



שבת קודש פרשת שלח | מסכת נדרים דף לד'

INSIGHTS FROM OUR CHABUROS

Can **הקדש** acquire something using the power of **חצר**?

היתה לפניו כבר של הפקר ואמר כבר זו הקדש, נטלה לאכלה מעל לפי כולה, להורשה לבניו מעל לפי טובת הנאה שבה

Tosafos and Rashbam in Bava Basra (79a) write that **הקדש** does not have the legal ability to acquire an object using the **קנין** of **חצר**. This is indicated from the Mishnah in Me'ilah (13a) where someone consecrated a pit, and it subsequently was filled with water. If anyone takes this water and benefits from it, he is not liable for **מעילה**, because **הקדש** does not automatically become the owner of the water which collected in its domain. These Rishonim explain that the reason for this is that the rule that **חצר** works is derived from the verse written about a thief (Shemos 22:3): "If the theft will be found (המצא תמצא) in his hand (בידו)". This teaches us that a person's domain is considered an extension of his own hand, and anything which is placed in his property can become his. Therefore, **הקדש** which does not have "a hand" does not have this power of being able to acquire with **חצר**.

אלגזי questions this premise based upon the explanation of **ר"ן** to our Gemara. Here, a person finds a loaf which is ownerless, and he consecrates it for **הקדש** using the power of acquiring the loaf by its being within his four-cubit domain. We apparently see that using one's domain, or **חצר**, allows a person to obtain an object for **הקדש**. How would Rashbam and Tosafos understand this? Even if we were to say that the person in the middle is a civilian, and he indeed does have the power to utilize **חצר**, we are still faced with a question. This person is acquiring this object on the behalf of **הקדש**, and he is serving as an agent (זכיה מדין שליחות). If **הקדש** itself cannot use the power of **חצר**, its agent cannot use this function either, on its behalf. How, then, can this person acquire this object for **הקדש** using the four-cubit process?

The **קצות החושן** (200, #1) clarifies the process of **חצר** and whether a civilian can acquire an object for **הקדש** using his own power of **חצר**. Perhaps when we say that there is no rule of **חצר** for **הקדש**, this only means that when the object is physically situated in the domain of **הקדש**, that we do not recognize the power of **חצר** to help the transfer to occur. However, when the object is being acquired by a civilian who is using his power of **חצר** or of four-cubits, here the transaction does work, and the object can then become consecrated. On the other hand, we might say that there is no manner for **חצר** to work for **הקדש** at all. The **קצות החושן** determines from the words of Rava in our Gemara that, in fact, a civilian can use his power of **חצר** or four-cubits to acquire a loaf on the behalf of **הקדש**.

POINT TO PONDER

The Gemara says that if someone says that his loaf of bread should be **אסור** on his friend and then gives it to him **במתנה**, we need to understand what he wanted to accomplish. Why can't we say that he meant pleasures which don't involve eating bread, like smelling it or warming his hands from the hot loaf?

Response to last week's Point to Ponder:

The Gemara brings a **מחלוקת** between **חנן** and **גדולים** regarding someone who provides food to someone else's wife while he is away. How can we understand the position of **חנן**? At the end of the day he benefited him, so why shouldn't he pay? If someone makes improvements to someone else's property without his consent he still gets paid.

The **ריטב"א** writes that when someone improves someone's property the improvements are tangible and that's why he can demand payment, however if he gave someone's wife money to buy food it's not tangible because the money is gone.

STORIES OF THE DAF

The pre-sumptuous guest

לאפוקי דאי אַזמניה עלה

A certain man attended a simchah. He remained a respectable amount of time and eventually stood up to go. As he left, he removed some plastic bags from his pocket and filled them with food from the buffet. A duly shocked fellow guest asked the man if he had permission to take food from the Ba'al Hasimchah. "Not explicitly," the man replied. "But what gives you the right to take his food?" asked the indignant one. "What do you mean? The Ba'al Hasimcha did himself when he wrote on the invitation that my entire household is invited! Although they couldn't make it, I certainly have the right to bring them their portion."

The fellow guest was not so sure and asked if he had spoken with a Rav. The man answered, "No. This seems to me to be an open-and-shut case. No need to bother a posek." His fellow guest stated that he didn't think it was so simple and that he planned to ask. Later, the second guest brought the question before his own posek, who responded, "I think this is definitely prohibited, but would prefer to ask Rav Vosner regarding this. I will ask and get back to you." Rav Vosner's replied, "It is forbidden. The invitation was not meant to be a meal voucher, just a nusach that permits one to bring his family." Rav Vosner continued, "Although the Rishonim at the very end of Nedarim 34b discuss whether one who is a guest at his host's table acquires the portion in front of him, that is only when one is sitting down to eat! A guest who leaves the affair certainly has no right to take any food unless he is certain that it will be disposed of and will not be wanted or needed by any other guest or the Baal Simchah himself. The only exceptions are if he himself didn't eat or if he asked the Baal Simchah."

Does the guest own the food that is served?

דאי אַזמניה עלה

If the vower invited the subject of the vow to partake of it

Rema¹ rules that if a guest takes some of the food his host placed on the table and gave it to a woman for kiddushin, the kiddushin is valid since food taken by a guest becomes his property. Taz² challenges this ruling from Shulchan Aruch's³ ruling that a guest is not permitted to take some of the food that the host put out on the table and give it to the host's son or slave. Why then would a guest be able to take some of the food that is on the table and give it to a woman for kiddushin? In light of this question Taz rules that the kiddushin is in a state of uncertainty (קידושין ספק).

This contradiction gives rise to a significant debate about whether a guest acquires the food that is placed on the table before him. Teshuvos Chikrei Lev⁴, for example, writes that the matter is a dispute between Rishonim expounding upon our Gemara. Do we say that the guest becomes the owner of the food as soon as it is placed before him, or does he not become the owner until he actually lifts up the food (הגבריה)? Rav Shlomo Kluger⁵, the Chochmas Shlomo, writes that once the guest has eaten his fill (כדי שובעו) the leftovers revert back to the host because there is an assumption that the host only confers ownership to the portion that the guest will eat. If, however, the guest refrains from eating his fill, the leftovers of the portion he would have eaten remains his and he may use that to betroth a woman.

Rav Shmuel Halevi Wosner⁶, the Shevet Halevi, addressed the issue of whether guests at a Simcha are permitted to take home food or flowers when the simcha is over. Shevet Halevi ruled that it is akin to theft (סרך גזל) to take leftovers from a simcha, except for the portion that one was given that he did not finish. The reason is that many times the leftovers are taken home by the host of the simcha and sometimes, in Eretz Yisroel, the host returns the uneaten leftovers and receives credit from the simcha hall for the uneaten portions. In the United States, however, where the leftovers are normally thrown away after the simcha it would be permitted for a guest to take home any portions that would otherwise be thrown away.

1. רמ"א אה"ע סי' כ"ח סע' י"ז
2. ט"ז שם
3. אור"ח סי' ק"ע סע' י"ט
4. שו"ת חקרי לב חו"מ סי' קמ"ז
5. הגהות וכתבמשלמה לאה"ע סי' כ"ח סע' י"ז
6. שו"ת שבט הלי"ח סי' רכ"ה.

MUSSAR FROM THE DAF

Appreciating others, our power!

להורישו לבניו מעל לפי טובת הנאה שבה... ר"ן-דכיון דלא הגביהו אלא להורישו לבניו ולא שיקנו אותה עכשיו לא נפקא לחולין אבל מ"מ מעל לפי טובת הנאה לפי שמעכשיו יחזיקו לו בניו טובה

The Gemara in Nedarim 34b discusses a case where someone declares an item hefker, and another person comes and is makdish it, thereby transferring it to the domain of hekdesh. The individual then takes that hekdesh item with the intention of bequeathing it to his children. The Gemara rules that this act constitutes me'ilah (misuse of consecrated property) and the person is liable to repay the principal plus an additional fifth.

This raises a question: what exactly is the me'ilah here? The item wasn't used directly or consumed. It's simply being designated to benefit someone in the future. Where is the misuse? The Ran explains that the person derives benefit not through physical use, but through emotional satisfaction. By arranging for his children to inherit something, he knows they will feel gratitude and appreciation toward him. That feeling of being appreciated, of being thanked is considered a real, tangible benefit in halachah. Since that benefit was derived from hekdesch, it constitutes me'ilah.

This insight reveals a deep truth: the experience of being appreciated is not just symbolic—it's substantial. According to Chazal, gratitude has real value. Halachically, it is treated as a form of benefit with legal consequences. We learn from here that expressing appreciation is not a small act. When we thank someone—whether a spouse, a friend, a teacher, or a parent—we are not just being polite. We are giving them something meaningful, something the Torah itself recognizes as valuable. And when we are on the receiving end of gratitude, we should realize that we've been given a real gift. This Gemara teaches us that gratitude is a form of giving. Appreciating others is powerful. Whether it's our spouse, our rebbeim, or anyone from whom we've received something, we should never underestimate how much we are giving them when we express our thanks.

PARSHA CONNECTION

In this week's dal the גמרא discusses a הפקר a loaf which means a loaf of bread. When baking a sufficient amount of bread one has a מצוה of separating חלה which we find in this week's Parsha. The מצוה of חלה follows after the חטא המרגלים and the מפרשים discuss why was this מצוה chosen and given immediately following the חטא המרגלים? The ספרנו writes that the מצוה of חלה was necessary at this time, to give בני ישראל in זכות in ארץ ישראל, because חלה brings with it a ברכה to the home. He cites as an example the Possuk (מלאכים א פרק י"ז ו"ג) in Melachim: ויאמר אליה אליהו: תיראי באי עשוי כדברך אך עשוי לי משם עגה קטנה בראשנה והוצאת לי ולך ולבנך תעשי באחרנה אל. This פסוק is talking about a lady who complained to אליהו that she has nothing to eat. His instructions to her was to make him a small cake and in the merit of doing so, there will never be a shortage of food in her home. Similarly, giving חלה showers a home with ברכה. The 'ירושלמי תענית פרק ד' writes that when the מרגלים came back they found משה רבנו teaching בני ישראל the הלכות of חלה and ערלה. When seeing this, the מרגלים said why are you learning these הלכות, we will not be able to capture ישראל. ארץ ישראל. The reason why משה רבנו was teaching these הלכות at that time was because he expected them to be shortly entering חלה מצוה. Perhaps this is another reason why the חלה מצוה is written right after the חטא המרגלים, to assure בני ישראל that one day they will be in ארץ ישראל. As Rashi writes: בשר להם שיכנסו לארץ.

For more points to ponder by Rabbi Yechiel Grunhaus, or insights by Rabbi Yitzchok Gutterman, please visit our website, dafaweek.org, or download the app

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