

OVERVIEW of the Daf

1) Making a chazakah on a married woman's property (cont.)

The Judges of the Diaspora disagree with Rav and rule that a chazakah may be made on the property of a married woman.

Rav ruled like the Judges of the Diaspora and when questioned explained that he referred to the specific case of R' Yosef mentioned earlier (50b).

2) Making a chazakah on her husband's property

The necessity for the ruling that a woman cannot make a chazakah on her husband's property is explained.

The Gemara infers from the Mishnah that if a man sells property to his wife the sale is binding and he may not claim that he was merely attempting to expose her hidden money.

This inference is rejected.

R' Nachman reported that an amazing halacha was said in the Beis Hamidrash, namely, that if a man sells property to his wife the sale is binding and he may not claim that he was merely attempting to expose her hidden money.

R' Huna and R' Nachman debate whether this ruling is indeed outstanding.

Another unsuccessful challenge to R' Nachman's ruling is presented.

R' Huna bar Avin rules that a woman acquires the field sold to her by her husband and he has the right to eat the produce.

R' Abba, R' Avahu and others maintain that the land is a gift and he merely called it a sale to strengthen her rights.

The assumption that the transfer of the land to the wife is binding is unsuccessfully challenged.

Rav rules that if a husband sells land to his wife she acquires the land and he has the right to the produce whereas if it was given to her as a gift she acquires the land but he does not have the right to the produce.

R' Elazar maintains that in both cases the husband does not collect the produce.

R' Chisda and his contemporaries discuss which opinion

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Distinctive INSIGHT

The tale of a sale, and how to endow

אמר רב המוכר שדה לאשתו קנתה והבעל אוכל פירות, במתנה קנתה ואין הבעל אוכל פירות

Rav taught that if a man sells his wife a field, the wife becomes the legal owner of the property, and the husband will receive the benefit of all produce from the land, according to the law of **נכסי מלוג** of his wife. If the man gives his wife a field as a gift, she again is the owner of the property, but this time the husband will not receive the benefits from the land. The reason we do not use the rule of **נכסי מלוג** is that we say that the nature of the gift is that it is given with a generous and open hand (**נותן בעין יפה נותן**), and the husband intends to grant his wife full benefits of the land, without retaining any gain for himself.

Rebbe Eliezer disagrees and he rules that in both cases, both in that of a sale and in that of a gift, the husband does not retain any rights to the **נכסי מלוג** benefits of the field. Rashbam explains that the reason for Rebbe Eliezer is that we say that the husband meant to give his wife a gift, even when he "sold" it to her, and a gift is granted open-handedly. The reason the husband cloaked it as a sale is only to empower his wife as a buyer and not just as a receiver of a gift.

As we have seen, according to Rav there is a difference between a sale and a gift. In Shitta Mikubetzes, **רבינו יהונתן** explains that when the woman receives a field as a gift from her husband, she is embarrassed to stipulate that the gift be given generously. It is therefore reasonable that this was not delineated, although the woman expects not to provide her husband with the produce of that field. However, when the woman buys a field from her husband, she should have been comfortable to clearly record the fact that she is buying the field expecting not to share its produce with him, if that is the case. If she does not demand that this detail be mentioned, it is because she is willing to allow him to collect the produce of the field she is buying, as with any of her **נכסי מלוג**.

יד רמה explains the distinction between a sale and a gift from the perspective of the husband. When the husband sells the field, and he insists to collect payment for the land, he thus indicates that he is not walking away from benefit associated with the land. He therefore expects to continue to receive its produce. However, when the husband gives the field outright as a gift, this indicates that he does not consider the land to be a source of benefit at this point. We therefore rule that he is giving away the land and its produce to his wife. ■

HALACHAH Highlight

Selling one's transgressions

כתב לו על הנייר אן על החרס אף על פי שאין בו שוה פרוטה

If he wrote on paper or earthenware, even if it was not worth a perutah

Poskim discuss the possibility of a person selling to his friend his transgressions so that the buyer should receive the Heavenly punishment rather than the seller. In other words, Reuven gives Shimon a sum of money so that Reuven's transgressions should now belong to Shimon. Is such a transaction effective?

Maharsham¹ questions whether the mechanism of this transaction is effective to transfer Reuven's transgressions to Shimon. The normal procedure for a transaction is for the buyer to give money to the seller for the object he wishes to purchase and in this case the opposite procedure is being followed since it is the seller who is paying the buyer to take his transgressions. Not only is this different mechanically from the way a sale is normally conducted but also Tosafos² in our Gemara indicates that an acquisition via cash (קנין כסף) does not work if the cash is given by the seller to the buyer. Another proof that such a transaction is invalid can be inferred from a ruling of Rema. Rema³ rules that a person who has already fulfilled a mitzvah or studied Torah may not sell the merit generated by that mitzvah or Torah study to another. This clearly points to the fact that mitzvos and transgressions are not a

REVIEW and Remember

1. Explain גלוויי זווי הוא דבעי
2. What is the meaning of the principle עבד לווה לאיש מלוה
3. Why was R' Chisda criticized for ruling in accordance with the position of R' Elazar?
4. Why do we not accept deposits from married women?

commodity that can be sold.

Teshuvos Machaneh Chaim⁴ also maintains that it is not possible for a person to sell his transgressions since Heaven does not hold one person responsible for the transgressions of another since – זה נהנה וזה מתחייב לא אמרינן – This one benefits while the other is liable is not a recognized principle. After citing numerous other proofs that this type of transaction is invalid he concludes that both the seller as well as the buyer should be punished for their attitudes. The seller adopted a gentile approach thinking that he could remove his Heavenly responsibility without repentance and the buyer deserves punishment due to his lax attitude regarding transgressions which shows great insolence towards Heaven. ■

1. שו"ת מהרש"ם ח"ג סי' קנ"א
2. תוס' ד"ה אע"פ שאין בו
3. רמ"א יו"ד סי' רמ"ו סע' א'
4. שו"ת מחנה חיים חו"מ סי' כ' ■

STORIES Off the Daf

The bubble bursts

עבד לווה לאיש מלוה

On today's daf we find that a person should prefer not to borrow money if he can help it, so as to avoid becoming a "slave to his creditor."

Rav Shmuel Tefilinsky, zt"l, once told a story about a wealthy investor from outside of Israel. This man arrived in Israel with six thousand lirot with which to invest in real estate. Since the rents at that time were very high in Tel Aviv, this man decided that it would be worthwhile to borrow another six thousand and purchase a building for the astronomical price of twelve thousand lirot.

The man did so and for a time every-

thing went well but not long after his big purchase there was a terrible depression and no one was able to pay the exorbitant rents they owed. Real estate in general fell precipitously and the building which a short time before had been worth twelve thousand lirot was now only worth four thousand.

Of course, the bank did not really care about this wealthy man's bad luck; they just wanted him to either make the payments on his loan or return the money that he had borrowed. They sold his building for four thousand and the miserable man was thrown in jail because he was unable to raise the remaining two thousand lirot that he owed.

Rav Tefilinsky commented, "If only this man had been happy to purchase a more modest building for six thousand,

he would have had a building worth two thousand lirot during the hard times. And later, when real estate picked up again, its value would be restored to six thousand.

"This is a mussar haskel. Never borrow if one can avoid it!"¹ ■

1. קונטרס הצוואה עמוד ל"ד

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should be followed.

Rava issues a final ruling on the matter.

The Gemara resolves what seems to be a contradiction in Rava's ruling.

3) Accepting deposits

A Baraisa discusses from whom one may accept a deposit and whom it should be returned to in the event that it was improperly accepted. ■