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Bava Basra Daf 52

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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

### ***Deposits from Questionable Sources***

The *Gemora* cites a *braisa*: Deposits should not be taken either from women or from slaves or from children (*for we presume that they were stolen from their husbands or masters, and it is forbidden to become an accomplice to a sinner*). If one has taken a deposit from a woman, he should return it to her (*and not to her husband, for we do not know for certain that she stole it*). If she dies, it should be returned to her husband. If one has taken a deposit from a slave, he should return it to the slave. If he dies, it should be returned to his master. If he accepted a deposit from a minor, he should make it a “*segulah*” (*the Gemora will soon explain what this means*). If the minor dies, he should return it to the minor’s inheritors. If any of these people stated when they were dying that the object in fact belongs to a certain person, the person who has the deposit should indeed return it to that person. If the person who has the deposit does not believe their statement is true, he should interpret their statement in his own way (*meaning he should give it to their father/husband/master*).

When Rabbah bar Chanah’s wife was dying, she said, “These earrings belong to Marta (*a scholar, the brother of Rabbi Chiya*) and his household.” Rabbah bar Chanah came before Rav. Rav told him, “If you believe her, do as she says. If not, interpret her statement in your own way (*keep them*).”

Some say that this is what Rav said: “If they are wealthy (*and it is reasonable they would have such earrings*), do as she says. If not, interpret this in your own way.” [See *Rashbam for another explanation*.]

The *braisa* stated that a deposit of a minor should be made into a *segulah*.

The *Gemora* asks: What is a *segulah*?

Rav Chisda says: This refers to a *Sefer Torah* (*Torah scroll*). Rabbah bar Rav Huna says: This refers to a palm tree that produces dates. (51b – 52a)

### ***Fathers, Sons, and Chazakah***

The *Mishna* (42a) had stated that a father cannot establish a *chazakah* on his son’s possessions, and a son cannot establish a *chazakah* on his father’s possessions.

Rav Yosef states: This is even if they no longer had any financial relationship (*the son was financially independent of his father*).

Rav says: If they had independent financial relationships, *chazakah* would apply.

Rav Yirmiyah from Difti says: Rav Pappi ruled in an actual incident that came before him like Rava, that if they had independent financial relationships, the law of *chazakah* would apply.

Rav Nachman bar Yitzchak says: Rav Chiya from Hurmiz Ardeshid told me that Rav Acha bar Yaakov told him in the name of Rav Nachman bar Yaakov that if they had independent financial relationships, the law of *chazakah* would apply. The *Gemora* concludes that this is indeed the law.

The *braisa* also states: A son who became financially independent from his father and a woman who got divorced are like all other people (*regarding chazakos against their father or husband*).

It was taught: One of the brothers dealt with the finances of the estate (*after their father had died*), at which time sale and loan documents appeared that had his name on them. He claims that these documents pertain to inheritance from his mother's father (*he had a different mother than the other brothers*). Rav says: He must bring proof that this is the case. Shmuel says: The brothers must bring proof that this is not the case.

Shmuel says: Abba (*Rav*) admits to me that if he dies, the brothers must bring proof (*to take this money away from his estate, i.e. his sons*).

Rav Pappa asked: Do we ever claim for orphans something that their father did not claim? Didn't Rava take a scissors used to trim clothing and books of *agadah* from orphans without proof (*in a similar case*)? And Rava did so because these are things that are normally lent out and rented. This is as Rav Huna bar Avin sent (*a message*): A person who claims that he bought things that are normally lent out and rented is not believed (*to say they are his when their clear original owner says that they are his*). This question is indeed difficult.

Rav Chisda says: Rav only stated that he must bring proof in a case where he and his brothers have not even divided their dough. However, if they have divided their dough, one can say that he took it from his dough. [*In other words, if there is any way that he could have legally taken money from the estate to account for these monies, the burden of proof is not on him.*]

The *Gemora* asks: What type of proof does Rav demand from this brother?

Rabbah says: He should bring witnesses. Rav Sheishes says: He must validate the documents in question.

Rav asked Rav Nachman: We see an argument between Rav and Shmuel, and Rabbah and Rav Sheishes argue regarding the opinion of Rav. What do you rule is the correct opinion?

Rav Nachman said: I know a *braisa* (*that clearly follows Rav's opinion, though it is unclear whether this is according to Rabbah or Rav Sheishes*). The *braisa* states: One of the brothers dealt with the finances of the estate, at which time sale and loan documents appeared that had his name on them. He claims that these documents pertain to inheritance from his mother's father. He must bring proof that this is the case. Similarly, if a widow dealt with the finances of the estate, at which time sale and loan documents appeared that had his name on them. She claims that these documents pertain to inheritance from his father's father or her mother's father. She must bring proof that this is the case.

The *Gemora* asks: Why does the *braisa* state a similar case of a widow?

The *Gemora* answers: One might think that because a widow is praised for taking care of the estate on behalf of the orphans, she would not steal from them and jeopardize this praiseworthy position. This is why the *braisa* states that she must swear as well.

The *Mishna* had stated: When were these laws regarding *chazakah* stated? They were stated regarding someone who establishes a *chazakah*. However, one who gives a present and brothers who divide etc.

The *Gemora* asks: Are all of the people we discussed people who cannot make a *chazakah*?

The *Gemora* answers: It is as if the *Mishna* is missing words, and says the following. When is this type of *chazakah* applicable? It is applicable in a case where a person had established a *chazakah* and someone else claims it is not his



land. For example, this applies in a case where the seller says he did not sell, but the buyer claims that he bought it. However, in a case where there is no counterclaim, as in a case where someone is giving a present, or brothers who split an estate, or someone who acquires the possessions of a convert, being that he just needs to make a *kinyan* (*acquisition*), if he locks, fences, or opens the property a little bit (*i.e. breaks a fence for a constructive purpose*), it is considered his. (52a – 52b)

### ***Chazakah as an Acquisition***

Rabbi Hoshaya taught the following *braisa* which was included in the *braisos* of Tractate Kiddushin which was taught in the Academy of Levi: If the buyer of a field locked a door, fenced it or made an opening, even a small amount, in the seller's presence, this constitutes a *chazakah*.

The *Gemora* asks: Is this the *halachah* only where the act was done in the seller's presence, and not otherwise?

Rava replied: The meaning of the *braisa* is as follows: If any of these acts are done in his presence, the seller has no need to say, "Go, make a *chazakah* and acquire ownership." [After the price has been set, the buyer acquires it with an act of *chazakah* when it is done in the seller's presence; it is not necessary for the seller to say anything.] If, however, it was done not in the seller's presence (*e.g. it was in a different city*), the seller would be required to say, "Go, make a *chazakah* and acquire ownership" (*otherwise, it will not be an acquisition*). (52b – 53a)

## **INSIGHTS TO THE DAF**

### ***Ripened Grapes for the Spies***

When the spies were sent out to *Eretz Yisroel*, it is written [Bamidbar 13, 20]: *It was the season when the first grapes begin to ripen.*

The commentators ask: What is the purpose of this information? What is the Torah teaching us?

In the *sefer Misbar Kerai*, he answers based upon the Rambam (Mechirah 1, 16), who rules that the eating of produce constitutes an acquisition of a field. Accordingly, Moshe instructed the spies to eat from the fruits of the land, for this way, they will be acquiring *Eretz Yisroel* for the Jewish people.

And, he continues, even according to the Raavad, who disagrees with the Rambam and holds that the eating of produce does not constitute an acquisition of a field, for one must perform an act that is beneficial to the field in order to acquire it, such as locking a door, fencing it or making an opening, even a small amount, nevertheless, here, the eating of the produce would constitute an acquisition. For the *Gemora* in Bava Basra (119a) states that *Eretz Yisroel* was regarded as if it was in the possession of the Jewish people (*even before the conquest*). It therefore follows that a formal act of acquisition was not necessary; they just needed to demonstrate ownership. The *Gemora* in Pesachim (6b) states: If there are in a man's field late figs (*which will never ripen*), and he is guarding his field on account of the grapes (*which have not ripened yet*); and similarly, if there are late grapes, and he is guarding his field on account of his cucumbers, the *halachah* is as follows: If the owner is not particular about them, they are not forbidden as theft and are not subject to the *halachos* of tithing, for ownerless produce is exempt from tithing. Evidently, produce at the end of their season are considered ownerless. If someone would take this produce at that time, he would not be demonstrating ownership at all. This is why the Torah stressed that the spies went at the time when the grapes were beginning to ripen, for then, the eating of the grapes would be demonstrating ownership.