

Daf Notes

Insights into the Daily Daf
Bava Metzia Daf 11

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Produced by Rabbi Avrohom Adler
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Daily Daf

Mishna

If a person saw people running after a lost object, or after a lame deer, or after young birds that cannot fly, and he said, "My field has acquired it for me," it has acquired it for him. If the deer was running in its usual manner, or the birds were flying, and he said, "My field has acquired it for me," he has said nothing (*for they will not remain secure in the courtyard*). (11a)

Standing by his Field

Rav Yehudah said in the name of Shmuel: His field can acquire for him provided that he is standing at the side of his field.

The *Gemora* asks: Let the field acquire for him even if he is not standing at the side? Didn't Rabbi Yosi son of Rabbi Chanina say that a courtyard of a person can acquire for him even without his knowledge?

The *Gemora* answers: That is correct if the courtyard is guarded (*with a fence*). However, if it is not guarded, it will only acquire for him if he is standing by its side.

We know this is true from the following *braisa*: If one was standing in the city and says, "I know that

the sheaf which I have in the field has been forgotten by the workers, and it is my wish that the sheaf shall not be regarded as *shich'chah* (*one or two bundles that are mistakenly left behind during the gathering of the bundles are left for the poor*)," I might think that it shall not be regarded as *shich'chah* (*even if later, the owner himself forgets about it*), the Torah tells us: *And you forget a sheaf in the field*. This implies that it is *shich'chah* only if it was forgotten while he was in the field; however, if it was forgotten while he was in the city, it is not regarded as *shich'chah*.

The *Gemora* asks: Now, this seems self-contradictory. First the *braisa* said: I might think that it shall not be regarded as *shich'chah* - from which it would appear that in fact it is regarded as *shich'chah*. But then the *braisa* concludes: it is *shich'chah* only if it was forgotten while he was in the field; however, if it was forgotten while he was in the city, it is not regarded as *shich'chah* - from which it would seem that in the case discussed, it is not regarded as *shich'chah*!?

The *Gemora* explains the *braisa* as follows: [*Rashi holds that in order to be regarded as shich'chah, the owner and the workers must forget about it.*] In the field, if it was forgotten in the beginning (*first by the owner and then by the workers*), it must be regarded as *shich'chah*, but if in the beginning it was remembered by the owner and was subsequently

forgotten (*by the workers and then by the owner*), it is not regarded as *shich'chah*. The *Gemora* explains the reason for this: Since he was standing near it, the field acquires it for him. But when the owner is in the city, even if the owner remembered the sheaf in the beginning and only later was it forgotten, it must be regarded as *shich'chah*. The reason for this is because he is not there beside it, so that the field cannot acquire possession of the sheaf for him. [Evidently, an unguarded field cannot acquire for the owner unless he is standing by its side.]

The *Gemora* asks: Perhaps it is a Biblical decree that only that which is forgotten when the owner is in the field shall be regarded as *shich'chah*, but that which is forgotten when the owner is in the city is not regarded as *shich'chah*?

The *Gemora* answers: This cannot be correct, for it is written: *You shall not go back to take it* - this is to include the sheaf which has been forgotten by the owner while he is in the city.

The *Gemora* asks: But isn't this needed for a prohibition to take that which was forgotten?

The *Gemora* answers: If that were so, the torah would only have to say: *Do not take it*. Why does it say: *You shall not go back to take it*? It must be to include the sheaf which has been forgotten by the owner while he is in the city.

The *Gemora* asks: But isn't the verse still required for that which we have learned in the following *Mishna*: That which is in front of him is not *shich'chah*; that which is behind him is *shich'chah*, as it is included in the prohibition: *You shall not go back*. This is the rule: All that can be included in the prohibition of going back is regarded as *shich'chah*; all that cannot be included in the prohibition of going back is not regarded as *shich'chah*!?! [We do not have a verse now to teach us that *shich'chah* can apply even when the owner is in the city!?!]

Rav Ashi said: The Torah says: *It shall be*. This includes that which has been forgotten by the owner when he is in the city.

Ulla and Rabbah bar bar Chanah both said also that the *Mishna* is referring to a case where he is standing at the side of his field.

Rabbi Abba challenged Ulla from the following *Mishna*: It happened once that Rabban Gamliel and some elders were traveling on a ship. Rabban Gamliel said to them: The tithe (*ma'aser rishon*) which I shall measure off when I come home is given to Yehoshua (*ben Chananyah, who was a Levi*) and the place where it lies is leased to him. [Rabbi Yehoshua gave him a *perutah* for the rental and acquired the *ma'aser* together with the land with *kinyan agav*.] And the other tithe (*ma'aser ani*) which I shall measure off is given to Akiva ben Yosef that he may acquire possession of it for the poor, and the place where it lies is leased to him.

Rabbi Abba asks: Were Rabbi yehoshua and Rabbi Akiva standing at the side of Rabban Gamliel's field?

Ulla responded: It would seem that Rabbi Abba is like one who never learned this *halachah* (*as the Gemora will explain below*).

When Rabbi Abba came to Sura, he related to the Rabbis there: This is what Ulla said and this is the challenge that I placed before him. One of the Rabbis then answered him: Rabban Gamliel made them acquire the movable property with a *kinyan agav* (*one can acquire movable property together with the acquisition of land; the kinyan of chatzeir - courtyard was not used in that case*).

Rabbi Zeira accepted this reply, but Rabbi Abba did not accept it.

Rava: Rabbi Abba was correct in not accepting it. Do you think that those *Tannaim* did not have a kerchief by which to acquire from Rabban Gamliel the tithes as *chalifin* (*the buyer gives the seller something as a token exchange to settle the transaction*)? It must therefore be explained that the small enjoyment of the right to give the tithes to whom one likes is not regarded as something that has a money value by which one could acquire through a *kinyan chalifin*. Here also, it must be said

that the small enjoyment of this right is not regarded as something that has a money value for the purpose of being acquired through a kinyan *agav*.

The *Gemora* disagrees with Rava: But this is not so: In regard to the Kohanic gifts, the term “giving” is written in the Torah. *Chalifin* cannot be used, for it is a type of business transaction (*and not a “giving”*), whereas the acquisition of movable property through immovable property is a transaction which can be regarded as “giving.”

Rav Pappa answers: In a case where there is a person transferring ownership of them (*to the courtyard*), it is different (*and the recipient does not need to be standing by the side of the field in order to acquire it*).

The *Gemora* provides proof to this from our *Mishna*: If a person saw people running after a lost object etc. And Rabbi Yirmiyah said in the name of Rabbi Yochanan: This is correct only if he can run after them and can reach them (*before they leave his field*). Rabbi Yirmiyah then asked: What is the *halachah* regarding a gift? Rabbi Abba bar Kahana accepted the distinction implied in this question, and he answered: They become his even if he runs after them and he cannot reach them. What is the reason for this? Is it not because where there is a person transferring ownership of them, it is different!

Rav Simi asked Rav Pappa: Behold there is the case of a bill of divorcement (*when the husband places the get into the wife’s house or courtyard*), where there is a person transferring ownership of them, and yet Ulla said that she must be standing by the side of her house or her courtyard?

The *Gemora* answers: The case of a *get* is different, for it may be given even against her will.

The *Gemora* asks: Would it not be a *kal vachomer* that in a case where it can be given against her will, she certainly should not be required to stand by the side of the courtyard?

Rather, Rav Ashi said: A person’s courtyard is included in his hand to acquire things, but it is no

less effective than agency Therefore, in the case of a bill of divorcement, where it is disadvantageous for her, we say that one may not disadvantage a person except when the person is present. But by the case of a gift, where it is beneficial to the recipient, we say that one may benefit a person even when the person is not present. (11a – 12a)

INSIGHTS TO THE DAF

THE REQUIREMENT OF "TZEVRIM"

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daf@dafyomi.co.il <http://www.dafyomi.co.il>

QUESTION: The *Gemara* discusses whether *Metaltelin* (mobile property) acquired through *Kinyan Agav* must be "piled" ("*Tzevurim*") on the land through which it is being acquired, or whether the *Kinyan* takes effect even when the *Metaltelin* are situated somewhere else.

Why does the *Gemara* entertain the possibility that the *Metaltelin* must be resting on the land in order to be acquired through *Kinyan Agav*? If it must be resting on the land, the buyer acquires it through *Kinyan Chatzer* (and *Kinyan Agav* is not necessary). *Kinyan Agav* is necessary *only* when the *Metaltelin* are not resting in the *Chatzer*. (**RITVA**)

ANSWERS:

(a) The **RITVA** explains that the *Chatzer* with which the person makes the *Kinyan Agav* is "*Einah Mishtameres*," it is not protected. Therefore, it cannot acquire the *Metaltelin* through *Kinyan Chatzer*, and *Kinyan Agav* is necessary even though the *Metaltelin* are resting on the land.

The answer of the *Ritva* does not seem to conform with all of the opinions mentioned in the *Gemara* in *Bava Metzia* (11b). The *Gemara* there discusses whether a *Chatzer* which is not protected can acquire objects through *Kinyan Chatzer*. *Ula* and *Shmuel* rule that such a *Chatzer* cannot acquire unless the *Chatzer's* owner is present (and thus it is guarded). *Rebbi Aba* attempts to prove that the *Chatzer* acquires the object even when the owner is not present. He cites the incident (which the *Gemara*

here cites as well) involving Raban Gamliel and the Zekenim who were traveling together on a boat. Rabbi Aba assumes that the Zekenim who accompanied Raban Gamliel acquired the Ma'aser and Ma'aser Ani from him through his Chatzer which he leased to them, even though the Chatzer was not guarded. The Gemara there refutes this proof in two ways. The Gemara ("ha'Hu me'Rabanan") suggests that the Zekenim acquired the Ma'aser through Kinyan Agav and not Kinyan Chatzer. Rav Papa refutes the proof by saying that a Chatzer which is not guarded *is* an effective Kinyan Chatzer for a *gift* (because someone consciously gives the object to the recipient -- "Da'as Acheres Makneh"), just like the gift Raban Gamliel gave to the Zekenim; it is *not* an effective Kinyan Chatzer for an object of Hefker.

The Ritva's explanation is consistent with the first answer in Bava Metzia which maintains that even when someone gives a gift ("Da'as Acheres Makneh"), a Chatzer which is not guarded cannot acquire the gift for the recipient. The only way the Zekenim could have acquired the Ma'aser (which was resting in a Chatzer which was not guarded) was through Kinyan Agav. However, according to Rav Papa's answer, the Zekenim were able to acquire the Ma'aser resting in their Chatzer through Kinyan Chatzer even though the Chatzer was not guarded.

Every case of Kinyan Agav is, by definition, a case of "Da'as Acheres Makneh," because Kinyan Agav requires that a giver tell a recipient to acquire the object through Kinyan Agav (as the Gemara on 27a says). If, however, Agav requires "Tzevurim," the recipient should always acquire the Metaltelin through Kinyan Chatzer and there should be no necessity for Kinyan Agav.

Apparently, the Ritva means that the Gemara here does not accept the opinion of Rav Papa that one can give a gift to a recipient by placing it in a Chatzer which is not guarded. The Gemara here maintains that the only way to acquire an object resting in an unprotected Chatzer is through Kinyan Agav. Therefore, the Gemara asks whether Kinyan Agav requires "Tzevurim" or not, and it does not assume

that if the Metaltelin are "Tzevurim" that one acquires them through Kinyan Chatzer.

Rav Papa, on the other hand, certainly maintains that the Metaltelin do not need to be resting on the property in order to be acquired through Kinyan Agav. (This is also the way the Gemara here concludes.)

(b) The **SHITAH LO NODA L'MI** cites the "**BA'ALEI TOSFOS**" who write that the reason why Metaltelin piled in a Chatzer cannot be acquired through Kinyan Chatzer is that Kinyan Chatzer is effective only for an object which entered the Chatzer *after* the Chatzer became the property of the buyer. It is not effective for an object which was in the Chatzer *before* it became the recipient's property. The original source for this explanation may be the **TOSFOS CHITZONIYOS** cited by the **SHITAH MEKUBETZES** in Bava Metzia (end of 25b, and quoted by the **KETZOS HA'CHOSHEN** 198:2 and the **MACHANEH EFRAIM**, Hilchos Kinyan Chatzer #13) who give this answer. The **HAGAHOS ASHIRI** there also mentions this distinction.

The Ketzos ha'Choshen and Machaneh Efraim question this distinction based on the Gemara in Bava Metzia, where Rav Papa clearly says that the Zekenim acquired the Ma'aser from Raban Gamliel through Kinyan Chatzer, even though Raban Gamliel gave them the Chatzer *after* the Ma'aser was already resting there.

Apparently, the Tosfos Chitzoniyos also assumes that the question of the Gemara here does not conform with the opinion of Rav Papa, but rather with the first opinion in the Gemara in Bava Metzia (that the Zekenim acquired the Ma'aser with Kinyan Agav). The Tosfos Chitzoniyos suggests that not only does that opinion disagree with Rav Papa and maintain that a Chatzer which is not guarded cannot effect a Kinyan Chatzer, it also maintains that any object which enters the Chatzer before the recipient buys the Chatzer is not acquired through Kinyan Chatzer. That is why objects piled there ("Tzevurim") can be acquired only through Kinyan

Agav and not through Kinyan Chatzer (according to the possibility that "Tzevurim" is necessary).

The Acharonim question the approach of the Tosfos Chitzoniyos from another Gemara. The Gemara in Gitin (21a) teaches that when a man places a Get in the hands of his servant and then gives the servant to his wife as a gift, she becomes divorced because of the principle of "Gitah v'Yadah Ba'in k'Echad." The Gemara clearly understands that the woman acquires the Get even though it was in the Eved's hand before the Eved became her property. Apparently, the Tosfos Chitzoniyos understands that the Gemara there follows the opinion of Rav Papa (and the way the Gemara here concludes) -- that Kinyan Agav does not require "Tzevurim." Accordingly, an object which is "Tzavur" and resting in the Chatzer (or in the hands of the Eved) *is* acquired through Kinyan Chatzer and does not need Kinyan Agav.

(c) Even if Kinyan Agav is effective only when the Metaltelin are "Tzevurim," there exists another difference between Kinyan Agav and Kinyan Chatzer. The **RITVA** and **TOSFOS RID** here (27a) write that when one transfers ownership of an object through Kinyan Agav, the land and its mobile contents are transferred simultaneously. However, when the recipient acquires the Metaltelin with Kinyan Chatzer, he first must acquire the Chatzer and only afterwards does he acquire the Metaltelin. (See **CHASAM SOFER** OC 117, DH Mah she'Kasuv Ma'alaso. See Insights to Gitin 77:3.)

(The following case demonstrates a practical difference between Kinyan Agav and Kinyan Chatzer. Reuven sells land to Levi, but Levi has not yet made a Kinyan on the land. Resting on the land are Metaltelin, which Reuven sells to Shimon with the condition that Shimon will acquire it only at the moment that *Levi* makes a Kinyan on the land (on which the Metaltelin rests). Reuven then instructs Levi to make a Kinyan on the land and thereby acquire the Metaltelin (that is, the Metaltelin which he has already sold to Shimon). If Levi's Kinyan of the Metaltelin constitutes Kinyan *Chatzer*, then only *after* the land (Chatzer) has become his can it acquire the Metaltelin for him. However, *at the same moment* that he acquires the land, *Shimon* becomes

the owner of the Metaltelin because of Reuven's stipulation, and thus Levi cannot acquire it a moment later. In contrast, if Levi's Kinyan of the Metaltelin constitutes Kinyan *Agav*, then his Kinyan on the Metaltelin occurs at exactly the same moment as Shimon's Kinyan, and thus they divide the Metaltelin between them.)

QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF

to refresh your memory

Q: Can one seize a debtor's property on behalf of a creditor, thereby causing loss to the debtor's other creditors?

A: No (except if he makes him an agent – according to Rashi).

Q: Where is the *kinyan* of four *amos* ineffective?

A: Either in a private property, or in a public domain.

Q: Does a minor girl have a right to acquire things through her courtyard or four *amos*?

A: It is a *machlokes Amoraim*.