5 Teves 5777
Jan. 3, 2017

DAF Notes
Insights into the Daily Daf
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Bava Metzia Daf 99

Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o"h

Tzvi Gershon ben Yoel (Harvey Felsen) o"h

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

The Moment he becomes Liable

The *Mishna* had stated: If the owner sent a cow to the borrower via his or the borrower's son, slave, or agent, and it died on the way, the borrower is not liable, since his obligation begins only once he has received the cow. If the borrower told the owner to send the cow via these people, or if the owner notified the borrower that he was sending it via these people, and the borrower agreed, the borrower has agreed to be responsible once they have received it, and he is liable once it has been handed to them.

The *Gemora* asks: How can this be correct in the case where the owner sent it in the hands of his slave? The rule is that a slave's hand is regarded as the master's hand!? [*Accordingly, it is as is it never the left the owner's hand, and the borrower should not be liable!?*]

Shmuel answers: The *Mishna* is referring to a Hebrew servant, where his body is not acquired by the master.

Rav said: It may even be referring to a Canaanite slave, but the *Mishna* means that it becomes as if the borrower said to the owner, "Hit the cow with a stick and it will come." [*It is as if the borrower is saying that he accepts all responsibility as soon as it leaves the owner's courtyard.*]

The *Gemora* asks on Rav from a *braisa*: If one borrows a cow, and the owner sent it to him via his son or agent, the borrower is liable (*in a case where he appointed them as his agent*). However, if it was via his slave, he is not. Now, according to Shmuel it is understandable, for our *Mishna* is referring to a Hebrew servant, whereas the *braisa* is referring to a Canaanite slave. But according to Rav, is there not a difficulty? [*If they are both discussing a Canaanite slave, why do the rulings conflict each other?*]

The *Gemora* answers: Rav can answer you: Do not answer above that it becomes as if the borrower said to the owner, "Hit the cow with a stick and it will come." Rather, it means that he had actually said to him, "Hit the cow with a stick and it will come." [*The braisa is not dealing with such a case.*]

Proof to this is brought from that which has been stated: One person said to another, "Lend me your cow," and the owner asked him, "With whom shall I send it?" If he replied, "Hit the cow with a stick and it will come," Rav Nachman said in the name of Rabbah bar Avuha in the name of Rav that once it leaves the owner's possession and it dies, the borrower is responsible.

The *Gemora* attempts to provide support for Rav from the following *braisa*: One person said to another, "Lend me your cow," and the owner asked him, "With whom shall I send it?" If he replied, "Hit the cow with a stick and it will come," once it leaves the lender's domain and it dies, the borrower is responsible.

Rav Ashi said: No (*it is not a proof*)! The *braisa* is dealing with a case where the borrower's courtyard was within (*but not actually contiguous*) the courtyard of the lender, so that when the lender sends it, it will certainly go there.

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

The *Gemora* asks: If so, why is it necessary to state it?

The *Gemora* answers: It is necessary to state it only when there are small passages in various directions in the courtyard. I might have thought that the borrower does not rely completely that the cow will come to him, for perhaps it may hide there and not come to him; therefore, the *braisa* teaches us that he does rely that it will come. (99a)

A Borrower's Liability

Rav Huna said: If a man borrows an ax from his fellow and he chops wood with it, he acquires it. If he does not chop wood with it, he does not acquire it.

The *Gemora* asks: In respect of which *halachah* is he referring to? Shall we say, in respect of unavoidable accidents (*that a borrower only becomes liable after he chops wood with it*)? But why should it be any different than a cow, for which he is responsible from the time of the borrowing?

The *Gemora* answers: He is referring to the *halachah* of the lender retracting from the loan. Once the borrower chops wood with it, the lender cannot retract. If not, the lender can retract.

Now, Rav Huna seems to be in conflict with Rav Ami. For Rav Ami said: If a man lends an ax belonging to the Temple treasury, he is liable for *me'ilah* (*one who has unintentionally benefited from hekdesh or removed it from the ownership of the Beis Hamikdosh has committed the transgression of me'ilah, and as a penalty, he would be required to pay the value of the object plus an additional fifth of the value; he also brings a korban asham*) in respect of the benefit of gratitude that there is (*for the gratitude that his fellow has towards him for lending the object is worth money*), and the borrower is *halachically* permitted to use it (*for it becomes chulin (non-consecrated) after it was misappropriated*). Now, if the borrower does not acquire it until he actually uses it, why is the lender liable for *me'ilah*, and why is the borrower permitted to use it? Let the borrower return it, and he will not acquire it; this way, there will be no liability for *me'ilah*!?

And, Rav Huna seems to be in conflict with Rabbi Elozar. For Rabbi Elozar said: Just as the Rabbis instituted *meshichah* (*pulling near; as a way of acquiring things*) for purchasers, so too did they institute *meshichah* for custodians.

A *braisa* has been taught likewise: Just as they instituted *meshichah* for purchasers, so too did they institute *meshichah* for custodians. And just as real estate is acquired by means of money, a contract, or *chazakah* (*a proprietary act; one that demonstrates that he owns it, such as plowing the field or locking the gate*), so is a rental acquired by means of money, a contract, or *chazakah*.

The *Gemora* asks: Why did we choose to mention anything about a rental?

Rav Chisda answers: The *braisa* is referring to the renting of real estate. (99a - 99b)

How a Robber Pays

Shmuel said: If a man stole from his fellow a cake of pressed dates containing fifty dates, which, when sold together, fetches forty-nine *perutos*; but when sold separately, fetches fifty *perutos*, the *halachah* is as follows: In the case of non-consecrated property, he must repay forty-nine *perutos*. In the case of *hekdesh*, he must pay fifty, plus the additional fifth. This, however, is not so in the case of one who damages property belonging to *hekdesh*, for then, one does not add a fifth. For a master

stated: *And if a man shall eat of the holy unwittingly, then he shall add its fifth part to it*. This excludes one who damages *hekdesh*.

Rav Bibi bar Abaye asked: In the case of secular property, why must he pay only forty-nine *perutos*? Can the owner not say, "I would have sold them individually"?

Rav Huna the son of Rabbi Yehoshua replied: We learned in a *Mishna*: We evaluate how much a *beis se'ah* in that field was worth (*before the damage occurred*), and how much it is worth now, and the difference in value must be paid. [*So it is regarding theft as well - we treat him leniently, and he is not required to pay its full value.*]

The *Gemora* asks: Shall we say that in Shmuel's opinion the law pertaining to secular property is not the same as that of the *hekdesh*? But we learned in a *Mishna*: If the Temple treasurer took a stone or beam from *hekdesh*, he did not transgress *me'ilah* (*for he did not remove it from the domain of hekdesh*). If he gave it to his friend, he transgressed, but not his friend. If he built it into his house, he only commits *me'ilah* when he lives underneath it and gains benefit worth a *perutah*. Rabbi Avahu sat before Rabbi Yochanan and said over in the name of Shmuel: This implies that if someone who lives in his friend's courtyard without his knowledge must pay him rent (*for the fellow is living in the house without the knowledge of hekdesh, and hekdesh did not suffer a loss*). [*We see that Shmuel derives laws pertaining to secular property from laws of hekdesh!?*]

The *Gemora* answers: Shmuel retracted from that comparison.

The *Gemora* asks: But how do you know that he retracted from the latter; perhaps he retracted from the former?

The *Gemora* answers: No! He must have retracted from the latter, in accordance with Rava's principle. For Rava said: Benefitting from *hekdesh* without their knowledge is akin to benefitting from an ordinary person with his knowledge (*for Hashem is the owner of hekdesh and He knows*). (99b)

QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF

to refresh your memory

Q: What does Rami bar Chama hold regarding the oath of a custodian and a partial admission?

A: He swears only if he has totally denied part of the claim.

Q: Which *Tanna* holds that you divide it without taking an oath?

A: Sumchos.

Q: If one guards an item while the owner is working for him, he is not liable for the item's loss. Must the owner be working for him at the onset of guardianship, or at the time of the loss.

A: He is exempt as long as he was working for him at the onset of guardianship.