

OVERVIEW of the Daf

1) Clarifying the dispute between R' Meir and Rabanan (cont.)

The Gemara answers why it stated that R' Elazar was refuted by the Baraisa on one point rather than on two points.

It is noted that the Baraisa cited in support of R' Yochanan's position refutes Shmuel on two points.

Shmuel suggests that the rationale behind the Rabanan's position is that a guarantee that is missing is assumed to be a mistake by the scribe.

A contradiction in Shmuel's position regarding this point is noted.

The Gemara resolves the contradiction.

Support for the distinction between loan documents and sale documents, is cited.

2) Selling land with or without a guarantee

Abaye discusses when Reuven, who sold land to Shimon with a guarantee, has the right to defend Shimon's interests when someone claims rights to that property.

Abaye discusses when Shimon, who purchased land from Reuven without a guarantee, has the right to renege on the deal.

3) Recovering an investment in a land purchase

Rav and Shmuel disagree whether someone who purchased land that turned out did not belong to the seller recovers only the purchase price or even the value of the improvements.

R' Huna was asked whether the buyer could recover the value of the improvements if that was specified at the time of the sale. This question presents two possible explanations for Shmuel's position.

R' Huna did not give a definitive answer to this inquiry.

R' Nachman cites Shmuel as ruling that the buyer cannot collect the value of the improvements even if that was specified because it looks like interest.

Rava unsuccessfully challenges R' Nachman's position.

Another challenge to R' Nachman's position is presented.

Rava explains the Baraisa in a way that does not refute R' Nachman. ■

Today's Daf Digest is dedicated
 Dr. and Mrs. Shmuel Roth
 In loving memory of their mother
 מרת מרים הינדא בת ר' שמואל ע"ה

Distinctive INSIGHT

The seller must fend off the threat of his creditor

דינא הוא דאזיל ראובן ומשתעי דינא בהדיה

Abaye taught the law of Reuven who sold a field to Shimon with a guarantee. Reuven's creditor then comes and attempts to collect the field from Shimon. The law is that Reuven may intercede and argue the case with his creditor, and the creditor cannot disregard Reuven and claim that his claim is only with Shimon, who is now in possession of the field. The reason for this is that Reuven can point out that once the creditor takes the field from Shimon, because the original sale was done with a guarantee, Shimon will inevitably return to him, Reuven, to reimburse the forfeiture of the field to the creditor. Reuven is therefore considered a direct party to the claim of the creditor to the land occupied by Shimon.

The text of our Gemara is "דינא הוא" - the law provides Reuven the right to step in and stop the creditor from taking the land from Shimon. Yet, it is not clear whether it is required and expected from Reuven to defend Shimon from the creditor, or if he simply has the option and the right to do so, but that he is not obligated to do so.

The text of the Ri"ף reads "דינא עליה" - the judgment is demanded from him to step forth and defend Shimon. The wording found in the name of רמ"ך in the Shitta is even stronger, where we find "עליה דראובן רמיה" it is mandatory that Reuven step up and deal with the creditor, and thereby protect Shimon.

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REVIEW and Remember

1. Explain אחריות טעות סופר.
2. Why is Reuven, who sold the land with a guarantee, considered a litigant in a case where someone wants to take possession of the land he sold to Shimon
3. Why, according to Shmuel, is a purchaser of land restricted from collecting the value of the improvements?
4. What does a buyer have the right to collect if the land he purchased turned out to be stolen?

HALACHAH Highlight

Calling off a shidduch

ראובן שמכר שדה לשמעון שלא באחריות ויצאו עליה עסיקין וכו' *Reuven sold land to Shimon without a guarantee and protestors came forward [claiming the land is theirs] etc.*

There was once a reputable young man who became engaged to a young woman whose father, he was told, was amongst the most distinguished wealthy people in his town and presently is in Tzefas. The young chosson took an oath that he would marry his fiancé at the agreed-upon date. Sometime later the chosson became aware of some unkind rumors regarding his bride and that her father is an apostate who married a gentile woman. The chosson wanted to call off the engagement since he had no interest in marrying a woman with such a bad reputation and whose father had become an apostate. His hesitation to call off the engagement was out of concern that he accepted upon himself with an oath that he would marry her and perhaps he is not permitted to call off the engagement.

The inquiry was sent to Teshuvos Maharit¹ and he demonstrated from our Gemara that the chosson is allowed to call off the engagement. The Gemara addresses the case of Shimon who purchased land from Reuven and subsequent to making a binding kinyan people step forward with a claim that the land is theirs and Reuven had no right to sell that land. The Gemara rules that as long as Shimon did not yet traverse the borders of the field he can back out of the purchase because he has not yet confirmed the validity of the

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שדה מרומי שדה explains this opinion. Reuven must be proactive and stop his creditor from taking the field from Shimon. It does not suffice to allow the creditor to extract the field from Shimon and to then come afterwards and reimburse Shimon. Included in the guarantee he promised is that he must be ready to defend and protect Shimon from the threat of the land taken from him in the first place. He must fight to preserve the land in Shimon's possession, and not allow the creditor to take it. ■

acquisition (אין כאן גמירת דעת מוחלטת על הקנין). So too in this case, the chosson can back out of his commitment since he was given false information. Moreover, the oath that he took to marry the kallah is also not binding since at the time of the oath he was under the impression of false information. Rosh discusses a case of a man who committed to marry someone and sometime after the engagement the kallah's sister became an apostate and he ruled that the chosson is not obligated to marry the kallah even though he took an oath that he would marry her. The reason is that it is so obvious that he would not have chosen to marry her under these conditions it is considered as if he stipulated against this scenario at the outset. Rashba also ruled that a woman is not obligated to marry a man who became an apostate after their engagement even though she took an oath to marry him. These two cases indicate that certain changes in circumstances can occur that completely undermine the binding nature of an oath. ■

1. שו"ת מהרי"ט יו"ד סי' מט ■

STORIES Off the Daf

A Suspect Letter

דלא יהיב איניש וזוי בכדיי

A certain woman received a telegram that her husband had passed away. She was obviously very upset at this shocking missive since she had had no knowledge that her husband had any illness and the telegram did not even specify the cause of death. The woman was also suspicious of the telegram since she had some enemies in the city that she felt would be happy to cause her pain, and it was possible that one of them had sent this as a false communi-

cation.

When she asked her rav, he was unsure if she should commence mourning on the basis of the missive. Although the rav agreed that it was possible that her enemies were out to fool her, he was unwilling to accept responsibility for this psak on himself and consulted with Rav Shlomo Kluger, zt"l. Although at first Rav Shlomo Kluger was inclined to rule that she should suspect that this communication was from an enemy, he ruled that she should believe it based on today's daf.

He said, "In Bava Metzia 14 we find that the sages hold that if a loan document does not state that the borrower's

property is subject to a lien the borrower must nevertheless repay the loan from his property if he does not repay the loan in its original configuration. Clearly the failure of the scribe to write that the borrower is responsible to cover the loan from whatever assets he may have or sell is a mistake, since people do not loan out money without expectation of some form of repayment.

"This holds true regardless of the value of the property. Presumably the same is true regarding a telegram. It costs money and we can safely say that the sender would not spend the money to send it merely for spite."¹ ■

1. שו"ת האלף לך שלמה, יו"ד ס' רח"צ