

OVERVIEW of the Daf

1) Valid witnesses (cont.)

The Baraisa continues to discuss whether a kablan is able to testify on the borrower's behalf.

2) Establishing a chazakah

R' Yochanan discusses different people who cannot make a chazakah but their children can make a chazakah.

The Gemara clarifies the rulings of R' Yochanan.

Rava gives an example when even the grandson of a thief cannot establish a chazakah.

The case of the robber mentioned earlier is explained.

A Baraisa discusses when people who cannot establish a chazakah can resume their right to establish a chazakah.

The last ruling of the Baraisa is explained.

R' Nachman in the name of R' Huna asserts that the people mentioned in the Baraisa who cannot establish a chazakah can keep the land if they bring proof but a thief is not granted the land even if he brings proof.

The Gemara explains the novelty of this ruling that relates to a thief.

R' Bibi asserts that although the thief will not be granted the land that he extorted, he will be refunded the money that he paid.

R' Bibi adds an additional qualification to this ruling.

3) A forced sale

R' Huna rules that a forced sale is valid.

A rationale for this ruling is suggested and rejected. ■

REVIEW and Remember

- Under what circumstances can the son of a craftsman establish a chazakah?

- When is a son able to make a chazakah on his father's property?

- Why doesn't a thief keep the land if he brings proof that it is his?

- Is a forced sale valid?

Distinctive INSIGHT

When does coercion undermine one's actions?

תליוהו וזבין זביניה זביני

Rav Huna taught the halacha that if a seller is coerced into agreeing to a sale, the sale is nonetheless valid. Rashbam learns that the case is where the seller receives payment for the sale, and this is why we say that although he sold it against his will, he nevertheless came to terms with the fact that he at least was being paid. This explanation is supported by the Gemara later (48a) where Rav Hamnuna discusses a case where someone manages to acquire land from a gentile who is a murderer who was given land by a Jew in order to spare his life. This person cannot legally become owner of the land, even if he goes to its original owner and pays him for the land. We acknowledge that the original owner was not pleased about forfeiting his land, and even now he is only accepting payment in fear of the gentile who may be monitoring the developments. The Gemara there contrasts that halacha to the case of Rav Huna who rules that a forced sale is valid, and the Gemara clarifies that the sale is only valid where he receives money for his land.

Yet, some Rishonim learn that while it is evident from the conclusion of the Gemara that the statement of Rav Huna applies where the seller received payment, it could be that initially, the Gemara did not assume that a valid sale hinged upon the seller's receiving payment. In fact, Ran explains that it is based upon this initial understanding that the Gemara continued to compare this ruling with the laws of coercion regarding bringing an offering and delivering a גט. In both of these cases there is no apparent benefit for the person involved, and yet in a case where he is coerced the act is not valid. This is parallel to the case of one who is forced to sell land and receives no payment for it.

Tosafos (ד"ה אילימא) explains that the Gemara, in fact, knew that a sale can only be valid when it is forced, if the seller receives payment. Yet, the cases of bringing an offering and giving a גט are similar to this case in that the person is aware that even though he is being forced, he is still receiving atonement in the case of an offering, and he is being released from the obligations to clothe, support and conduct himself as a husband in the case of the גט. This is the basis for the Gemara's question in each case that coercion causes the actions to be disqualified in these

HALACHAH Highlight

Does financial pressure qualify as an אונס?

אמר ר' הונא תליוהו וזבין זביניה זביני

R' Huna ruled: If one is forced to sell property the sale is valid

Terumas Hadeshen¹ extends the leniency of the halacha of תשלומין – making up a missed shemoneh esrei. Halacha states that one who missed shemoneh esrei due to circumstances beyond his control (אונס) is allowed to make up that missing prayer by davening shemoneh esrei twice at the next tefilla. Terumas Hadeshen asserts that the definition of אונס is not limited to circumstances where it was impossible for the person to daven; rather even an אונס that was financial in nature qualifies for this ruling. Thus, for example, if a person would have suffered a financial loss by interrupting what he was doing to daven and therefore did not daven he is permitted to make up that missing shemoneh esrei at the next tefilla. He adds, however, that l'chatchila, one should interrupt even if he will suffer financially by doing so, but if he did not interrupt he may make up the missing shemoneh esrei. This ruling is recorded in Shulchan Aruch², and Mishnah Berurah³ adds that even one who did not interrupt his business in order to make a profit qualifies for this ruling, not only those who did not interrupt in order to prevent a loss.

Teshuvos Divrei Yatziv⁴ cites support for this ruling from our Gemara. The Gemara discusses the case of one

(Insight...continued from page 1)

cases, while Rav Huna states that coercion does not undermine a sale.

Regarding the nature of the coercion being discussed, Rashbam explains that the person was being hung or suspended to the point where he was subjected to great suffering until he agreed to the sale. Tosafos and Rosh explain that the coercion could simply be that the seller was under financial pressure. ■

who was forced to sell his property. The sale is considered valid despite the coercion involved since any sale of property contains an element of אונס. If a person was not in need of money he would not sell his property and despite the inherent אונס the sale remains valid. This indicates that financial pressure qualifies as an אונס and accordingly we could apply the same definition to the halacha of תשלומין. A similar thought was expressed by Rav Moshe Feinstein⁵. He was asked whether a person could accept a job where the employer asked that he not cover his head while at work. Rav Feinstein wrote that the need to earn a living is considered an אונס and as such it would allow him to override a positive command so certainly it would exempt him from putting a yarmulke on his head. ■

1. שו"ת תרומת הדשן סי' ה'.
2. שו"ע או"ח סי' ק"ח סעי' ח'.
3. מ"ב שם ס"יק כ"ד.
4. שו"ת דברי יציב יו"ד סי' קנ"ב.
5. שו"ת אג"מ או"ח ח"ד סי' ב'.

STORIES Off the Daf

An absent guarantor

"קבלן..."

The beginning of today's daf discusses the subject of an ערב קבלן, a guarantor with an added degree of responsibility.

One person borrowed a significant sum of money from his friend, but he ran into hard times and wished to quickly move out of the town before he ran into real trouble with the local non-Jews. When his Jewish creditor heard about his plans he immediately summoned him to beis din to ensure that the man paid his debt before leaving for

a distant destination for an indefinite amount of time.

Not surprisingly, the beis din ordered the borrower to remain in town until he paid his debt in full. The borrower could not afford to do so, and would be in real trouble if he stayed in town for much longer. Finally, a third party agreed to pay off the borrower's debt in full. He accepted a kinyan and absolutely obligated himself to repay the debt. The lender was satisfied with this, since although he was owed a significant sum, the new קבלן would now pay it off, slowly but surely, month by month.

The borrower left town, but shortly afterwards, the ערב suddenly passed away. The lender tracked down the borrower and demanded that he pay off his

debt since his cosigner had died.

"But the cosigner agreed to pay it off for me and even accepted a kinyan obligating himself to pay the debt. Perhaps you should go to his grave and ask him for the money."

When this case came before the author of Bnei Chiyah, zt"l, he ruled that the borrower was still obligated to pay the debt. "Although the ערב made the debt his own, the original borrower is still obligated to pay until the debt is paid off in full, unless the lender makes a clear statement discharging the original borrower from his obligation. Since no such statement was given in our case, the original borrower must pay what he owes."¹ ■

1. ספר בני חיי, ס' קכ"ו, אות ד'.