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DAF Notes
Insights into the Daily Daf
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Gittin Daf 51

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

***Collecting from Encumbered Property when the Obligation is not Fixed or Written Down***

The *Mishnah* had stated: Compensation for produce consumed and for the improvement of the land (*when someone bought stolen land that is now being returned to its original owner*), and for the food of a wife and daughters (*after the husband/father dies*), is not taken from mortgaged property, for the benefit of the public.

The *Gemora* asks: What is the reason for this?

Ulla said in the name of Rish Lakish: It is because it (*his responsibility to compensate the buyer for the produce*) is not written in the sale document (*and the seller's obligation to compensate him for the produce which was not in existence at the time of the sale is something that is not public knowledge; therefore it cannot be collected from mortgaged property*).

Rabbi Abba asked Ulla: But sustenance for a wife and daughter (*after the father's death*) is considered as if it was written in the *kesuvah* (*for it is an automatic obligation*), and nevertheless, it is not collected from mortgaged property!?

Ulla replied: The initial enactment was that it is considered written only regarding his non-mortgaged property; however, it is not regarded as written with respect to his mortgaged property.

And Rav Assi in the name of Rabbi Yochanan also explained the *Mishnah's halachah* because it (*his responsibility to compensate the buyer for the produce*) was not written in the sale document.

Rabbi Zeira asked Rav Assi: But sustenance for a wife and daughter (*after the father's death*) is considered as if it was written in the *kesuvah* (*for it is an automatic obligation*), and nevertheless, it is not collected from mortgaged property!?

Rav Assi replied: The initial enactment was that it is considered written only regarding his non-mortgaged property; however, it is not regarded as written with respect to his mortgaged property.

Rabbi Chanina suggests a different reason (*for why the compensation for produce consumed is not taken from mortgaged property*). It is because the amount of produce (*that will grow by the buyer*) is not fixed.

The *Gemora* inquires: In order to collect from mortgaged property according to Rabbi Chanina, does it need to be fixed and written in a document, or is it sufficient if it is fixed, even though it is not written?

The *Gemora* offers a proof from that which was stated: If a man dies and leaves two daughters and a son, and if the first one took her tenth of the property (*as a dowry; the Rabbis decreed that she should receive a tenth of the estate when she gets married*), but the second one did not take her tenth before the son died, Rabbi Yochanan said that the second one has forfeited her tenth (*for now, she is inheriting half the estate*). And Rabbi Chanina said to him: The Rabbis went even further than this by ruling that we collect from encumbered property for his daughter's dowry, but not for maintenance, and how can you say then that the second forfeits her tenth? [*If she can collect from others, how can we rule that she should give up what is already in her hands?*]





L'zecher Nishmas HaRav Raphael Dov ben HaRav Yosef Yechezkel Marcus O"H

Now, a dowry is a fixed sum, but it is not written down, and we see that Rabbi Chanina holds that we collect for it from the purchaser's land!

The *Gemora* rejects the proof by saying that there is a special reason in the case of a dowry; since it has a report, it is considered as if it was written.

Rav Huna bar Manoach asked on Ulla from the following *Mishnah*: [*If someone marries a woman and promises to support her daughter (from a previous marriage) for five years, he must do so. If she (is divorced from him and) marries someone else (within those five years), and she makes that same condition with her new husband, he must keep this condition as well. The first husband cannot say, "If her mother would be married to me I will feed her." He is obligated to bring her food to where her mother resides. Both husbands cannot say that they will split the costs of her food, but rather one buys her food and the other gives her the monetary equivalent.*] If the husbands die, their daughters are fed from unencumbered possessions, and this daughter (*that we are discussing*) can be fed from encumbered properties, as she is considered like a creditor. [*This Mishnah refutes Ulla who said that only an obligation which is written in a document is collected from the purchasers!*]

The *Gemora* answers: That *Mishnah* is discussing a case where there was a formal transfer (*a kinyan; and it is regarded as if it was written*).

If so, asks the *Gemora*, then the (*other*) daughters should also collect from the encumbered properties?

The *Gemora* answers: We presume that the *kinyan* was made on behalf of the one daughter, but not for the others.

The *Gemora* asks: On what grounds do you make such a distinction (*when the Mishnah does not hint at this at all*)?

The *Gemora* answers: In truth, the *kinyan* was made for all of them; however, because his wife's daughter was already born at the time of the *kinyan*, she can benefit from it, but their own daughters, who were not yet born at the time of the *kinyan*, cannot benefit from it.

The *Gemora* asks: But are we not to assume that they all were already born at the time of the *kinyan*, and if you ask, how can that be, I can answer that they (*the two husbands*) divorced her (*after giving birth to a daughter from each of them*) and then remarried her (*and then they made the kinyan; hence, they all were alive at that time*)!?

Rather, the *Gemora* explains that the husband's daughters, who are entitled to maintenance (*from their father's estate*) on the strength of *Beis Din's* stipulation derive no benefit from the *kinyan*; whereas his wife's daughter, who is not entitled to maintenance on the strength of *Beis Din's* stipulation (*but rather, the husband volunteers for this*) does derive benefit from the *kinyan*.

The *Gemora* asks: How can they be in an inferior position?

The *Gemora* answers: This is the explanation: Since the husband's daughters are entitled to maintenance on the strength of *Beis Din's* stipulation, we presume that he gave her bundles of money (*for their maintenance, and therefore, we cannot collect from the purchasers; this, however, is not a concern with respect to his wife's daughter*).

The *Gemora* proves from a *Baraisa* that the argument between Ulla (*who holds that an obligation that is not written down cannot be collected from encumbered properties*) and Rabbi Chanina (*who holds that an obligation that is not fixed cannot be collected from encumbered properties*) is actually a *Tannaic* dispute. The Baraisa states: Rabbi Nassan says: When does this rule (that compensation for produce consumed and for the improvement of the land - *when someone bought stolen land that is now being returned to its original owner*, is not taken from mortgaged property) apply? It is when the purchase of the second

preceded the improvement of the first. But, if the improvement of the first preceded the purchase of the second, he (the first purchaser) can recover from mortgaged property. We see therefore that the reason is because he did not improve the field first (and not because the produce is not recorded in the deed or is not a fixed amount)!?

The Gemora notes: This indeed is a point on which Tannaim also differed, as it has been taught in a Baraisa: Compensation for produce consumed and for improvement of the land and for sustenance of a widow and daughters cannot be collected from mortgaged property on which there is a lien, for the benefit of the public, since they are not written in any deed. Rabbi Yosi said: What benefit of the public is there here, seeing that they (these obligations) are not fixed? (50b3 – 51a4)

***Returning a Lost Article***

The *Mishnah* had stated: And one who finds a lost object does not swear (*where the owner is claiming that the finder is not returning everything*), for the benefit of the public.

Rabbi Yitzchak said: If one person says to another, "You found two purses of mine tied together," and the other one says, "I found only one," he is required to swear (*that he only found one*). [*The Torah states that one who makes a partial admission must swear on the remainder.*] If he says, "You found two oxen of mine tied together," and the other one says. "I found only one," he is not required to swear. How is this difference explained? It is because oxen can get loose from one another, but purses cannot (*and therefore the owner has a definite claim that if the finder found one, he found the other as well*). If he says, "You found two oxen of mine tied together," and the other one says, "I did find two, but I returned to you one of them," he is required to swear (*since he admitted that he found two of them*).

The *Gemora* asks: Does Rabbi Yitzchak not accept the rule of our *Mishnah* that one who finds a lost object does not swear (*where the owner is claiming that the finder is not returning everything*), for the benefit of the public (*for people would not return lost articles*)!?

The *Gemora* answers: He holds like Rabbi Eliezer ben Yaakov, for we learned in a *Baraisa*: Rabbi Eliezer ben Yaakov says: Sometimes it may happen that a man is required to swear because of his own claim. What is the case? If one says to his friend, an orphan, "I owed to your father a *maneh* and I returned to him half," he must swear (*that he does not owe the other half*). And this is a case where one swears because of one's own claim. But the *Chachamim* say: He is regarded only as one who returns a lost article and he is exempt from swearing.

The *Gemora* asks: And why doesn't Rabbi Eliezer ben Yaakov hold that one who returns a lost article and he is exempt from taking an oath (*surely this is against the well-established principle that he is exempt*)?

Rav answers: We are referring here of a case when a minor claimed from him (*and his claim was therefore, not entirely his own*).

The *Gemora* asks: But didn't we learn the following: One does not take an oath because of a claim by a deaf-mute, an imbecile, or a minor!?

The *Gemora* answers: What is meant by a minor? An adult. And why is he referred to as a minor? It is because with regard to the affairs of his father, he is regarded as a minor.

The *Gemora* counters: If so, how can you say that this is his own claim, why surely it is a claim made by others?

The *Gemora* answers: It is a claim made by others and also by his own admission.

The *Gemora* asks: But all claims consist of a claim made by others and one's own admission?

The *Gemora*, based on the above questions, reject this explanation and returns to its original understanding of Rav that the claim was made by an actual minor, and nevertheless, one would be obligated to swear because it was regarding a debt of an adult. The *Gemora* explains the dispute: They differ regarding an opinion of Rabbah, for Rabbah said: Why did the Torah say that one who admits part of a claim must swear? It is because we assume that no man would be so insolent to deny his obligation in the face of his creditor. He would wish to deny the whole debt, but he does not do so because no one is so insolent. (*This is why he is required to swear on the remainder.*) Indeed, he would like to admit to the entire claim, only he does not do so in order to evade the creditor for the moment, and he thinks, "As soon as I will have money, I will repay the debt." This is why the Torah said: Impose an oath on him, so that he should admit to the entire claim.

Rabbi Eliezer ben Yaakov holds that he is not insolent against him nor against his son, and therefore he is not regarded as one who returns a lost article. The *Chachamim* maintain that against the creditor, he is not insolent, but against his son, he might be insolent, and since he is not insolent (*by admitting to a portion of the debt*), he is regarded as one who returns a lost article (*and he is believed without an oath*). (51a4 – 51b3)

**DAILY MASHAL**

***Save us from Brazenness***

We say in davening every morning: Blessed are You, Hashem, Who bestows kindness that are beneficent to His people Israel. Immediately following that, we say: May it be the will of Hashem…..that you rescue me today and every day from those who are brazen-faced and from brazen-facedness, etc.

What is the connection between the two prayers?

In the sefer, Nitei Eishel, Reb Shmuel Aharon Lieder explains based upon our Gemora which states: Rabbah said: Why did the Torah say that one who admits part of a claim must swear? It is because we assume that no man would be so insolent to deny his obligation in the face of his creditor. And since the Holy One, Blessed be He has showered us with beneficent kindness without any limits whatsoever, so much so that we cannot even thank Him sufficiently. As we say in *nishmas*: Even if our mouths would be as full of song as the sea, and our tongue as full of joyous song as its multitude of waves, and our lips as full of praise as the breadth of the heavens etc., we still could not thank You sufficiently for even one of the thousand, thousands of thousands and myriad of favors that You performed for our ancestors and for us. Accordingly, we are debtors to Hashem, so immediately after we thank Hashem for all the kindness He does for us, we pray that He should save us from brazenness, i.e. we should not Heaven forbid act insolently towards Hashem after all the kindness that He bestows upon us.

**QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF**
to refresh your memory

Q: Which type of guarantor does everyone agree about that he is required to honor his guarantee?

A: A *kablan* (*a guarantor who accepts full responsibility, even if the debtor does not default*).

Q: Biblically, with what type of land do we assess a field for a debt? Rabbinically?

A: Biblically – inferior property; Rabbinically – average.

Q: What two *halachos* apply when we are collecting from an orphan's inherited property?

A: We may only seize land of an inferior quality, and it is only with an oath