Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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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

Mishna

A house fell on him and his father, or on him and his inheritors, and he had a *kesuvah* along with other creditors that were demanding payment from his estate. The inheritors of his father say that the son died first, and then the father died. [*Accordingly, the son never inherited his father, and therefore his father's estate is not liable for the kesuvah or the son's debts.*] The creditors claim that first the father died and then the son (*and they can therefore claim money from the father's estate*). Beis Shammai says: The money should be split. Beis Hillel says: The property should stay where it is (*by the inheritors*). (157a)

Whatever I shall Acquire

The *Mishna* elsewhere says: If someone lends money to his friend in a loan document, he can collect from encumbered properties. If he lends money to his friends with witnesses (*but not in a document*), he may (*only*) collect from unencumbered properties.

Shmuel asks: If someone writes that he is giving as a lien for this loan any property that he will buy in the future, and he later buys properties and defaults on the loan, is this valid? [*The Rashbam explains that this was commonly done. This seems to be why the Gemora proceeds to ask regarding many cases, even though the cases do not explicitly state that this condition was made.*] According to Rabbi Meir who says that a person can convey something that has not come into the world, it is clearly valid. The question is according to the *Chachamim*, who say that a person cannot convey something that has not yet come into the world (*and his possession of these properties had not yet happened when he made this loan*).

Rav Yosef says that he can bring a proof from the following *Mishna*. The *Mishna* states: [*A person claims that someone owed him money. The defendant counters that he can show proof that the claimant sold him a field after the loan was given.*]
The *Chachamim* say: He was smart in selling him the land, as he can use it as collateral (*and he has no claim that he must have paid back the loan, as otherwise the lender could have just received the money without making a sale*). [*This shows that one can claim land the borrower bought after the loan was issued. The case must be Shmuel's question, and we see that the condition is valid according to the Chachamim!*]

Rava asked: How can you bring a proof from land that solely belongs to the borrower? You can even collect the shirt off his back! [*This has nothing to do with making the condition for properties he acquires afterwards!*] The question is only if the borrower said, "Whatever I will acquire should be mortgaged for the loan," and then the borrower acquired it and then sold it or bequeathed it

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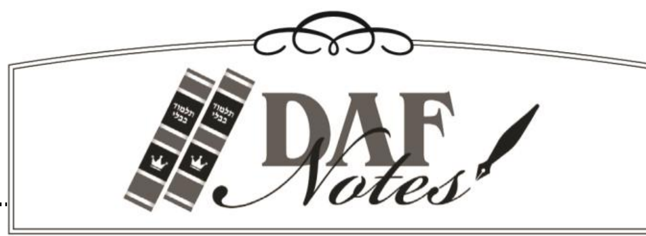

(*after he died*) to someone else before the lender tried collecting the loan. What is the law in that case?

Rav Chana says that he can bring a proof from our *Mishna*. The *Mishna* states: A house fell on him and his father, or on him and his inheritors, and he had a *kesuvah* along with other creditors that were demanding payment from his estate. The inheritors of his father say that first the son died and then the father died. If you hold that when the borrower says, "Whatever I will acquire should be mortgaged for the loan," and then the borrower acquired it, and then sold it or bequeathed it to someone else before the lender tried collecting the loan, the lien is invalid, even if the son inherited after the father died, he immediately bequeathed it to his inheritors after he died. It must be that the creditors can still take it away!

Rav Nachman said: Zeira, our friend, explained that there is a *mitzvah* for the orphans to pay the debt of their father. [*This is why the case does not prove that whatever he later acquires and then bequeaths can still be seized by inheritors.*]

Rav Ashi asked: If the loan is oral (*as opposed to being documented*), how can he seize the property from the orphans? Rav and Shmuel both say that an oral loan cannot be collected from inheritors or buyers!?

Rather, the *Gemora* answers: It must be that this is according to Rabbi Meir who says that a person can convey something that has not come into the world. [*Shmuel's question still remains unanswered, as it is according to the Chachamim.*]

Rav Yaakov from Pakod River attempts to bring a proof in the name of Ravina. The *Mishna* states: Pre-dated loan documents are invalid. Post-dated loan documents are valid. If you hold that when someone says, "Whatever I will buy in the future should be mortgaged for this debt," and he bought and then sold or bequeathed it to others that the lien is invalid, why should post-dated loans be valid? We should suspect that he bought it later! [*We should suspect that the borrower bought the property after the loan (which should make it unable to be a valid lien if we say that future purchases are not valid liens) and before the document was written. The document should therefore be invalid, as we cannot be sure about the time of the lien. Being that the Mishna does not worry about this, it is apparent that such a lien for future purchases is valid.*]

The *Gemora* answers: This must be according to Rabbi Meir, who says that a person can conveysomething that has not yet come into the world.

Rav Mesharshiya attempts to bring a proof in the name of Rava. The *Mishna* states: What is the case of "improvement of land (*for which we do not allow one to seize possessions that have a lien*)?" A person sold a field to his friend who proceeded to improve the field. The seller's creditor now seizes the field. When the buyer claims his money back from the seller, he can take the principal from property with a lien, but can only claim his improvement from the seller's property that do not have a lien. If you hold that when the borrower says, "Whatever I will acquire should be mortgaged for the loan," and then the borrower acquired it, and then sold it or bequeathed it to someone else before the lender tried collecting the loan, the lien is invalid, why does the creditor collect the improvement at all? [*This only arrived after the loan to the seller (who then sold the field to the buyer)!*]

The *Gemora* answers: This must be according to Rabbi Meir, who says that a person can convey something that has not yet come into the world

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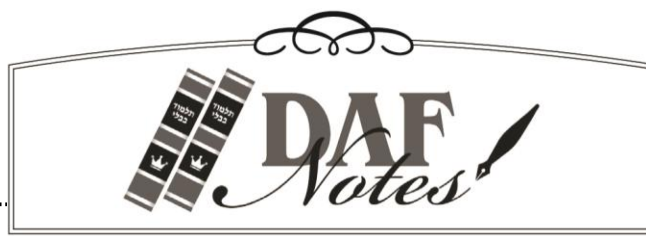

The *Gemora* continues with its question. If you hold that when the borrower says, "Whatever I will acquire should be mortgaged for the loan," and then the borrower acquired it, and then sold it or bequeathed it to someone else before the lender tried collecting the loan, the lien is invalid, it is invalid. If you say it is valid, what is the law if a person borrowed money from two people at two different times, and wrote to each, "Whatever I will acquire should be mortgaged for the loan?" If he subsequently goes and buys property after both loans were completed and he sells or bequeaths it to others, who has the first rights to seize the property? Do we say that the first lender has the first rights, or do we say that the second one has the rights?

Rav Nachman says: We asked this question, and they sent us the answer that the first one has the rights. Rav Huna says: They should split it. Rabbah bar Avuha also taught: They should split it.

Ravina says: Rav Ashi told us the first time that the first one has the rights, and the second time he told us that they should split it. [*The Rashbam says this refers to the first and second time he learned this topic* (*see Rashbam further for more exaplanation*).] The law is that they should split it. (157a – 157b)

1.

INSIGHTS TO THE DAF

Mitzvah to Pay the Father's Debt

Tosfos explains that the concept of their being a *mitzvah* on inheritors to pay the debts of their fathers depends on a few variables:

a. whether the father left them property from which to collect.

b. whether a debt without a contract is collectible from the orphans.

c. whether the orphans inherited anything from their father.

1. If the father leaves over property on which there is a loan with a contract - the orphans have a *mitzvah* to pay and we force them in *beis din* to pay.

2. If the father doesn't leave over property - the orphans have a *mitzvah* to pay, but we don't force them to pay [Rashash points out that the Shulchan Aruch (107) rules like the Hagahos Ashri that if the father doesn't leave over anything, they don't even have a *mitzvah* to pay at all].

3. If the father leaves them property on which there is a verbal loan, it depends: One opinion holds that a verbal loan is collected from orphans, so we force them to pay. But according to Rav and Shmuel that a verbal loan isn't collected from orphans, they have a *mitzvah* to pay but we don't force.

Perhaps the concept of forcing the orphans to pay is under the rubric of forcing for positive *mitzvos*. This seems to be supported clearly by Tosfos who quotes this *Gemora* not only for the reason that one must repay their own debt, but to justify why we force orphans to pay their fathers debt (*when it is a contractual debt and he leaves over property*). The difficulty is: if we force for *mitzvas aseh*, why don't we force in all situations where they have a *mitzvah* to pay, even when he doesn't leave over property on which there is a lien?

Conveying Properties that are not in Existence

Our *sugya* says that this principle applies to *dinei mamonos* [*cases involving monetary matters*]. As long as an article is nonexistent, it cannot be acquired (*C.M.*

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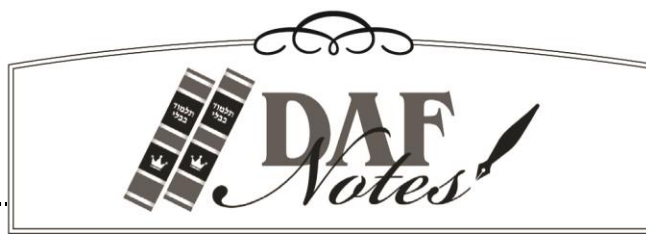

209:4). However, under certain circumstances, when a *kinyan* [*an act of acquisition*] is made for something nonexistent, the seller must carry out the transaction.

Two Jews, one a Turkish *chacham* and businessman and the other captain of a cargo ship, went to the Maharit for a ruling. The Turkish *chacham* told the Maharit that he had recently signed a contract in which he had **committed** to sell four hundred skins to the captain. Now, after the *chacham* had reneged on his side of the deal, he argued that he had never been obligated to deliver the goods. He only intended to sell skins that were nonexistent at the time of sale and therefore the transaction is null and void since "nonexistent items cannot be sold."

However, the Maharit ruled that the *chacham* could not use this excuse to sidestep his obligation. We can differentiate between **selling** a nonexistent article and **obligating oneself** concerning such an article. Although the sale of the nonexistent item is invalid, this is because there is nothing tangible for the sale to take effect upon. However, an obligation to sell such an article is binding because the obligation lies upon the person, who does exist. We regard his obligation as a monetary debt in the form of an object. The monetary debt is binding, for surely one can undertake to give money to someone else (see *Ktzos HaChoshen* 203:4).

DAILY MASHAL

A Yahrtzeit

Rabbi Meir Shapiro, the founder of the Daf Hayomi passed away on the day that those who were studying the *daf* during that cycle were learning the *Gemora* which states: The orphans have a *mitzvah* to pay the debt of their father.

Hundreds of Reb Meir Shapiro's students, who viewed themselves as only children of their beloved Rebbe swore by his coffin that they would continue building the illustrious Yeshiva of their Rebbe spiritually and financially. It was in this manner that they felt that they were paying the debt of their father; continuing his legacy.

And so it was. For the next six years, until the Holocaust, his Yeshiva flourished; his spirit was present in the walls of the Yeshiva, and served as a tremendous influence to all of his disciples.

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