

Today's Daf Digest is dedicated
L'ilui Nishmas Mr. Israel Gotlib of Antwerp and Petach Tikva, Yisrael Tzvi ben Zev (23 Av).
Family Weiss, London

OVERVIEW of the Daf

1) A forced sale (cont.)

The Gemara answers the challenge to R' Huna's ruling that signing a notification nullifies a forced sale.

2) Witnesses who claim their testimony was invalid

R' Nachman rules that witnesses who claim that the document was written on trust (אמנה) or were preceded by a notification (מודעה) are not believed.

Mar bar R' Ashi disagrees and rules that witnesses are believed that there was a notification and explains the rationale behind his position.

3) Establishing a chazakah on ones wife's property

The novelty of the Mishnah's ruling that a husband cannot establish a chazakah on his wife's property is explained.

This explanation is unsuccessfully challenged.

It is noted that from the Mishnah it seems that if the husband has proof that he bought the property from his wife he would be given the land. This implication is challenged.

The Gemara begins to answer this challenge. ■

REVIEW and Remember

1. What is the point of dispute between R' Nachman and Mar bar R' Ashi?
2. Does a man relinquish the rights to his wife's property by merely signing a document to that effect?
3. Which types of Rabbinic enactments could a person choose not to follow?
4. Explain נחת רוח עשיתי לבעלי.

Distinctive INSIGHT

Denying the rights to a rabbinic privilege

וכדרבא, דאמר רבא כל האומר אי אפשי בתקנת חכמים כגון זאת שומעין לו, מאי כגון זאת?...יכולה האשה שתאמר לבעלה איני ניוזנת ואיני עושה

The Mishnah had taught that a husband cannot establish a chazakah in the property of this wife. The Gemara noted that this is obvious, because the husband has full rights to take the produce of the fields belonging to his wife, so his utilizing the field certainly does not indicate ownership at all. Why, then, would we even think that he could claim that he owns the field and that his wife's silence indicated her foregoing of her rights?

The Gemara answers that the novelty of the ruling of the Mishnah is in a case where the husband had previously denied the rights to his wife's field. Now that he no longer has any assumed rights as a husband to eat the produce, if he does so we might think that his chazakah might indicate that he bought the field, and that his claim is valid. The lesson of the Mishnah is that, nevertheless, the husband's act of taking fruit is an act the woman would not protest even if it would be unjustified.

The ability of a husband to relinquish his right to his wife's מלוג נכסי has a precedent, as voiced by Rava. A married woman is allowed to declare that she is relinquishing the right to being supported by her husband, and that she will consequently not forfeit any income she may earn to her husband (איני ניוזנית ואיני עושה). Although the support she receives from her husband is sanctioned by the rabbis, a woman can decline this privilege and live with the consequences of her decision. Similarly, in our case a husband can relinquish the income which her fields may produce. The Gemara clarifies that in both cases we are dealing with relinquishing a right to future benefits that are yet to be provided. The woman can relinquish support which is yet to come, and the husband may relinquish his rights to benefits his wife's land may yet generate.

Tosafos notes that the statement of Rava does not prove that a person may legally divest himself of a right which the rabbis grant to him. The statement of the woman may be understood to mean that she does not wish to be supported by her husband, and, accordingly, we cannot

HALACHAH Highlight

A woman who forgoes the mortgage she has on her husband's property

אלמא אמרה נחת רוח עשיתי לבעלי

We see that she can claim that she agreed only to please her husband

The Gemara discusses the case of a woman who sells the right to land that is mortgaged to her kesubah. The ruling of the Mishnah cited in our Gemara is that even if someone buys the property from the husband and then purchases the land from his wife, she can invalidate the sale with the claim that she agreed to sell the property only to please her husband. Rishonim disagree about the halacha of a woman who forgoes the mortgage she has on her husband's property rather than sells the property. Tur¹ in the name of his father the Rosh holds that there is no difference between a case of a woman who sells the property that was mortgaged to her kesubah or whether she simply forgoes that mortgage; her consent does not constitute a halachically valid agreement and she can claim that she agrees only to please her husband.

Bedek Habayis² writes that Rambam maintains that a woman who forgoes the mortgage she has on her husband's property loses the right to collect from that property and cannot claim that she agreed only to please her husband. The reason is that the claim that a woman agreed to sell the mortgaged property only to please her husband applies only when the buyer first approached the husband and then secured the

(Insight...Continued from page 1)

force her to eat that which he provides. Her rights may still be protected, and she may be able to reverse her statement, but as long as she is not taking from him, she does not have to submit her earnings to the husband.

R' Elchonon Wasserman, in his *קובץ שיעורים* explains that the reason Tosafos is reluctant to say that the woman is actually foregoing her rights to being supported forever is that the support she is to receive is not a one-time life-long grant. Rather, it is a daily dose of support, and what she denies today should not determine the status of her support for tomorrow. ■

agreement of the wife. If the buyer approached the wife first and she agrees to sell the property, she would not be able to claim that she agreed to sell the property only to please her husband since she is not following through on her husband's decision to sell the land. Our case of a woman who forgoes the mortgage she has on her husband's property to her husband is akin to the latter case and thus she cannot assert that she agreed only to please her husband since he did not previously sell the property. Similarly, if the husband wanted a loan and the lender was concerned with the possibility that the husband would die and asks the wife to forgo the mortgage she has on his property she cannot claim that she agreed to please her husband since the husband did not previously sell the property. ■

1. טור אהע"ז סי' צ"א.

2. בדק הבית שם בשם הרמב"ם פי"ז מהל' אישות הי"א. ■

STORIES Off the Daf

Collateral damage

נחת רוח עשיתי לבעלי

A certain man borrowed a large sum of money from a very good friend and furnished his wife's good Yom Tov clothes as collateral until the debt could be repaid.

As Yom Tov approached, the debtor asked for permission to use the collateral for Yom Tov. The lender sympathized with the hardship of going through Yom Tov without nice clothing, so he allowed the couple to regain possession of the garments for the duration of the festival. Tragically, the debtor died shortly after Yom Tov.

Since it was normal for the ruler of their city to take advantage of sudden death by sending soldiers to expropriate any property owned by the widow under the pretext of unpaid taxes or the like, the distraught widow "sold" all of her belongings, including her Yom Tov outfit, to the faithful friend who had lent her husband the money in the first place. When it was clear that there was no danger of the government stealing her belongings the faithful friend returned everything—except the Yom Tov clothes which he claimed were owed to him as collateral on the original loan.

The woman was very unhappy about this and took him to the R"l, zt"l, for adjudication. "I am afraid that the faithful friend has every right to take the clothes in lieu of his debt. After all, it is

highly unlikely that the husband did not have his wife's agreement to hand over her garments as collateral since presumably he was no thief. The faithful friend only agreed to release them until after the holiday, but now that it is over they must be restored to him until the debt is paid."

But the Mordechai reports that others argued on the R"l's reasoning from a principle brought on today's daf. "Although we are not speaking about thieves, our sages teach us that a woman sometimes agrees to something merely to make her husband happy. The same is presumably true in our case. Unless the faithful friend has proof otherwise, he must return the woman's finery at once."¹ ■

1. מרדכי, ב"מ, רמז שס"ד ■

