (*and he will now have to load and unload twice on this entire journey instead of just once*).

The *Gemara* asks: If so, this (*the added wear and tear*) is a good claim that should mandate payment, not just complaints!?

The *Gemara* answers: Rather, the case is that the same person indeed went the entire distance, as originally planned. However, he stipulated with the boat owner that he has the right to stop and pick up packages for additional pay. He ended up using this right.

The *Gemara* asks: Why, then, does the owner have a complaint?

The *Gemara* answers: The boat owner did not think the renter would use this right, and thought he would travel back and forth quickly. He can have a complaint only about the added stops.

Alternatively, the *Gemara* answers: The added packages caused the boat owner to buy heavy and long ropes for his anchor, which now needs to be placed deeper into the sea, due to the weight of the added packages. Being that he did not warn the boat owner of this fact, the boat owner has a complaint against the renter. (79b1)

The *Baraisa* states: If someone rented a donkey to ride upon it, he can put his clothing, flask, and food for the journey on the donkey as well. Any added weight can be protested by the owner of the donkey. The owner of the donkey can put the barley, straw, and food for that day

on the donkey, but more than this can be protested by the renter. [*The case is where the donkey owner would travel with the renter, and would want to put these things on the rented donkey during the journey.*]

The *Gemara* asks: What is the case? If the case is where it is common to buy food every day on the road, the donkey owner should be able to protest that he cannot put all of the food for the entire journey on the donkey! If it is uncommon to buy food every day, why can the renter protest when the donkey owner puts more than one day's food on the donkey?

Rav Pappa answers: This is necessary for a case where it is common to be able to buy food from one place of lodging (*where they are staying at night*) to the next. While it is normal for a donkey owner to inquire and find out where to buy food every day, it is uncommon for a renter to do so. [*This is why he can have food for the entire journey on the donkey, while the owner cannot have more than food for one day.*] (79b2)

The *Baraisa* states: If someone rents a donkey to have a man ride on it, he should not have a woman ride on it. If he rents it so that a woman should ride on it, a man can ride on it. A woman refers to any woman, whether an adult or a minor, even if she is pregnant or nursing.

The *Gemara* asks: If it says this includes a nursing woman (*who carries her infant with her*), it obviously includes a pregnant woman!?

Rav Pappa answers: It means even a pregnant nursing woman.

Abaye says: We see from here that a fish's weight is largely determined by the size of its stomach. What is the difference? The difference is regarding buying and selling. [*Rashi says that if you see a fish with a big belly, do not*



buy it by weight unless its innards are taken out first.]
(79b2 - 79b3)

INSIGHTS TO THE DAF

THE BOAT THAT SANK WITH THE WINE

QUESTION: The *Gemara* discusses a case in which a person rented a boat from a boat owner (without specifying any particular boat -- "Sefinah Stam") to transport specific barrels of wine ("Yayin Zeh"), and the boat sank at sea with the wine. The renter is obligated to pay rent for the boat, because the boat owner may claim that he is willing to provide another boat to transport the wine. The renter must pay rent because it is *his* misfortune that he no longer has those specific barrels of wine to transport (since they sank).

Why does the renter have to transport those specific barrels of wine? Why can he not accept a different boat from the boat owner and transport different barrels of wine? The *Gemara* earlier (77a) quotes Rava who says that if an employer hired workers for one day to do a specific job and the workers finished the job by midday, the employer is entitled to give them other work to do (of an equivalent degree of effort as the first job). It is clear that an employer is entitled to substitute the specific work for which he initially hired workers to do for other work (as long as the new work is not more burdensome). The same should apply to a renter: he should be entitled to substitute the specific work for which he initially rented the boat for another form of work. Why, in the case of the *Gemara* here, may the renter not bring other barrels of wine to be transported, and demand that the boat owner provide him with another boat? (See **HAGAHOS ASHIRI** to **ROSH** 6:5.)

ANSWER: The **KETZOS HA'CHOSHEN** (311:1; see also **SHACH** 311:1) writes that there are a number of answers to this question, but that the most likely answer is that

only in the case of the *Gemara* here can the owner of the boat limit the rental to the transport of the specific barrels of wine. Since he lost the boat in the process of transporting the wine, the renter is not entitled to demand another boat with which to transport other wine. Rather, the renter must pay the rental fee for the original boat. In contrast, in the case of the workers who finished the job early, the workers have not lost anything in the process of doing the original work, and therefore the employer is entitled to give them other work.

PAYING FULL RENT FOR A SUNKEN BOAT

QUESTION: The *Gemara* states in the name of Rabbi Nasan that in a case in which a person rented a specific boat ("Sefinah Zu") for the purpose of transporting specific barrels of wine ("Yayin Zeh"), and the boat sank after traveling only half of the distance for which it was rented, the law is that "if he has already paid, then the money is not refunded, but if he has not yet paid, then he is exempt." Why, if he has already paid, does the renter not receive a refund for at least half of the cost of the boat? The boat transported his wine only half of the way!
(**TOSFOS** DH *ly*)

ANSWER: **TOSFOS** answers (as explained by the **KEHILOS YAKOV** 46:4) that there are two types of rentals. When one pays the entire sum of rent at the commencement of the rental term, the object (such as the boat) becomes completely his (he has temporary ownership) for the purpose for which he rented the object (in the manner of "Dekel l'Perosav"). Hence, even if he did not succeed in using the object in the manner in which he intended (such as when the boat sank), he nevertheless is obligated to pay the entire rental fee because he acquired the object. If, however, the renter did not pay at the commencement of the rental term, the rental is viewed merely as a right to use the object of the other person (and not that the renter actually has ownership of it), and thus the renter



pays only for as much use as he was able to obtain from the object.

Therefore, in Rebbi Nasan's case, if the renter has already paid the entire rental fee for the boat, then he has acquired the boat and is not entitled to a refund. If he has not yet paid the rental fee, then he has not acquired the boat and he is obligated to pay only for the amount of use that he obtained from the object. Since in this case the use of the boat was virtually worthless (the boat sank and did not accomplish anything), the renter is exempt.

QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF

to refresh your memory

Q: Who holds that if someone deviates from the owner's stipulation, he is regarded as a thief?

A: Rabbi Meir.

Q: If a poor person is given money to be used for the Purim feast, may he use it for any other purpose?

A: It is a *machlokes Tannaim*.

Q: Do moths consume flaxen cloths or golden garments?

A: Golden garments.

DAILY MASHAL

Is it your Business?

The Gemara asks a question from a Baraisa and answers that the Baraisa is referring to a time when the laws applicable to Yovel do not apply.

The Rashba asks: Why couldn't the Tanna answer that the Baraisa may even be referring to a time when the laws applicable to Yovel do apply, but it is referring to land sold

outside of Eretz Yisroel where the laws of returning land by Yovel do not apply?

He answers: Since the Tanna was residing in Eretz Yisroel, it would not be proper of him to discuss a case which applies only outside of Eretz Yisroel.

We may derive an important lesson from here: One should not discuss things which are not applicable to him at all; if it is not his business, it is best to stay out of it.