

OVERVIEW of the Daf

1) Claiming ownership of land (cont.)

The Gemara continues to recount the incident of Rava bar Sharshom who retained land that belonged to orphans to satisfy a debt that was owed to him.

Abaye instructed him to return the land and seek collection for the other debt after the orphans grow older.

2) A disputed inheritance

R' Iddi bar Avin and another person had a dispute regarding the inheritance of a palm tree and eventually the other person admitted that it belonged to R' Iddi bar Avin.

R' Iddi bar Avin sought collection for the fruit the other person had eaten and a dispute emerges between R' Chisda on one side and Abaye and Rava on the other side whether R' Iddi bar Avin can claim reimbursement for the consumed fruits.

3) Why would he lie?

In a case where one person produced witnesses that the land belonged to his father and a second person produced witnesses that he occupied the land for three years R' Chisda ruled in favor of the one who has witnesses to his chazakah.

Abaye and Rava disagreed since this case involves a **מגור** במקום חזקה – a *migo* in the face of witnesses.

4) One who is incapable of establishing a chazakah

R' Nachman ruled that one who could not establish that he occupied the land for three years must return the land and the fruit.

R' Zevid asserts that if the occupant claims that he entered the field to consume the produce he is believed.

The rationale for this ruling is explained.

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REVIEW and Remember

1. What did Rava bar Sharshom hope to gain by concealing the document of security?

2. Why did R' Chisda reject R' Iddi's request to recover the fruit that was eaten from his field?

3. What happens when an occupant can only prove that he was on a field for two years?

4. What is the case of **אבא דר' נסכא** 'אבא דר' נסכא?

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 l'illui nishmas Perla bas Naftali Nachman
 by Alan and Sheila Shapiro

Distinctive INSIGHT

Collecting from the property of orphans

אמרו רבנן הבא ליפרע מנכסי יתומים לא יפרע אלא בשבועה

Rava bar Sharshom had occupied a piece of land, and a rumor began circulating that he was taking land owned by orphans. When Abaye questioned him, Rava explained that the father of the orphans had given the land to him as collateral to use and to defray the need to pay back a loan (**משכנתא** (דסורא)). After that loan was paid back, Rava had another loan with the father which was owed. No arrangements had been made regarding this second loan. He had already occupied the land for enough years to establish a chazakah, and he also knew that if he would return it, he would have to deal with the orphans, and the law is that one who comes to collect from orphans cannot do so unless he takes an oath. Instead of returning the land, Rava decided to keep it to defray the second loan. He knew that he had a *migo* that he could have claimed that he bought the land, so now he would be believed that he had a second loan to collect.

Abaye told Rava bar Sharshom that the *migo* was faulty. He could not claim that he bought it, because there was a strong rumor that the land was owned by the orphans. Rava had to return the land, and contend with the orphans when they were older.

The Gemara in Arachin (22a) teaches that property of orphans may not be taken to pay any loan of their father unless interest is eating away at the money. The question is, therefore, why Rava was using his strategic position to attempt to collect the loan from orphans. Also, Abaye did not argue against Rava's attempting to collect from orphans other than pointing out that the *migo* was not valid, but the very fact that he was trying to collect from orphans was not the issue.

Yad Ramah determines from our Gemara that while it is not allowed to initiate collection of a loan from orphans, if one is already in possession of property of orphans, he may legally maneuver to keep the assets as payment for a loan.

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HALACHAH Highlight

Taking a Rabbinic oath on a claim of land

דמגו דאי בעינא אמינא לקוחה היא בידי מהימנא וכו'

Since, if I wanted, I could claim that I purchased the land and I would be believed etc.

Rava bar Sharshum wanted to collect money that was owed to him from orphans by eating the fruit from their land rather than claim his money by the strength of his contract. His thinking in doing so was to avoid the oath that goes together with collecting money from orphans. Rishonim¹ note that even when Rava claims that the land is his so that he could continue to eat the fruit he would still be required to take a *שבועת היסת* – a Rabbinic enacted oath. What, then, did Rava gain with his plan if he anyway had to take an oath? Rashbam² writes that Rava would not have to take an oath when he claims that the land is his due to the principle that one does not take an oath that relates to a claim of land. Rosh³ rejects this approach since the principle that exempts one from taking an oath that relates to land applies only to a Biblical oath, but since the oath in question is a Rabbinic oath Rava would have been obligated to take that oath when he claimed the land was his.

Nesivos Hamishpat⁴ suggests that Chazal only introduced the *שבועת היסת* when a person seizes movable objects. The only claim to ownership of one who is in possession of a movable object is his possession. Since another person is claiming

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Tosafos (ד"ה אמור) explains that there are two reasons given why one may not collect from orphans. One reason is that there is a possibility that the father left some means of collection for the lender. The orphans, being young, are not privy to their father's arrangements, so we must protect them just in case payment for the loan has already been arranged. Another reason is that paying back a loan for their father is a mitzvah, and, being minors, they have no obligation to perform this mitzvah. Rava, who attempted to collect from orphans, obviously holds that the reason we do not collect is due to the possibility that it has already been paid. Rava knew that he had not been given any payment, so he was justified in pursuing payment for himself. ■

ownership of that same item Chazal instituted an oath so that the one in possession of the object should not appear as a thief. Regarding land, in addition to the fact that the occupant is presently on the land he also has supporting his claim the fact that he has been in possession of the land the last three years and the challenger was silent. In such a case where he also has a *chazakah* to his benefit he does not appear as a thief even though someone else is claiming ownership of the land, and thus Chazal never required him to take an oath to confirm his ownership of the land. ■

1. עי תוס' ד"ה מגו.
2. רשב"ם ד"ה מהימנא.
3. רא"ש פ"ג סי' י"ז.
4. נתיה"מ סי' ק"מ סק"ב. ■

STORIES Off the Daf

A forbidden oath

"אלא בשבועה..."

Many people are unaware of the dire consequences of the most insignificant seeming things, especially regarding how one treats his parents. Perhaps one reason why is that children of today feel that their parents owe them everything. As one renowned mechanech famously put it, "Children of old used to honor and fear their parents since they knew that taking care in fulfilling this mitzvah brings one long life. But today, parents cave into their children's every whim to avoid being harassed relentlessly. Instead of 'Honor your father and mother that

you may live...' it is, 'Honor your son and daughter so that they'll let you live!'"

Although people used to honor their parents greatly, this very respect precipitated a strange custom in certain communities. One who was required to swear was warned with what seemed to be the worst possible threat: "And if he is lying, his parents should be cursed!"

On the one hand, people were more inclined to believe such a vow, since, who in his right mind would curse his parents? Surely everyone knows that one who does this is cursed from Hashem, as the verse says explicitly. But on the other hand, maybe this in itself is disrespectful or worse towards one's parents?

Someone decided to ask Rav Yehudah, ז"ל, the son of the Rosh, ז"ל, his opinion regarding this strange practice.

"This kind of practice is absolutely forbidden!" he replied forcefully. "What if a person thinks he is telling the truth but he is mistaken and what he said is really a lie? Surely this unfortunate person has cursed his father. Who could be so callous as to utter even a doubtful curse directed at his parents?"¹ ■

■ תשובות זכרון יהודה, סי' צ"א

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The Gemara unsuccessfully challenges this ruling.

In another incident someone was only able to produce one witness that he occupied the land for three years.

It was suggested that this case is similar to the case of R' Abba's chunk of silver.

The Gemara begins to elaborate on this case. ■