The Geller Edition

שרשרת זהב

Good Money After Bad

הוצאות שכנגדו

KOLLEL

לרפואה שלימה

שמואל יעקב בן רחל

JX KOLLEL

Vol XV

COMPILED BY

R' SHMUEL IANN

Dayan at Beis Din Shaarei Horaah

With

Rabbi Mendy Brukirer

Design and Print:

מכון תפארת

732.475.0101 • machon@bpprintgroup.com

To join and learn more visit
JXKollel.com

שרשרת זהב

These booklets are called **Sharsheres Zahav** (*Golden Chain*), based on the verse describing the golden chains of the Choshen (Shemos 28:13–14). Just as those chains connected the Choshen to its proper place, so too these works are intended to be small links in the golden chain of Torah transmission, connecting the learner to the teachings of Chazal, the Rishonim, the Acharonim, and the great Torah scholars of every generation.

In particular, these booklets seek to connect the reader to the illuminating Torah of the **Ketzos HaChoshen**, whose teachings serve as a central foundation throughout. Everything written here is based on the sacred words of our sages and was prepared through sincere effort to clarify and understand the sugyos in the light of their teachings.

May Hashem grant that these words find favor among those who study Torah, and may these works become worthy additions to the eternal chain of Torah transmission from generation to generation.

Amen.

How to Read This Sheet?

Each source appears first in the original Hebrew or Aramaic, with a plain English version directly underneath. A Sugya Note helps explain the source in everyday words.

A Term Note defines an important word or idea. A Takeaway sums up the main point in a line or two.

You do not need any background to follow along. Read each source, then the English, then the note. The sheet is built to walk you through the discussion one step at a time.

Do not worry if you do not finish the sheet in one sitting. A good Torah session is not measured only by how much you finish, but by how deeply you learn to think through the discussion.

הוצאות שכנגדו
Good Money After Bad

Opening Frame

Reuven owes Shimon five hundred thousand dollars. The debt came due a year ago, and Reuven has since stopped responding altogether. So Shimon first pays someone to track him down and ask for the money.

When Reuven refuses to pay, Shimon is forced to spend thousands more on legal fees, subpoenas, and summonses just to get him into court — and then still more as the lengthy proceedings drag on.

At last the day arrives, and Reuven is found liable for the full debt he owes. But the question remains: must Reuven also cover everything Shimon laid out along the way — both the messenger and the legal fees — as compensation for the extra harm he caused? Or do we hold him to the loan amount alone and treat the rest as simply the cost of doing business?

I. The Cost of Coming to Court

The rule on what a lawsuit costs, and the single case that changes it.

סנהדרין, ל״א | Sanhedrin 31b

The Mishnah is the written summary of the Oral Law, set down in Eretz Yisrael around the year 200. The Gemara is the record of the discussion that grew up around it in the academies of Babylonia over the following three centuries; together they are the Talmud. The Amoraim here are Rav Dimi, who carried the teachings of Eretz Yisrael to Babylonia, and two of the leading scholars of Eretz Yisrael, R' Yochanan and his student R' Elazar.

כי אתא רב דימי אמר רב יוחנן התוקף את חבירו בדין, אחד אומר נדון כאן, ואחד אומר נלך למקום הוועד, כופין אותו וילך למקום הוועד, אמר לפניו רבי אלעזר, רבי, מי שנושה בחבירו מנה, יוצא מנה על מנה, אלא כופין אותו ודן בעירו.

When Rav Dimi came from Eretz Yisrael, he said in the name of R' Yochanan: If one person summons another to court, and one says, "Let us be judged here," while the other says, "Let us go to the central court," we compel the one who wants to stay and make him go to the central court.

R' Elazar challenged him: Rebbi, should a man who is owed a maneh have to spend a maneh just to collect the maneh he is owed? Rather, we compel the defendant, and the case is judged in the claimant's own city.

Term Note

מקום הוועד | *mekom hava'ad* | **The Central Court**

The seat of the leading judges, where the most qualified beis din sits.

Term Note

מנה | *maneh* | **One Hundred Dinars**

A sum of a hundred dinars; a dinar and a zuz are the same coin.

Sugya Note

R' Yochanan and R' Elazar disagree about where a case should be heard when one side wants to move it to the central court. R' Yochanan holds that the judges there are greater and more discerning, so we make the other side travel there. R' Elazar holds that you can't force a claimant to spend money and go through the trouble of chasing after what he's already owed, so instead we make the defendant come to the claimant's own city.

The two sides are weighing different concerns. Is a better court worth the cost and trouble of traveling there? Or does the claimant's right to sue for his money where he already stands outweigh the benefit of the better court?

מבואר בגמ', דנחלקו רבי יוחנן ורבי אלעזר היכן מקום הדין כשאחד מבעלי הדין מבקש לילך למקום הוועד. לדעת רבי יוחנן, כיון דבמקום הוועד מצויים דיינים גדולים וברורים יותר, כופין את בעל הדין לילך לשם. אולם רבי אלעזר סבירא ליה, דאין לחייב את התובע להוציא הוצאות ולטלטל עצמו אחר חובו, אלא "מי שנושה בחבירו מנה, לא יוציא מנה על מנה", ולכן כופין את הנתבע לדון בעירו. יסוד מחלוקתם הוא אם מעלת מקום הוועד דוחה את הטורח וההפסד הכרוכים בהליכה לשם, או דזכותו של התובע לתבוע את חובו במקומו גוברת על מעלה זו.

Rosh, Sanhedrin 3:40 | ראש (שם, סי' מ')

Rabbeinu Asher ben Yechiel (c. 1250 to 1327), Germany and Toledo. He was the leading student of the Maharam of Rothenburg – whom he names in this very ruling. The Maharam was seized, imprisoned and died in captivity; in the persecutions that followed, the Rosh fled Germany for Toledo, Spain and became the foremost halachic authority of his generation.

From the previous Gemara (according to R' Yochanan) there is a proof that one who is found liable in court does not pay the other side his expenses, even though he made him go to court in another city.

And this applies where he did not refuse to stand in judgment, but only wished to be judged in another city. But if he was refusing to come to beis din, and the claimant had to lay out money in order to compel him to come to court, Rabbeinu Meir would obligate him to pay all of his expenses.

מכאן ראיה מי שנתחייב בדין אינו משלם לכשנגדו יציאותיו אע"פ שהזקיקו לדון בעיר אחרת, והני מילי דלא מסרב למיקם בדינא אלא שרצה לדון בעיר אחרת, אבל אם היה מסרב לבוא לב"ד והוצרך התובע להוציא הוצאות לכופו לירד עמו לדין היה רבינו מאיר מחייבו לפרוע כל יציאותיו.

Sugya Note

Even when the claimant had to spend money because the defendant asked to have the case heard in another city, the defendant does not have to pay him back. He did not refuse to come to court. He only asked to have the case decided somewhere else.

That rule applies when the defendant is willing to stand trial and the disagreement is only about where the case should be heard. But if he refuses to come to court at all, and the claimant must spend money to force him to appear, Rabbeinu Meir requires the defendant to pay those expenses.

מבואר מדברי הרא"ש, דאף אם מחמת בקשת הנתבע לדון בעיר אחרת נגרמו לתובע הוצאות, מכל מקום אין הנתבע חייב לשפותו עליהן, כיון שלא סירב לעמוד בדין אלא ביקש לברר דינו במקום אחר. אמנם כל זה דוקא כשהנתבע נכון לעמוד לדין, אלא שנחלקו על מקום הדיון. אבל אם הנתבע סירב לבוא לבית דין כלל, והוצרך התובע להוציא הוצאות כדי לכופו להתדיין, בזה כתב בשם רבינו מאיר דחייב הנתבע לשלם את כל ההוצאות, דכיון שבסירובו הוא שגרם להוצאות אלו, הרי הן מוטלות עליו.

Term Note

סרבנות | *sarvanus* | **Refusing to Appear**

A defendant who will not come to beis din at all, as against one who comes but disputes where the case should be heard.

The Shulchan Aruch takes the Rosh's ruling and states it as the law, in its own words.

שו"ע (סי' י"ד, סע' ה') | Shulchan Aruch, CM 14:5

Rabbi Yosef Karo (1488 to 1575), Spain, Turkey, and Tzfas. His family fled Spain in the Expulsion when he was a small child. After decades of wandering through the Ottoman Empire he settled in Tzfas, where he composed the code that became the central text of practical Jewish law.

One who is found liable in court is not obligated to pay the other side expenses, even though he compelled him to be judged in another city. And this applies where he did not refuse to stand in judgment, but only wishes to be judged in another city. But if he was refusing to come to beis din, and the claimant had to lay out money in order to compel him to come to court, he is obligated to pay him all of his expenses.

המתחייב בדין, אינו חייב לשלם לשכנגדו יציאותיו אע"פ שהזריקו לדון בעיר אחרת, וה"מ דלא מסרב למיקם בדינא אלא שרוצה לדון בעיר אחרת, אבל אם היה מסרב לבא לב"ד והוצרך התובע להוציא הוצאות לכופו לירד לדין חייב לפרוע לו כל הוצאותיו.

Shach, CM 14:10, citing the Yam Shel Shlomo
ש"ך (שם, סק"י) בשם הים של שלמה

Rabbi Shabsai ben Meir HaKohen (1621 to 1662), Vilna and Moravia. He sat on the rabbinic court in Vilna and married into the family of the Rema. His Sifsei Kohen on Yoreh Deah appeared when he was about twenty-five and was accepted at once. The Yam Shel Shlomo he quotes here is the Maharshal, Rabbi Shlomo Luria (c. 1510 to 1573), Poland, whose work on the Talmud rules directly from the Gemara itself.

וכתב ביש"ש (ב"ק) פ"י סי' י"ד, היינו הוצאות סרבנות, אבל שאר הוצאות כגון ששלח שליח אחר המעות או ששלח אחריו למקום פלוני אין צריך לשלם ע"ש.

The Yam Shel Shlomo writes (Bava Kama, chapter 10, siman 14) that this refers specifically to the expenses caused by the defendant's refusal to come to court. But other expenses — such as when the claimant sent a messenger to collect the money, or sent someone after the defendant to a particular place — the defendant is not required to pay.

Sugya Note

משמע דיש"ש חולק וס"ל דוקא הוצאות סרבנות הנתבע מחוייב לשלם לתובע אבל שאר הוצאות פטור.

The Yam Shel Shlomo disagrees with the Shulchan Aruch, which holds that once the defendant refuses to come to court, he must pay all the legal fees and related costs. According to the Yam Shel Shlomo, only what the refusal itself cost may be charged to the defendant; every other expense the claimant laid out, he must absorb himself.

Takeaway

According to the Yam Shel Shlomo's opinion, even the one exception to the Rosh's rule is narrow: a defendant who refused to appear pays only what his refusal cost, and specifically not a messenger sent after the money.

II. The Added Dinar

The following is a Mishnah regarding consecrated property, which the Rosh will use as his proof.

A creditor's claim in Jewish law isn't only against the borrower personally; it attaches to the borrower's land, which is why what happens to that land matters so much. When an individual consecrates his own property to the Temple treasury, one has the option to buy it back by means of redemption.

Mishnah, Arachin 23b | מתני' בפרק שום היתומים (ערכין, כ"ג:)

המקדיש נכסיו והיתה עליו כתובת אשה ובעל חוב, אין האשה יכולה לגבות כתובתה מן ההקדש, ולא בע"ח

One who consecrates his property while he owes his wife her marriage settlement and/or owes a creditor a debt, the wife cannot collect her marriage settlement from the

consecrated property, and the creditor cannot collect his debt. Rather, the one who redeems the property from the Temple treasury, redeems it on condition that it will be used towards the wife's marriage settlement and/or the creditor's debt.

את חובו, אלא הפודה פודה ע"מ ליתן לאשה בכתובתה ולבע"ח את חובו, הקדיש תשעים מנה והיה חובו מאה מנה, מוסיף עוד דינר ופודה את הנכסים האלו על מנת ליתן לאשה כתובתה ולבע"ח את חובו.

Sugya Note

The property is worth ninety maneh, but the debt against it is one hundred maneh. Since the creditor's claim (one hundred) exceeds the property's value (ninety), the creditor could simply seize the entire property to collect part of his debt, leaving nothing for the Temple treasury to gain from the consecration. In effect, the consecration would have no real value — the property is fully "underwater," swallowed by the debt.

For the consecration to take hold and mean something, there has to be some value that belongs to the Temple. So the Mishnah requires the redeemer to add one dinar of his own. That extra dinar is the bit of value that makes the redemption real: the Temple receives that dinar, and the property is then released to be redeemed, with the arrangement that the creditor or the wife collecting her marriage settlement is paid from it afterward.

Put simply: without the added dinar, the consecration would be empty because the debt eats up the entire value. The dinar gives the Temple at least some value, allowing the redemption to function.

רש"י (שם, ד"ה מוסיף עוד דינר וכו') | Rashi, Arachin 23b

Rabbi Shlomo Yitzchaki (1040 to 1105), Troyes in northern France. He made his living from his vineyards and wrote the commentary that has accompanied the Talmud on the page ever since; a learner who can read Rashi can read the Gemara.

The creditor lends him [the borrower] one further dinar, and [then] redeems these properties.

בעל חוב יוסיף עוד להלוותו דינר לזה ופודה את הנכסים האלו.

Term Note

הקדש | *hekdesh* | **Consecrated Property**

Property transferred to the Temple treasury, which may not be put to ordinary use while it holds that status.

Term Note

פדיון | *pidyon* | **Redemption**

The payment that releases consecrated property back into ordinary use.

Term Note

שעבוד | *shibud* | **Lien**

The creditor's claim attached to the borrower's land itself, which is what lets him collect from that land.

Term Note

כתובה | *kesubah* | **Marriage Settlement**

The sum a husband undertakes to his wife, secured against his property like any other debt.

Sugya Note

If you consecrate property that already has a debt against it, your creditors cannot collect directly from the consecrated property itself. It first has to be redeemed out of the Temple treasury, and that redemption is made with the intention of paying the marriage settlement and/or the debt afterward.

Why the extra dinar? So that the transaction counts as a genuine redemption, rather than looking like a payment arranged purely for the creditor's benefit.

And Rashi tells us who adds that dinar — the creditor himself, by lending the debtor one more dinar. Now that he is owed a slightly larger sum, he redeems the property in order to collect his entire debt out of it.

מוכח דכשהקדיש אדם את נכסיו בעודו חייב בכתובת אשה או לבעל חוב, אין בעלי החובות גובים מן ההקדש עצמו, אלא יש לפדות את הנכסים מן ההקדש, והפדיון נעשה על דעת לפרוע לאחר מכן את הכתובה והחוב. וצריך להוסיף דינר על סכום החוב כדי שתהא כאן פדייה גמורה ולא ייראה כפדיון לצורך בעל החוב בלבד. ופירש רש"י, דהוספת הדינר נעשית על ידי שבעל החוב עצמו מוסיף ומלווה לחייב דינר נוסף, ובכך נעשה הוא בעל חוב בסכום גדול יותר, ולאחר מכן פודה את הנכסים על מנת לגבות את כל חובו מן הנכסים שנפדו.

Rosh, Kesubos 9:27 | רא"ש בפרק הכותב (כתובות, סי' כ"ז)

The same Rosh, now on masechta Kesubos, which deals with marriage and the wife's claims against her husband's estate.

And the lender may add the messenger's fee to his debt and collect it together with his debt, like that [Mishnah] in Arachin: one who consecrates his property while he owed his wife her marriage settlement and/or owed a creditor adds one further dinar and redeems the properties, and so on.

והמלוה יוסיף על חובו שכר השליח ויגבהו עם חובו כההיא דערכין (שם) המקדיש נכסיו והיו עליו כתובת אשה ובע"ח מוסיף עוד דינר ופודה הנכסים וכו',

And the expression “adds” indicates that he adds to his loan and collects the dinar together with the rest of his debt. And the same applies to the messenger’s expense, the claimant can add the additional costs to the debt for collection [when the defendant refused to go to court].

ולשון מוסיף משמע שמוסיף על הלואתו וגובה הדינר עם שאר חובו, והוא הדין להוצאת השליח שהוא לטובת הלוה, שמן הדין הוא ראוי לירד לנכסיו מיד משום נעילת דלת.

Sugya Note

It is clear from the words of the Rosh that expenses which the lender spent for the purpose of collecting his debt — such as the fee for a messenger [when the defendant refused to go to court] — he may add to the original debt and collect from the borrower. The basis for his ruling comes from what is stated in the Mishnah in Arachin, that the creditor adds a dinar to his debt and collects it together with the rest of the debt. This implies that there is power to add onto the debt itself an expense that was spent for the purpose of collecting it.

Therefore the same applies to a messenger’s expense. Since this cost came about for the borrower’s own benefit, the expense is considered part of the debt, and the lender collects it along with the principal.

מבואר מדברי הרא”ש, דהוצאות שהוציא המלוה לצורך גביית חובו, כגון שכר שליח, רשאי להוסיף על עיקר החוב ולגבותן מן הלוה. ויסוד דבריו הוא מהמבואר במשנת ערכין, דבעל החוב מוסיף דינר על חובו וגובהו יחד עם שאר החוב, ומשמע דיש כח להוסיף על עצם החוב הוצאה הנעשית לצורך גבייתו. ולפיכך ה”ה בשכר שליח, כיון שהוצאה זו באה מחמת טובת הלוה, שהיה מן הדין ראוי לירד לנכסיו מיד משום נעילת דלת בפני לוין, הרי ההוצאה נחשבת כחלק מן החוב, וגובה אותה המלוה עם עיקר חובו.

Takeaway

The Rosh allows the lender to add a messenger’s fee to the debt. Money spent collecting the debt can become part of the debt itself.

Sugya Note

One could raise a difficulty: when a person consecrates his property in order to avoid paying his debt, he is actively causing damage (a mazik b’yadayim — a direct, hands-on damager), and that is precisely why he is obligated to pay the lender the cost of the redemption. This is unlike our case, where the claimant’s [refused to go to court and] causing an expense of sending a messenger after the money is merely an indirect obstruction (just “prevention”) and is not considered active, direct damage.

The point of the difficulty. The Rosh tried to prove from the Arachin case (consecrated property) that a lender can add collection expenses to the debt. But are the two cases comparable?

ויש להקשות, דאם מקדיש נכסיו הוי מזיק בידים ומשו”ה חייב לשלם למלוה דמים של הפדיון, משא”כ בנידון דידן דהוצאות התובע דשלח

In the Arachin case, the debtor did something aggressive and direct — he consecrated the property, actively interfering with the creditor's claim — so it makes sense he must cover the redemption cost.

In our case, the debtor merely failed to pay, forcing the creditor to send a messenger. That is passive prevention, not active damage, and there is no clear proof that a debtor must cover costs he caused only passively.

שליח אחר המעות אינו אלא מניעה בעלמא ולא נחשב הזיק בידים וצ"ע.

III. A Coin in the Sea

A case that tests whether a forced expense is a damage at all.

Is forcing someone to spend money in order to obtain his own property a damage at all? The Gemara has a case that tests exactly that.

Bava Kama 98a | פרק הגוזל עצים (ב"ק, צ"ח.)

Masechta Bava Kama deals with damages: what a person is liable for, and what he is not.

Rabbah said: One who throws his fellow's coin into the great sea is exempt. What is the reason? He says to him: it is lying there before you; if you wish, take it.

אמר רבה, הזורק מטבע של חבירו לים הגדול פטור, מאי טעמא, אמר הא מנח קמך אי בעית שקליה.

Rashi, Bava Kama 98a | רש"י (שם, ד"ה פטור וכו')

Rashi again, here on the exemption itself.

And if [you would obligate him] because [the owner] must pay a zuz to a diver to dive and get it back, it is [only] indirect damage that causes him the loss of that fee, and indirect damage in the law of damages is exempt.

ואי משום דבעי למיתב זוזא לבר אמוראה למישט ולמישקליה, גרמא הוא שגורם להפסידו אותו שכר, וגרמא בנזקין פטור.

Term Note

מזיק בידים | *mazik b'yadayim* | **Direct Damage**

A person directly damages the object or directly causes the loss through his own act. This requires payment.

Term Note

דינא דגרמי | *dinei d'garmi* | **Direct Enough to Pay**

The object may not be directly damaged, but the loss follows closely enough from the person's act that payment may at times be required.

Term Note

גרמא | *grama* | **Indirect Damage**

The person causes a loss, but the result is too indirect or too far removed from his act to require payment.

Sugya Note

The one who threw in his friend's coin is exempt because nothing was lost from the coin itself. It still exists and the owner can go and take it, so the thrower can say: it's lying there in front of you, take it if you want.

And Rashi goes further. Even the cost of hiring someone to bring the coin up isn't his to pay. He caused that loss only indirectly, and indirect damage carries no payment.

So here's the principle. You can cost your fellow money to get his own property back into his hands, and as long as you didn't damage the property itself but only caused the expense, you owe nothing.

משמע בגמ', דהזורק מטבע של חבירו לים הגדול פטור, משום שאין כאן הפסד בעצם המטבע, שהרי הוא עדיין קיים ויכול הבעלים ליטלו, ועל כן יכול המזיק לומר לו: "הא מנח קמך, אי בעית שקליה". ופירש רש"י, דאף אם יצטרך לשכור אדם שיוציא את המטבע מן הים, אין המזיק חייב לשלם הוצאה זו, דלא הפסידו אלא בגרמא, וגרמא בנזקין פטור. נמצא, דאף שגרם לחבירו הוצאה ממונית כדי להשיב את ממונו לידו, כל שלא הזיק את גוף הממון אלא רק גרם להוצאות, אין בכך חיוב תשלומין.

קצות החושן, סימן י"ד ס"ק ב' | Ketzos HaChoshen, CM 14:2

Rabbi Aryeh Leib Heller (1745 to 1812), Galicia. He served as rav of Rozdol and later of Stryi, and lived and wrote in great poverty. The Ketzos HaChoshen is printed alongside Choshen Mishpat and is one of the sharpest analytical works in Jewish monetary law.

And therefore it appears that the Rosh is following his own approach in Bava Kama, siman 13, regarding one who pushes a coin into the sea. Where a diver can get it back, this is only grama (indirect) and exempt. He did not damage the object itself, and the owner can still get it back. Even though that takes money, it is not dinei d'garmi (the closer, liable kind of indirect damage), as the Mordechai wrote in Bava Kama.

If so, someone who consecrates his property is in the same situation. The property can be redeemed for a dinar, so this is really no different from pushing a coin into the sea and needing a diver to fetch it. Here too, the creditor can still get the property back — by redeeming it.

ולכן נראה דהרא"ש לשיטתו בפרק הגוזל (ב"ק, סי' י"ג) גבי דוחף מטבע לים, היכא דמצי בר אמוראה למשקל, אין זה אלא גרמא בעלמא ופטור, כיון דלא היזק גוף הדבר אלא מצי למשקליה, ואע"ג דצריך הוצאות לזה לא הוי דינא דגרמי, וכמו שכתב במרדכי פרק הגוזל (סי' קי"ד), וא"כ מקדיש נכסיו נמי כיון דמצי לפדותו בד' זוזי אינו אלא כמו דוחף מטבע לים, דצריך בר אמוראי למשקל, וזה נמי מצי להעלותו על ידי פדיה ואפילו הכי מוסיף עוד דינר ע"ש.

Sugya Note

The Gemara in Bava Kamma states that one who throws a coin into the sea is exempt. Since the coin still exists whole and the owner can get it back — he just needs to spend money to bring it up — this is only grama (indirect damage, which is exempt). And Rashi explains that the fee paid to divers is likewise only indirect damage.

On this, the Ketzos writes that the Rosh is consistent with his own approach: whenever the object is still whole and its owner only has to spend money to get it back, this is only indirect, and exempt.

Based on this, the Ketzos explains that consecrated property is similar. The property still exists whole; the owner merely needs to redeem it in order to get it out — comparable to someone who needs divers to raise the coin. In both cases it counts only as indirect damage, since the item stays whole and the only problem is that access is blocked.

And with this, our original question is answered. We began by asking: how can we compare consecrating property to sending an agent to collect a debt? The answer is that both are considered grama (indirect) — in each case nothing is actually destroyed; the person is only made to spend money to reach what is rightfully his.

And yet, despite this, the Mishnah in Arachin says that the creditor adds a dinar and collects it. This shows that even in a case that is only grama, the law nevertheless permitted attaching this expense and collecting it together with the debt.

The result is this: we do not specifically require direct, hands-on damage in order to allow adding expenses onto the debt. Even in a case that is essentially indirect (grama), there is still room to attach those expenses to the collection of the debt — provided the person did something to create the obstacle, such as consecrating the property or refusing to come to court.

By contrast, take someone who simply has an outstanding loan, and the claimant sends a messenger to collect it. There the borrower didn't do anything at all to create an obstacle — he just failed to pay. Since there was no "act" on his part, those collection costs can't be pinned on him, and the claimant absorbs them himself.

דהיינו הגמ' בב"ק קאמר דהזורק מטבע לים פטור, דכיון דהמטבע בעין קיימת ויכול ליטלה, אלא שצריך הוצאה להביאה, לא הוי אלא גרמא. ורש"י מפרש דשכר האמוראי אינו אלא גרמא בנזקין. ועל זה כתב הקצות, דהרא"ש לשיטתו, דכל כהאי גוונא דליכא היזק בגוף הדבר, אלא רק צריך הוצאות כדי להשיגו, לא הוי אלא גרמא ופטור, ולא חשיב דינא דגרמי. ולפי זה מבאר, דהקדש נמי דמי להא, דהא הנכסים קיימים, אלא שצריך לפדותם כדי להוציאם, והוי כמי שצריך אמוראי להעלות המטבע. ואעפ"כ אמרינן בערכין דמוסיף דינר וגובהו, אלמא דאף במקום דהוי רק גרמא-מ"מ לענין גביית חוב התירו לצרף הוצאה זו ולגבותה עם החוב. ונמצא, דלא בעינן דוקא היזק בידים כדי להתיר הוספת הוצאות, אלא אפילו היכא דהוי כעין גרמא, יש מקום לצרפן לגביית החוב.

Rambam, Hilchos Chovel u'Mazik 7:11 | רמב"ם (פ"ז מהל' חובל הי"א)

Rabbi Moshe ben Maimon (1138 to 1204), Cordoba, Fez, and Fustat in Egypt. His family fled Spain under persecution when he was a boy; he settled in Egypt, served as physician to the vizier of Saladin, and composed the Mishneh Torah, the first complete code of Jewish law.

So too: one who pushes his fellow's coin, and it rolls and goes down into the sea, is liable to pay.

וכן הדוחף מטבע חבירו ונתגלגל וירד לים חייב לשלם.

Sugya Note

As we discussed earlier, imagine someone grabs your coin and throws it into the sea. The coin isn't destroyed — it's still sitting on the ocean floor. You could get it back, but you'd have to pay a diver to bring it up.

The Rosh says the thrower doesn't have to pay. He didn't destroy the coin; it still exists. All he did was force the owner to spend money to get it back. The Rosh treats this as grama — indirect damage. The loss came through his action, but it isn't direct enough to require payment.

The Rambam rules the opposite: the thrower must pay. Even though the coin still exists, his action cut the owner off from his money and forced him to spend to recover it. The Rambam treats this as garmi — damage direct enough to require payment. The object doesn't have to be broken or destroyed; blocking the owner from reaching it can itself count as damage.

Now apply this disagreement to consecrated property. A borrower consecrates property that is tied to the lender's debt. The lender can no longer collect from it directly — the property must first be redeemed, and that costs money.

According to the Rambam, the borrower performed an act that blocked the lender from collecting. Consecrating the property was therefore a damaging act, just like pushing the coin into the sea, and the borrower must cover the redemption cost because his action caused it.

The Rosh sees it differently. The property is still whole, just like the coin on the ocean floor. The lender only has to spend money to make it available again. That is grama, not direct damage. And yet the Mishnah in Arachin still allows the lender to add a dinar and collect the redemption cost together with the debt. The Rosh therefore finds proof that even a loss at the level of grama — where nothing was destroyed and money must only be spent to recover the property — can be attached to an existing debt. That is exactly why the Rosh also allows the lender to add a collection expense, such as a messenger's fee, to what the borrower owes.

The Rambam disagrees and rules that the lender cannot recover the messenger's fee. For the Rambam, liability requires an act that caused the damage. In the coin case and the consecration case, there was such an act — throwing the coin,

מבואר דדוחף מטבע חייב משום היזק דדיני דגרמי ולא גרמא בעלמא, א"כ ה"ה דמקדיש נכסיו הוא חייב לשלם למלוה דמים של הפדיון משום מזיק, ממילא לא דמי לנידון דידן דהוצאות התובע דשלח שליח אחר המעות אינו אלא מניעה בעלמא ולא נחשב הזיק. וצ"ל דהרמב"ם ס"ל כשיטת הי"ש דדוקא ה ו צ א ו ת ס ר ב נ ו ת ה נ ת ב ע מחוייב לשלם לתובע, אבל שאר הוצאות פטור, דלא דמי לשיטת

or consecrating the property — and both are direct enough to count as garmi, which is why the person must pay. But sending a messenger is different. The borrower's failure to pay caused an expense, yet it wasn't itself an act of damage — it's only grama.

This lines up perfectly with the Yam Shel Shlomo, who divides expenses into two groups. When a defendant refuses to come to court and forces the claimant to spend money bringing him there, the defendant did something, so he must cover those costs. But ordinary collection expenses, such as sending a messenger after the money, cannot be recovered — because there the borrower did nothing at all.

ה ר מ ב " ם למקדיש נכסיו, דהתם חייב דמי הפדיון מדין מזיק משא"כ בנידון דידן דאם שלח שליח אחר המעות דאינו אלא מניעה בעלמא.

Putting It Together

The Rosh treats the coin in the sea as grama. He then uses the Mishnah in Arachin to show that even an indirect loss, where nothing was destroyed and money must only be spent to recover it, can be added to a debt. That allows the lender to add a messenger's fee to what the borrower owes.

The Rambam treats the coin in the sea as garmi, damage direct enough to require payment. On this reading, payment depends on an act that caused the loss. A borrower who simply failed to pay performed no such act. The Rambam would therefore agree with the Yam Shel Shlomo that ordinary collection expenses cannot be recovered.

Takeaway

The Rosh allows even a grama-level expense to become part of the debt, so the lender may add the messenger's fee. The Rambam lines up with the Yam Shel Shlomo: costs caused by an act that blocked collection may be paid back, but simply failing to pay is not enough.

IV. The Challenge

A challenge from a different direction.

That objection came from a different ruling on the coin. This one grants the Ketzos his ruling and attacks the comparison itself.

טבעת החושן (סי' י"ד) | Taba'as HaChoshen, siman 14

Rabbi Chaim Pinchas Scheinberg (1910 to 2012), born in Poland, raised in New York, and from 1965 in Jerusalem, where he founded and led Yeshivas Torah Ore.

The Ketzos answers that the Rosh is just following his own rule. When the borrower consecrates the property, it doesn't count as a direct act of damaging the lien, because he didn't actually wreck the object itself. It's just like the coin thrown into the sea — the

ומתרץ הקצות דהרא"ש לשיטתו דזה לא הוי מזיק שעבודו משום שלא הזיק גוף הדבר וכמו בדוחף מטבע של

coin is still fine, nothing about it got broken.

But if you look closely at what the Ketzos himself says, his answer seems shaky. Consecrating the property also changes the object — it turns into something different, because now it's holy. So why should it matter how he changed it? Whether he changed the object by ruining it or by making it holy, either way the object itself has been changed. So it should count as a direct act of damaging the lien, not an indirect one.

חבירו לים ע"ש, ואם לפי דברי הקצות לכאורה אין תירוצו עולה יפה, שהרי הקדש הוי גם קלקול בגוף הדבר, שהוי דבר אחר, ומה לי אם עשה שינוי ע"י קלקול או ע"י קדושה, סוף כל סוף הוי שינוי בגוף הדבר והוי שפיר מזיק שעבודו ע"ש, וצ"ע.

Term Note

מזיק שעבודו | *mazik shibudo* | **Damaging the Lien**

Harming a creditor's claim on property without laying a hand on the creditor himself.

Sugya Note

Rav Chaim Pinchas Scheinberg pushes back on how the Ketzos explained the Rosh. The Ketzos said that consecrating the property doesn't hurt the property itself — it only affects the lien on it — so it's like pushing a coin into the sea: indirect, and therefore exempt.

But Rav Scheinberg's problem is this: you can't really say consecration leaves the property unchanged. Consecrating it turns the object into something completely different and changes what it is at its very core. And if that counts as a change to the object itself — not just to the lien on it — then there's a strong reason to hold the man liable for damaging the lien after all.

שהקשה מרן הגאון הרב חיים פנחס שיינבערג זצוקללה"ה על ביאור הקצות בדברי הרא"ש, דהקצות ביאר דהרא"ש לשיטתו, דכיון שאין כאן היזק בגוף הנכס אלא רק בשעבוד שבו, דינו כדוחף מטבע של חבירו לים, שאין זה אלא גרמא ואינו חייב. אולם תמה טבעת החושן, דבהקדש אין לומר שלא חל שינוי בגוף הדבר, שהרי על ידי ההקדש נעשה החפץ לדבר אחר ונשתנה מעמדו בעצם, ואם כן הרי יש כאן שינוי בגוף החפץ ולא רק בשעבודו, ולכאורה היה מקום לחייבו משום מזיק שעבודו.

רש"י (שם, ד"ה אלא הפודה וכו') | Rashi, Arachin 23b

Rashi once more on the same page, now on the redemption itself rather than on the added dinar.

The owners redeem them from the consecrated property cheaply, for a dinar or for some small amount, on condition of paying [the wife and the creditor]. For consecration certainly did not take effect upon them, since [the property] is not his. And this small amount is on account of a rule of the sages.

בעלים פודין אותן מן ההקדש בזול בדינר או בדבר מועט על מנת לשלם, דודאי לא חייל עלייהו הקדש, שהרי אינו שלו, והאי דבר מועט משום גזרה הוא.

Sugya Note

A borrower who owes money and then consecrates his property to hekdesh (the Temple treasury). The lender has a lien on that property — a legal claim that lets him collect his debt from it. So there's tension: the borrower is trying to give the property to the Temple, but the lender already has rights to it.

Normally, when you consecrate something you own, it becomes fully holy and belongs to the Temple. But here the passage says the consecration never truly took hold on the property. Why? Because the property isn't fully "his" to give — the lender's lien sits on it, so the borrower doesn't have complete ownership. You can't consecrate what isn't fully yours. That's the meaning of "since it isn't really his."

So why does he pay anything at all? If the consecration didn't really work, the property should just be free and clear, and the owner shouldn't have to pay a thing to get it back. Yet the passage says he still redeems it cheaply, for a dinar or some small amount. The answer is that this small payment isn't because the Temple genuinely owns the property. It's only because of a rabbinic decree (gezeirah). The Rabbis were worried that people would get confused: if word got out that consecrated property could just be walked away with for free, people might come to treat real consecrated property lightly and take it without redeeming it. To prevent that confusion, the Rabbis required at least a token payment — a dinar or small sum — so that it still looks like a proper redemption, even though technically the property was never fully consecrated.

Takeaway

According to Rashi, the consecration did not affect the lien by Torah law. The small redemption payment is only a rule of the Sages.

רמב"ם (פ"ז מהל' ערכין הי"ד) | Rambam, Hilchos Arachin va'Charamin 7:14

The same Rambam, on a different subject: not damages, but consecrated property.

המקדיש כל נכסיו והיתה עליו כתובת אשה או שטרי בעלי חובות, אין האשה יכולה לגבות כתובתה מן ההקדש ולא בע"ח את חובו, שההקדש מפקיע השיעבוד שקדם, אבל כשימכור ההקדש הקרקע שלו ותצא השדה לחולין, יש לבע"ח ולאשה לגבות מן הפודה שהרי שעבודה עומד על קרקע זו.

One who consecrates all his property while he owed his wife her marriage settlement, or there were creditors' promissory notes against him: the wife cannot collect her marriage settlement from the consecrated property, and the creditor cannot collect his debt, because the consecration removes the lien that preceded it.

But when the Temple treasury sells its land and the field goes out into regular use, the creditor and the wife may collect from the one who redeemed it, since [the wife's] lien stands upon this land.

Sugya Note

The Rambam says clearly that the consecration does take effect by Torah law, and it removes the lender's lien. Rashi says the opposite: strictly speaking, the consecration never really took hold at all.

If we follow the Rambam, then the redemption isn't just a rabbinic setup — it's a real redemption that actually takes the property out of the Temple treasury's control.

But this creates an additional problem. If it's a real redemption, how can a single dinar or some small amount be enough to redeem it? Normally, redeeming consecrated property costs its full value — and when the owners themselves are the ones redeeming it, they even have to add an extra fifth on top. So paying just a dinar doesn't seem to fit.

מדברי הרמב"ם מבואר להדיא דהקדש חל מדאורייתא ומפקיע את השיעבוד, ולא כרש"י דס"ל דמעיקר הדין לא חייל הקדש כלל. ולפי"ז יוצא, דהפדיון אינו רק תקנה דרבנן, אלא פדיון גמור להוציא את הנכסים מרשות הקדש. ולכאורה קשה, דאם כן, האיך סגי בפדיון בדינר או בדבר מועט, הרי כל פדיון הקדש בעי להיות בשוויו, ואם הבעלים פודים, בעי נמי להוסיף חומש צ"ע.

V. The Nature of Consecration

What kind of act the redemption is, and why that decides how much it has to cost.

חי' הגרי"ז (תמורה, כ"ז:) | Chiddushei HaGriz, Temurah 27b

Rabbi Yitzchok Zev Soloveitchik (1886 to 1959), known as the Griz and as the Brisker Rav – the title by which he is named in this passage. He escaped Europe in 1941 and settled in Jerusalem, where his approach to defining how a halacha works shaped much of twentieth-century Torah study.

Consecration has two separate parts. First, there is the money side, where the property's value enters the ownership of the Temple treasury. Second, there is the holiness side. The property becomes holy and may no longer be used for ordinary purposes.

In the Rambam's case, the lender already had a lien on the property. Because of that lien, the property's value never entered the Temple treasury's ownership. The Temple could not fully own the value of property that was already tied to the lender's claim. There is therefore nothing to redeem on the money side, and no full value that must be paid.

Only the holiness took effect. To remove that holiness, all that is needed is an act that transfers it off the property. For this kind of redemption, everyone agrees that full value is not required. Even property worth a maneh can have its holiness transferred onto something worth only a perutah.

This fits the Rambam. The consecration can take effect by Torah law, and the redemption can be real, while a very small payment is still enough. The holiness took effect, but the property's value never entered the Temple treasury in the first place.

שביאור מרן הגאב"ד דבריסק זצוקללה"ה דכל הפדיון אינו אלא מצד איסור קודש, וליכא קנין ממון, דהממונות של החפץ מעולם לא נקנו לרשות הקדש, ואין צריך פדיון לדיני ממונות דידיה, וכיון דבעינן פדיון רק לאיסור קדש א"כ אינו אלא מעשה חילל בעלמא, ובזה כו"ע מודו דהקדש שוה מנה שחיללו על שוה פרוטה מחולל.

Term Note

חילול | *chillul* | **Removing the Holiness**

Transferring the holiness from consecrated property onto another object. This can take effect even when that object is worth far less.

Term Note

קנין | *kinyan* | **Transfer of Ownership**

The act by which ownership passes from one owner to another.

Sugya Note

The Brisker Rav gives us a new way to understand this redemption. It is not a purchase of the property from the Temple treasury. It is needed only to remove the holiness.

The property's value never entered the Temple treasury's ownership. Only holiness rested on it. There is therefore nothing to purchase back. All that is needed is an act that removes the holiness.

Since the redemption deals only with the holiness, and not with ownership of the property's value, something worth only a perutah is enough.

מבואר מהגרי"ז זצ"ל דיסוד חדש בגדר הפדיון, דכל ענין פדיון הקדש כאן אינו מדין קנין ממון, אלא רק מצד איסור קדש. דהיינו, הממון של החפץ מעולם לא נכנס לרשות הקדש בגדר ממון ממש, אלא רק חל עליו קדושה. וממילא, אין כאן צורך בפדיון כדי "לקנות" את החפץ מהקדש, אלא רק צריך מעשה חילול להסיר את קדושת ההקדש. וכיון שכל הפדיון הוא רק מצד איסור, ולא מצד ממון, סגי אפילו בפדיון בשוה פרוטה.

Takeaway

The Rambam can treat the consecration as real while still allowing a tiny redemption, because only the holiness needs to be removed.

Return to the words of the Mishnah.

Shiurei Rabbeinu Meshulam Dovid HaLevi
שיעורי רבנו משולם דוד הלוי (ערכין, כ"ג:)

Rabbi Dovid Soloveitchik (1921 to 2021), Brisk and Jerusalem. A son of the Griz, he led Yeshivas Brisk in Jerusalem for more than sixty years, and his shiurim on Kodashim were published by his students.

With this, the exact wording of the Mishnah makes sense. The Mishnah says, "The redeemer redeems on condition

ולפי"ז דייקא שפיר לישנא דמתני' ד"הפודה פודה ע"מ ליתן לאשה" וכו',

that he give the wife what she is owed." Because the redemption is done on condition that the wife be paid, one dinar is enough.

The wife already has a lien on the land. That lien is what makes the act here only an act of removing the holiness. For that, even a perutah is enough.

The money given to the wife is itself part of the redemption. It is not a separate purchase of the property from the Temple treasury. Only because her payment is built into the redemption can we say that the entire act is removing the holiness, rather than buying back the property's full value.

דכיון דפודה ע"מ ליתן לאשה לכן סגי ליה בדינר, דכיון דאיכא שעבוד האשה על הקרקע זהו בגורם דליכא הכא אלא מעשה חילול, ולכן סגי בפרוטה, ומאי דאזיל לאשה הוי חלק ממעשה הפדיון דרק משום כך אמרי' דליכא הכא דיני ממונות אלא מעשה חילול בלבד ע"ש.

Sugya Note

Rav Dovid explains that the single added dinar is enough specifically because the redemption is done on condition that the wife receive her marriage settlement and the creditor receive his debt.

The wife and the creditor already have claims attached to the land. Therefore, the redeemer's main act is only to remove the holiness from the property. The payment to the wife and the creditor is part of that same redemption.

There is no separate purchase or payment standing on its own. The entire act is one act of removing the holiness, with the payment to the wife and creditor included within it. That is why a small added amount is enough to complete the redemption properly.

מבואר בדברי מרן הגאון הרב משולם דוד הלוי זצוקללה"ה, דדוקא משום שהפדיון נעשה "על מנת ליתן לאשה בכתובתה ולבעל חוב את חובו", סגי בתוספת דינר בלבד. דכיון שהאשה ובעל החוב כבר משועבדים לקרקע, אין עיקר מעשה הפודה אלא מעשה חילול ההקדש, ואילו התשלום לאשה ולבעל החוב אינו אלא חלק ממעשה הפדיון עצמו. משום כך אין כאן מעשה מקח או פרעון ממוני העומד בפני עצמו, אלא כל עיקרו של המעשה הוא חילול ההקדש, והתשלום לבעלי החוב נגרר אחריו, ולפיכך די בתוספת מועטת כדי לקיים את מעשה הפדיון כהלכתו.

Takeaway

The wife and creditor are not paid through a separate purchase.
Their payment is built into the redemption itself,
so one small added amount is enough.

The Objection Falls Away

Sugya Note

We can see from all this that consecrating the property does not transfer the property itself, or its value, into the ownership of the Temple treasury. The creditor is blocked for a different reason: holiness rests on the property and prevents him from collecting.

Based on this, we can now answer the question raised by the Taba'as HaChoshen. He assumed that consecration is a change in the body of the object, and that's why he figured it should count as directly damaging the lien.

But according to our approach, there's no change to the body of the object at all. The actual ownership of the property didn't change because of the consecration — all that happened is that a new holiness appeared on it, and that is what stops the creditor from collecting.

So there's no real damage to the object itself here — only a blocking of the creditor's ability to collect. It's just like someone who pushes a coin into the sea: the coin still exists, it's still whole, there's only something getting in the way of taking it back. That's why it counts only as grama, not direct damage.

The same is true with consecration: the property itself didn't change at all. All that happened is that holiness rested on it, which holds back the lender from collecting from the property. And for that reason, it doesn't count as directly damaging the lien — it's only grama.

עכ"פ נראה מזה, דאם הקדש נכסיו אינו הקדש בגופו, דליכא קנין להקדש בעצם הנכסים, ממילא אין הטעם שאין בעל החוב גובה מהם משום שיצאו מרשות הבעלים ונכנסו לרשות הקדש, אלא משום דקדושת ההקדש מעכבת את הגבייה. ולפי מה שנתבאר, יש ליישב קושיית הטבעת החושן, דס"ל דהקדש הוי שינוי בגוף הדבר וממילא חשיב מזיק שעבודו. דלפי דרכנו אין זה שינוי כלל בגוף החפץ, שהרי עצם הבעלות בנכסים לא נשתנתה מחמת ההקדש, אלא שנתחדשה בהם קדושת איסור המונעת את גביית בעל החוב. וממילא אין כאן היזק בגוף הדבר, אלא מניעה בעלמא, והוי כעין דוחף מטבע לים, דהמטבע קיים בעין ורק יש מניעה להוציאו, ולכן אינו אלא גרמא. והכי נמי בהקדש, דגוף הנכסים לא נשתנה כלל, אלא נתחדש בהם איסור המעכב את מימוש השעבוד, ומשום הכי לא חשיב מזיק שעבודו אלא גרמא בעלמא.

Conclusion

We began with Shimon out two kinds of money: what he spent trying to collect on his own, and what he spent forcing Reuven into court. The first is settled early, and narrowly. A losing litigant pays nothing toward the other side's costs. The one exception is a defendant who refused to appear at all, and on the Yam Shel Shlomo's reading even he owes only what the refusal itself cost.

The second is where the sugya opens up. In Kesubos the same Rosh lets a lender add what collection cost him, a messenger's fee for instance, to the debt and take it back with the principal. His proof comes from an unlikely place. A borrower consecrates property that

a creditor already has a lien on. The creditor can't reach it. Someone redeems it, and the Mishnah has him add one further dinar. If a dinar can ride along with a debt, so can a messenger's fee.

That proof only works if consecrating isn't an act of damage, and the Ketzos shows that on the Rosh's own view it isn't. Throwing a coin into the sea is exempt. The coin still exists, and the owner merely has to spend to bring it up. That is grama, and grama is not paid for. Consecrated property is the same: whole, and costing money to release. The Mishnah adds the dinar anyway. So a loss that is nothing but an expense can still attach to a debt.

Not everyone reads the coin that way. The Rambam holds the thrower liable, because cutting a man off from his money is itself a kind of damage even with the coin lying whole on the sea floor. That one disagreement runs through the whole question. If consecrating is damage, the Mishnah's dinar is explained by damage and proves nothing about ordinary collection costs. And a borrower who simply doesn't pay has done nothing at all. On that reading the Rambam lines up with the Yam Shel Shlomo, and the Rosh stands on the other side of both.

The Taba'as HaChoshen presses from another direction. Consecration turns the property into something else, something holy. Isn't that a change to the object, and so direct damage after all? Answering him means asking what consecration actually does, and there Rashi and the Rambam part company. Rashi holds it never took hold at all, because the property was never fully the borrower's to give. The Rambam holds it took effect by Torah law and removed the lien — which makes the redemption real, and raises its own problem: a real redemption takes full value, and a further fifth when the owner redeems, so why is a dinar enough?

The Brisker Rav answers by splitting consecration in two. One part is the money, the property's value passing to the Temple. The other is the holiness that forbids ordinary use. The lender's lien was already on this property, so the value never entered the Temple's ownership at all. Only the holiness took hold, and lifting holiness takes nothing more than a small act. Rav Dovid finds the same thing in the Mishnah's wording: the redeemer pays "on condition of giving the wife," so the payment isn't a separate purchase. It is part of one act of removing the holiness.

This answers the objection. The property never changed owners, and its value never entered the Temple treasury. Only holiness rested on it and blocked the creditor from collecting. It was like the coin on the sea floor: still whole, but out of reach. That preserves the Rosh's approach. A loss that consists only of the expense needed to regain access can still become part of an existing debt.