YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**TALMUDIC METHODOLOGY**

**By Rav Moshe Taragin**

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**Shiur #04: *Kinyan Daled Amot***

Portable items (*mitaltelin*) require a physically demonstrative action to entail an act of *kinyan*. Smaller items must be lifted (*hagba’a*), while larger items may be pulled into the *reshut* of the *lokei’ach* (*meshikha*). The heaviest objects (such as boats or massive animals) may be acquired through *mesira* - merely transferring the reins from seller to buyer.

Ideally, *hefker* items should be acquired in accordance with these guidelines, but this would likely lead to violence, as competing individuals would attempt to execute the FIRST *kinyan* and enjoy the windfall of *hefker* acquisition. To avert these “dust-ups,” *Chazal* instituted a *kinyan* of “*daled amot*” (*Bava Metzia* 10a): The first person to be stationed within a four *amot* radius of the *hefker* item acquires the item even without performing a classic ACT of *kinyan*. Awarding the item to the “first arriver” without need for a physical act of *kinyan* naturally prevents altercations.

At first glance, this is a limited *takana* intended to solve a very specific problem. However, this narrow view is challenged by a *gemara* in *Gittin* (78a) which appears to extend the four *amot* rule to situation of divorce. The *mishna* describes a situation in which a husband hurled a *get* in the direction of his wife. If the *get* lands closer to her, she is divorced. R. Yochanan interprets the *mishna* literally, as describing a method of divorcing a woman simply by lodging the *get* in her GENERAL proximity. Rav, however, reinterprets the *mishna*, arguing that the woman is divorced only if the *get* lands within her four *amah* radius. Just as four *amot* facilitate the acquisition of a *hefker* item, they enable a necessary *kinyan* upon the *get* by a woman undergoing *geirushin*.

This extension of the four *amot* *takana* seems odd. Items within 4 *amot* have not undergone an act of *kinyan*, but rather have been unilaterally awarded to the first arriver to prevent hostilities among different people vying for the item. Since such hostilities will not occur between a man who wishes to divorce a particular wife, four *amot* should have no relevance.

The Ramban in *Gittin* senses this issue and asserts that a SECOND and separate *takana* evolved. Just as *Chazal* instituted the *takana* of *daled amot* and awarded *hefker* items to first arrivers, they similarly validated a divorce in a situation in which no *kinyan* was performed but the *get* was delivered into the four *amot* radius of a woman. Concerned with preventing *aguna* scenarios, *Chazal* were armed with a principle known as “*afka’inhu*,” which allows them to validate *get* situations that would not otherwise be effective.[[1]](#footnote-1) Although the *gemara* in *Gittin* does not explicitly invoke *afka’inhu* and the conditions in *Gittin* are not those that typically enable a*fka’inhu*, *Chazal* intervened nonetheless and validated an otherwise ineffective *get* delivery. No classic *kinyan* has been executed, yet the woman is divorced once the *get* reaches her *daled amot*.

The Ritva in *Gittin* quotes his teacher, the Ramban, but is dissatisfied with his explanation. He suggests a very different explanation of the *gemara* in *Gittin*, and in doing so revolutionizes the notion of *daled* *amot*. He argues that the reason the *Chakhamim* instituted the *takana* of *daled amot* was to prevent hostilities between two potential acquirers of an item, but they did not merely award the item to the first arriver; they REDEFINED a new form of *kinyan*. Although *kinyanim* are normally enabled by active demonstrations of *ba’alut* (such as *meshicha, hagba’a*, etc.), often, mere placement of an item in the *reshut* of the recipient is sufficient. This is referred to as *kinyan* *chatzer*.[[2]](#footnote-2) Perhaps *Chazal* – in attempting to prevent hostilities – “rezoned” a four *amah* radius as a person’s temporary *CHATZER* capable of facilitating *kinyanim* just as a personal *reshut* can.

According to the Ritva, the extension of four *amot* from the context of *hefker* items to *gittin* clearly indicates that the *takana* was not NARROWLY defined as awarding the item to the “first finder,” but rather re-landscaped a halakhic area of *daled amot* into a *chatzer*. Once rezoned as a *chatzer*, these four *amot* can operate outside the parameters of *hefker*; they may also assist in performing a *kinyan* necessary for *gittin*. Just as a husband deposits a *get* into his wife’s actual *reshut* (as described in the Torah), he may deposit it –at least according to Rav – into her four *amot*.

A similar question regarding how far the four *amot takana* may be extended arises in an interesting debate among the *Rishonim* as to whether four *amot* may be utilized to enable a sale, or even a gift. Presumably, since these are targeted *kinyanim* rather than a *hefker* “free for all,” the chance of hostilities is diminished, if not eliminated entirely. If Reuven wishes to gift the item to Shimon and not Levi, the latter’s act of *kinyan* would be ineffective, and Levi would therefore presumably not battle with Shimon over this *kinyan* prospect. Indeed, the Rashba in *Gittin* cites many *Rishonim* who inferred from the *gemara* in *Bava Metzia* which discusses about *daled* *amot* and *hefker* items that *daled* *amot* would NOT facilitate *mekhira* and *matana*. The Rashba himself, however, is incredulous. He maintains – like the Ritva in *Gittin* – that the *takana* rezoned *daled* *amot* as a personal *reshut* and once designated as such, these four *amot* can be employed for multiple functions. Just as the *daled* *amot* may be used to accomplish a *get*, they can similarly be utilized to facilitate a sale. In fact, a sale is a halakhically more powerful *kinyan* than *hefker* acquisition, since it is driven by the “*da’at makneh*” of the seller. As such, a *kinyan* that works for *hefker* acquisition CERTAINLY is effective for sales and gifts. This position of the Rashba, of course, assumes that *daled* *amot* is truly a new form of *kinyan*.

An interesting question raised by Tosafot in *Bava Metzia* (10a) may indicate that they also inclined to view *daled* *amot* as a newly zoned *chatzer*. Tosafot cite a well-known *gemara* in *Ketuvot* (32a) describing the “attempt of a *ganav*” to execute a “*ma’aseh kinyan*,” an action necessary to perform the crime of *geneiva*. In dragging the item into a *reshut ha-rabbim*, the *ganav* has not yet performed *meshikha* or *hagba’ah* and is not yet considered a *ganav* until he reaches his own *reshut* and *meshikha* is accomplished. Tosafot question why he isn’t considered a *ganav* once he draws the item into his own *daled* *amot*, long before he reaches his actual property. From the fact that they pose this question, it is evident that Tosafot consider *daled amot* a rezoned *chatzer* that is available for a broad range of *kinyan* performances, including *geneiva*. If they viewed *daled amot* as a narrow awarding of *chefetz* to the first arriver, the entire question would have been illogical.

What remains unclear, however, is Tosafot’s answer. They appear to claim that a *ganav* cannot employ *daled* *amot* to finalize his *geneiva* because the *Rabbanan* only instituted *daled* *amot* to prevent hostilities regarding *hefker* items or to facilitate a *get* and avoid *aguna* situations. It thus appears that Tosafot REJECT the Ritva’s and Rashba’s broad definition of *daled* *amot*, choosing instead the Ramban’s narrow definition of two parallel but different *takanot*.

Interestingly, the Shach (*Choshen Mishpat* 243:9) offers a very different and more complicated reason to justify the failure of *daled* *amot* in the case of a *ganav*. He may have viewed the *takana* in the same broad strokes as the Ritva and Rashba and therefore felt compelled to offer a different justification for why *daled amot* do not work for a *ganav*.

Perhaps the most ambitious extension of the scope of *daled* *amot* is found in the *Geonim*, who questioned whether *daled* *amot* can be used as the basis for a *kinyan agav*. *Agav* allows acquiring minor *mitaltelin* items as “throw-ins” to major land acquisitions, even without performing an act of *kinyan* upon the *mitaltelin*. This is an extremely powerful form of *kinyan* and very useful in situations that do not easily allow for *meshikha* or *hagba’ah*. However, only those who own land can initiate an *agav*, severely restricting the scope of this *kinyan*. Many *Geonim* suggested that since everyone theoretically owns his current *daled* *amot* (at least temporarily), anyone can utilize those *daled* *amot* as the basis for *agav* applications. According to this argument, Reuven can offer Shimon to transfer his *daled* *amot* to Shimon and “throw in” a cow without Shimon performing an act of *kinyan* upon that cow.

Without question, these *Geonim* agree with the Ritva and Rashba, who broadly defined *daled* *amot* as a rezoning of a *daled* *amah* radius as a temporary personal *chatzer*. Of course, that does not mean that the Rashba and Ritva would not necessarily agree with the *Geonim*’s conclusion. Just because *daled* *amot* has been re-designated as a *chatzer* and can facilitate *kinyanim* on *hefker*, *gittin*, sales, and (in theory) even *geneiva* does not mean that a person actually owns those *daled* *amot* sufficiently to manipulate the land as a basis for *kinyan agav*. (This question rests heavily upon the nature of *kinyan agav*, which is beyond the scope of this *shiur*.)[[3]](#footnote-3)

1. See <http://vbm-torah.org/archive/metho-by-topic/ketuvot.html>. [↑](#footnote-ref-1)
2. See <http://vbm-torah.org/archive/metho70/08metho.htm> for a description of the mechanism of this *kinyan*. [↑](#footnote-ref-2)
3. See <http://www.vbm-torah.org/archive/metho61/08agav.doc> for an explanation of this intriguing *kinyan*. [↑](#footnote-ref-3)