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Kiddushin Daf 26

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Daf Notes is currently being dedicated to the neshamot of

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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

Mishna

Properties that have responsibility (*real property, such as land or a house; they are called “property that has responsibility” because a lender can always collect his debt from the borrower’s land, even if he subsequently sells it*) can be acquired through money, a document, or *chazakah* (*a proprietary act; one that demonstrates that he owns it, such as plowing the field or locking the gate*). Properties that have no responsibility (*movable properties*) are only acquired through “pulling it near.”

Movable property can be acquired together with real property through money, a document, or *chazakah* (*by making a kinyan on the land, he automatically acquires the movable property; this is called a kinyan agav*). Movable property can cause one to take an oath regarding real property. [*Generally, one is only obligated to take an oath regarding movable property. However, if one was obligated to take an oath regarding movable property, he can be required to swear regarding the real property as well. This is known as a gilgul shevuah.*] (26a)

Acquiring with Money

The *Gemora* provides a Scriptural source showing that real property can be acquired through money.

Rav qualified this *halachah*: Money will not be sufficient in a place where it is customary to write up a

document (*for the buyer intends to acquire the property only when he takes possession of the document*). However, if he specifies that he wishes to retain the right to choose if he will acquire through money or through a document, he has such a right.

And this is what Rav Iddi bar Avin in fact did: When he purchased land, he would say, “If I want, I will acquire it with money, and if I want, I will acquire it with a document.” He would then explain: “If I want, I will acquire it with money, for this way, you (*the seller*) would not be able to retract (*after I gave the money, but before you gave me the document*). And if I want, I will acquire it with a document, for this way, I can retract (*before you give me the document*).” (26a)

Acquiring with a Document

The *Gemora* provides a Scriptural source showing that real property can be acquired with a document.

Shmuel qualified this *halachah*: This is only with respect to a gift; however, with regards to a sale, the buyer does not acquire it unless he gives the seller money (*for the seller does not intend to sell the land until he receives compensation for it*).

Rav Hamnuna asked from the following *braisa*: How does one acquire with a document? If the seller writes for him on a paper or a shard, even if it is not worth a *perutah*: “My field is sold to you,” or “My field is given



to you as a gift," it is sold or given. [*This proves that a document is valid even for a gift!?*]

He asked the question and he answered it himself: The *braisa* is referring to a case where he sold the field because of its poor quality (*and the seller wants the acquisition to be effective immediately in order that the purchaser cannot retract*).

Rav Ashi answers: The *braisa* is referring to a case where he wanted to give him the field as a gift (*and he wrote in the document: "My field is sold and given to you"*). He wrote that it is sold in order to enhance the rights of the purchaser (*so if the seller's creditors should seize this field, he will be compensated by the seller*). (26a)

Kinyanim

The *Gemora* provides a Scriptural source showing that real property can be acquired with a *chazakah*.

The *Gemora* provides a Scriptural source showing that movable property can be acquired through "pulling it near."

The *Gemora* asks: According to Rabbi Yochanan, who holds that Biblically, only money can acquire movable property, how is the *Mishna* to be explained?

The *Gemora* answers: The *Mishna* is teaching the Rabbinic decree (*where they replaced the kinyan of "money" with the kinyan of "pulling it near"*). [*This was because a seller might tell the buyer, "Your wheat was destroyed in a fire." Since the wheat belonged to the buyer when the money changed hands, the seller will not try hard to save the wheat. The Rabbis therefore*

abrogated the kinyan of money and replaced it with meshichah.]

The *Gemora* provides a Scriptural source showing that movable property can be acquired together with real property. (26a)

Kinyan Agav

The *Gemora* inquires: Must the movable property be piled on the real property in order for the *kinyan agav* (*by making a kinyan on the land, he automatically acquires the movable property*) to be effective?

Rav Yosef said: This can be resolved from the following *Mishna*: Rabbi Akiva said: The smallest piece of land is subject to the requirements of *pe'ah* (*a corner of the field is left over for the poor*) and *bikkurim* (*the first ripe fruits of any of the seven species with which the Torah praises Eretz Yisroel, which had to be brought to the Beis Hamikdosh in Yerushalayim*) and to write a *pruzbul* because of it (*after shemita all debts are cancelled unless the lender wrote a pruzbul; a document which transfers all of one's personal loans to the Beis Din, and their debts are not cancelled after shemita; it may only be written if the debt was secured by land*) and movable properties can be acquired by means of it. Now if you will say that the moveable properties must be piled on the land, what can be acquired with a tiny piece of land?

Rav Shmuel bar Bisna explained this *Mishna* in front of Rav Yosef to mean that the seller stuck a needle into the land.

Rav Yosef exclaimed: Do you mean to annoy us with this answer? Would the *Tanna* go to such lengths just to teach the *halachah* of a needle?

Rav Ashi answered: Perhaps we are referring to a case, where a pearl worth one thousand *zuz* was hanging on it.

The *Gemora* attempts to resolve this inquiry from a *braisa*: Rabbi Eliezer said: There once was a man from Madon who was in Yerushalayim and he possessed much movable property which he desired to give away as a gift. They told him, however, that there was no means of carrying out his wish unless he transferred possession to the recipients by virtue of land (*given to them at the same time*). He consequently went and purchased a *beis sela* piece of land near Yerushalayim and gave the following instructions: Its northern part shall be given to So-and-so, and together with it, a hundred sheep and a hundred casks. And when he died, the Sages carried out his instructions. Now if you will say that the moveable properties must be piled on the land, what can be acquired with a *sela* (*size of a coin*) piece of land?

The *Gemora* rejects the proof: It is not referring to a *sela* coin; rather, it means that the land was hard like a rock.

The *Gemora* attempts to resolve this inquiry from the following incident: Rav Yehudah said in the name of Rav: A certain man was seriously ill in Yerushalayim; this is Rabbi Eliezer's version (*who holds that even a gift from a sick person requires a kinyan, except if it was done on Shabbos*). Others say that he was healthy (*and that is why a kinyan was necessary*). He possessed much movable property which he desired to give away as a gift. They told him, however, that there was no means of carrying out his wish unless he transferred possession to the recipients by virtue of land (*given to them at the same time*). He consequently went and

purchased a quarter-*kav* piece of land near Yerushalayim and gave the following instructions: A square *tefach* shall be given to So-and-so, and together with it, a hundred sheep and a hundred casks. And when he died, the Sages carried out his instructions. Now if you will say that the moveable properties must be piled on the land, what can be acquired with a square *tefach* piece of land?

The *Gemora* rejects the proof: We are discussing the value of the sheep and casks (*not the sheep and casks themselves; the money can be piled on a square tefach piece of land*).

This explanation can be proven, for otherwise, why didn't they suggest that he use *chalifin* (*the buyer gives the seller something as a token exchange to settle the transaction*) as a *kinyan* (*movable property can be transferred with chalifin; money cannot be*).

The *Gemora* asks: Why couldn't the money be transferred with *meshichah* (*pulling it near*)? It must be referring to a case where the recipient was not present. If so, that would explain why *chalifin* could not be used.

The *Gemora* attempts to resolve this inquiry from the following *Mishna*: It happened once that Rabban Gamliel and some elders were traveling on a ship. Rabban Gamliel said to them: The tithe (*ma'aser rishon*) which I shall measure off when I come home is given to Yehoshua (*ben Chananyah, who was a Levi*) and the place where it lies is leased to him. [*Rabbi Yehoshua gave him a perutah for the rental and acquired the ma'aser together with the land with kinyan agav.*] And the other tithe (*ma'aser ani*) which I shall measure off is given to Akiva ben Yosef that he may acquire possession of it for the poor, and the place where it lies is leased to him.



Evidently, the movable property must be piled on the land in order for the *kinyan* to be effective.

The *Gemora* rejects the proof: Rabban Gamliel did this in order that Rabbi Yehoshua and Rabbi Akiva would not be troubled when they return home (*so that they can leave the produce there until they wish to take it*). (26b – 27a)

INSIGHTS TO THE DAF

Kinyan Agav

The *Gemora* inquires: Must the movable property be piled on the real property in order for the *kinyan agav* (*by making a kinyan on the land, he automatically acquires the movable property*) to be effective?

The Rishonim ask: If the *halachah* would be that *kinyan agav* is only effective if the movable property is piled on the land, why would it be necessary to use *agav*? The movable property should be acquired because it is resting in his courtyard!?

The Ritv" a answers: The *Gemora* is referring to a case where the courtyard is not protected and therefore it cannot be used to make a *kinyan*. That is why *agav* is necessary.

The Shitah Mekubetzes answers that a courtyard can acquire for a person only movable property that entered it after it became his. However, a courtyard cannot acquire property that was in it before the courtyard became his.

The Steipler Gaon writes that the Shach states this *halachah* only with respect to the acquisition of a

courtyard without the knowledge of the owner. However, if he intends to use the courtyard to acquire the movable property which is found in it, it will be effective even if the property entered the courtyard before it became his.

Does One Need to Register an Apartment in the Land Registry Bureau?

Is a person who sold his apartment allowed to cancel the sale as long as it has not been registered in the government Land Registry Bureau on the buyer's name? The poskim disagree about this question. The source of their disagreement is based on our sugya.

Our sugya teaches us that although land is acquired with kesef [money], in places where the custom is to write a shtar [a deed] when land is sold, the sale is not final until the transaction is written in a shtar. Although the land has been paid for, the gemirus daas [final decision] of the sale depends upon the customary writing of the deed. (Rashi s.v. lo kana). This is the halacha (Shulchan Aruch Choshen Mishpat 190:7).

The law of many lands requires real estate transactions to be recorded at Land Registry Bureaus [called "tabilation" in halachic responsa and Tabo in Israel]. Apparently according to our sugya, as long as the sale of the apartment or land was not registered in Tabo the sale has not been finalized. Both the seller and buyer have no gemirus daas until after the customary registration of the real estate (Divrei Malkiel IV §143 and many other poskim). Because of this line of logic one of the geonim of the previous generation was asked to decide about the following question:

DAILY MASHAL



Many years ago a Jew passed away. His children discovered that a neighbor had built a large winter oven at the edge of their father's yard, inside their father's property. When they asked him to dismantle the oven and remove it from their property the neighbor argued that long ago he had bought that part of the yard on which the oven stands from their father.

What was his proof? The fact that his oven has been standing on this part of the yard for many years and no one complained was ample proof, he claimed, that he bought that part of the yard. On the other hand, the children argued that since the transaction was not recorded in the Land Registry Bureau the transaction was never effective. However, HaRav Meir Arik Zt'l (Responsa Imrei Yosher II §95) decided that in this particular case the sale is valid. The reason real estate must be registered is to finalize the gemirus daas. In this case the fact that the buyer was actually using this part of the yard in the presence of the seller shows the best possible gemius daas. Thus there is no need to register it to finalize the transaction. [The same is true about all land transactions. After the buyer takes active possession, e.g. moves into the acquired property, the buyer does not need to register it in the Tabo to validate the transaction].

However, the Chazon Ish (Choshen Mishpat Likut im §16) is of the opinion that the signing on an agreement of the involved sides is always sufficient to finalize the transaction. He bases his psak on the Rishonim (Rashba, Kiddushin 26a) that mi d'oraaysa the kinyan is effective with kesef or shtar. Our Sages decided that the kinyan is ineffective without a shtar because of the lack of gemi rus daas. Accordingly, only the writing of the shtar that our Sages referred to, which is the particular shtar that itself is effective according to the Torah to buy land with, impedes the kinyan. However,

new arrangements that governments have enacted cannot impede the kinyan. Since registration is not a kinyan according to the Torah, our Sages would not declare a Torah kinyan ineffective because of a lack of gemi rus daas before the registration takes place. Most of the poskim agree with the Chazon Ish's opinion (see also Minchas Yi tzchak VI §170, and see a l engt hy di s c u s s i o n i n Ma' adanei E ret z S hevi ' i s §18).

Selling land to a non-Jew: There are implications even regarding kashrus connected to this issue. For instance, if a Jew sells land to a non-Jew, he must know whether one is still obligated to separate terumos and ma'aseros after the agreement was signed since they have not recorded it in the Land Registry Bureau. Apparently he is exempt from separating terumos and ma'aseros since according to most poskim after signing the agreement the transaction has already been finalized even before its being registered.

However, the Chazon Ish zt'l writes (Bava Kama 10:9) that selling land to a non-Jew is different since according to non-Jewish law a real estate transaction is invalid until registered. Therefore since the non-Jew only takes into consideration his own laws and not those of the Torah, the Jew is considered the owner of the land as long it has not been registered on the name of the non-Jew and the Jew must separate terumos and ma'aseros.