

OVERVIEW of the Daf

1) Recovering an investment in a land purchase (cont.)

Rabbah bar R' Huna offers another explanation of the Baraisa that does not refute R' Nachman's position that a buyer cannot collect the value of the improvements even if that was specified because it looks like interest.

The Gemara explains why Rava and Rabbah bar R' Huna offer different explanations of the Baraisa.

R' Ashi presents a third explanation of the Baraisa so that it does not refute R' Nachman's position.

Further clarification of the Baraisa, according to Rava and Rabbah bar R' Huna, is presented.

Advice Shmuel gave to R' Chinana bar Shilas is recorded which seems to contradict the ruling R' Nachman said in his name.

R' Yosef suggests a resolution to the contradiction.

Abaye unsuccessfully challenges this explanation.

A second version of the exchange between R' Yosef and Abaye is presented.

Rava cites proof for Shmuel's earlier ruling that a creditor has the right to seize the improvements to the debtor's sold land.

R' Chiya bar Abba unsuccessfully challenges this proof.

R' Nachman cites a Baraisa that he feels supports Shmuel's ruling but R' Huna interprets differently.

Another Baraisa is cited that according to Shmuel seems impossible to explain.

Two explanations for the Baraisa are suggested.

The second explanation is challenged and the Gemara is forced to revise that explanation.

2) Purchasing stolen property

Rav and Shmuel disagree how much a purchaser of stolen land, who knew the land was stolen, will be able to recover when the owner of the land repossesses his land.

The essence of the dispute is explained.

It is noted that Rav and Shmuel argued about this same issue in a different context.

The necessity of the dispute in two contexts is explained.

(Overview...Continued on page 2)

REVIEW and Remember

1. What are the points that Shmuel advised should be included in a bill of sale for land?

2. In what regard is a gift more stringent than a sale?

3. What is the point of dispute between Rav and Shmuel?

4. What are the two reasons a robber purchases the land to protect his purchaser?

Distinctive INSIGHT

The power of the lender to collect improvements to the land

אמר רבא תדע שכך כותב לו מוכר ללוקח אנה איקום ואשפי ואדכי ואמריק זביני אילין ועמליהון ושבחיהון ואיקום קדמך וצבי זביני דנ' וכו'

A borrower designated a piece of land to be used for collection if he would default on his loan. The borrower then sold that land to a buyer. The lender may go to the one who bought the land and collect it from him. Shmuel had taught that in this case, not only is the lender allowed to take the land itself, but he is also permitted to collect any improvements which might have been made to the property. This means that if the land itself was worth one thousand dollars, and with the investment the buyer made, it improved to be worth fifteen hundred dollars, the lender may collect the full improved value of the land, assuming the loan was for that amount or more. Obviously, the buyer will return to his seller (the borrower) and try to get reimbursed for his loss.

On our daf, Rava comes to prove that Shmuel is correct, as the technical language used in the guarantee given by the seller to the buyer is that "I will establish this land in your possession against any quarrel or challenge...its value, any expenses, and all improvements..." It seems that because the seller must guarantee to reimburse the buyer for improvements, this proves that the buyer is at risk of losing them. Rava argues that this proves that the lender may confiscate the improvements from the buyer.

Tosafos explains that the proof that the lender may collect is not from the wording of the guarantee, but rather from the fact that the seller must reimburse the buyer even for the improvements. Although this is a subtle difference, it explains why Rav Chiya bar Avin asked Rava whether one who receives a land as a gift would also be reimbursed for any improvements he makes if the land is later taken away by the gift giver's creditor. The basis for the question is not due to any wording of a guarantee, as in the case of a gift there is no guarantee. Rather, Rav Chiya questioned whether this same reassurance is given to one who receives a gift, and Rava answered that there is, in fact, no such guarantee when a gift is given.

Rosh explains that the ability for a lender to collect the full, improved value of the land is a rabbinic enactment to remove any reluctance a lender may have to lend money. Why should we empower the lender and put the buyer at a disadvantage? The reason is that we need to encourage the lender to lend money, and that he will not suffer a loss. The buyer will also be able to recover his loss from the seller, but he is not the one who needs encouragement. ■

HALACHAH Highlight

Disqualifying a slaughterer for coloring his hair

ונתן לו לשם מתנה וע' תוס' שכתב ליכא למימר אדם יודע וכו'

And he gave it as a gift [Tosafos there writes], "It cannot be said that a person knows etc."

There was once a slaughterer who was embarrassed about his graying hair so he dyed it black. Since a man is not permitted to dye his white hairs black, the question arose whether the slaughterer is reliable to slaughter or perhaps we must be suspicious about his reliability and should require someone to examine his slaughtering knife before he slaughters. Teshuvos Beis Shearim¹ responded that the first issue that requires clarification is whether a man who colors his hair violates a Biblical prohibition or not. Rambam² rules that a man who colors his hair from white to black violates a Biblical prohibition whereas Ra'avad³ maintains that the man has only violated a Rabbinic enactment. It follows that according to Rambam it would be necessary to check this slaughterer's knife since he maintains that one who intentionally violates even one mitzvah must have his knife examined whereas according to Ra'avad it would be unnecessary since he did not violate a Biblical command.

Teshuvos Beis Shearim then suggests that even according to Rambam he would be permitted to slaughter without the requirement of having his knife examined. Tosafos⁴ to our Gemara teaches that whenever there are differing opinions and there is no compelling evidence to indicate that the halacha should follow one of those opinions we do not invoke the principle, "אדם יודע וכו' - A person knows that etc." Consequently, anytime someone violates a prohibition about which there is a disagreement a violator cannot be con-

This explanation is unsuccessfully challenged.

Rava rules that one who unknowingly purchased stolen property can recover the cost of the field as well as the improvements even if this was not stipulated with the seller.

Rava rules that when the purchaser was aware it was stolen he only recovers the cost of the field but not the improvements.

Rava also rules that it is assumed to be a mistake of the scribe when a guarantee is left out of a document.

3) Purchasing the stolen field after the thief sold it

Rav ruled that a thief who purchases the field from the owner after he already sold it may not take it from the purchaser.

Two explanations are offered to explain Rav's ruling.

The practical difference between these two explanations is presented. ■

sidered an intentional violator. Thus, in our case since there is a disagreement whether a man who colors his hair violates a Biblical prohibition the slaughterer cannot be considered a wanton violator and thus he does not lose his reliability. Furthermore, Magid Mishnah⁵ writes that since people are not overly cautious when it comes to Rabbinic prohibitions one cannot say that the violator did so intentionally and treat him as an intentional transgressor. Despite his lenient conclusion Beis Shearim wrote that the slaughterer should be suspended for a short time since he behaved improperly and he should accept upon himself additional stringencies. ■

1. שו"ת בית שערים יר"ד סי' י"ט
2. רמב"ם פי"ב מהל' ע"ז ה"י
3. ראב"ד שם ע"ב הכ"ט
4. תוס' ד"ה ונתן לו
5. מגיד משנה פ"א מאישות ■

STORIES Off the Daf

The absentee owner

בעל חוב גובה את השבח

A certain person once owed a large sum of money. When it became clear that he was not going to pay it back, the lender took him to beis din. Since the proofs of the loan were impeccable and there had been a stipulation that the loan could not be repaid without clear witnesses, the borrower lost his case and the beis din expropriated a rather expensive piece of property that he claimed was his.

The lender made expensive improvements to the property which was under his control for some time. Eventually, a man came to town claiming that the borrower had never been the owner of this property.

He had only been the caretaker, but since the owner lived out of town, the caretaker had pretended to own the property.

The lender approached his rav and asked him if he was like a person who came into another's property with permission or without it? This rav was not certain what the halachah was in this case, so he decided to ask the Yismach Yisrael of Alexander, zt"l, a very well-known scholar with whom he enjoyed a close relationship. When he presented the arguments, he sought to support the borrower's claim with a complex proof from Tanach.

The Yismach Yisrael answered, "Why are you trying to bring a proof from so far away? The entire Shas and Tosafos are filled with clear precedents regarding this case! The most decisive proof is on Bava Metzia 15. There we find that if a person purchased property from a thief which was

later recovered by the true owner, the purchaser is considered to have taken the land without permission. We see in many places in Shas that if a beis din erred regarding property ownership, its decisions based on faulty information do not result in the legal transfer of the property."

The Yismach Yisrael concluded, "You must accustom yourself to learning Torah b'kevius. Do not look here and there or search out and jump from one subject to the next, since such learning is in the category of arrai—it is superficial. It is only if one learns b'kevius that Torah will truly penetrate his heart and soul. And even methodical learning will not truly move a person unless he learns with a pure heart and the proper spirit!"¹ ■

1. שיח שרפי קודש דברי תורה על סדר הש"ס אות י"ט