

OVERVIEW of the Daf

1) Testifying about property one sold to a friend (cont.)

The Gemara continues to challenge the explanation suggested by R' Sheishes why it is assumed that land was sold with a guarantee, but there is no such assumption when movable objects were sold.

The Gemara succeeds at presenting two unanswered questions against R' Sheishes's explanation.

The more correct distinction why one may not testify about land that one sold to a friend, but one is permitted to testify about movable objects one sold to a friend is that land is still encumbered to the seller's creditor as opposed to movable objects.

This explanation is challenged, forcing the Gemara to limit the circumstances in which this explanation is true.

Another unsuccessful challenge to this explanation is presented.

2) The seller of land testifying on behalf of the buyer

The Gemara cites the statement of Ravin bar Shmuel in the name of Shmuel that someone who sold land may not testify on behalf of the buyer and asks about the circumstances of the case. ■

REVIEW and Remember

1. What happens to the property that remains in the possession of a thief who dies?

2. Explain יורש כרשות לוקח דמי רשות יורש כרשות לוקח דמי רשות.

3. Does a creditor have a the right to collect an object designated as an אפותיקי?

4. When does a buyer have recourse even if he bought the property without a guarantee?

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 מרת ציפורה פייגא בת הרב אלכסנדר סנדור ע"ה

Distinctive INSIGHT

When is the seller disqualified from testifying?

המוכר שדה לחבירו שלא באחריות

The Baraisa (43b) taught that if someone sells a field to a buyer, and a third party comes to challenge the ownership of the field, the seller may not testify on behalf of the buyer that the field is his. Although it may seem that he might be impartial and eligible to testify, Ravin bar Shmuel, in the name of Shmuel, notes that as long as the land is held by Shimon, the buyer, a creditor of Reuven, the seller, who finds that Reuven has nothing with which to pay can then approach Shimon and collect from the land he bought from Reuven. If, however, it is shown that the land never belonged to Reuven, Reuven's creditor would not be able to collect from it. This, then, is the direct interest which Reuven has in whether the land stays with Shimon or not.

The statement of Ravin was issued even in a case where the sale to Shimon was made with no guarantees (שלא באחריות). Even though Reuven has no interest whether the field actually remains with the buyer or is taken by a third party who challenges the original ownership, Ravin notes that he does, nevertheless, have an interest that his own creditor have access to the land in case of collection.

Rabeinu Yona explains that when the third party comes to challenge the validity of the sale of the land from Reuven to Shimon, the nature of his challenge is not that Reuven is a thief. If this was the case, the reason Reuven would be disqualified from testifying would be due to his interest to clear his own reputation and not be accused as a thief. Yet, Ravin stated that the aspect of the case which disqualifies Reuven is his interest that his creditor have access to the land. It must be, therefore, that the nature of the challenge of the third party is that someone who had stolen it from him had subsequently sold his field to Reuven. It is noteworthy that the Gemara does not recognize the very substantiating of the sale as a factor is Reuven's willingness to testify on the behalf of Shimon. Although the sale was with no guarantee, we might have thought that Reuven does not want a third party to seize the land from Shimon, because this would cause Shimon to be upset with Reuven for cheating and selling him land he did not own. In fact, ש"ך (C.M. 37) and ב"ח rule that we do not suspect that a seller would testify falsely in order to

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HALACHAH Highlight

Using a lulav and esrog that grow on one's property in Eretz Yisroel

ידעינן ביה בהאי דלא הוה ליה ארעא מעולם

We know about this man that he never owned land

Tosafos¹ mentions an opinion which maintains that every person possesses at least four amos of land in Eretz Yisroel for one of two reasons. One reason is that the tribes divided the land amongst themselves and thus, as their descendants, all Jews must have some parcel of land that is theirs. Even though many gentile nations have conquered the land it does not become theirs since land cannot be stolen. Secondly, every Jew is given four amos in which he will be buried and that space is considered his even during his lifetime.

Teshuvos Machazeh Avrohom² was asked, based on this position cited in Tosafos, whether a person living in Eretz Yisroel could fulfill the mitzvah of lulav and esrog that grew on his property. Since the land at some point in history was stolen from the true owner, it remains stolen land even if it has changed hands numerous times, even if the present occupant paid the full price for the land. Since Tosafos writes that every Jew owns four amos of land in Eretz Yisroel as an inheritance from his ancestors it is possible that this land belongs to someone else and the current resident is in possession of stolen

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simply avoid having the buyer be upset with him. סמ"ע, however, learns that we do not allow the seller to testify under these circumstances not only due to the reason given by Ravin in the Gemara, but also due to the risk that the seller might lie just in order to sustain the sale and to make sure that the buyer not have any bad feelings toward him. ■

land. The only way to fulfill the mitzvah would be to purchase one's lulav and esrog from someone else since by doing so the stolen property changes hands (שינוי רשות) and as such it is no longer tainted and could be used to fulfill the mitzvah.

In his response he answered that there is no reason to be concerned about this matter since even Tosafos notes that the matter is debatable and many of the other Rishonim strongly subscribe to the position that we do not assume that all Jews are considered owners of land in Eretz Yisroel. Furthermore, even if we are concerned with the opinion mentioned in Tosafos it is reasonable to assume that everyone is considered a partner in the land and accordingly, it could be assumed that others would not be particular if the present occupant would use the lulav and esrog for a mitzvah that grows on the property that he presently occupies.³ ■

1. תוס' ד"ה דלא הוה ליה.
2. שו"ת מחזה אברהם או"ח סי' קמ"ג.
3. ע"ע בשו"ת להורות נתן או"ח סי' נ"ג-נ"ט. ■

STORIES Off the Daf

Stolen goods

דדוקא ממכר דהוה ליה יאוש

A certain wealthy man noticed that his house had been plundered. When he heard that many other houses had been robbed and that a certain suspicious person who was new to town had disappeared during the night in a wagon presumably loaded with the stolen goods, he gave up hope of ever recovering his property. He soon forgot about the entire matter. After all, they did not even know which direction the man had taken or where he was headed.

In a distant town, an unknown person set up shop and sold many valuable objects at rock-bottom prices. One of the townsfolk purchased an expensive item

for a very low cost. He was overjoyed and didn't consider for a moment that the seller might be offering such bargains because he wished to quickly unload items that were actually stolen from another town.

Many months later, the man who had purchased the valuable object heard about the robbery. After making inquiries it was proved that he had purchased one of the valuable objects stolen from the wealthy man. When the wealthy owner heard that the purchase had been cheap he demanded the remaining value of the stolen object. "It is true that I gave up on the property and since the thief sold it to you, you acquired it, but he had no right to sell it cheap. I demand that you either pay me the difference or return the object and I will refund what you paid."

But the purchaser refused. They

brought their case before the Shach, ז"ל, and he responded, "We find on Bava Basra 44 that the gemara reasoned that the owner of a stolen cow or garment may serve as a witness against the thief if he gave up on his property since it will not be returned to him even if his testimony is believed.

"We see from here that even if the stolen property was sold for less than its value—as is usually the case—the owner gets no compensation from the buyer for this. Otherwise, the premise of the gemara would be false since the owner would be gaining from the man who bought the stolen object."

The Shach turned to the owner, "The thief must pay you back, not the man who unknowingly bought the object from him!"¹ ■

1. ש"ך, חו"מ, ס' שני"ג, ס"ק ה'