

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Daf Notes is currently being dedicated to the neshamot of

**Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h**

**Tzvi Gershon ben Yoel (Harvey Felsen) o”h**

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

***When the Years Are Unclear***

There was a document that said “years” in it, but it did not say how many years. [*Rashi explains it was a loan document that stated that the payment would be that the lender would eat the fruit from the field of the borrower until “these years” ended. This would erase the debt.*] The lender claimed that it was for three years, while the borrower claimed it was only for two years. The lender kept eating the fruit into the third year. Who is believed? Rav Yehudah says: The status of property is that it belongs to its owner (and therefore the lender must pay for the fruit of the third year). Rav Kahana says: The status of the fruit is that it belongs to the one who ate it. [*Accordingly, the lender does not pay, as the borrower cannot bring proof that he ate it improperly.*]

The *Gemora* rules that the law follows Rav Kahana, who says that the fruit belongs to the one who ate it until proven otherwise.

The *Gemora* asks: Don’t we rule (in monetary matters) like Rav Nachman, who in this case says that the status of property is that it belongs to its owner?

The *Gemora* answers: Rav Nachman holds this way in a case where the facts will always be in doubt. However, in a case where it is very possible that the facts will be determined (i.e. the witnesses on the loan document will come testify how long the fruit were supposed to be eaten by the lender), he agrees that proof must be brought against the one who ate the fruit. This is because we do not bother a *Beis Din* to take something away from

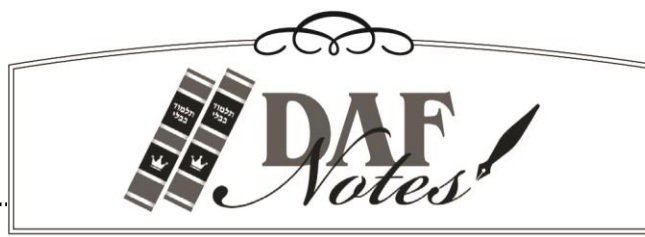
someone, when it will very possibly be made to give it back to him.

The *Gemora* proceeds to discuss a case similar to the one above. In this case, there is no document. The lender claims he is able to eat the fruit for five years, while the borrower says he was only given three years, which are finished. The borrower says, “Show me your document!” The lender claims, “I lost it.” Rav Yehudah says: The lender is believed, as he has a *migu* (winning claim that he should be believed, as he could have claimed a different claim that would prevail if he wanted to lie). He could have claimed that the field is his, and he has been on it for three years (which establishes proof of ownership).

Rav Pappa said to Rav Ashi: Rav Zevid and Rav Avira do not agree with Rav Yehudah. Why? Being that his document was needed for collecting the loan, he was probably careful with it, and is now purposely hiding it to claim that he should have two more years of fruit.

Ravina said to Rav Ashi: If so, in a regular *mashkanta* of Sura, where the stipulation is that at the end of a certain number of years this land will go back to the borrower without him having to pay anything, would we indeed say that if the lender hid his document, he could claim that he bought it? Would the Rabbis institute a mechanism (this *mashkanta*) that could make borrower’s lose their land?

Rav Ashi answered: This is why part of the Rabbi’s decree was that the borrower should still pay taxes on the land and dig around the borders of the field.



Ravina asked: What happens if one does not have to pay taxes on the field and no digging needs to be done around its borders?

Rav Ashi answered: He must state in front of people that he only gave it to this person temporarily (*so that the lender should not have three straight years of being on the land without it being made known that he is not the true owner*).

Ravina asked: What if he did not protest?

Rav Ashi answered: He has himself to blame for his loss. (110a)

#### ***When the Amounts Are Unclear***

A sharecropper claims that the deal was that he would get half of the crop, while the landowner says the sharecropper was supposed to receive one third. Who is believed? Rav Yehudah says: The landowner is believed. Rav Nachman says: We rule based on the customary fee for sharecropping in his area.

It was presumed that they were not really arguing. Rav Yehudah was discussing a case where the custom was that the sharecropper's took one third, while Rav Nachman was talking about a case where the custom was that they take one half.

Rav Mari, the son of the daughter of Shmuel said in the name of Abaye: They are even arguing in a case where the custom is they take one half. Rav Yehudah holds that the landowner is believed, as he can claim that the sharecropper is just a mere worker, and he does not owe him anything besides wages. (110a)

#### ***The Burden of Proof***

A creditor wants to collect from an estate. The orphans claim they improved the estate (*and he therefore would*

*not be able to collect from the improvement*), while the creditor says that the estate was improved by their father. Upon who is the burden of proof?

Rabbi Chanina thought to say that the land is in the status of being owned by the orphans. It is therefore incumbent upon the creditor to prove the father made the improvements.

A certain elder told him in the name of Rabbi Yochanan: The orphans have the burden of proof. Why? Being that the land was subject to be collected when the father was alive, it is as if it is already collected (*and owned by the creditor*). Therefore, it is the orphans who must prove that they made these improvements.

Abaye said: We learned Rabbi Yochanan's law from the following *Mishna*. The *Mishna* in Bava Basra (24b) states: [*A tree cannot be planted within fifty cubits of a city. If it was, it must be cut down, and the residents of the city do not have to compensate the owner of the tree. If the tree was there before the city was built, it must be cut down, but with compensation.*] If it is unclear whether the tree or city was first, it must be cut down without compensation. This implies that being that it is supposed to be cut down in any event, we tell the owner of the tree to bring proof and only then receive compensation. Here, too, being that the creditor's document shows that the field is supposed to be collected, it is as if it is already collected, and the burden of proof is on the orphans.

The orphans brought proof that they improved the land. Rabbi Chanina thought to say that they must be given a part of the land equivalent to the value of their improvements.

The *Gemora* says that this is incorrect. They must be given the amount of their improvement in money. This is apparent from a statement of Rav Nachman in the name of Shmuel. He said: There are three types of people who



we evaluate what they improved, and we say they should be paid with money. One is a firstborn and his brother. [*If they inherit an estate and improve it before they split it amongst themselves, the firstborn takes a double portion from the part that is improved as well, even though he does not deserve a double portion from the improvement. To make up for the double portion, he pays the difference to the regular brother.*] Another is a creditor or the collection of their mother's *kesuvah* from the inherited estate of orphans. [*This is the law stated in the case above.*] Another is a creditor who seizes a field from buyers (*of a field from the person who owes him money and did not pay*).

Ravina says to Rav Ashi: Does this mean that Shmuel holds that a creditor who seizes from buyers pays for the improvement in money? Didn't Shmuel say that a creditor can collect the improvement itself (*and does not have to pay for it*)? [*Rather, the borrower who defaulted must compensate him for the improvement as well.*] If you will say that there is no contradiction, as he collects the improvement when it (*i.e. grain or fruit*) still needs the land in some fashion, but not when it is harvested or fully grown, it cannot be, as Shmuel always had the creditor collect improvement even when it needs the land!?

The *Gemora* answers: There is no contradiction. When the debt is the amount of the land and the improvement, Shmuel enables him to collect it. When it is only worth the value of the land, the creditor must pay him back for the improvement.

The *Gemora* asks: In a case where it is only worth the value of the land, and the creditor must pay him back for the improvement, this is understandable according to the opinion that the buyer does not have the option to make the creditor take money instead of the land. However, according to the opinion that the buyer does have the option to pay the creditor, why can't he claim, "If I had money, I would make you go away from all of the land.

Now that I do not have money, at least leave me an amount of land equivalent to the improvement that I made!"?

The *Gemora* answers: The case is where this field was made an *apotiki* (*meaning that it was stated in the document that this field was the sole item that the creditor could collect his debt from*), meaning that he could not collect anything besides this field. (110a - 110b)

### **Mishna**

If someone accepts to work a field for one seven year cycle for seven hundred zuz, the shemittah year is included. If he accepts to do so for seven hundred zuz for seven years, *Shemittah* is not included. [*While every seven year cycle has a Shemittah, seven years implies seven years of working the field.*]

[*The next part of the Mishna deals with paying workers on time.*] A day laborer must be paid during the following night. A night laborer must be paid during the following day. If he is paid by the hour, he must be paid all day and all night (*the Gemora will explain this*). If he was hired for a week, month, year, or seven years, if his employment finishes during the day, he must be paid on that day. If he finishes during the night, he must be paid that night and the next day. (110b)

### **Paying Workers on Time**

The *Gemora* cites a *braisa*: How do we know that a day laborer must be paid that night? The verse states, "Do not leave over the work (*what he is owed due to his work*) of the worker with you until morning." How do we know that a night worker must be paid the following day? The verse states, "On his day you should give his wages."

The *Gemora* asks: Why don't we say the opposite? [*Why shouldn't we say that the first verse is talking about a night worker and the second about a day worker?*]

The *Gemora* answers: This is because we hold that wages are only owed at the end of employment. [*Being that a day laborer finishes at sunset, he is only owed the money at the beginning of the night, not during the day. The opposite is true regarding a night laborer. Accordingly, the verses must mean as stated above.*]

The *braisa* states: The implication of the verse, “Do not leave over the work of the worker with you,” is that it should not be left until morning. [*The Torah often says not to “leave over” korbanos to the next morning. This term, therefore, clearly implies leaving over until the morning.*] Why does the verse have to continue to say, “until morning?” This teaches that one transgresses this prohibition on the first morning only, not the next day (*if he does not pay him by the next day after the first day, he does not transgress again*).

The *Gemora* asks: What is his sin on the next day that he does not pay on time?

Rav says: He transgresses waiting to pay his workers. Rav Yosef explains: What is the verse that implies this prohibition? The verse states, “Do not tell your friend, “Leave and come back, and I will give tomorrow,” and you have with you.”

The *Gemora* cites a *braisa*: If one says to his fellow, “Go and hire workers for me,” neither of them will transgress the prohibition of holding a worker’s wages overnight. The employer cannot be liable, for he did not hire him (*and the employee is therefore not regarded as “his hired worker”*). The agent cannot be liable, for he is not the one who owes the worker his wages. (110b - 111a)

#### DAILY MASHAL

##### **Reward Only in the World to Come**

The *Gemora* cites a *braisa*: If one says to his fellow, “Go and hire workers for me,” neither of them will transgress

the prohibition of holding a worker’s wages overnight. The employer cannot be liable, for he did not hire him (*and the employee is therefore not regarded as “his hired worker”*). The agent cannot be liable, for he is not the one who owes the worker his wages.

The Bechor Shor (Yevamos 96b) uses our *Gemora* to answer a famous question. Chazal say that there is no reward for the observance of *mitzvos* in this world; the reward will be given in the World to Come. They ask: How can this be? Isn’t there a prohibition against an employer to delay the payment of wages to his worker? How can Hashem wait until the World to Come?

He answers that since the Jewish people were not commanded to observe the *mitzvos* directly from Hashem; rather, it was done through Moshe, the prohibition does not apply. Hashem did not directly instruct *Klal Yisroel* to perform the *mitzvos*, and Moshe is not the employer.

This answer will be sufficient for *Klal Yisroel*; however, it does not answer regarding Moshe himself. He was instructed directly from Hashem to observe the *mitzvos*? How can his reward be delayed?

One can answer based upon the *Gemora* in Sotah (13b) which states that Moshe is constantly serving the Holy One, Blessed be He, and since rental is paid only at the end, his reward does not come due until the World to Come.