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

Testifying for the Buyer

The *braisa* says that if one sold a house or field to someone, he may not testify to the buyer's possession, since he is responsible if it is taken. However, if he sold a cow or garment, he may testify, since he is not responsible if it is taken.

Rav Sheishes explains the *braisa*'s case is where one (A) stole a field (from B), and sold it to a buyer (C). Another person (D) then claimed ownership of the field, and tried to seize it from the buyer (C). The robbery victim (B) may not testify to the buyer's possession, since it is in his interest that the buyer retains the field, so that he may prove that the thief took his field, and then retrieve his field. If the one claiming possession (D) succeeds, the robbery victim (B) will have no recourse to retrieve his field. If the robbery victim explicitly testifies that the buyer owns the field, he may no longer claim that it was stolen from him, since he's admitted the buyer is the rightful owner. However, if he only testifies that the claimant does not own the field, he may still return to court to adjudicate the robbery.

The *Gemora* asks why he has an interest in the field remaining in the buyer's possession – if he has evidence that the field is not the claimant's, he can retrieve it from him as well. The *Gemora* offers two reasons he may want the field to remain with the buyer:

1. The buyer may be a more reasonable litigant, making it easier to take him to court and win.
2. The claimant and the robbery victim both have witnesses backing their claim. If the claimant successfully takes the field from the buyer, the deadlock of his witnesses and the robbery victim's witnesses will revert to the status quo – in the claimant's possession. If the robbery victim successfully keeps it in the buyer's possession, he can retrieve it by adjudicating his robbery claim.

The *Gemora* asks why the *braisa* chose a case where the thief sold the land, and didn't simply discuss whether a robbery victim can testify against one who tries to retrieve the field from the thief.

The *Gemora* answers that the *braisa* wanted to contrast the case of land with the case of movable property (*the second section of the braisa*), where the robbery victim has lost his possession of the stolen item. The victim lost possession only once it has changed ownership after he has despaired of retrieving it. If the *braisa* had discussed a thief who had not sold the item, the robbery victim still owns the stolen item, and will have an interest in both the case of movable and real property. Only in the case where the thief sold a movable item, and then died, does the robbery victim lose all claims to the item or its value, and therefore has no interest in who owns it, allowing him to testify.

The *Gemora* asks: But let us consider the last case: Granted that the original owner abandons his claim to the object itself, but he has not abandoned his claim to the money (*and therefore he should not be allowed to testify*)!?

The *Gemora* answers: The rule must be stated regarding the case where the thief has died (*where he cannot recover the money either*), as we have learned in a *Mishna*: If one robbed an item from someone, fed his children with it, or left the item to them, and then died, the children are not obligated to pay the victim.

The *Gemora* asks: But according to this explanation, let the rule be stated regarding the heir of the thief (*and not a case of a buyer; for the halachah would still be that the original owner can testify since he cannot recover the money*)?

The *Gemora* notes: It is understandable if we accept the opinion that the transfer of ownership accomplished by inheritance is not equivalent to the transfer of ownership accomplished through a sale (*for then, he can still recover the object from the heir, and he will therefore be disqualified from testifying*), but according to the view that that the transfer of ownership accomplished by inheritance is equivalent to the transfer of ownership accomplished through a sale, what are we to say (*why doesn't it state that case*)?

Furthermore, Abaye finds another difficulty in the explanation of Rav Sheishes: Why did the *braisa* use the expressions, "because he is responsible for it," or, "because he is not responsible for it" (*as the reasons to allow him to testify or not*)? The *braisa* should have said, "because it may be recovered by him," or, "because it cannot be recovered by him"?

The *Gemora* suggests a different explanation of the *braisa*: the first ruling of the *braisa* should be understood according to the teaching of Ravin bar Shmuel, for he said in the name of Shmuel: If a man sells a field to another without accepting responsibility (*and if his creditor seizes the field, he will not compensate him*), he cannot give testimony as to the buyer's title, because he can keep it available for his own creditor (*by leaving it in the possession of the buyer*).

The *Gemora* notes: This, however, applies only to a house or a field, but in the case of a cow or a garment, there is no question where he sells them without having specifically declaring them as a lien to a creditor, the creditor has no lien on them, for they are movables, and movables cannot be mortgaged to a creditor. And even if the seller provides a written contract to pay "from the coat on his shoulders," that is only binding as long as they are actually there (*in his possession*), but not if they are not there (*for he sold them; he therefore is allowed to testify, for he cannot collect the moveable property*). And even if declared them to be 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.*), the creditor still has no lien on them, for Rava said: If the debtor designated his slave as an *apotiki* and then he sold him, the creditor may still collect his debt from the slave. If, however, he designated his ox or donkey as an *apotiki*, he may not collect his debt from the ox. The reason why the debt may be collected from his slave is because the public will hear about the slave being designated as an *apotiki* (*and the purchasers should be wary of buying the slave*); however regarding an ox, the public does not

hear about it (*and therefore the seller may testify regarding it, for he cannot collect from it anyways*).

The *Gemora* asks: But is there not a possibility that the seller mortgaged to the creditor the movables along with real property, and Rabbah has ruled that if a man mortgages movables to another along with real property, the creditor acquires a lien over the land and acquires a lien one over the movables as well!?

The *Gemora* answers: We are dealing with a case where the seller sold the cow or the garment immediately after acquiring it (*in which case, he did not have time to take any loans while these movables were in his possession*).

The *Gemora* asks: But is there not still a possibility that this is a case where the seller has given his creditor a lien on his movables even on which he will acquire after the loan?

The *Gemora* notes that (*by the fact that the braisa is not concerned for this*) we may learn from here that if a man gives his creditor a lien on his movables which he will acquire after the loan, and then he acquires them and sells them, or acquires them and bequeaths them, the creditor has no lien on them!?

The *Gemora* answers: The *braisa* is referring to a case where the witnesses say, "We know that this man never owned any land" (*and therefore, his movables could not have been mortgaged for his debt*).

The *Gemora* asks: But didn't Rav Pappa say that although the Rabbis have ruled that if a man sells his field to another without a guarantee and his creditor comes and seizes it, the buyer cannot recover his money from him, yet if it is found that the field never belonged to him (*the seller*), he can recover it? [*And since the braisa is referring to such a case, the seller should be disqualified from testifying regarding it!?*]

The *Gemora* answers: The *braisa* is dealing with a case that the buyer recognizes the animal as being the offspring of the donkey belonging to the seller (*and because he admits this in front of witnesses, he cannot claim a refund from the seller*).

Rav Zevid, however, says that even if it is found that the field did not belong to the seller, the buyer cannot recover his money from him, because he can say to him, "This was precisely why I sold it to you without a guarantee." (43b – 44b)

DAILY MASHAL

The Rudiments of Efficient Partnership

The essence of faithful partnership may be learnt from Rebbe Meir zt"l of Premishlan. Two people, about to found a commercial partnership, came for his blessing. "Have you drawn up a contract?" asked the Rebbe. "Not yet", they replied. "If so", he said, I"ll write one for you." The Rebbe took some paper, inscribed it with the letters alef, beis, gimel, dalet and handed it to them. Seeing their wonderment, he explained: "These initials represent the secret of successful partnership: alef for emunah, beis for berachah, gimel for geneivah and dalet for dalus (poverty). If you treat each other with emunah (faithfully), you"ll merit a blessing but if one of you steals or hides anything from the other, you"ll be stricken with poverty.