



The Hakuk Edition **English Topics on the Daf**

Dedicated l'refuah sheleima for Yaakov ben Victoria

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Yevamos Daf 89

Here we are introduced to the remarkable concept of “hefker Beis Din hefker,” that the Sages have the authority to confiscate and reallocate people’s possessions.

Two Amoraim in our Gemara each prove the rule from a different possuk.

The Aruch L’Ner asks a simple question – which opens up our discussion, spanning the centuries of commentaries and response: Why do we need two pesukim for the same thing?

He answers that the first source shows only that Beis Din has the power to forfeit possessions, like in the episode with Ezra. They can make them hefker, and anyone may take them. But we don’t see the second part, that Beis Din can take things away from one person and give them to another. For that, we need the second possuk of inheritances to demonstrate that they can also distribute them as they see fit.

This idea is implied by an earlier source, the Rashba on Gittin 36b. In the sugya of prozbul, the Gemara wonders how the Rabonon could enact something that counteracts a dioraisa. Rava answers that hefker Beis Din hefker, with the two pesukim we have here – since Beis Din have authority over our assets, they can institute whatever they like with them. The Rashba comments that we learn from here that Beis Din can remove money from one person and credit it to another, even

before he actually gets it. This is derived from the possuk of inheritances, in which the inheritors acquire the assets automatically; they don’t have to make a kinyan on them.

However, we find sources to the contrary. The Shitta Mekubetzes on Bava Basra (100a), in the name of Rabbeinu Yona, writes that hefker Beis Din serves only to make it just that – ownerless. Such assets do not transfer to another’s possession until he makes a kinyan on them! This is also the opinion of several Acharonim, such as the Machaneh Efraim and the Nesivos. Apparently they pasken like Rav Yitzchok in our Gemara, who derives it from the possuk about Ezra. There, all we see is the forfeiture of the assets. (In Moed Katan 16a and elsewhere, only this possuk is cited.)

Thus far, we see it is a machlokes Rishonim if Beis Din can merely confiscate someone’s assets, or if they can also transfer ownership of assets to someone else.

The Devar Avraham (1:1:14) explains that the two groups of opinions differ in how they look at acquisitions formulated by the Rabbis. He begins with a query: Can something acquired only midirabonon be considered yours, midioraisa?

For example, if we hold that shemittas kesafim does not apply in our days on the Torah level, then a borrower must pay

back his loans even after shemitta. However, the Rabbis enacted that shemitta kesafim should nonetheless continue in our days, so all loans become annulled when the shemitta year ends. How can they deprive the lender of his money? The Gemara in Gittin answers with hefker Beis Din. It would emerge that midioraisa, the borrower does not have a right to keep the money, and yet the Rabbis said he could keep it. It seems from here that the Rabbis' kinyan can take effect even on the Torah level. But other poskim say that the most the Rabbis can do is to render it ownerless, and then when the other party makes a kinyan he acquires it midioraisa (R' Shlomo Eiger in Shu"t R' Akiva Eiger 221).

This may be the root of the argument above. The Rashba holds that a kinyan dirabonon takes effect even for dioraisas, and so the Rabbis can decide who the owner is even without any kinyan action. R' Yona, on the other hand, does not ascribe with that power, and Beis Din can only make it hefker, but not assign a new owner to it.

We mentioned the Aruch L'Ner about the necessity for two pesukim as a source for hefker Beis Din. In Reshimos Shiurim (Siman 106:7) he offers another explanation, as follows.

The Rambam elaborates on the power of Beis Din to enforce justice as it sees fit (Hilchos Sanhedrin 24 – we quoted part of it last week). In Halacha 6 he writes, "A judge has the right to make people's money hefker as they see fit, to rectify breaches in religious life and to fortify its fences... As it says in Ezra, 'whoever does not come within three days, all his possessions will be destroyed.' From here is derived hefker Beis Din hefker."

Note that the Rambam cited the first possuk of our Gemara and not the second.

Furthermore, the Rambam seems to contradict himself in Hilchos Shemitta V'Yovel (9:17). There, discussing prozbul, he says, "A prozbul can be written only by foremost Sages, like the Beis Din of Rabbi Ami and Rabbi Asi. They are eligible to remove assets from people. But other Botei Dinim can't write them." (The minhag, note the meforshim on the Rambam, is to allow any prominent Beis Din to issue them.)

But, in the first quote, the Rambam allows any judge to forfeit people's money, as he sees fit? It is not restricted to "the greatest Sages," like he says by prozbul?

Maybe the two pesukim in our Gemara each teach us a different halacha, based on its context. The story in Ezra was an emergency situation. He had returned to Eretz Yisroel after golus Bavel and found the spiritual environment in a severe decline. He sent out a proclamation that everyone had to assemble in Yerushalayim – or else. This is an example of the authority of Jewish judges to exert control over people's assets as they see fit, as the Rambam puts it, "to repair the breaches." And it is given to any qualified rabbinical judge.

The second possuk is a whole different setting. It records the allocation of sections of Eretz Yisroel to the tribes of Israel. As the Gemara expounds, the heads of Klal Yisroel are endowed with the power to apportion to the nation "whatever they want." This halacha is reserved for the foremost leaders in the generation. This is the description Rambam applies to facilitating a prozbul, since it's not a one-time emergency situation, but a fixed takana for the benefit of the tzibbur. This is

why the Gemara brings two pesukim for
hefker Beis Din hefker.