

Daf Notes

Insights into the Daily Daf
Bava Metzia Daf 7

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Daily Daf

Forcibly Consecrating

The Gemora returns to address the question of the disputed bathhouse, which was consecrated by one of the litigants. The Gemora attempts to resolve the issue from a case of a consecrated disputed bathhouse that was brought to Rav Chisda. Rav Chisda consulted Rav Huna, and the question was resolved by the statement of Rav Nachman, who said that money which cannot be retrieved in court cannot be consecrated. Therefore, this bathhouse, which neither party was able to retrieve in court, cannot be consecrated by either one.

The Gemora challenges the implication of Rav Nachman's statement - that if one can retrieve an item in court, he may consecrate it. This seems to contradict Rabbi Yochanan's statement, that if an item is stolen, neither the thief nor the owner can consecrate it, since consecration can only be done by one who has both de jure and de facto ownership to consecrate. The Gemora explains that Rabbi Yochanan's statement only applies to movable items, which are physically removed from the possession of their owner. However, Rav Nachman is referring to real estate, which cannot be removed from the original owner's possession. Therefore, once the owner can retrieve it in court, he has full ownership, and can consecrate it.

How Much to Split

The Gemora discusses the details of splitting the clothing between the two litigants. Rav Tachlifa

learned in front of Rabbi Avahu that each one who's holding on to the clothing takes the section they are holding – since they have possession of that section - and the rest is split. Rabbi Avahu exhibited that they still must swear to receive their parts. The Mishna, that indicates that each party split the whole clothing, is a case where each party is holding onto only the fringes of the clothing, and therefore have no portion in their direct possession. Rav Mesharshia explains that Rav Tachlifa's statement indicates that holding on to part of a garment is possession of that portion. Therefore, if one holds onto a 3x3 tefach area of a garment for a chalipin (exchange) acquisition, that is sufficient, since that fulfills the verse *vnasan l'rayayhu – and he gives [the chalipin] to his friend*. However, when a husband divorces his wife, a get must remove any connection between them, so the wife must have full possession of the get. Therefore, if the husband can pull the get to him, even if the woman is grasping the get, she is not divorced.

Rava says that if the garment is gold, the two parties split it. The Gemora explains that Rava is teaching us that even if each is holding part of the garment, and the golden section is in the middle, closer to one side, we split it evenly between them.

Splitting a Contract

The Gemora introduces a braisa that discusses the rules of a contract whose status is unknown. The braisa first discusses a debtor and creditor that are both grabbing the debt contract, with the creditor claiming the

contract is his and is in force, and the debtor claiming that the contract is in his possession, since he paid the debt. Rebbi says that the creditor must validate the contract's signatures, while Rabban Shimon ben Gamliel says that the two must split the contract. The braisa then discusses a contract found by a third party. The braisa says that if it falls to the hands of a judge, it should never be given to either party. Rabbi Yossi says that the contract retains its current status.

Rav Nachman explains the first part of the braisa. He says that if the contract is validated, all agree that the creditor and debtor split the contract. The dispute is when the contract has not been validated. Rebbi holds that even if a debtor admits that a contract is genuine, its signatures must be validated. Therefore, if the creditor cannot validate the contract, the debt cannot be collected, so the debtor receives the contract. Rabban Shimon ben Gamliel holds that once a debtor agrees that the contract is genuine, it need not be validated. Therefore, in the braisa, since the debtor agrees the contract is genuine, even if the contract is not validated, the debtor and creditor split it.

The Gemora proceeds to the latter part of the braisa. Rava explains that when the braisa says the contract ended up in the hands of the judge, it is discussing the rule when the contract is found by a third party, even if it's been validated. The Chachamim (first opinion) are concerned that the contract was paid, and therefore don't allow either party to get the contract, while Rabbi Yossi assumes it was not paid, and returns it to the creditor. The Gemora challenges this braisa with another braisa that discusses a *kesuvah* found by someone. The Chachamim say that if the husband admits that he didn't pay the *kesuvah*, it should be returned to the wife, but otherwise it is not given to either party. Rabbi Yossi says that if the couple is married, it is given to the wife, but otherwise, it is not given to either party. This indicates that Rabbi Yossi is concerned that a found contract was already paid, and therefore does not allow the woman the *kesuvah* once the couple is not married. The Gemora gives three possible resolutions to this contradiction:

1. Rabbi Yossi and Chachamim in the first braisa are switched, and the second braisa is all Rabbi Yossi's statement, that when the couple is married, the *kesuvah* is given to the wife, but otherwise, it is held, unless the husband admits that he didn't pay the *kesuvah*.

2. Rav Papa answers that Rabbi Yossi in the second braisa is only challenging the Chachamim within their own logic. Really, Rabbi Yossi holds that we never are concerned that a found contract was paid, but he is arguing that the Chachamim should at least agree to this when the couple is married. To this the Chachamim counter that we are concerned that while still married, the husband put money in escrow for the *kesuvah*.
3. Ravina also switches Rabbi Yossi and Chachamim in the first braisa, but leaves the second braisa intact. Even though the Chachamim are not concerned that a found contract has been paid, they are concerned that the husband may have written a second *kesuvah* for his wife, once the original one was lost.

What part of the Contract?

A contract contains two portions. The *tofes* is the generic form section, which is the same for all contracts, while the *toref* is the detail section (containing the parties, time, etc.), which is different for each contract. Rabbi Elazar says that the dispute in the case of a contract being held by both parties is when both are holding on to the form section and the detail section of the contract. However, if one is holding the form section, and one is holding the detail section, each only gets the section they are holding. Rabbi Yochanan says that even in this case, the contract is split. The Gemora explains that Rabbi Yochanan is stating that if the detail section of the contract is in the middle section of the contract held by no one, but is closer to one side, we still split it evenly.

Ravina clarified that in the case of one holding the detail and one holding the form, Rabbi Elazar holds that they split the monetary value of the contract. The one holding the form section gets the value of a contract without a date, and the other party gets the value of a contract with a date. The difference between these values is what the one holding the form section must concede to the one holding the detail section. Otherwise, splitting such a contract would be meaningless, since the one holding the form section would get nothing more than a pot cover. The Gemora tries to prove that a split is a monetary split – and not a physical split of the item – from the case of a garment.

Actually splitting a garment would seem to destroy the value of the garment, so the mishna must mean we split the value. The Gemora deflects this proof, since half a garment is useful for a child. Similarly, Rava's statement of splitting a gold garment also can be understood to actually split the garment, since half a gold garment is useful for royal children. However, the case in the mishna of two people claiming an animal, who should split it, must mean monetary split, since splitting an animal (when nonkosher) destroys the value of the animal.

INSIGHTS TO THE DAF

By: Rabbi Yechezkel Khayyat

Ownership

The Gemora discusses the status of a disputed bathhouse, and whether either claiming party can consecrate it. The Gemora's conclusion is that the power needed to consecrate an item depends on the type of item. If the item is real estate, anyone who can retrieve the item in court may consecrate it, even before retrieving it. However, a movable item can only be consecrated when the one consecrating has de facto and de jure possession.

The Baal Hamaor and the Ramban (BK 18 in Rif pages) discuss why one may not consecrate an item which was stolen from him. The Baal Hamaor says this is simply because it is out of his reach, and an item must be accessible to be consecrated. The Ramban says it is because the thief has certain liability for the item, and therefore has acquired some ownership by his theft.

Based on the Ramban's opinion, Rabbi Akiva Eiger (BM 7 bemasusa) asks how our Gemora reaches its conclusion. The Gemora distinguishes between stolen real estate and movable items, since real estate is immutable, and cannot be acquired through the standard acquisitions of theft. However, this distinction seems irrelevant in the case of the bathhouse, where neither party did any acquisition.

Rav Elchanan Wasserman (Kovetz Shiurim BK #9) points out that the Baal Hamaor brings our Gemora as a proof to his opinion. He therefore states that the

Ramban agrees that inaccessibility precludes consecration, but adds that the partial ownership acquired by theft also blocks consecration. In our Gemora, where the bathhouse is inaccessible, both Rishonim agree that neither can consecrate it.

The Ramban and Baal Hamaor only disagree about a thief who is ready to hand over the item, but has not yet done so. (In fact, that is the context for their discussion of the rules of consecration).

Rav Elchanan therefore answers Rabbi Akiva Eiger's question by explaining that the distinction of acquisition between real estate and movable items is only relevant when the consecration is prevented by theft acquisition. However, when the consecration is prevented by sheer inaccessibility, if one can retrieve a real estate asset in court, he may consecrate it, since the one holding the real estate cannot truly hide the item from its owner. If he cannot retrieve it in court, he cannot consecrate it, since it is still inaccessible.

Grabbing vs. Holding

The Gemora states that the Mishna, which evenly splits a garment held by two parties, is a case where each side is only grabbing a fringe, which doesn't confer any possession. Therefore, they swear and take half. However, the braisa of Rav Tachlifa discusses a case where each party is holding a segment of the garment. In that case, each party takes what they are grabbing, and then split the rest.

The Rishonim point out that the word used in the Mishna is *ochazin* – *holding on to*, since the parties are only holding onto the edge. However, Rav Tachlifa uses the word *adukin* – *attached*, since the parties are grabbing a segment of the garment. The Gemora says Rabbi Avahu indicated that the split in the adukim case is done with each side swearing.

The Rosh (1:13) and Tosfos (7a Machvei) say that they must swear on everything that they will take, including the portion they are grabbing. The Rosh proves this from the statement of the Gemora on 3a that the oath in the Mishna is to prevent people from forcibly grabbing other people's garments. This logic applies to the whole garment, including the portion they are currently grabbing.

The Ramban agrees, and proves it from the language of the Gemora, which says that Rabbi Avahu *machvei* – *showed* – that the split should be with an oath. Rabbi Avahu was physically showing that the *whole* garment is subject to an oath.

The Rambam (To'ain v'nit'an 9:9) says that the oath is only on the section that they are not grabbing, but each can cause the other party to swear on the part they are grabbing through *gilgul* – *an ancillary oath*.

The Shulchan Aruch (HM 138:3) rules like the Rambam. The Gra (12) supports this position from the Gemora's statement that holding on to a portion of the garment is sufficient for *chalipin*, indicating that grabbing a section of a garment is full ownership, with no need for proof or swearing. The Shach (5) and Sma (11) dispute this, and rule like the Rosh.

The Shita discusses why the Gemora didn't resolve the contradiction by stating that the Mishna was a case of each grabbing exactly half the garment. The Shita quotes a number of answers:

1. They wouldn't swear in this case, since they are not splitting anything out of their direct possession. This answer follows the Rambam's ruling above.
2. It is a rare (even impossible) case, and therefore not a good answer.
3. The Mishna would not need to tell us such an obvious halacha in that case.

How to Split a Contract?

The Gemora cited statements of Rabbi Elazar and Rabbi Yochanan about splitting a contract held by the debtor and creditor. Rabbi Elazar said they only split it evenly when they are both holding the detail and form section of the contract, but if one is holding the details and one the form, they each get the section they are holding. Rabbi Yochanan said that they also split the contract evenly when the detail and form section are in the section not held by either side.

The Rif and Rambam do not cite these opinions and limitations on the rules of splitting a contract, and the Shulchan Aruch (HM 65:15) follows their ruling in the first version of this halacha.

The Rosh does cite the statement of Rabbi Elazar, and the Shulchan Aruch cites this opinion as well.

The Gra explains that this dispute depends on the understanding of how a split is done when each is holding the detail or form section. The Gemora says that the advantage of holding the detail section is the increased value a date adds to a contract. Rashi (7b Shtara) states that Rabbi Elazar is discussing Rabban Shimon ben Gamliel's statement that we split the contract, even if the signatures were not validated, since Rabban Shimon ben Gamliel does not require validation of the signatures. Therefore, the value of the detail section is not in the signatures, since they need not be validated. The value is not in the names of the parties, since those are repeated in the form section. The only element which is crucial in the detail section is the date of the contract, and that is the increased value of that section.

Tosfos (7b d'is) disagrees, and says that elements of each section that would render the contract unfit are not included in the possession gained by grabbing, since each party doesn't want the counter party to remove such elements. The only element which is nonessential is the date.

According to Rashi, the statement of Rabbi Elazar, and the discussion following it, are only according to Rabban Shimon ben Gamliel's opinion, that a contract that is not forged need not have its signatures validated. We, however, rule like Rebbi, and therefore will not hold of Rabbi Elazar's statement. However, according to Tosfos, Rabbi Elazar's statement is in accord with Rebbi as well, and therefore halacha includes it. See Gra HM 65:45 and Note 1 on the Rosh for further discussion.