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Found: a Contract

The Gemora continues to discuss the dispute of Rabbi Meir and Chachamim about a found contract, as cited in the braisa. The contract may explicitly state that the debtor accepts responsibility to pay, which allows the creditor to collect from assets he sold after the debt, if necessary. The braisa stated the opinions of Rabbi Meir and Chachamim in the various cases:

Contains Debtor Responsibility	Debtor accepts validity	Rabbi Meir	Chachamim
Yes	Yes or No	No	No
No	Yes	Yes	No
No	No	No	No

Shmuel made two statements, both of which are disproved by this braisa:

1. Our Mishna (which quotes the dispute of Rabbi Meir and Chachamim) is only in a case where the debtor disputes the validity of the contract. If he accepts the validity, all agree that it may be returned to the creditor. Shmuel does not suspect a debtor of colluding with the creditor to defraud those who purchased the debtor's land, but the

braisa shows that any contract that can be used to collect sold land may never be returned, due to this suspicion of collusion.

2. If one finds a contract, with an explicit acquisition stating that the contract is in force even if it wasn't used, it is returned to the creditor, regardless of what the debtor claims. Since the braisa suspects that the contract was paid – even when the debtor claims otherwise – it would definitely suspect it was paid when the debtor claims so.

Shmuel explains that the Chachamim do not distinguish between explicit responsibility of the debtor and no responsibility, because we assume a contract without explicit responsibility was a mistake by the scribe. Therefore, any contract can be used to collect sold land. The Gemora clarifies from another statement of Shmuel that this is only true for a debt contract, where we assume the creditor would not have given money to someone without attaching a lien. However, when one buys land, he may not demand responsibility from the seller in the case of the land being seized, since he will get use of the land, even if it is later removed from him by a creditor. Therefore, when writing a sale contract, the scribe must ask the seller if he wants to include responsibility, whether the responsibility should include payment for any appreciation to the land, and whether the buyer should be able to collect from the best assets of the seller. The Gemora proves this from a story of Avuha bar Ihi who bought an attic from his sister, which was subsequently seized by his sister's creditor. When he went to Shmuel, Shmuel informed him that since his contract did not



explicitly contain responsibility, he had no recourse, since responsibility is implicit only for a debt.

I'm Responsible

Abaye states if someone sells land to another with seller responsibility for creditor's seizure, the seller has legal standing in court against his creditor. Since the seller must pay the buyer if the creditor seizes the land from the buyer, he is an interested party. Some say that this is true even if there was no responsibility taken, since the seller does not want the buyer to have complaints against him.

Abaye states that if one buys land with no seller responsibility for the sale, and, before taking possession, discovers that there are people claiming it for a debt they have against the seller, the buyer may back out of the sale. Once he has taken possession, he has shown that he doesn't consider the claims a reason to void the sale. However, if the sale was with responsibility, the buyer may back out even if he's taken possession, since he relied on the seller responsibility when taking possession. Some say that even if he has bought it with the seller's taking responsibility, he may not back out once he's taken possession. The seller has no obligation to the buyer until someone actually collects the land, so the buyer should not have relied on this obligation before taking possession, if he was concerned about claims.

How much is Returned?

The Gemora discusses a dispute of Rav and Shmuel in the case of someone who bought land, and then discovered that it was robbed. Rav says that the buyer is paid by the seller both the money he paid, as well as any appreciation of the land since the sale, while Shmuel says that only the sale price is returned. Rav Huna was asked whether Shmuel said this because the refund of the appreciation was not stipulated, or because of an appearance of interest. Since the land was never owned by the seller, the transaction would be equivalent to the buyer giving the seller money (at the time of the sale), and then receiving more money back later (at the time of the victim collecting the land), which appears as interest on a loan.

If the concern is interest, even an explicit stipulation to pay back appreciation would not entitle the buyer to the appreciation. Rav Huna was unsure, but the Gemora quotes Rav Nachman who says that the appreciation is not paid due to its appearance as interest.

Rava challenges Rav Nachman, with a braisa that lists items that cannot be collected from sold assets:

1. Produce
2. Land appreciation
3. Food for a wife and daughters

This braisa implies that these items *can* be collected from assets still in the possession of the debtor. Rava assumes that the first two cases of the braisa are when the land was collected from a robbery victim, since the first case cannot apply to a creditor seizing land, since one whose land is seized by a creditor does not receive payment for produce he had on the land. The braisa therefore indicates that if one bought land from a robber, when it's collected by the robbery victim, the buyer may collect the land appreciation from the seller. The Gemora suggests that these two cases of the braisa may be in different scenarios – the produce in the case of a robbery, and the land appreciation in the case of a creditor. The Gemora tries to reject this from another braisa that explains the case of land appreciation as a robbery scenario. This braisa says that land appreciation is a case where one robbed land, and the land is returned to the victim. When the owner collects the land appreciation, he can only do so from available assets. The Gemora assumes that this braisa must be amended to mean a case where one *bought* from the robber, and then returned it to the victim. The Gemora objects to this proof, as once we are amending the braisa, we can also amend it to be a case of a creditor instead.

The Gemora brings the continuation of the braisa that explains the case of produce in a robbery scenario, using the same phrase as the earlier braisa that discussed appreciation. If Shmuel is concerned about the

appearance of interest, this would prohibit collecting the value of produce from the land as well.

The Gemora suggests alternate readings of this braisa, which would not contradict Rav Nachman:

1. The robber robbed land with its produce, and the victim is collecting from him both the land and produce. The Gemora suggests two possible scenarios where the victim would be collecting the value of the land, and not the land itself
 1. Rava says the robber dug up the land, destroying its value
 2. Rabbah bar Rav Huna says non Jewish attackers took the land from the robber by force

[Rava did not suggest the case of Rabbah bar Rav Huna, since the braisa says that the land left the possession of the robber, implying it is lawfully leaving his possession, and not as a result of force. Rabbah bar Rav Huna did not suggest the case of Rava, since the braisa implies that the land left the robber's possession intact, and not destroyed.]

2. Rav Ashi says the case is when the robber ate the produce and sold the land. The victim takes the land from the buyer, but when the buyer collects the value of the land, he may collect from any assets, and when the victim collects the produce from the robber, he can only take it from available assets.

The Gemora clarifies that Rava and Rabba bar Rav Huna are discussing a case where the victim took the robber to court to pay for his land – but not for his produce - before the robber sold his assets. Generally, a person will first claim the land, and only later the value of the produce that was on it. This makes the value of the land not just an oral obligation, and it can therefore be collected from any assets. The produce remains an oral obligation only, and may not be collected from sold assets.

The Gemora returns to Shmuel's original statement, with an apparent contradiction. Shmuel told the scribe Rav

Chinena bar Shailas to ask a seller whether he agrees to include in his sale contract an obligation to pay for any appreciation or produce in the case of the land being taken from the buyer. This cannot be in the case of a creditor seizing the land, since Shmuel says a creditor can only seize appreciation, but not produce. Therefore, it is in the case of a robber selling land he stole. To resolve this contradiction, Rav Yosef limits the concern of interest.

The Gemora quotes two versions of Rav Yosef's answer:

1. Paying back appreciation and produce is allowed if the robber is paying real estate. Paying back land for money does not look like interest, since the items given and taken are different.
2. Paying back appreciation and produce is allowed if the robber made a special kinyan acquisition when selling the land, accepting these obligations. This makes the transaction different than interest, since at the time of the sale, the seller had not gotten any use of the sale money, for which he would pay interest.

In response to Abaye's challenge that a real loan with these mitigating factors would still be prohibited, Rav Yosef clarified that this is fundamentally a sale, and paying appreciation is prohibited, only since it *appears* like interest. Once it does not appear as interest, it is permitted.

INSIGHTS TO THE DAF

A Mistake of the Scribe

Shmuel says that the Chachamim hold that even a contract without explicit responsibility taken by the debtor is considered to obligate him with this responsibility, since we assume that the omission was a mistake by the scribe. The Ritva explains that Shmuel does not mean that we assume the responsibility was taken, but omitted in the written document, but rather that even if the responsibility was never discussed, it is implicit in every loan, and the scribe was mistaken in not writing this implicit responsibility. The Ritva proves this from the discussion of the Gemora. The Gemora challenges this

statement of Shmuel from his statement that a scribe must ask his client before including a clause for responsibility. If Shmuel only meant that after the fact, we assume responsibility was taken, but fundamentally, responsibility must be explicitly taken, then there would be no contradiction. Even though we assume later that all was done correctly, the proper way to write a contract would be to spell out the responsibility. The contradiction cited by the Gemora proves that Shmuel's first statement was that responsibility is implicit in all debts.

Legal Standing

Abaye stated that a seller has legal standing against a creditor trying to seize land he sold. The Rishonim discuss why this legal standing is relevant, since superficially, we would assume that any claim the seller could advance could also be advanced by the buyer. In fact, Tosfos (14a Dina) points out that the court will sometimes offer a theoretical claim for the buyer, even if he does not do so, since he is not fully apprised of the land and loan's history. The Rishonim enumerate the following possibilities:

1. Any witnesses that are related to the seller and not the buyer are disqualified. (Rosh) Tosfos rejects this option, since we disqualify relatives of any party affected by the case, even if they do not have legal standing. The Gemora (Makkos 7a) disqualifies witnesses related to a guarantor, since he would have to pay if the debtor cannot.
2. If the buyer stated to the court that he exhausted his evidence, he may not enter any further claims. However, since the seller is a party to the case, he may still enter evidence and claims. (Tosfos)
3. If the creditor was obligated in a Torah oath to the seller (for some other case), the seller may demand that he swear a Torah oath that he did not already collect his debt, through *gilgul* (attaching an oath on an existing oath). The buyer can only demand a Rabbinic oath, which is less severe. (Tosfos)
4. The seller may be a wiser litigant, and advance better claims than the buyer. (Tosfos)
5. The creditor will be less likely to lie to the seller,

- since he knows what truly happened (Tosfos)
6. If the creditor demands to go to a higher court, he can force his counter party to go there, or else pay. If the buyer cannot go, but the seller can, the seller can continue the case there. (Tosfos)
7. If the seller claims that the creditor also owed him the same amount of money from a different debt, he can defer the case until both claims are adjudicated. (Tosfos Rid)
8. If the land was designated as an *apotiki* (land assigned to this loan), the buyer cannot offer to pay the creditor in lieu of the land, but the seller can. (Rashba)
9. If the land was designated as an *apotiki*, and the buyer improved the land, if the creditor seizes it from the buyer, he must only pay the buyer for his labor. However, if he seizes it from the seller, he may only seize the amount of the land equal to the debt. (Rashba)

Taking Possession

Abaye states that if one buys land and then discovers that there are those who claim the land already, he may back out of the sale if he has not taken possession. The Gemora explains that taking possession means elevating the boundaries of the field. The Mishna in Kiddushin states that land is acquired through money, a contract, or taking possession (*chazaka*), and the Gemora uses the same *chazaka* term for the elevation of the boundaries. Rashi says that the Gemora's case is a buyer who has not yet paid for the field, and is acquiring it through the act of elevating the boundaries. Tosfos (14a Ad) and the Ritva disagree, citing two difficulties with Rashi's explanation:

1. The Gemora's first version of Abaye said that if the seller accepted responsibility for the sale, the buyer can back out even after taking possession. According to Rashi, at that point the sale is complete, so why should any buyer be able to back out?
2. The Gemora asks what taking possession means, and specifies the elevation of the boundaries. The Gemora here does not seem the place to discuss general rules of taking possession (the Gemora in Babba Basra discusses land possession at length), and this form of taking possession is not listed

anywhere else as a form of acquiring a field.

Therefore, Tosfos and the Ritva say that Abaye is discussing a buyer who has fully acquired the field, in any way that is valid. However, until he actually starts using the field, if he finds out about any claims, he can void the sale, as a mistaken sale (*mekach ta'us*). Therefore, the elevation of boundaries is only discussed here, since it is not to acquire the field, but to indicate that the buyer has assumed the role of owner, and disregarded any other claims.

DAILY MASHAL

There is a repetition with Avraham, when Hashem tells him in Parshas Lech Lecha: "Raise your eyes and see from the place where you are ... for the entire land that you see I will give to you and your descendants forever." Later it says: "Go and walk around in the land to its length and width, for I will give it to you." (Bereishis 13:14-17)

The Kli Yakar comments on this and asks why there is this repetition of walking and seeing? He also notes that regarding seeing it says: "I will give to you and your descendants," whereas regarding walking it only says: "I will give it to you."

He explains that Eretz Yisrael is good and special in two ways. First, it is a good land, a land of flowing rivers, of wheat and barley, a land in which you will not eat bread in poverty ... you will eat and be satiated and bless Hashem, your G-d for the good land that He gave you." (Devarim 8:7-10)

The second is the Divine status and spiritual benefits of Eretz Yisrael. "A land that the eyes of Hashem, your G-d, are on it from the beginning of the year until the end of the year." The Ramban deals at length with the special spirituality of the land at the end of Parshas Acharei Mos, and calls it "the Sanctuary of Hashem." He writes that the

mitzvos are intended primarily for those who live in the Land. He concludes with these words: "If you are worthy of understanding the first 'land' that is mentioned in Parshas Bereishis and Parshas Bechukosai, you will understand a great and hidden secret, and you will understand what Chazal said that the Temple above is parallel to the Temple below."

The physical "land" on earth is acquired through possession. The Gemara that "by walking the borders," when a person walks around the borders of a field, he acquires it through possession. Therefore, Avraham was told: "Go and walk around in the Land". However, the spiritual "land" in heaven is acquired through a special vision, through a spiritual force.

Therefore Hashem promised Avraham two things: 1. "To the land that I will show you." This parallels Moshe's request: "and I will see the land," to which Hashem responds: "Go up to the top of the peak and raise your eyes west and north and south and east, and see with your eyes, for you will not cross this Jordan [River]".

Hashem granted the request of seeing the Land, but not the request of walking through it. This was also Moshe's request for the good land – the revealed, and the good mountain – the Temple.

The spiritual virtue of the land will exist eternally, and even when the Temple below is destroyed, the Temple above is never destroyed. Therefore, it says to Avraham: "for the entire land that you see I will give to you and your descendants forever." What is acquired through seeing is never forfeited, whereas what is acquired through walking in the material land: "Go and walk around in the land ... for I will give it to you." There is no guarantee that it will be also to your descendants, and if, heaven forbid they shall sin – it will be taken away from them.