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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

Seizing its Improvement

Shmuel had stated: A creditor can seize the appreciation of the land from the buyers.

Rava said: I will prove that this is correct, for this is what the seller writes to the purchaser (*at the time of the sale*). I shall stand, satisfy, purify, and perfect these purchases (*from any protests*). This is with respect to the land, the expenses (*that which he spends to improve the land*), and the improvements that are made in them (*if they are more than the expenses*). And I shall stand for you. The witnesses say: And this purchaser agrees to it and accepts it. [*If the seller is compensating the buyer for the improvements he made, we see that the creditor may collect the appreciation from the buyer.*]

Rabbi Chiya bar Avin then said to Rava: If this is true, then in a case of one who receives a gift, regarding which the giver does not write any such guarantee, would the giver's creditor not be allowed to collect the improvement?

Rava answered him: Yes.

Rabbi Chiya asked him: It emerges that a gift is stronger than a sale!?

Rava answered: Yes, it definitely is.

Rav Nachman said: The following *braisa* supports the view of the Master, Shmuel, but Huna, our colleague, explains it as referring to a different matter. For we learned: If one has sold a field to his fellow and then the purchaser has to surrender it to another claimant, when the purchaser is collecting compensation from the seller, he may exact repayment of the principal from encumbered property, and the improvements, he collects from unencumbered property. But our colleague Huna explains it as referring to a different matter: to that of one who has purchased a field from a robber. [*However, he holds that a creditor cannot collect the improvements from the purchaser.*]

The *Gemora* cites another *braisa*: If one has sold a field to his fellow, and the purchaser has improved it, and then the seller's creditor comes and seizes it, when the purchaser is collecting compensation from the seller, the *halachah* is as follows: In a case where the value of the improvements is greater than his expenses, he collects the value of the improvements from the owner of the land (*the seller*) and the cost of the expenses from the creditor. But in a case where his expenses are greater than the value of the improvements, the purchaser is only entitled to collect from the creditor the amount of the expenses corresponding to the value of the improvement.

Now, how would Shmuel explain this *braisa*? If it is referring to one who has purchased a field from a robber, then the *braisa's* first part contradicts him, for Shmuel had said that one who purchases a field from a robber is not entitled to compensation for the improvements he made in the field. And if it is referring to a case where the seller's creditor is seizing the field, then both parts of the *braisa* contradict him, for Shmuel had said that a creditor collects even from the improvements made by the purchaser!?

The *Gemora* answers: If you like, I shall say that Shmuel will explain the *braisa* to be referring to one who has purchased a field from a robber, and (*the reason why he collects compensation from the robber for the improvements he*

made is because) the robber owns land, or where the robber pledged himself (*in the presence of witnesses*) at the sale that he would pay for the improvement.

And if you like, I shall say that Shmuel will explain the *braisa* to be referring to a case where the seller's creditor is seizing the field. Nevertheless, there is no contradiction to Shmuel, for here, we are referring to an improvement which reaches the shoulders (*which has matured and is ready to be carried away; it therefore is not regarded as land and the creditor cannot seize it unless he compensates the purchaser*). Shmuel, however, is referring to an improvement which does not reach the shoulders (*has not yet matured and is not ready to be carried away*).

The *Gemora* asks: But are there not instances occurring daily where Shmuel would allow creditors to collect from the purchasers even from improvements which reaches the shoulders (*which has matured and is ready to be carried away*)?

The *Gemora* answers: There is no difficulty: Shmuel's common practice was where the creditor claimed from the seller an amount which was equal to the combined value of the land and its improvements (*and that is why there is no need to compensate the purchaser for his expenses*). The *braisa* refers to a case where the creditor claimed from the seller an amount equal to the value of the land alone, in which case the creditor compensates the purchaser for the value of his improvement and then removes him from the property.

The *Gemora* asks: This would be correct according to the view of the one who says that when the purchaser has money to pay the seller's debt, he cannot send away the creditor by paying him money. But according to the view of the one who says that when the purchaser has money to pay the seller's debt, he can send away the creditor by paying him money, let the purchaser say to the creditor: If I had money, I would have removed you away from the whole field (*by paying the amount owed to you*). Now that I do not have money, give me a small piece of land in the field corresponding to the value of my improvement!?

The *Gemora* answers: The *braisa* is dealing with a case where the seller had made the field an *apotiki* (*A person may designate any type of property as security to the creditor without placing it in the possession of the creditor. The creditor has a lien on this property, and if the debt is not otherwise repaid, the creditor can collect his debt from the security. This security is called an apotiki.*) to the creditor, in that he said to the creditor, "You shall collect the debt only from this." [*Accordingly, the purchaser cannot send away the creditor by paying him money.*]

The *Gemora* rules: If the purchaser knew that the field did not belong to the seller, and yet he bought it anyway, Rav says: The purchaser is entitled to be compensated for the purchase price, but not for the value of the improvement. But Shmuel says: He is not entitled even to the price of the purchase.

What is the point of issue between them?

Rav is of the opinion that the purchaser, knowing that the land does not belong to the seller, decided that he will give him the money as a deposit (*for he is obviously not giving him the money as payment*).

The *Gemora* asks: But then the purchaser should say to the seller that the money is to be regarded as a deposit?

The *Gemora* answers: He is concerned that the seller will not accept it as a deposit.

But Shmuel is of the opinion that the purchaser, knowing that the land does not belong to the seller, decided that he will give him the money as a gift.

The *Gemora* asks: But then the purchaser should say to the seller that the money is to be regarded as a gift?

The *Gemora* answers: The purchaser thought that the seller might be bashful (*to accept it as a gift*).

The *Gemora* asks: But has not this difference of opinion between Rav and Shmuel been expressed once already? For it was stated: If a man betroths his sister, Rav says that the betrothal money is to be returned, while Shmuel says that it is to be regarded as a gift. The *Gemora* explains: Rav holds that the money is returned to him, for a person knows that *kiddushin* cannot take effect with his sister (*and the money was obviously not given for kiddushin*), and he gave the money to her as a deposit. The *Gemora* asks: Why doesn't he tell her that the money is being given as a deposit? The *Gemora* answers: It is because he thinks that she will not accept it. Shmuel maintains that the money is considered a gift, for a person knows that *kiddushin* cannot take effect with his sister (*and the money was obviously not given for kiddushin*), and he gave the money to her as a gift. The G*emora* asks: Why doesn't he tell her that the money is being given as a gift? The *Gemora* answers: He thinks that she will be embarrassed to accept it as a gift. [*Why are both cases necessary?*]

The *Gemora* answers: It is necessary for them to argue in both cases. For if it were taught only in that case (*by the purchasing of the stolen property*),we might have thought that only in such a case does Rav say that the money is a deposit because people do not usually give presents to strangers, but with regards to a sister, perhaps he agrees with Shmuel. And if it were taught only in this case (*where he betrothed his sister*), we might have thought that only in such a case does Shmuel say that the money is a gift, but with regards to the other case (*by the purchasing of the stolen property*) perhaps he agrees with Rav. Therefore, it is necessary to state both cases.

The *Gemora* asks: Both according to Rav, who says that the money is to be regarded as a deposit, and according to Shmuel, who says that the money is to be regarded as a gift, how does the purchaser go down to work the field and how does he eat the fruit?

The *Gemora* answers: He thinks: I shall go down to the field and work in it and eat the fruit just as the robber would have done, and when the real owner of the field will come and claim it, my money will be regarded as a deposit, according to Rav, who says that it is to be regarded as a deposit, and as a gift, according to Shmuel, who says that it is to be regarded as a gift.

Rava said: The *halachah* (*in a case where the real owner seizes the land from the purchaser after he improves it*) is that the purchaser is entitled to be compensated for the price of the purchase, as well as to the value of the improvement, even if the improvement was not specifically mentioned.

If the purchaser knew that the field did not belong to the seller, he is entitled to be compensated for the price of the purchase, but not to the value of the improvement.

The omission of the guarantee clause is to be regarded as a scribe's error. This is true both in a case of notes of indebtedness and in a case of deeds of purchase and sale.

Shmuel inquired of Rav: If the robber who sold the field subsequently purchased it from the original owner, what is the *halachah* (*can the robber take the land from the purchaser*)?

Rav replied: What did the first person (*the robber*) sell to the second person (*the purchaser*)? He sold to him every right that he might subsequently acquire (*and the robber bought it with the intention that it should remain in the hands of the purchaser*)!

And for what reason did the robber do this? Mar Zutra said: It is because he wants that the purchaser should not call him a robber. Rav Ashi said: It is because he wished to keep his word.

The *Gemora* asks: What is the difference between them? The difference would emerge in a case where the original purchaser died. According to Mar Zutra, who said that he wants that the purchaser should not call him a robber, it could not be applied to this case, as the purchaser is dead. But according to Rav Ashi, who said that he wished to keep his word, it could be applied even to this case, as the robber would wish to keep his word before the purchaser's heirs as well.

The *Gemora* asks: But would not the purchaser's children also call him a robber?

The *Gemora* presents a different difference: The difference would emerge in a case where the robber died. According to Mar Zutra, who said that he wants that the purchaser should not call him a robber, it could not be applied to this case, as the robber is dead. But according to Rav Ashi, who said that he wished to keep his word, it could be applied even to this case, as the robber would wish to keep his word even when he is dead.

The *Gemora* asks: But would not people refer to his children as the children of a robber?

The *Gemora* presents a different difference: The difference would emerge in a case where the robber gave the field as a present. According to Rav Ashi, who said that he wished to keep his word, it could be applied even to this case, as the robber would wish to keep his word even by a gift. But according to Mar Zutra, who said that he wants that the purchaser should not call him a robber, it could not be applied to this case, for he could say to the recipient of the gift, "What have I stolen from you (*since even if you lose the field, you will not have lost anything*)?" (15a – 16a)

QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF

to refresh your memory

Q: Why, according to the *Chachamim*, can a creditor collect from encumbered properties, even if a guarantee is not written in the contract?

A: It is because we assume its omission is due to a scribe's error.

Q: Why, in a case when one buys land, may he not demand responsibility from the seller in the case of the land being seized, when no guarantee was written in the contract?

A: It is because the purchaser will get use of the land, even if it is later removed from him by a creditor.

DAILY MASHAL

The Gemora states that one who makes a partial admission (regarding a debt) is liable (to swear on the part that he is denying).

It is said (She'airis Menachem) that this can be compared to teshuvah, repentance. In order for one to repent properly and completely he must confess (modeh) and abandon the sin (ozev). One who only confesses, but he does not abandon the sin, is still liable. This is hinted at by the law of "one who makes a partial admission is liable." This means that he only confesses, but he does not abandon the sin, such a person has not repented and is still liable. This law (that one who makes a partial admission is liable) is derived from the Scriptural word 'yomar' (ki hu zeh – that he said this is it). This too hints at the law regarding repentance. If one merely says that Hashem is our God – that is not sufficient. It is as the verse concludes: 'yavo d'var sheneihem' – the words of 'both of them' must be brought; teshuvah has (at least) two components – the confession and abandoning of the sin. [One must also feel remorseful that he committed the wrongful act and he must firmly resolve never to commit the act again.]