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

Why did she Sign?

The *Mishna* said that a husband cannot prove a *chazakah* ownership of his wife's land, since a wife does not mind her husband using her land.

The *Gemora* infers that a husband *can* bring a contract as proof that he acquired her land.

The *Gemora* attempts to contradict this from a *Mishna* that says that if one buys a field from a husband and then from his wife, the sale is void, since the wife signed the contract only to please her husband. Similarly, even if the wife sold her field to her husband, we should assume that she simply did so to please her husband, but not as a true sale.

The *Gemora* quotes Rabbah bar Rav Huna, who limits this *Mishna* to three fields that are tied to the wife – a field that was written into her *kesuvah*, a field that is designated for her to collect her *kesuvah* from, and a field that she brought into the marriage with an estimated value.

The *Gemora* asks that a wife will feel even more compelled to sign on other fields to please her husband, for if she would object to his selling fields that she has no special association with, the husband will think that she is planning on a divorce or his death (*and she intends to collect her kesuvah in the very near future*).

Rather, a field which is her *melog* property, in which she holds the principal, is a type of field that she feels comfortable not selling. Therefore, if she gave her husband a sale contract on such a field, it is considered a bona fide contract.

The *Gemora* challenges this from Ameimar, who says that if a husband and wife sold *melog* property, the sale is void.

The *Gemora* presents two resolutions to this challenge:

1. Ameimar is referring to a case where *either* the husband or wife sold their part of the *melog* property, based on the enactment in Usha, that if a wife sold her *melog* property and then died, her husband can retrieve the property from the buyer. However, if they jointly sold it, or if the wife sold it to the husband, the sale is valid.

2. Ameimar is based on Rabbi Eliezer's opinion that only one who owns both principal and produce of an object is a true owner.

The *Gemora* cites the dispute of *Tannaim* regarding the rule of *yom o yomaim*. The Torah says that if an owner hits his slave and the slave dies, if the slave lived for *yom o yomaim* – one or two days (*24 hours*) after the

hit, the owner is not punished. This is a leniency reserved for the owner of a slave, since, generally, if one kills someone and the victim dies as a result, the murderer is punished, even if the victim lived for more than 24 hours. The case discussed by the *Tannaim* is someone who sold his slave, but reserved the slave's work for himself for thirty days. During that period, the seller has ownership of products (*service of the slave*), but the buyer has ownership of the principle (*the slave*).

Four *Tannaim* dispute who gets the leniency of *yom o yomaim*:

Tanna	Seller	Buyer	Rationale
Rabbi Meir	Yes	No	Product ownership is ownership
Rabbi Yehudah	No	Yes	Product ownership is not ownership
Rabbi Yosi	Yes	Yes	Unsure whether product ownership is ownership Therefore, we cannot kill either buyer or seller after 24 hours, for we must be lenient regarding capital punishment
Rabbi Eliezer	No	No	The Torah applies this only to *kaspo* – his full property, and neither fully owns him

(49b – 50b)

1. *Chazakah in a Wife's Property*

The *Gemora* challenges the *Mishna*'s statement that a husband cannot prove his ownership of his wife's land by his *chazakah* use. Rav said that a married woman must protest to maintain her ownership. The *Gemora* says that Rav must be referring to her protesting against her husband, since Rav says that a person cannot acquire a *chazakah* in a married woman's property, since she can claim that she relied on her husband to protest. Rava says that the woman must protest if her husband destroys the land itself (*e.g., digging up holes*), since a husband only has rights to the produce of *melog* land, not to destroy the land itself. If he destroys the land, this indicates that he bought it, so the wife must protest.

The *Gemora* challenges Rava's statement from Rav Nachman, who says that one who damages land cannot prove a *chazakah*, since he did not use the land in a normal manner. The *Gemora* resolves this with two options:

1. Rav Nachman meant that if one damages land, he acquires *chazakah* rights immediately, since one who sees someone damaging his land will protest immediately.

2. Rav Nachman is not discussing general *chazakah* proof. Instead, Rav Nachman meant that if one acted in a damaging way to his neighbor (*e.g., generating smoke or building an outhouse next to his neighbor*), he cannot claim that doing this habitually proves that the neighbor waived his rights.

Rav Yosef says that Rav meant that a wife must protest another person's use of her land, and this is true in a case where the person ate the produce of the land during the husband's life, as well as for three years after the husband died. Since he could claim that he bought the land from the wife after her husband died, we accept his claim that the wife sold her land to her husband, who sold it to him.

The *Gemora* returns to Rav's statement that one cannot

prove a *chazakah* in a married woman's property. The judges of the Diaspora (*Shmuel and Karna*) differ, and say that one may prove a *chazakah* in a married woman's property. Rav ruled like the judges of the Diaspora. When Rav Kahana and Rav Asi asked Rav if he reversed his position, Rav explained that the judges of the Diaspora's position is logical in a case where the one claiming to be the buyer ate the produce for some time while the husband was alive, and for three years after his death, as Rav Yosef explained. (50b – 51a)

INSIGHTS TO THE DAF

Partners – Full or not?

The *Gemora* discusses the opinions of the *Tannaim* regarding *yom o yomaim* for a slave whose principle is owned by one, but products are owned by another. The *Gemora*, in our version, states that the *Tannaim* hold their positions, based on how they view ownership of products, as explained above.

Tosfos in Bava Kamma (90a) raises an issue with this logic. According to this explanation, Rabbi Meir says that the seller, who owns the products only, is considered the owner for the purposes of *yom o yomaim*. The *Gemora* is assuming that considering product ownership full ownership confers rights exclusively to the product owner. However, earlier the *Gemora* had stated that the *braisa* that said neither the husband nor the wife were the owner regarding *shain v'ayin* also held that ownership of products is ownership. This assumes that considering product ownership full ownership only *prevents* the principle owner from full ownership rights, and leaves neither owner with full rights.

Tosfos answers that in the case of freeing a slave, the co partner's ownership prevents the freeing, since he still retains rights. However, in the case of *yom o yomaim*, we simply need to identify who is the owner, not to remove any other owner's rights, but to apply the rule of *yom o yomaim*. There, we identify the one who owns products as the owner, since the Torah refers to the owner who the slave is *tachtav* – under him.

The Rivam, however, states that the introduction of this dispute about *yom o yomaim* is an alternative explanation, which does not refer to the dispute of product ownership. Rabbi Meir would hold that both the husband and wife would have the rule of *shain v'ayin*. The authors of the two *braisos* above are Rabbi Yehudah (*only the wife has the rule of shain v'ayin, since she owns the principle*) and Rabbi Eliezer (*neither have the rule of shain v'ayin, because both types of ownership are necessary to get ownership rights*).

The *halachah* rules like Rabbi Eliezer, who says that neither owner is the full owner for *yom o yomaim*.

Husband and Wife Sale

Ameimar says that if a husband and wife sell *melog* property, the sale is invalid. The *Gemora* says that this is following the opinion of Rabbi Eliezer.

Rashi states that Ameimar's *halachah* is true in all cases - even if the couple both sold the same property together.

The Ra'avad says it is true even if they both sold it, but only if they sold it separately. If they sold it together, they can pool their ownership to accomplish full ownership.

The Meiri goes further and says that Ameimar only meant that each one cannot sell their ownership, but if they both sold the property, even not simultaneously, the sale is valid.

Rashi is based on the reasoning found in our *Gemora*, that Ameimar is following the opinion of Rabbi Eliezer, and therefore neither the husband nor wife can be considered owners. However, the Ra'avad and Meiri hold that the *Gemora*'s association of Ameimar with Rabbi Eliezer is only within the statement that both *braisos* do not accept *Takanas Usha*. That statement led the *Gemora* to discuss and explain the *Tannaim*'s opinions about the *halachah* of *yom o yomaim*. However, we accept *Takanas Usha*, and therefore Ameimar is not following Rabbi Eliezer per se, but rather is limiting the individual ownership rights of the husband and wife, due to the presence of their spouse's ownership. Once their ownerships work in concert for the sale, it is valid.

Slave Ownership

The *Gemora* identifies a *braisa* about joint slave ownership regarding *shain v'ayin* as Rabbi Eliezer's opinion. The *braisa* states that a slave owned by two masters or half free does not go free as a result of *shain v'ayin*.

Tosfos and Rashi say that this *braisa* is only in a case where the partnership splits principle and profit, just like Rabbi Eliezer's case. However, in a normal case of partnership, where each partner has partial quantitative ownership, of both principle and products, each partner is considered a full owner of his share.

The Ra'avad says that this *braisa* is even in the case of a regular quantitative partnership. Joint ownership of a slave is different than other joint ownerships, since a slave cannot be split, so part ownership does not confer ownership rights to either partner.

DAILY MASHAL

Extraneous Thoughts

According to Rambam's well-known definition, if a Jew is coerced to perform a deed required by halachah, his act is not regarded as due to force majeure since his true wish is to observe the mitzvah. His wayward inclinations just tempted him to object (Hilchos Geirushin, 2:20). The Chozeh of Lublin was treated a similar situation: A person complained to him that extraneous thoughts were distracting and confusing him during prayer.

"Extraneous thoughts?!" asked the tzadik in amazement. "Tzadikim, who always ponder the Torah and meditate on holy matters, are sometimes bothered by extraneous thoughts. By you, however, those thoughts aren't extraneous. They're your own, so how can I help you?" (Sipurei Chasidim 'al HaTorah by Rav S.Y. Zevin, p. 259).