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When is it an Esnan?

The *Baraisa* says that if one gave a harlot an animal and then had relations, the animal is permitted to be sacrificed. The *Gemara* asks why it is not retroactively prohibited as *esnan* – the payment for illicit relations once he had relations.

Rabbi Elazar answers that the *Baraisa* refers to a case where she already sacrificed it before the cohabitation.

How is this to be understood? — If he said to her: Take possession of this at once, then obviously it is permitted because it is no longer there at the time of cohabitation and he merely presented her with a gift; but if he had not said to her: Take possession of this at once, how could she offer it, since the Merciful One has declared: And when a man shall sanctify his house to be holy — as the house [which he sanctifies] must be in his possession, so must everything [which is dedicated to the Sanctuary] be in the person's possession! — Rather [must we suppose the circumstance] where he said to her: Let it be with you until the time of cohabitation; but should you require it then take possession of it at once. (62b4 – 63a1)

Rav Hoshaya asked what is the rule if she did not sacrifice it, but simply consecrated it. Since consecration is tantamount to a formal acquisition, this may be considered equivalent to sacrificing, but since the animal is still present, it may not prevent it from being considered *esnan*.

The *Gemara* suggests that Rabbi Elazar's explanation that the case is one where she *sacrificed* it, and not a case where she

simply consecrated it, indicates that consecration is not equivalent to sacrificing.

The *Gemara* deflects that Rabbi Elazar may also have been unsure about the case of consecration. Is it clear to Rabbi Elazar that only if she had actually offered it [is it permitted] but not if she merely dedicated it because it is [in her possession] at the time of cohabitation or perhaps he is clear in the circumstance where it had been offered but doubtful when it had only been dedicated? The *Gemara* leaves this question unresolved. (63a1 – 63a2)

The *Baraisa* says that if he had relations and then gave her the animal as payment, it is permitted. The *Gemara* challenges this from another *Baraisa* which says that if he paid her with an animal, it is prohibited, even if he gave it years later.

Rav Nachman bar Yitzchak answers in the name of Rav Chisda that the *Baraisa* that prohibits it is a case where he specified the animal beforehand, while the *Baraisa* that permits it is a case where he simply said he will give her an animal.

The *Gemara* asks why specifying the animal prohibits it, since she did not acquire it by *meshichah* – pulling the animal.

The *Gemara* answers: It was a non-Jewish harlot, who acquires without *meshichah*. Or if you wish I can say that it surely deals with an Israelite harlot when, e.g., it is standing in her courtyard. - But if it was standing in her courtyard, [how can it be taught that] he cohabited with her and subsequently presented it to her, seeing that she already had

possession of it! — No, it is necessary [to suppose a case] where he used it as a pledge, saying to her, ‘If I bring you a certain number of zuz by such a date, well and good; otherwise take [the lamb] for your hire.’¹ (63a2 – 63a3)

Rabbi Yannai’s Practice

Rav Sheishes challenges Rabbi Yannai’s practice of paying for the poor people’s *Shemittah* food later from a *Baraisa*. The *Baraisa* says that one may tell his workers to take money and use it to buy food as payment, even if they eat *Shemittah* or *ma’aser* produce, or *yayin nesech*. However, if he tells them to buy food, and he will pay for it, then he must be concerned that they may eat *Shemittah* or *ma’aser* produce, or *yayin nesech*. The latter section of the *Baraisa* indicates that if one pays later for prohibited items that have been eaten, the money has the status of prohibited items, which would prohibit Rabbi Yannai’s practice.

The *Gemara* offers the following answers: Rav Chisda says that the *Baraisa* refers to a case where the storekeeper selling the food to the workers is one who takes the employer’s credit, and therefore when he sells them the food, he acquires the money immediately.

The *Gemara* challenge this on two counts:

1. The *Baraisa* should have distinguished between a storekeeper who accepts the employer’s credit, and one who does not, without having to resort to a case where he gives the workers money in advance.
2. Even if the storekeeper does not accept his credit, he should acquire the money based on the acquisition of a guarantor, as Rava says that if a person tells someone “Give a third party a *maneh*, and thereby acquire my property”, he acquires the property by transferring the

maneh, similar to a guarantor, who obligates himself by the creditor giving money to the debtor.

Rava explains that it is immaterial whether he gives him credit or not; but although [the employer] is indebted to him, for the reason that he does not specify his indebtedness, it is not prohibited. - Why, then, in the present circumstance should he be concerned [about their eating and drinking the produce of] the *Shemittah* year inasmuch as he does not specify his indebtedness!

Rav Pappa says that the *Baraisa* refers to a case where he already paid the storekeeper. Since the money was given before, it is prohibited to buy prohibited food.

Rav Kahana said: I cited this teaching in the presence of Rav Zevid of Nehardea who remarked to me: If that were so, then instead of the words: Go out and eat and drink and I will pay, we should have expected: I will have a reckoning with him! [Rav Kahana] said to him: Read: Go out and I will have a reckoning with him.²

Rav Ashi says that the *Baraisa* refers to a case where he took the food from the storekeeper and handed it to the workers.³ Rav Yeimar said to Rav Ashi: If that were so, then instead of the words: Go out and eat, go out and drink, we should have expected: Take and eat, take and drink! — He replied to him: Read; Take and eat, take and drink’ (63a4 – 63b4)

Destroying, for Hire

Rav Nachman, Ulla, and Avimi bar Pappi were sitting, and Rabbi Chiya bar Ami was sitting nearby. They asked whether a Jew who was hired to shatter barrels of *yayin nesech* may

¹ He only designated it as an *apotiki* – assets to collect from if he does not pay by a certain date. Since it is only an *apotiki*, it is not hers yet, but if he does not pay, it retroactively is hers, and is an *esnan*.

² The *Baraisa* must be amended to say that he told the workers that he will “settle the account” with the storekeeper, instead of “pay” the storekeeper.

³ Since he is directly giving them the food, it may not be prohibited items.

benefit from his wages. Do we consider them prohibited, since the worker wants the barrels to exist, so he can break them, or do we consider them permitted, since anything that destroys idolatry is positive? Rav Nachman says that he should break them, and be blessed.

The *Gemara* attempts to support Rav Nachman from a *Baraisa*, which prohibits one from tending to a non-Jew's prohibited hybrid plant, but permits one to uproot it, in order to destroy the prohibited plant. The *Gemara* initially assumes this *Baraisa* follows Rabbi Akiva, who prohibits maintaining hybrids, and therefore would prohibit one who wants the hybrid to exist. Although the worker wants the hybrids to exist, so he can be paid for his work, the *Baraisa* permits it, for the positive goal of destroying it.

The *Gemara* attempts to deflect the proof, by saying the *Baraisa* is following the Sages, who allow one to maintain hybrids.

The *Gemara* asks why the *Baraisa* then only allows uprooting, if any maintenance is permitted.

The *Gemara* says the *Baraisa* is a case of one who is working for free, and the *Baraisa* follows the opinion of Rabbi Yehudah, who prohibits giving a free gift to a non-Jew.

The *Gemara* says that we can still prove the point. Just as Rabbi Yehudah, who would not allow one to work for free for a non-Jew, allows one to do so for the positive goal of uprooting hybrids, so would Rabbi Akiva allow one to do this work for hire, even though one may not maintain hybrids. This proves that the positive goal of uprooting it permits the wages. (63b4 – 64a3)

INSIGHTS TO THE DAF

Acquiring an Esnan

The *Gemara* asks how the harlot acquired an animal if she did

not do *meshichah* – pulling the animal from the man. The *Gemara* (B" M 47b) records a dispute between Rish Lakish and Rabbi Yochanan about the origin of the requirement of *meshichah* to acquire merchandise. Rish Lakish says that the verse mandates it when it says that one acquires merchandise *miyad amisecha* – from the hand of your friend, implying an acquisition from hand to hand. Rabbi Yochanan says that from Torah law one acquires an object by paying for it, but the Sages instituted *meshichah* to protect the buyer from damage to his purchased merchandise.

Tosfos (63a v'ha) explains that the *Gemara's* question is surely a question according to Rish Lakish, who says that the Torah mandates *meshichah*, as that should therefore apply to an *esnan* transaction as well. Tosfos says the question is even according to Rabbi Yochanan, since once the Sages instituted *meshichah*, they removed the power of money to acquire on its own. Since the Sages have the power to set the rules for monetary matters, this impacts all acquisitions, even an *esnan* one.

The *Gemara* offers two answers:

1. She is a non-Jewish harlot, who does not acquire through *meshichah*. Tosfos (63a b'zona) explains that this answer follows Rish Lakish, since his source for *meshichah* excludes one who is non Jewish, as they are not *amisecha* – your friend. Rabbi Yochanan says that *meshichah* was instituted by the Sages, and applies equally to all people.
2. The animal was in her field already. Tosfos explains that this answer is for Rabbi Yochanan, who does not accept the first answer.

The Rosh (2) asks why the harlot does not acquire the animal by her service, as all workers acquire their wages when they perform their job. The Rosh explains that when a worker acquires his wages, this simply means that he is owed the value of the wages, but not a specific item. In the case of the harlot, in order for the animal to be an *esnan*, she has to have acquired that specific animal, and not simply its value.



Shemittah Lunch

The *Gemara* challenges Rabbi Yannai's arrangement from a *Baraisa* which forbids one from paying for his worker's meal, which may have been from *Shemittah* produce. Rashi explains that it would be forbidden if the workers ate *Shemittah* produce, because then the employer would be giving the storekeeper *Shemittah* money, and one may not give such money to an am ha'aretz. Tosfos (63a v'aino) disagrees, and says that the issue is not the money per se, but that if he pays for the workers who ate from *Shemittah* produce, he would be effectively paying his debt to his workers (their meal) from *Shemittah* produce, which is forbidden.

Destroying Kila'im

Rav Nachman says that one may get wages for destroying *yayin nesech*, since the positive goal of destroying it overrides the fact that he is pleased with its existence, so he may have employment. The *Gemara* proves this from the *Baraisa* which allows one to aid a non-Jew in uprooting *kila'im*. The *Gemara* says that even if the *Baraisa* follows the Sages, who allow one to maintain *kila'im*, the *Baraisa* is teaching that one may uproot it for free, even according to Rabbi Yehudah, who forbids one to give a non-Jew a free gift. Just as Rabbi Yehudah allows one to do this job for free, due to the positive goal of destroying *kila'im*, Rabbi Akiva would permit one to do this for wages.

Rabbi Akiva Eiger raises two challenges to this reasoning:

According to the Sages, why is uprooting *kila'im* a positive goal? Since one may maintain *kila'im*, why do we assume that there is merit in destroying it, to the point of allowing one to give a free gift to the non-Jew?

The Ran (Gittin 20b) says that the prohibition to free one's non Jewish slave is only in effect when done for altruistic

reasons, but if it is done in one's self interest (e.g., to fulfill a *mitzvah*), it is not prohibited. Rabbi Akiva Eiger assumes the same qualification is true for Rabbi Yehudah – it is only prohibited to give a non-Jew a free gift when it is purely a generous gesture, but not when the giver has his own interest in giving it. Assuming destroying *kila'im* is a positive goal, when one uproots the non-Jew's *kila'im* for free, he is doing it for a *mitzvah*, and not as a generous gesture. Therefore, such service is not included in the prohibition of a free gift at all. Since it therefore involves no prohibition, even according to Rabbi Yehudah, how can the *Gemara* prove that Rabbi Akiva would allow one to earn wages for such work, although it involves wanting the existence of *kila'im*, a form of the prohibited maintenance of *kila'im*?

DAILY MASHAL

The Small Siddur

An "enlightened" *maskil* once expressed his wonderment to one of the leaders of his generation about the decrees that *Chazal* added to safeguard the Torah. "I'll tell you a story," replied the rabbi. "A *talmid chacham* came to an inn. When the time came to pray, he noticed that the innkeeper was using a thick *siddur* full of halachos and commentaries. Since he was a simple Jew and most of the commentaries were beyond his comprehension, the guest offered to give him a simple *siddur* in exchange for the thick one. The exchange was made but in the morning the innkeeper ran after the guest and claimed that he'd changed his mind. "In my *siddur*", he explained, "there are dozens of pages in Rashi script at the beginning that are starting to fall out but the pages of the actual prayers remain intact. If I use your *siddur*, though, the pages of the prayers will soon wear away and it'll start with 'Aleinu...'"

"And the parable," said the rabbi, "is self-understood."