

Blazing Our Own Path

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Before Shavuot, when we try to internalize the meaning of Kabalat Hatorah and apply it to our own lives, we are often faced by what seems like an unsolvable paradox. On one hand, the Torah can be seen as an ancient text that has been interpreted in a myriad of different ways over Jewish history. It is often difficult to get a clear idea of how any particular issue was viewed by Chazal over the generations. On the other hand, the text's very antiquity and multifaceted nature poses a serious challenge to anyone trying to form his or her own style of thinking and achieve a personal Kinyan (acquisition) HaTorah. In short, it is often difficult to understand the past, and it can be equally difficult to blaze your own path toward the future. It may be possible to gain insight into this dilemma through an exposition of a famous passage in the Ketzot Hachoshen (A halachic work by Aryeh Leib HaCohen Heller 1745 – 1812).

The Ketzot Hachoshen (200:4) raises a very interesting issue with regards to the character of the acquisition method known as "Kinyan Daled Amot." The process in question is based on a Gemara in Bava Metzia (10a), where Reish Lakish states in the name of Abba Cohen Bardela that our Rabbis enacted that one may acquire objects within a 4-amma radius around him so as to prevent fighting [between parties trying to take possession of a particular object]. The Ketzot cites the Shach and S'ma who bring the opinion of the Talmidei HaRashba contending that kinyan daled amot is only effective when the acquiring party precedes the object that is to be acquired. However, should the object arrive on the scene before the person, daled amot would be ineffective. Conversely, Rabbeinu Yerucham (Netiv 10:2) does not differentiate, seemingly implying that the chronology is of no import. The Rosh in Bava Metzia (1:28) concurs. Shach qualifies the opinion of the Talmidei HaRashba and says that even they would agree that the chronology does not matter if the object is a metzia (a lost object that any finder is permitted to take) or hefker (ownerless).

The Ketzot posits that the reasoning of the Talmidei HaRashba is based on the opinion of Tosfot in Kiddushin (25b). Tosfot deals with the statement that when one tries to acquire an animal, kinyan meshicha (acquiring by pulling an object into one's own domain) works only in a simta (alleyway), while kinyan mesira (acquiring by handing over) is effective only in a reshut harabim (public domain). The Tosafist R' Chaim Cohen offers the following explanation. According to Tosfot a simta is classified as a reshut hayachid (private domain) given over to whomever arrives there first. Since, generally, the seller will arrive with his or her wares at the place of a transaction before the buyer, the place where the animal is becomes her domain. If that is the case, the halacha is abundantly clear that "mesira" has no power in the seller's domain because there is lacking hachnasa lireshut (bringing an object into one's own sphere of control). The only kinyan that will work is meshicha, which is seen as uprooting the animal from its original resting

place. (See Tosfot in Kiddushin and in Bava Batra 76a for further elaboration). This, says the Ketzot, is the source of the Talmidei HaRashba's position. Since kinyan daled amot does not work in the seller's domain (Shulchan Aruch C.M. 200:2), if we are dealing with a transaction between a buyer and a seller the object will be considered birshut mocher (the seller's domain) and daled amot will be ineffective. However, if the object is ownerless, then there is no interfering reshut and daled amot will work even if the object preceded the koneh.

What remains to be explored is the position of Rabbeinu Yerucham and the Rosh. If we accept the Ketzot's assertion that even in a two-person transaction they would hold that the object could precede the buyer, how is it possible to acquire an object from another using kinyan daled amot when there is an interfering reshut? The most obvious possibility would be to say that they disagree with the basic assumption that the place of the animal is considered the reshut of the seller with regard to kinyanim when it is not under his direct physical control. Thus, when one attempts kinyan daled amot, some sort of in between state of ownership is created to allow bringing it into his domain. Another possibility could be that part of the takana (rabbinic injunction) of kinyan daled amot is that when one is clearly acquiring, the Rabbis decreed that the object being within your four-amma radius is tantamount to your actually uprooting the object from its place which would create a method similar to meshicha (pulling).

What we see coming out of this analysis are two basic views on acquisition revolving around the following basic question. How much activity is necessary for acceptance? It seems clear from both opinions that some sort of preparation is needed, and the argument is about what should the nature of this preparation be. According to the Talmidei HaRashba one cannot be completely passive in acceptance, rather they must precede the acquisition and be prepared before it occurs so that there will be no interference. However, the Rosh and Rabbeinu Yerucham take the position that while it is important that there be nothing interfering, it is still possible to actively pursue objects that are already in the place of the transaction.

These two perspectives can also be seen as different ways of approaching Torah learning. The Talmidei HaRashba's approach to Kinyan HaTorah would focus on preparation of all of the basic foundations of a topic and through thorough preparation the insights will come on their own accord. This could be seen as analogous to the idea posed by the gemara in Nedarim (55a) quoting the verse, "from the desert to Matana." (Bamidbar 21:18) The Gemara states that the Torah is given as a gift to one who transforms to be like a desert for it. In other words, whomever does the proper preparations to remove external obstacles has the Torah brought {given??} to him. Similarly the Gemara in Megilla (6a) states that one can only believe one who says, "I have toiled and I have found", meaning that to acquire Torah one must toil, but even then the Torah will be considered a "M'tziah" (a *found object*) The approach of the Rosh and Rabbeinu Yerucham would be more along the lines of this second pasuk. Their perspective would be to actively search out things that are already there, looking directly for the deepest

point of Chidush that would characterize their personal Kinyan HaTorah. This would necessitate actually ridding oneself to a certain extent of preconceived notions in order to truly see the Torah in a new light.

When we approach Shavuot we should try to utilize both of these perspectives to create an approach that synthesizes both solid preparation of the basic issues in the topic and deep thought that will dig down to the root of the ideas presented. It is through harmony of these two ideas that one can not only uncover new ways of seeing the Torah, but also truly understand, to the best of one's ability, the thinking of earlier scholars who approached this same text.

So, there is truly no quick and easy solution to the with which we began, and the integration of {opposing styles of} the Rosh/Rabbeinu Yerucham with the Talmidei HaRashba is surely a task that will require much time and effort. However, it is important to realize that "as to the toil, so is the reward" nothing can stand in the way of sincere desire to grow in Torah. May we all merit to have a true Kabbalat Hatorah on this Shavuot achieve, "Place our share in Your Torah."