

OVERVIEW of the Daf

1) Acquiring a boat (cont.)

The Gemara continues to elaborate on the Baraisa that is asserted to be related to the dispute between Rav and Shmuel concerning the distance a ship must be pulled in order to acquire it.

This connection is rejected.

The Gemara connects the alternative explanation of the dispute between Tanna Kamma and R' Nosson with a dispute between Rabbi and Chachomim.

The parallel drawn between these two disputes is unsuccessfully challenged.

This interpretation is challenged in light of the outcome that Abaye and Rava would be following the position of Rabbi rather than the majority opinion.

R' Ashi resolves this challenge by limiting the extent of the dispute between Rabbi and Chachomim.

2) Selling promissory notes

R' Pappa rules that one who sells a promissory note must state that he is also transferring the lien that is associated with the note.

R' Ashi unsuccessfully challenged the necessity for this clause. ■

REVIEW and Remember

1. What does the Gemara refer to when it discusses אֲוֹתִית?
2. What is the point of dispute between Rabbi and Chachamim?
3. Where is the kinyan of הגבהה effective?
4. According to R' Pappa, what clause should be added to the sale of a promissory note?

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Distinctive INSIGHT

משיכה and מסירה

אביי ורבא דאמרי תרווייהו קונה ברשות הרבים ובחצר שאינה של שניהם, משיכה קונה בסימטא ובחצר של שניהם

A Baraisa is brought in the Gemara regarding the manner in which a boat (ספינה) which is situated in רשות הרבים can be acquired. Rebbe is of the opinion that a boat is acquired with מסירה – when the item is handed over from hand to hand, while Chachamim contend that a boat is acquired with משיכה – pulling an item into one's possession (or into a סימטא in this case), or if a buyer rents the place where the boat is situated, when he can then acquire it with קנין חצר.

Rashbam and many of the Rishonim are of the opinion that the transaction of משיכה is stronger than that of מסירה. Ritva explains that the reason for this is that when pulling an item, one brings the item into his possession, whereas the animal remains standing where it is when the reins of animal are handed to him.

Rashi (Kiddushin 25a) and Rabeinu Tam (תוס' ד"ה) contend that the acquisition of מסירה is superior to that of משיכה. Rabeinu Tam explains that the advantages of מסירה are that the item is given directly from the hand of the buyer to the hand of the seller, and it is also done with both parties present, as opposed to משיכה which is not done hand to hand, and it does not have to be done with both parties present.

Tosafos and Rosh argue with Rabeinu Tam, and they contend that מסירה need not be where the item is given over directed hand to hand. They also question Rabeinu Tam's note that מסירה must be done in the presence of the seller and buyer, as they note that it is not clear that there is a source for this requirement. In fact, the Gemara later states that if the seller instructs the buyer with the words "לך חזק = Go, perform an act of ownership and acquire the item," the seller need not be present when the buyer completes the transaction.

Ritva also writes that משיכה is a stronger method of acquisition than מסירה. He explains that according to the opinion of many Rishonim, הגבהה, lifting up the object (when possible) is superior to all methods of acquisition, followed by משיכה and then מסירה.

Tosafos points out that when the Mishnah in Kiddushin (25a) rules that a large animal is acquired with מסירה, it actually means that משיכה would certainly be valid, and even preferable, but that מסירה would also be adequate. According to Rashi and Rabeinu Tam, the Mishnah teaches that a large animal is acquired with מסירה only. ■

HALACHAH Highlight

Meshichah in the public domain

משיכה קונה בסימטא ובחצר של שניהם

Meshichah acquires in a simta or in a courtyard that belongs to both of them

The Gemara teaches that the kinyan of meshichah acquires objects that are in a simta or a courtyard that is owned by the two parties but does not acquire objects that are in a public domain or a courtyard that does not belong to either one of the two parties. Rashbam¹ explains that for meshichah to be effective the one acquiring the object must bring the object into his domain. Since one has the right to use a simta for personal use and certainly a courtyard in which one has part ownership, when one pulls the object in these areas it is considered as though he is pulling it into his domain. In contrast, since one does not have the right to use the public domain and certainly not someone else's domain, meshichah is ineffective there since it is not considered as though the object is being pulled into his domain.

Other Rishonim² explain that meshichah is ineffective in a public domain since it is not common for a person to pull something in the public domain since others can prevent him

from engaging in that activity. Rav Moshe Feinstein³ suggests that according to these Rishonim the mechanics of the kinyan of meshichah is not that one is pulling the object into his domain; rather it is a display of ownership since only the owner of an object will pull it. In this regard it is similar to the acquisition of chazakah wherein one performs an act to land in a way that demonstrates ownership. Accordingly, since people generally do not pull their objects in the public domain it is not a demonstration of ownership and thus the object has not been acquired.

Ketzos Hachoshen⁴ questions the ruling that meshichah does not work in the public domain from the Gemara Bava Metzia (9b) that rules that one can acquire an animal by riding it in the public domain. Why is riding an animal in the public domain more effective than pulling an animal in the public domain? Beis Meir⁵ answers, at least according to the second approach, that although it is uncommon for a person to pull an animal in the public domain it is not uncommon for a person to ride an animal in the public domain. Therefore, pulling an animal is not a display of ownership but riding an animal is a display of ownership. ■

1. רשב"ם ד"ה לא.
2. רשב"א ד"ה לא קשיא ור' יונה ד"ה מסירה.
3. דברות משה קידושין סי' ל"ט ענף ב'.
4. קצות החושן סי' קצ"ז סק"ב.
5. שו"ת בית מאיר סי' כ"ד. ■

STORIES Off the Daf

Alleyways and rivers

"כאן בסימטא..."

A certain man once purchased some large-sized lumber bound together from a fellow merchant. Since the purchaser required the material in a somewhat distant location, he hired five workers to move the wood. Of the workers only one was Jewish, since these were the only workers available to do the job.

The workers picked up the lumber which was arranged near the stream that everyone used to move floatable material from one place to another, and placed them in the stream. But the moment they did so, the buyer changed his mind and decided that he would prefer to use other materials instead.

Of course, the seller claimed that it was too late to change his mind, but the

buyer denied this. "After all," he said, "There was no kinyan. And even if you say that the handlers made a kinyan meshichah, four of them are non-Jews and the Jew alone could not lift any of the bundles, so who exactly made the kinyan?"

When this question came before the Teshuras Shai, ז"ל, he explained that this question was complex and needed to be analyzed one stage at a time. "First of all, kinyan meshichah in a סימטא, an alleyway of the public domain, certainly acquires an item too big to carry alone—just like the disputed lumber in our case. Since the Shitah Mekubetzes in Bava Basra 76 implies that נהרות and ימים have the halachic status of a סימטא¹, and since this seems to be the position of the Shulchan Aruch as well², there could have been a kinyan that works here.

"However, in our case the workers are not Jewish who cannot make a kinyan meshichah in a סימטא for themselves, much less for another, as we find in the

Nesivos³. Even so, the Ketzos brings a dispute between Rashi and the Ritva brought in the Shitah Mekubetzes regarding whether a normal person can acquire a horse he rides upon together with a deaf-mute, who cannot effect a kinyan. According to Rashi, the deaf-mute prevents the healthy Jew from making a kinyan, while according to Ritvah the Jew does acquire the horse."⁴

The Teshuras Shai concluded, "This same machlokes applies in our case as well. But even according to the Ritva, it seems clear that since the Jewish worker is only capable of doing part of the meshichah, only his part is acquired by the buyer. In our case, it should be twenty percent. This is different from riding a horse, since the Jew is capable of riding it alone!"⁵ ■

- 1 שמי"ק, ב"ב ע"ו, ד"ה ולענין פסק הלכה
- 2 קצ"ח, סי' י"ג
- 3 סימן קפ"ח, סי' א'
- 4 ע"כ כ"ז מבואר באורך בקצה"ח, סי' רס"ט, סי' ד'
- 5 שו"ת תשורת שי, קמ"א, סי' תקל"ב ■