

## OVERVIEW of the Daf

### 1) Taking a debtor's slaves as payment for a loan (cont.)

R' Nachman and Ulla continue to discuss whether a creditor is authorized to collect the debtor's slaves even from his orphans.

The Gemara relates that two Beis Din's allowed the creditor to collect slaves from orphans as payment for a debt and R' Nachman demanded that the money should be returned.

Rava asked R' Nachman to identify the source of his ruling and he responded by citing a Baraisa.

It is suggested that the dispute between Ulla and R' Nachman can be traced back to a dispute between Tannaim.

This interpretation of the dispute between the Tannaim is rejected by R' Ika the son of R' Ami.

A second rejection of the assertion that Tannaim argue whether a creditor is authorized to collect slaves for payment from orphans is presented.

The Gemara challenges the premise that one could acquire movable property that is on a slave and answers that it refers to where the slave is bound.

Another Baraisa is cited that rules that an act of acquisition on land acquires slaves, which contradicts earlier cited Beraisos.

The Gemara answers that the slave is acquired when he is standing on the field that is acquired.

It is noted that the explanation does not account for the two earlier explanations of R' Ika the son of R' Ami.

The Gemara resolves this challenge.

### 2) Liability for sacred property

It is inferred from the Mishnah that one could be liable for damaging sacred property.

R' Yochanan suggests that the Mishnah is discussing kodshim kalim and follows R' Yosi HaGalili's opinion that kodshim kalim are considered private property.

This explanation is unsuccessfully challenged.

The Gemara begins to mount a challenge to the assertion that R' Yosi HaGalili's opinion is limited to when the animal is still alive. ■

## REVIEW and Remember

1. Are slaves treated like land or like movable objects?

2. What limitation applies to a walking courtyard?

3. Who owns kodshei kalim?

4. Is a Kohen authorized to sell a בכור?

## Distinctive INSIGHT

### Self-propelled movable objects—(מטלטלי דניידים)

הא קיימא לן דלא בעינן ציבורין, אלא מאי אית לך למימר שאני מטלטלי דניידים ממטלטלי דלא ניידים

One Baraisa taught that if one wants to acquire land and slaves, even if he performs a transaction to acquire the land, he does not acquire the slaves together with the land. A second Baraisa rules that in such a case, he can acquire the slaves together with the transaction he performs upon to acquire the land.

The Gemara answers that the second Baraisa is dealing in a case where the slaves are situated in the land itself. This is why the transaction to acquire the land functions to enable the acquisition of the slaves. The Gemara concludes that this ruling is true whether slaves have the legal status of land or that of movable objects. Normally, a transaction on a piece of land allows acquisition of another piece of land or of movable objects, and the second item need not be situated on the first land (לא בעינן ציבורין). However, here we are dealing with the legal acquisition of slaves, which are able to propel themselves (ניידים). Here, the slaves must be on the land itself, or the transaction cannot include them.

Rambam (Mechira 3:11) rules that slaves are considered moveable objects. He also writes that slaves cannot be acquired with land unless they are situated on the land itself. Ra'aved agrees that slaves are movable objects, but he rules that they can be acquired together with land whether or not they are on the field. Rosh rules in accordance with Rambam. Pnei Yehoshua notes that although we generally allow movable objects to be acquired even if they are not on the land which is being transferred, yet, because slaves are self-propelled movable objects, the transaction of אגב does not work unless the slaves are confined to the very land which is being acquired.

אבן האזל (to Rambam, ibid.) explains that the mechanism of אגב works because we see the movable objects as being secondary to the land, even if they are not on the land at the moment of the transaction. The owner wants to transfer ownership of his land, and the movable objects are "tossed in" to be acquired together with the deal. This is only true by inanimate objects. Slaves have a certain degree of independence, so this aspect of being secondary to the land is no longer a factor, unless the slaves are physically present on the land.

R' Meir Simcha of Dvinsk explains that the Gemara means to say that self-propelled movable objects can never be part of אגב. The slaves can only be acquired with the mechanism of חצר, and this is only true when the slaves are not only on the land, but where they are confined and bound (כפות). ■

## HALACHAH Highlight

### The origin of the acquisition of אגב

דמר סבר עבדים כמקרקעי דמי ומר סבר עבדים כמטלטלין דמי  
*One opinion maintains that slaves are like land and the other opinion maintains that slaves are like movable items.*

Tosafos<sup>1</sup> writes that R' Nachman's statement that a slave is treated like movable objects applies to Rabbinic law but when it comes to Biblical matters a slave is treated like land. Accordingly, he is forced to explain that the method of acquisition of אגב is not a Biblical kinyan; rather it is Rabbinic. Consequently, we will have to assume that the pasuk in Divrei Hayamim (II, 21:3) that is cited as the source for the acquisition of אגב is merely an allusion (אסמכתא) to this halacha but not the actual source. Thus, a slave can be acquired with the acquisition of אגב since אגב is a Rabbinic acquisition.

Other authorities<sup>2</sup> disagree and maintain that the acquisition is Biblical. For example, Ketzos Hachoshen<sup>3</sup> writes that it is evident from Rashi's comments that he maintains that אגב is a biblical acquisition. Rashi<sup>4</sup> writes that a man can divorce his wife by giving her a גט using אגב to transfer the גט into her domain. This proves that

אגב is Biblical because it would not be possible to permit a married woman to remarry with a Rabbinically enacted acquisition. Ketzos Hachoshen then rejects this proof since it is possible that a Rabbinic acquisition could release a woman from marriage since every man betroths a woman in accordance with the consent of the Rabbis (כדת משה וישראל) and thus a Rabbinic enacted acquisition can release a woman from her marriage.

Tosafos HaRosh<sup>5</sup> notes another practical difference whether the acquisition of אגב is Biblical or Rabbinic. What will be the status of a woman's kiddushin if the man performs kiddushin by giving the woman movable property אגב a piece of land? If the acquisition of אגב is a Rabbinic enactment the kiddushin in this case is only Rabbinic but if אגב effects a Biblical acquisition the kiddushin is Biblically recognized. Minchas Chinuch<sup>6</sup> discusses whether a gentile can make an acquisition using אגב and part of his analysis relates to whether אגב is a Biblical or Rabbinic acquisition. ■

1. תוס' ד"ה אגב.
2. עי גליון הש"ס הכא והריטב"א לקידושין כ"ו. ד"ה מנא.
3. קצות החושן סי' ר"ב סק"ה.
4. רש"י גיטין ע"ז: ד"ה הרר.
5. תוס' הרא"ש קידושין כ"ו. ד"ה אמר.
6. מנחת חינוך מצוה שליו אות י'. ■

## STORIES Off the Daf

### A tolerable falsehood

"אמר להו עולא הכי אמר רבי אלעזר..."  
 On today's daf we find that although Ulah said in the name of Rav Elazar that one may not collect a father's debt from the slaves of orphans, the moment Rav Nachman left, Ulah admitted that Rav Elazar does allow one to collect from orphan's slaves.

The Chazon Ish, ז"ל, explained that if one is afraid that a sage may have erred and will be publicly embarrassed by his stated opinion, he may lie about what the sage said since this is another example of lying "to preserve the peace." There are many examples when one may lie to ensure

that another is not embarrassed or made to feel uncomfortable.

Rav Shlomo Zalman Auerbach, ז"ל, was so vigilant to speak precisely the truth that even hearing a lie was reprehensible to him. It was therefore very surprising for people to see him tolerating what he must have known was an overt falsehood, time and time again.

He would depart from a simchah or public function of some kind or another and a hopeful driver would approach him and ask him if he wanted a ride home.

The Rav would ask the same question to ascertain that he would not be taking the driver out of his way. "But are you passing through Shaarei Chessed anyway?"

The answer given was invariably

the same every time. "I was indeed on my way there either way."

Could the Rav whose acumen was legendary really fail to grasp that virtually all his drivers were certainly only driving him home and had no other business in Shaarei Chessed?

Several close students asked the Rav what was behind his bland acceptance of falsehood in this particular case. He answered, "I know they are not telling the truth, but they may definitely lie in this instance since they are only lying in order to make me feel more comfortable. Lying with only this motive is not prohibited at all. On the contrary, it is an act of chessed!"<sup>1</sup> ■

1. שלמי מועד, עמוד תקל"ו-תקל"ז

