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Gittin Daf 40

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h
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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

Betrothal as an Emancipation

Rabbi Zeira said in the name of Rabbi Chanina, who said in the name of Rav Ashi, who said in the name of Rebbe: A slave, who marries a Jewish woman in front of his master, goes out free (*for if the master would not have previously freed him, he would not be permitted to marry a free woman, and since he did not protest, it proves that he, in fact, freed him*).

Rabbi Yochanan said to him: Can this novelty that you possess be accurate? I have learned the following *Baraisa*: If a man writes a deed of betrothal for his slavewoman, Rabbi Meir says that she becomes betrothed and the *Chachamim* say that she is not betrothed (*for perhaps he is treating her as being a free woman, even though she, in fact, is still a slave*). [*Rebbe is ruling against the Chachamim!?*]

The explanation is similar to that given by Rabbah bar Rav Shila, who said [in an analogous case]: When his master puts the tefillin on him. So here, the slave becomes free when the master actually gives him a wife.¹ - But is it possible that there can be an action involving a breach of the law which a man would not allow to be done on behalf of his slave but would perform on his own behalf?² — Rav Nachman bar Yitzchak answers: The *Baraisa* is dealing with the following: The master told her, “Become free with this deed (*of betrothal*) and be betrothed to me with this.” [*In this case, she was obviously not freed from beforehand.*] Rabbi Meir holds that this expression (*be betrothed*) includes emancipation (*for she cannot become betrothed to him*

unless he frees her first), and the *Chachamim* maintain that it does not include emancipation. (39b4 – 40a1)

Indications of Freedom

Rabbi Yehoshua ben Levi said: If a slave dons *tefillin* in front of the master, goes out free. [*It is not customary for a slave to wear tefillin, for it is a positive commandment that is governed by time (for there is no obligation to wear tefillin by night); therefore, his wearing tefillin, without the master protesting, indicates that he has been previously emancipated.*]

The *Gemora* asks on this from the following *Baraisa*: If his master borrowed money from him, or he made him the caretaker of his assets, or the slave put on *tefillin* in front of his master, or if he read three verses in the synagogue in front of his master, the slave does not go free (*for perhaps the master tolerates these things*)!?

Rabbah bar Rav Shila answers that Rabbi Yehoshua ben Levi is dealing with a case where the master himself placed the *tefillin* on the slave (*only then, is it an indicator that the slave was previously freed*). (40a1 – 40a2)

Inheriting Slaves

When Rav Dimi came (*from Eretz Yisroel to Bavel*), he said in the name of Rabbi Yochanan: If a man, at the time of his death said, “I do not want my slavewoman So-and-so to be

¹ As in this case there can be no doubt that he has freed him.

² Viz., his marrying his female slave before making out for her a deed of emancipation.

used as a slave after my death, the heirs are forced to make out for her a deed of emancipation.

Rabbi Ami and Rabbi Assi challenged him: Do you not admit that her children will be slaves (*just because the heirs cannot force the slavewoman to work, she is still a slave; why do we compel them to free her, causing them a loss of her children to become his slaves*)?

A different version of Rabbi Yochanan's ruling is cited: When Rav Shmuel bar Yehudah came (*from Eretz Yisroel to Bavel*), he said in the name of Rabbi Yochanan: If a man, at the time of his death said, "My slavewoman So-and-so has given me great satisfaction, let something be done to satisfy her," the heirs may be forced to satisfy her (*and if the only manner in which she will be satisfied is by going out free, they will be compelled to emancipate her*). The reason is because it is a *mitzvah* to carry out the wishes of the deceased.

Ameimar said: If a man declares his slave ownerless, nothing can be done for the slave (*to allow him to marry; he cannot marry a Jewish woman, for he is still a slave, and he cannot marry a slavewoman, for he is not monetarily controlled by the master*). The reasoning is as follows: The master no longer possesses his body, but he is still controlling the prohibitory matters (*that he cannot marry a Jewess*), and this, he cannot transfer to him with a document (*for he holds that the emancipation document can only be effective with respect to the prohibitory matters if it also releases the slave from the monetary control of his master*).

Rav Ashi asked Ameimar: Didn't Ulla say in the name of Rabbi Yochanan (*that someone who proclaims his slave ownerless effectively sets his slave free, but he needs an emancipation document*) and Rav Chiya bar Avin said in the name of Rav that in both cases (*someone who proclaims his slave ownerless and a consecrated slave*) the slave goes free, but he needs an emancipation document?

He replied: He requires one, but nothing can be done for him (*for it will not be effective*).

The *Gemora* cites a different version: Ameimar said: If a man declares his slave ownerless, nothing can be done for the slave. The reasoning is as follows: The master no longer possesses his body, but he is still controlling the prohibitory matters (*that he cannot marry a Jewess*), and this, he cannot bequeath to his son (*because there are no monetary matters involved; therefore, the son cannot emancipate him*).

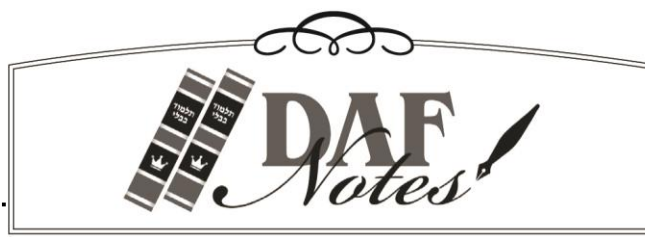
Rav Ashi asked Ameimar: But when Rav Dimi came (*from Eretz Yisroel to Bavel*), he said in the name of Rabbi Yochanan (*if a man, at the time of his death said, "I do not want my slavewoman So-and-so to be used as a slave after my death, the heirs are forced to make out for her a deed of emancipation*)!?! [Evidently, the sons can write out such a document even though it is only relevant to prohibitory matters!?!]

Ameimar answered: Rav Dimi's ruling was a mistake (*based on R' Ami and R' Assi's question cited above*).

Rav Ashi persisted: But that was only because the master did not utilize an expression of emancipation! But if he would have used a proper expression, Rav Dimi's *halachah* would be correct (*and the heirs would write out an emancipation document for the slave, even though it is only relevant to prohibitory matters*)!?

Ameimar answers: I hold like Rav Shmuel bar Yehudah (*who reported a different version of what Rabbi Yochanan actually said*).

The *Gemora* cites an incident: A certain settlement of slaves was sold by their Jewish masters to idolaters. When the second masters died, they went to Ravina (*to determine if they could marry Jewish women*) and he said to them: Go and find the sons of your original masters (*who still retain the prohibitory rights of the slaves*), and they will write you out deeds of emancipation.



The Rabbis asked Ravina: But Didn't Ameimar rule that if a man declares his slave ownerless and dies, nothing can be done for the slave!?

Ravina replied: I follow the opinion of Rav Dimi (*if a man, at the time of his death said, "I do not want my slavewoman So-and-so to be used as a slave after my death, the heirs are forced to make out for her a deed of emancipation*).

They asked him back: Rav Dimi's ruling was a mistake (*based on R' Ami and R' Assi's question cited above*)!?

Ravina replied: That was only because the master did not utilize an expression of emancipation! But if he would have used a proper expression, Rav Dimi's *halachah* would be correct (*and the heirs would write out an emancipation document for the slave, even though it is only relevant to prohibitory matters*)!

The *Gemora* rules that the *halachah* follows Ravina. (40a2 – 40a4)

A Child's Emancipation

A certain slave was owned by two men, and one of them emancipated his half. The other thereupon thought to himself: If the Rabbis hear of this, they will force me to give him up (*as taught in a Mishnah below, for this slave cannot presently find anyone to marry*). He therefore went and transferred him to his son who was still under age (*and Beis Din will not bring a minor to court to force him to free the slave*). Rav Yosef the son of Rava sent the case to Rav Pappa. He sent him back the following response: As he has done, so it shall be done to him; his dealing shall return upon his own head. We all know that a child is fond of money. We shall therefore appoint for him a caretaker (*to ensure that he will obtain a fair price for the slave, for when we compel a master to free his slave, the slave must compensate him for his loss*) and the slave will rattle some coins before the child (*enticing the child to free him in exchange for the coins*), and the caretaker will write out a deed of emancipation for the slave

in the child's name (*provided that the child is old enough (six or seven) to understand the basic ideas of transactions*). (40a4 – 40b1)

Expressions of Freedom

The *Gemora* cites a *Baraisa*: If a man says, "I have made my slave So-and-so free," or "He is made free," or "He is hereby free," then he becomes a free man. If, however, he says, "I shall make him free," Rebbe says that he acquires himself, but the *Chachamim* say that he does not (*for he was only saying that he will eventually free him*).

Rabbi Yochanan explained that the expressions mentioned above are only effective if a deed was made out (*an oral declaration would not be sufficient*).

The *Gemora* cites a related *Baraisa*: If a man says, "I have given such-and-such a field to So-and-so," or "It is given to So-and-so," or "It is hereby his," then it is his. If, however, he says, "I shall give it to So-and-so," Rabbi Meir says that he acquires ownership of it, but the *Chachamim* say that he does not acquire ownership.

Rabbi Yochanan explained that the expressions mentioned above are only effective if a document was written up (*an oral declaration would not be sufficient*).

The *Gemora* cites a *Baraisa*: If a man says, "I have made my slave So-and-so free," and the slave says, "You have not freed me," we presume the possibility that the master has given him a deed of emancipation through a third party (*and the slave never knew about it*). If, however, the master says, "I have written (*the deed*) and given to him," and the slave says, "He has not written for me, nor has he given to me," the admission of the litigant (*when it is disadvantageous for him*) is worth the testimony of a hundred witnesses (*and the slave is therefore believed*).

If a man says, "I have given such-and-such a field to So-and-so," and the other person says, "He has not given it to me,"



we presume the possibility that he may have given him a deed through a third party. If, however, he says, "I have written (*the deed*) and given it to him," and the other person says, "He has not written for me, nor has he given to me," the admission of the litigant (*when it is disadvantageous for him*) is worth the testimony of a hundred witnesses (*and the recipient is therefore believed*).

The *Gemora* asks: Who is entitled to the produce?

Rav Chisda says the giver is entitled to the produce, whereas Rabbah says that the produce is entrusted to a third party (*to watch it, and it remains by him until Eliyahu comes*).

The *Gemora* notes: There is no conflict between the two *Amoraim*. Rav Chisda is dealing with a case where the father denied receiving the field, and Rabbah was referring to a case where the son was denying that the father received the field (*he is not believed, for he might not have known about it*). (40b1 – 40b2)

Mishnah

A slave whose master pledged him to others as an *apotiki* (*A person may designate any type of property as security to the creditor without placing it in the possession of the creditor. The creditor has a lien on this property, and if the debt is not otherwise repaid, the creditor can collect his debt from the security. This security is called an apotiki.*) and freed him, according to the letter of the law, the slave is not liable for anything, but for the benefit of the public, they force his master to make him a free man, and the slave writes a document for his value. Rabban Shimon ben Gamliel says: The slave does not write it, but rather, the one who frees him. (40b2)

INSIGHTS TO THE DAF

Kiddushin with a Slavewoman

Rav Nachman bar Yitzchak explains the *Baraisa* to be dealing with the following case: The master told her, "Become free

with this deed (*of betrothal*) and be betrothed to me with this." [*In this case, she was obviously not freed from beforehand.*] Rabbi Meir holds that this expression (*be betrothed*) includes emancipation (*for she cannot become betrothed to him unless he frees her first*), and the *Chachamim* maintain that it does not include emancipation.

Tosfos in *Yevamos* (47b) asks: How can the *kiddushin* be effective if the slave did not immerse herself in a *mikvah* beforehand? The *halachah* is that after a slave becomes free, he is immersed in a *mikvah* to become a complete Jew. If so, this woman is still a slave, and *kiddushin* is not effective with a slave!?

Tosfos answers that we are dealing with a case where she immersed herself prior to the *kiddushin*.

The *Nimukei Yosef* states that the requirement for this immersion is only Rabbinical, and therefore, the *kiddushin* will be Biblically effective even if she did not immerse beforehand.

Reb Chaim Brisker asks that both of these answers will not resolve the issue according to the Rambam. He proves that the Rambam holds that this immersion is a Biblical requirement. This is because the Rambam maintains that this immersion is a completion of her conversion process. If so, asks Reb Chaim, it is obviously a Biblical requirement and it also cannot be done before she becomes free, for it is part of her conversion process and that can only be accomplished after she becomes free! How would the Rambam understand our *Gemora*? How can the *kiddushin* be effective with a slavewoman?

He answers as follows: A freed slave requires immersion in order to accept upon himself those *halachos* that he was lacking while he was still a slave, for at that time, he was not a complete Jew. This, however, has no bearing on the fact that *kiddushin* is not effective with a slave or a slavewoman. That, the *Gemora* in *Kiddushin* (68a) explains is because a slave does not have any lineage (*yuchasin*). A slave, in this

respect, is inferior to an idolater, for an idolater does have lineage. As soon as the slave is freed and he is no longer a slave, he does have lineage, even though his conversion was not completed, for even an idolater has lineage. It is for this reason that *kiddushin* can be effective in this case even though she did not immerse in the *mikvah* yet. For in order for the *kiddushin* to be effective, it is not necessary for her to have a completed conversion; as long as she is not a slave is sufficient, and since at the moment she becomes free, she is no longer a slave, *kiddushin* may take effect.

DAILY MASHAL

Women and Slaves Wearing Tefillin

Rabbah bar Rav Shila explains that Rabbi Yehoshua ben Levi is dealing with a case where the master himself placed the *tefillin* on the slave. Only then, is it an indicator that the slave was previously freed.

In Shulchan Aruch (O"C 38:3) it is written that women and slaves are exempt from the *mitzvah* of wearing *tefillin*. The Rama adds that if a woman wishes to act stringently upon herself and don *tefillin*, you should protest the matter. The Magen Avraham explains that this is because it is difficult for women to be cautious regarding the cleanliness of their body.

The Yerushalmi in Brochos relates that Michal the daughter of Shaul HaMelech wore *tefillin*, and the sages of that time protested. The *Gemora* in Eruvin (96a), however, states that the sages did not protest.

The Peri Megadim rules that although slaves are permitted to wear *tefillin*, they should not be encouraged to, and one should object if they do don *tefillin*. The Mishnah Berurah rules that it should not be frowned upon.

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

Q: Why do the *Tanna Kamma* and Rabban Shimon ben Gamliel argue in a case where the master consecrated his slave, if there is *me'ilah* on his hair or not?

A: If hair that is about to be shorn is already considered shorn or not.

Q: If a convert dies, does his adult slave go free?

A: Yes.

Q: Can a slave become free by redeeming himself with money?

A: According to Rebbe - yes. According to Rabbi Shimon - only with respect to his labor.