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CHICAGO CENTER FOR Torah & Chesed

This month's Daf Digest is dedicated in memory of
Mr. Israel Gotlib of Antwerp and Petach Tikva and Yisrael Tzvi ben Zev.
By Mr. and Mrs. Manny Weiss

OVERVIEW of the Daf

1) A wife who gave her property to her son (cont.)

R' Idi bar Avin concludes his proof to the Gemara's explanation why Shmuel rejected R' Yirmiyah bar Avin's proof that the son should retain the property his mother gave him. Abaye rejects this proof.

2) טובת הנאה

Abaye states that a woman who sells the rights to collect her kesubah keeps the money for herself.

R' Shalman rejects the Gemara's proof.

Rava rules that a woman keeps the טובת הנאה for herself and the husband does not even have the right to the profits of that money.

R' Pappa and R' Huna the son of R' Yehoshua prove that a woman cannot sell her melog property.

This proof is rejected.

It is suggested that a woman should be able to generate funds by selling her kesubah.

After an exchange the Gemara decides that this suggestion should also be rejected and the conclusion is that a woman is not required to sell her kesubah to pay for an injury she caused another person.

In light of this discussion the Gemara wonders why a woman who injures her husband is not required to sell her husband her kesubah to pay for his injury.

One resolution is suggested and challenged and the Gemara concludes that the Baraisa that rules that a woman who injures her husband does not lose her kesubah refers to a very specific case.

Another Baraisa is cited that challenges the statement that a woman never loses her kesubah to pay for an injury.

Rava offers an alternative explanation of the Baraisa.

It is suggested that the enactment of Usha regarding the rights to טובת הנאה is subject to a dispute between Tannaim.

Two alternative explanations of the dispute are presented which do not relate to the issue of טובת הנאה. ■

Today's Daf Digest is dedicated in memory of
Colonel Henry Crown ob"m
On the occasion of his yahrzeit

Today's Daf Digest is dedicated in memory of
אבי מורי שמואל יצחק בן אריה
Shmuel Yitzchak Backenroth ZT"L
sponsored by his children

Distinctive INSIGHT

One who sells a loan may subsequently forgo the loan
המוכר שטר חוב לחבירו וחזר ומחלו מחול

Shmuel teaches that even after a person sells his loan document to a buyer, the seller can still forgo the loan, thus renderingthe loan document obsolete. Ktzos HaChoshen (66, #26) brings several explanations why this is true.

Ri"f and Rambam (Mechira 6:12) explain that the legal validity of selling a loan document and the right to collect the loan recorded therein is only recognized rabbinically, and not on a Torah level. Therefore, when such a sale of the loan is performed, the seller does not relinquish his rights as lender vis-à-vis the borrower. Tosafos and Tosafos HaRosh ask, though, why shouldn't the sale of a loan document be recognized by the Torah? The lender should be able to transfer the money represented by the loan, and handing the document should enable the transfer of the rights to the land of the borrower which was mortgaged to back the loan. Three answers are given to this question.

Tosafos explains that the lender had the right to collect the land of the borrower in the event the money to repay the loan is not collected. The lender never owned the land itself, and the rights to the land are not a tangible item which can be sold to the one who buys the document. Nimukei Yosef answers, in the name of Rabeinu Yona, that the halacha is that when a lender subsequently collects land from the borrower, his stake in the land is only מכאן ולהבא - from now and on. The lender cannot sell his position regarding collecting this land, because we do not say that the lender's rights are reflected back to the beginning from when the loan was made. Chidushei Harav Chaim, in his comments to Rambam (ibid.) explains that it is evident from the words of Rambam that although a document is a tangible item which can be transferred with a קנין, the document is not the money itself. The document just represents the rights to collect the loan, and when the document is sold, the buyer acquires just that—the document. The money is still owed to the original lender, and he may still forgo the loan if he so wishes.

Urim v'Tumim asks, according to Ri"f and Rambam, that according to Abaye, who holds that a lender who collects is the owner of the land retroactively, the sale of the loan should be valid on a Torah level, and the loan should not be able to be forgiven. Ketzos HaChoshen (ibid.) explains that even according to Abaye, the lender only acquires the field once it is in his hands. Before that, it is not his, and he cannot sell it with the loan document. The loan can therefore still be forgiven by the lender, as the land was not his to be sold with the document. ■

HALACHAH Highlight

A mother's rights in the stipulations of the kesubah

שהמוכרת כתובתה לאחרים לא הפסידה כתובת בנין דכרין

A woman who sells her kesubah to others does not lose the rights to ***כתובת בנין דכרין***

Shulchan Aruch[1] writes that a woman who sells her kesubah, whether to her husband or to another person, does not lose any of the stipulations **(תנאים)** of her kesubah. The only right she loses, asserts Beis Shmuel[2], is the right to collect money for her maintenance **(מזונות)** from her husband's heirs. In contrast, a woman who waives **(מוחלת)** her kesubah to her husband loses the rights to all the stipulations of the kesubah and there is a dispute whether she also loses the dowry **(נדוניא)** in the event that it is no longer intact.

Chelkas Mechokeik[3] infers from the wording of Shulchan Aruch that all the stipulations of the kesubah are considered to be under the domain of the woman, even those that are not designed for her benefit. Moreover, even if the woman does not waive the right to collect the essential kesubah but she merely states to her husband that she waives the stipulations of her kesubah, her statement is binding. The ramifications of such a statement is that her daughters will not be able to collect payment for maintenance after their father dies and their claim that they already acquired the right for maintenance and someone else cannot give it away is ignored. Similarly, the mother has the right to waive the right of the sons to collect the כתובת בנין דכרין. This is in contrast with another halacha where Shulchan Aruch[4] rules that a mother cannot waive a husband's agreement to support his stepdaughters. The reason for this distinction, explains Chelkas Mechokeik[5], is that in the case of the stepdaughters the agreement was made for the benefit of people who were already in the world, whereas our halacha refers to a circumstance where the agreement was made for unborn children and the language of the agreement is that they will receive support after the father dies but they do not acquire anything until after the father dies. As such the mother has the right to waive a privilege that has not yet been activated. He notes however, that there are dissenting opinions who maintain that a woman does not have the authority to forgo the maintenance of her daughters and thus leaves the matter unresolved. ■

1. שו"ע אה"ע סי' ק"ה סע' ד'
2. ב"ש שם סק"ט
3. חלקת מחוקק שם ס"ק י"א
4. שו"ע אה"ע סי' קי"ד סע' ג'
5. חלקת מחוקק שם ס"ק י"א ■

REVIEW and Remember

1. How does Abaye prove that טובת הנאה for a kesubah belongs to the wife?

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2. What is the reason a person is not permitted to remain with his wife if she does not have a kesubah?

_____

3. Do children lose their כתובת בנין דכרין if their mother sells her rights to the kesubah?

_____

4. When do melog slaves go free when a limb is knocked off?

_____

STORIES Off the Daf

Groundless litigation

ואטרוחי בי דינא בכדי לא מטריחינן

A certain businessman was fairly sure that his friend had not fulfilled his obligation in one of their numerous business deals. Since the friend was very wily, the businessman did not wish to reveal to him his precise claim until they were in front of a beis din. Although he had a good point, it was far from clear that his claim was correct. The businessman approached his friend and told him that he would like to go to beis din.

The friend asked, "Regarding what matter are we appearing before beis din?"

"What difference does that make to you? But believe me, you will find out in court..."

The would-be defendant refused to go to beis din until the plaintiff revealed what his precise claim was. The would-be plaintiff refused to divulge the precise nature of his claim and the two decided to consult with the Be'er Sheva, zt"l, regarding whether the defendant must go to court without prior knowledge of the plaintiff's claim.

"The defendant must go to court even if the plaintiff refuses to divulge his claim," the Be'er Sheva replied.[1]

But when this question came before the Shach, zt"l, he disputed the Be'er Sheva's proofs and ruled that a defendant can be forced to beis din only after the plaintiff reveals why he is taking him there.[2]

When this question was brought before the Chacham Tzvi, zt"l, he ruled like the Shach . "We find clearly in accordance with the Shach from Bava Kamma 89. There we see that one may not trouble a beis din for no reason. If the plaintiff refuses to tell the plaintiff what his claim is about this will possibly trouble beis din for no reason. Perhaps after the defendant hears the plaintiff's claim he will admit and pay!" [3] ■

1. ספר באר שבע דף קי"א
2. ש"ך חו"מ ס' י"א ס"ק א'
3. שו"ת חכם צבי ס' קי"ט ז

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