Notes on kiddushin 22b

*Eved k’na’ani* acquired with money, document and *chazaka*.

Source is Vayikra 25:41 that compares them to *karka* and we know that *karka* is acquired in those three ways. Slaves do not return to their original owners in *yovel* due to the *passuk* of *l’olam bahem ta’avodu*.

A *braisa* adds *chalifin*; our *mishna* specifically refers to *karka* only type of *kinyanim*, whilst this *b’raisa* refers to all *kinyanim* that work for *karka*, even if they also work for *m’talt’lin*

Shmuel – *m’shicha* works. This is missed out in the above places as it does not apply to *karka*.

A talking *m’shicha* works on things that are not considered to have *da’as*.

The *gemara* asks for examples of *chazaka*. One of them is ‘*higbi’o*’ – it is unclear who picked up whom. Rav Shimon responds that *hagbaha* is a more powerful *kinyan* than all others. The *gemara* asks what this means. The response is that the *b’raisa* tells us that the *slave* lifting the master works to acquire the slave. However, *tanna kamma* holds that the master lifting the slave does not work. Rav Shimon argues on this.

The *gemara* asks that given the above (*v’hashta*), why does a master not acquire a maidservant by way of *bi’ah*? It responds that she too receives benefit from that act and slave acquisition only works when the master benefits and the slave does not. What about *shelo k’darka*? Two responses: who says that there isn’t pleasure in that and also, there is a *hekesh* between the two types of *bi’ah* such that they are halachically equated.

Some questions:

1. The *gemara* makes a point of ‘given the above, why doesn’t *bi’ah* acquire?’ – Why wasn’t this a reasonable question without the *b’raisa*? It is an act of service!
2. Rashi explains the *gemara*’s question about *bi’ah* by saying that the maidservant lifts up the master during *bi’ah*. Why does he need to say this? Does the underlying act of service not suffice? And is this even true?

Lichora, with regard to all of the above, we have to say that *bi’ah* is not inherently an act of service and hence we have to look to other aspects to find an act of service.

Note that Rashbam in BB 53b explains the suggestion that *bi’ah* work to acquire as because he leans on her.

1. Why does the *hekesh* about the two types of *bi’ah* apply here? Seemingly the *bi’ah* is just a situation in which there is a lifting up / leaning and the *bi’ah* is not at all inherent to the *kinyan*. Hence, this has nothing to do with the halachic status of *bi’ah*.
2. How do we know that *bi’ah* is not *koneh*?
   1. I would think that this is because we have no source saying it is, when we might expect one.

Explanations of the question on the *b’raisa*’s comments about *hagbaha*:

1. Rashi here – Before Rav Shimon, we were discussing the slave lifting the master and then Rav Shimon comments on the master lifting the slave.
2. Rashbam in BB – We aren’t sure who is lifting whom in the comments of the *tanna kamma*.

This difference in explanation leads to different understandings of *v’hashta*:

1. Rashi – question on the *b’raisa*, independent of our discussion about Rav Shimon.
2. Rashbam – specifically now that we have understood that the *b’raisa* refers to the slave lifting the master, we can ask this question about *bi’ah*.

Idea emanating from Ritva, Ritva v2, Ramban and Rosh on the *mishna*:

*Karka* needs the acquirer’s body to benefit directly from the land. *Achilas peiros* does not work. The same thing applies to acquiring an *eved*. The master’s body must directly benefit from the slave, such as putting on his shoes.

If so, why does *holich keilav acharav l’beis hamerchatz* work? This is an example of something that is an *avodas eved* and that acquires even without direct benefit.

It comes out that there are two independent ways of acquiring an *eved k’na’ani*:

1. Direct benefit (slave lifting master)
2. Classic slave acts (taking clothes to bathhouse)

Both stem from the same idea of clearly showing the relationship between master and slave.

(This explanation is slightly difficult in Ritva who seems to necessitate both, as opposed to giving two options. One could suggest adding the word ‘*oh*’ to the text of the Ritva, given that he is likely based on Ramban.)

**Why doesn’t the *mishna* discuss *eved* acquiring himself with tips of limbs?**

Ritva:

1. It is a *k’nas* from which a person could acquit himself by admitting.
2. The *mishna* only discusses that which offers a difference between via himself and via others.
3. Based on the *Yerushalmi* – There is a *machlokes* as to whether or not a *get shichrur* is required in the case of going free due to losing a limb tip. The *mishna* is only willing to discuss cases which don’t need a *get shichrur* and doesn’t want to get involved in this *machlokes*, although the *mishna* is not taking sides.
   1. Tosfos 24a s.v. *Tanna* has a slightly different take – The *mishna* is like the opinion that a *get shichrur* is necessary and hence, it does not teach the case of limb tips.

***Chalipin* for *eved k’na’ani* to acquire himself**

Ritva:

From that which the *b’raisa* mentions trading slaves with *chalipin* but does not mention the slave acquiring himself with *chalipin*, this implies that he cannot acquire himself with *chalipin*. *Chalipin* is not *mitoras kessef*.

However, the *gemara* in Gittin seems to contradict this:

Gittin 39b – The master threw a hat at the maidservant and said ‘acquire this and yourself’. Rava said that this does not work to free the maidservant – not because it follows Rav Shimon’s opinion that *kessef* does not work to free, but because the *makneh*’s vessels were used in the attempted *kinyan*. This implies that were the vessels owner by the *koneh*, the *chalipin* would have worked. (Q from Alex – How would an *eved* own anything with which to do the *chalipin*? A – I suppose something given to him on condition that the master does not get it.)

Opinions:

1. Based on the aforementioned *gemara* in Gittin as well as that which one master can sell to another with *chalipin*, an *eved* can acquire himself with *chalipin*. It is not mentioned in our *mishna* as it is the equivalent of *kessef.*
2. ‘Tosfos’ – The *gemara* in Gittin did not mean *chalipin* when discussing *keilav shel makneh*. It meant the money of the *makneh*, but the case happened to be with a piece of clothing being used for its monetary value instead of money itself, so the *gemara* said *keilim*. The *hava* *amina* that money of the *makneh* would work stems from not limiting the case of a woman paying a man in order to do *kiddushin* to an *adam chashuv*.
3. Ritva’s *v’efshar od* – *Chalipin* would work for the monetary aspect but not the *issur* aspect. Hence it would still need a *get shichrur* and thus is excluded from our *mishna*. However, once a *kinyan mammon* has been done to free the slave, the master would then be obliged to provide a *get shichrur* to undo the *kinyan issur*. Hence, the *gemara* in Gittin contrasts the case of *keilav shel makneh* which does nothing to *keilav shel koneh* which would undo the *kinyan mammon* and then leave the master obligated to provide a *get shichrur*.

**Yehuda Hindo’a**