

OVERVIEW of the Daf

1) The seller of land testifying on behalf of the buyer (cont.)

The circumstances of the ruling of Ravin bar Shmuel in the name of Shmuel that someone who sold land may not testify on behalf of the buyer are explained.

2) The buyer/seller relationship

R' Pappa rules that a seller must attempt to retrieve a donkey that was taken by an idolater from the one who bought it from him.

Two qualifications to this ruling are added.

Ameimar maintains that the seller has no obligation to help the buyer recover the donkey from the idolater.

3) A craftsman

Rabbah asserts that the Mishnah's ruling that a craftsman cannot establish a chazakah is limited to where the object was given to him in the presence of witnesses because otherwise he could assert ownership with a *migo*.

Abaye challenges this qualification.

Abaye cites a Baraisa that will present a challenge to Rabbah.

Before presenting the challenge Rabbah clarifies the intent of the Baraisa.

The Gemara resumes Abaye's unsuccessful challenge.

Rava begins to mount a challenge to Abaye that will support Rabbah's position. ■

REVIEW and Remember

1. When is a seller obligated to help a buyer recover property that was taken by an idolater?

2. What is Abaye's issue with Rabbah's qualification to the Mishnah?

3. How does Rabba explain the Baraisa that discusses the launderer's claim that he bought the garment from the owner?

4. When there is a disagreement between the customer and the craftsman regarding salary, what is the halacha?

Distinctive INSIGHT

Were the items seen in the possession of the craftsman?
אמר ליה אביי אי הכי אפילו בעדים נמי וכו'

The Mishnah (42a) taught that an artisan or professional who was given materials to fashion into a final product cannot claim that he bought the materials from his client, unless he has proof. In our Gemara, Rabba clarifies that this claim is dismissed only where he was given the materials in front of witnesses. The craftsman cannot deny that he received the items, and he also may not claim that he returned them without witnesses. If, however, there were no witnesses to verify his being given the materials, the craftsman may claim that he subsequently bought them from their owner. The strength of this claim is based upon a *migo* that he now has, in that he could have denied the entire incident. Therefore, now that he admits that he received the goods, he is believed when he claims that he bought them. Abaye disagrees with the approach of Rabba, and, based upon a Baraisa, he proves that the legal position of the craftsman hinges upon whether the objects have been seen in his possession. If we have spotted the materials in his possession, he obviously cannot claim that he returned them, and he has no *migo*. If we have not seen the objects in his possession, he could have claimed that the incident never occurred, so he is believed to say that he bought them from their owner. And this is true even if he originally was given the items in front of witnesses. Abaye holds that objects presented to a craftsman in front of witnesses need not be returned in front of witnesses.

Rashbam summarizes that three outcomes are seen at the conclusion of the Gemara. One is that objects given by their owner to a craftsman in front of witnesses need not be returned in front of witnesses. In deference to the Baraisa, even Rabba subsequently retracts his earlier assertion, and he agrees to this. Secondly, if an object is actually spotted in the possession of a craftsman, the craftsman is not believed to say that he bought it from his client. He has no *migo* to say that he returned the items and then bought them. Finally, if the items were not seen in the possession of the craftsman, he would be believed to say that he bought them, with a *migo* that he could have claimed that he returned them. This is true even if he had originally been given the item in front of witnesses, for, as we have seen, he need not return the items to their owner in front of witnesses. ■

HALACHAH Highlight

Selling a house to an idolater

מידע ידע דסתם עובד כוכבים אנס הוא

The buyer knows that the average idolater is a robber

There was once a person who sold his house on a Jewish street to a idolater. At the time of the transaction he accepted upon himself that if any of the neighbors would be damaged by the idolater he would reimburse them for their loss. Some time later the neighbors approached the seller and claimed that the idolater had caused significant damage to their property but they did not have witnesses who could corroborate their claim. Since the seller did not want to pay unless they could prove that damage occurred, the involved parties turned to Rav Natronei Gaon for a ruling. Rav Natronei Gaon¹ responded that it is unnecessary for the neighbors to have to prove their claim since, as our Gemara relates, it is assumed that idolaters will cause damage. Therefore, since the seller does not have any evidence to indicate that damage did not occur and it is unreasonable to think that all the neighbors would attempt to make a false claim against the seller, the neighbors will be able to collect after

they take an oath regarding the value of the damages.

Pischei Teshuvah² notes that there are three opinions regarding the permissibility of selling one's house on a Jewish street to a idolater. The Gaonim maintain that it is always prohibited for a person to sell his house to a idolater even if he needs the funds to supports his family and is willing to guarantee the neighbors that he will reimburse them for any damages that may occur. Others hold that only one who is selling the house for profit is bound by these restrictions but it is permitted for one to sell a house if it is to support himself if he guarantees to reimburse the neighbors for damages. Rosh and Tur maintain that when one cannot find a Jewish buyer it is permitted to sell the house to a idolater even without providing the neighbors with a guarantee regarding damages. If, however, a Jewish buyer is available it is prohibited to sell the house to a idolater even if the seller guarantees to reimburse the neighbors for damages. Pischei Teshuvah concludes that halacha follows the opinion of Rosh and Tur. Kesef Kadashim³ permits selling a house to a idolater as long as all the houses are independent of one another as are the property lines and the houses do not open up to a common courtyard or alleyway. ■

1. דבריו הובא בסמ"ע סי' קע"ה ס"ק ס"ט.

2. פת"ש שם ס"ק ט"ו.

3. כסף קדשים שם. ■

STORIES Off the Daf

The wicked borrows and does not repay

לוח רשע ולא ישלם

Sefer Chassidim records a story of a certain wicked person in relation to a verse that appears on today's daf: "לוח רשע ולא ישלם – A wicked man borrows and does not repay."

A certain person was destitute and needed money for expenses. He could have asked for charity like most indigents but he shied away from this drastic step. "How can I take money from public funds and deprive a poor family?" he reasoned.

But the bills needed to be paid. Finally, when he really had no choice, he borrowed a large sum to cover his most basic expenses. He reasoned that this was better than taking charity since he

was certainly not depriving those who could not afford to give. In any event, he was comfortable borrowing so this is what he did.

Day by day his loans mounted and when anyone would request money from him he would explain that he could not pay. After all, sometimes people borrow in good faith but then find themselves unable to repay the debt as planned. In this man's case, it eventually became clear to all that he was borrowing with no real plan to pay any of it back—unless Hashem sent him a windfall, which he felt certain would definitely come one day. In that case, he would repay all of his outstanding loans and everyone would be happy with him.

But strangely, this man continued to request loans from unsuspecting prospects even though he had not yet returned a penny of his many prior debts and still had no means to repay any of the loans. When people noticed his

strange behavior they confronted him. "How can you possibly borrow when you have not yet repaid such a fortune of money? Aren't you ashamed to borrow money in such bad faith? Why not take what you can from tzedakah if you are qualified to receive it?"

But this man was unperturbed. "Is it better for me to take tzedakah and rob a poor man who has no way to support his family? This way, I take from those who don't need the money as much and everyone is happy. And I do hope to repay the loans someday with Hashem's help..."

The Sefer Chassidim comments: "This man is very wicked since not only does he make a tremendous chilul Hashem, he also causes people to refrain from lending other indigents who would repay their loans, making their lives much harder!"¹ ■

1. ספר חסידים, סי' ש"ח ■