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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

Found a Contract

A Baraisa has been taught in support of Rabbi Yochanan, and in refutation of Rabbi Elazar in one point, and of Shmuel in two points: If one has found notes of indebtedness in which there is a clause mortgaging [the debtor's] property, even if both [the debtor and creditor] admit [the genuineness of the documents], one should not return them either to the one or to the other. But if they contain no clause mortgaging [the debtor's] property, then as long as the borrower admits [the debt] they should be returned to the lender, but if the borrower does not admit the debt, they should not be returned either to the one or to the other. This is the view of Rabbi Meir, for Rabbi Meir maintained that notes of indebtedness which contain a clause mortgaging [the debtor's] property [entitle the lender to] exact payment from encumbered property, and that those that contain no clause mortgaging [the debtor's] property [entitle the lender] to exact payment from unencumbered property [only]. But the Chachamim say: In either case does [the document entitle the lender to] exact payment from encumbered property.

This is a refutation of Rabbi Elazar in one point, as he maintained that according to Rabbi Meir a document that contains no clause mortgaging [the debtor's] property does not [entitle the lender to] exact payment either from encumbered or unencumbered property, and he [further] said that both Rabbi Meir and the Chachamim agree that we are not concerned of a fraudulent agreement [between the lender and the borrower to exact payment from the purchasers of the borrower's property], while the Baraisa teaches that a document which contains no clause mortgaging [the debtor's] property [does not entitle the creditor to] exact payment from encumbered property but does [entitle him to exact] payment from unencumbered property, and it [further] proceeds to indicate that both Rabbi Meir and the Chachamim agree that we are concerned of a 'fraudulent agreement,' for it teaches that even if both parties admit [the debt] one must not return [the documents] either to the one or to the other, which shows that we are concerned of a fraudulent agreement [between the parties to rob the purchasers of the borrower's property]. - But aren't these two points? — They are really one, for there is one reason [for both views]. As it is because Rabbi Elazar says that the difference of opinion [in our Mishnah] concerns a case where the debtor does not admit [his indebtedness] that he interprets it thus.

The view of Shmuel is refuted in two points. The one point [is the same] as [that which applies to] Rabbi Elazar, for he [also] interprets our Mishnah as referring to a case where the debtor does not admit [his indebtedness]. And the other point is that Shmuel says: If one finds a deed of transfer in the street one should return it to the owners, and we are not concerned that [the debt] may have been already paid. The refutation is that here [in the Baraisa] we are taught that even if both parties admit [the genuineness of the documents] one should not return them either to the one or to the other, which shows that we are concerned that [the debt] may have been paid, and it follows with even greater certainty that in a case where the borrower does not admit [the genuineness of the document] we are concerned that [the debt] may have been paid.

Shmuel said: What is the reason of the Chachamim [who maintain that a document which contains no clause mortgaging the debtor's property entitles the creditor to

exact payment even from encumbered property]? They are of opinion that [the omission of the clause] mortgaging [the debtor's property] is due to an error of the scribe.[1]

Rava bar Iti said to Rav Idi bar Avin: And has Shmuel really said that? Hasn't Shmuel said: [As regards] improvement [of the field], [the claim to] the best property, and mortgaging [the debtor's property] it is necessary for the scribe to consult [the seller of the field]?[2] Shall we say that he who stated the one view [of Shmuel] did not state the other? — There is no contradiction [between the two views]. The first view [was stated] in connection with a note of indebtedness, [in which case it is assumed] that no man will advance money without adequate security.[3] The second view [was stated] in connection with buying and selling, [in which case it is assumed] that a man may buy land for a day,[4] as, for instance, Avuha bar Ihi did, who bought an upper story from his sister [and] a creditor came and took it away from him. He appeared before Mar Shmuel [who] said to him: "Did she write you a guarantee?" He answered, "No." [Whereupon Shmuel] said to him: "If so, go in peace." So he said to him: "Is it not you, master, who said that [the omission of a clause] mortgaging [the debtor's property] is due to an error of the scribe?" He [Shmuel] answered him: "This applies only to notes of indebtedness, but it does not apply to documents [drawn up in connection with] buying and selling, for a man may buy land for a day." (13b2 – 14a2)

Abaye said: If Reuven sold a field to Shimon with a guarantee, and Reuven's creditor came and took it away from him, the law is that Reuven may go and argue the case with him [the creditor], and he [the creditor] cannot say to him [Reuven]: "I have nothing to do with you,"[5] for he [Reuven] may say to him [the creditor]: "What you take away from him [Shimon] comes back on me."[6]

Some say that even [if the field has been sold] without a guarantee the law is the same, for he [Reuven] may say to him [the creditor]: "I do not wish Shimon to have a grudge against me."[7] (14a2 – 14a3)

Abaye also said: If Reuven sold a field to Shimon without a guarantee, and claimants appeared [contesting Reuven's title to sell the land], he [Shimon] may retract as long as he has not taken possession of it, but if he has taken possession of it he cannot retract, for he [Reuven] may say to him [Shimon]: "You bought a bag sealed with knots, and you got it."[8]

When is he deemed to have 'taken possession'? When he has set his foot upon the landmarks. But some say that even

[1] All notes of indebtedness must be assumed to contain the mortgage clause, as no one will lend money without adequate security, and if a note is produced which contains no mortgage clause it can only be due to an error on the part of the scribe who, in writing the note, failed to carry out the instructions given to him by the creditor.

[2] The scribe must ask whether, in drawing up a deed of sale of land, he is to insert clauses dealing with the guarantees given to the buyer in case the land is seized by the seller's creditors, and making clear the buyer's claims to compensation for improvements made by him in the land; to the best portions of the seller's land (as indemnity to the buyer); and to the seller's property generally as security against loss through seizure by the seller's creditors. For all this the seller's consent is required, which would show that the omission of the mortgage clause in a document is not merely 'a scribe's error'.

[3] In the case of a loan, where the lender derives no benefit from the transaction, one must assume that the lender will take no risks and will insist on adequate security. In such a case the omission of the mortgage clause could only be due to a mistake on the part of the scribe.

[4] The buyer will take risks, for even if the land is ultimately seized by the seller's creditors, he (the buyer) will in the meantime have profited by the produce of the land.

[5] The creditor cannot plead that Reuven's counter-claim does not affect his right to seize the land bought by Shimon, and that Shimon's claim should be dealt with by the court as a separate action.

[6] shall have to refund him the purchase money. I am thus directly concerned in your action against Shimon, and I have a right to stop you from seizing his land in virtue of my counter-claim.

[7] Although legally Shimon has no redress, as I did not offer him any guarantee against loss through the actions of my creditors, I do not wish him to feel that I have let him down by selling him property which was liable to be seized by my creditors.

[8] You agreed to buy the field without examining my title, and you have to suffer the consequences.

[when the field is sold] with a guarantee [the buyer may not retract][9] for he [the seller] may say to him [the buyer]: "Show me your document [legalizing the seizure of the field and entitling you to demand your money back] and I shall pay you."[10] (14a3 – 14b1)

It was stated: If one sells a field to his fellow and it turns out not to be his own,[11] — Rav says: He [the buyer] is entitled to [the return of the money [which he paid for the field] and to [compensation from the seller for the] improvement [which he made in the field].[12] But Shmuel says: He is entitled to the money [he paid] but not to [compensation for the] improvement.

They inquired of Rav Huna: If he [the seller] expressly stated [that he would compensate the buyer for the] improvement [if the field were taken away], what is the law then? Is Shmuel's reason [for withholding compensation] that [the seller] did not expressly state [that he would compensate the buyer for the] improvement? [Then it would not apply to this case, for] here [the seller] did state expressly [that he would compensate the buyer]. Or is Shmuel's reason that, in view of the fact that he [the seller] really had no land [to sell, the money received by the buyer as compensation for the improvement] would appear like interest?[13] Rav Huna answered: Yes and No, for he was uncertain. (14b1 – 14b2)

It was stated: Rav Nachman said in the name of Shmuel: He [the buyer] is entitled to [have returned to him] the money [paid for the field], but not to [compensation for] improvement, even if he [the seller] stated expressly that [he would compensate the buyer for the] improvement, the reason being that, in view of the fact that he [the seller] really had no land to sell, he [the buyer] would be taking profit for his money.

Rava then asked Rav Nachman [from the following Mishnah]: We may not collect from encumbered property for the consumption of produce, the improvement of land, the food for one's wife and daughters, out of consideration for the public good.[14] [This would show that] it is only from encumbered property that we do not collect, but we do collect from unencumbered property, and it is stated [that this law applies] to the improvement of land. Now may it not be assumed that it refers to [land] bought from one who acquired it wrongfully?[15] — No, [it

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[9] Although in the end the seller must make good the buyer's loss, the buyer has no right to withdraw from the transaction on the plea that in the end his money will have to be refunded.

[10] I need not refund your money until the court has given its decision regarding the legality of the seizure and your title to have the money refunded.

[11] The seller had acquired the field wrongfully and had no title to the property. The rightful owner then comes and seizes the field from the buyer.

[12] If during his tenure of the field the buyer improved it by manure or by erecting a fence round it, he may claim compensation from the seller. The obvious question why the original (rightful) owner, who regains possession of his field, is not made to pay for the improvement, may be answered by referring to a case where the seller allowed the field to deteriorate after taking it away from the rightful owner, and the buyer only restored it to its original condition so that the original owner derives no actual benefit from the change. Rashi

[13] As the seller had no right to the field the transaction was entirely invalid, and there was no sale. The money handed over to the seller could therefore only be regarded as a loan, and when the seller returns to the buyer a larger sum than the purchase-price paid him, it appears like interest on the money.

[14] The reason why one may not hold encumbered property liable for such purposes is that it would prevent people from buying land, as such obligations are so common that they would arise in nearly every case.

[15] And has improved it before the original owner seized it again. The buyer may then collect the purchase price from the seller's encumbered property even if this property has been sold after the purchase of that field, for as long as the deed of sale contains a guarantee clause the claim involved has priority. The compensation for the improvement, however, can only be collected from unencumbered property — 'out of consideration for the public good' — as at the time when the deed of sale was written, and the guarantee clause inserted, no one knew what the compensation for improvements would amount to, and it is not in the interests of the public to allow such claims. In any case, this shows that the buyer is entitled to compensation from the seller, who had no title to the land, for the amount he spent on improvements.

refers to land seized by] a creditor.[16] - But note the first part: We may not collect [etc.] for the consumption of produce. Now if it refers [to land seized by] a creditor, is the creditor entitled to the produce [of the land]? Hasn't Shmuel said: A creditor collects [his debt from] an improved field, and does it not mean that [he] only [collects it from] an improved field but not from the produce [of the field]? It is therefore obvious that it refers to one who acquired [a field] wrongfully and to the one who has been deprived of it,[17] and seeing that the first part deals with one who acquired a field wrongfully and one who has been deprived of it, the second part [surely] also deals with such a case! — How does it follow? This [first part] deals with one case, and this [second part] deals with another case.[18] But are we not taught differently [in a Baraisa relating to the above Mishnah]: How [does it happen that payment is exacted for] improvement of the land? If one stole a field from a fellow, and he has had to give it up again [in consequence of legal action], then the one that is entitled to compensation may collect the original value [of the field] from encumbered property, and the value of the improvement [may be collected] from unencumbered property. Now, how is this to be understood? If we say that [it is to be understood] as stated, what right has the person who acquired the field wrongfully to claim compensation from anybody? It must therefore be [understood as referring to a case] where a person wrongfully took away a field from a fellow and sold it to another person, and [this other person] has improved it![19] — [Rav Nachman] answered him: Had you not removed the difficulty [in the Baraisa] by explaining [that it refers to an unlawfully acquired field]? You may as well remove the difficulty [by saying that it refers to a field seized] by a creditor [after it has been improved by the buyer].

Come and hear: How [does it happen that payment is exacted as compensation for] the use of the produce [of the field]? If one stole a field from a fellow, and he has had to give it up again [in consequence of legal action], then the one that is entitled to compensation may collect the capital [value of the field itself] from encumbered property, and the value of the produce [may be collected] from unencumbered property. Now, how is this to be understood? If we say that it is to be understood as stated, what right has the person who has acquired [the field] wrongfully to claim compensation from anybody? It must therefore be [understood as referring to a case] where one stole a field from a fellow and sold it to another person, and [this other person] has enhanced its value [by producing fruit]![20] — Rava answered: We deal here with a case where one stole from a fellow a field full of fruit and ate the fruit, and then dug in it pits, ditches and hollows. When the robbed [fellow] comes to demand the capital [value of the field itself] he may exact payment from encumbered property, but when he comes to demand [the value of] the

[16] The seller was entitled to sell, but the seller's creditors were entitled to seize the property, in which case the buyer is certainly entitled to the return of the money he spent on improvements, and if he receives a larger amount than the price he paid for the field it does not appear like interest on a loan, as the original sale was valid, and the return of the field is a new transaction.

[17] The produce of the field or the improvement of it may be claimed by the original owner who was robbed of his property, no matter whether the produce was there when the field was first taken away, or not. The owner can always claim the land with all its improvements, except that the buyer may demand back his outlay which brought about the improved condition of the field, provided that the sum demanded by the buyer does not exceed the amount by which the value of the field was increased as a result of the improvements.

[18] I.e., the first part deals with a person who has been robbed of his field, and the second part deals with a creditor who has seized the field from the buyer.

[19] The court compels the buyer to return the field to the rightful owner, who is also entitled to demand from the seller the value of the improvement. From this we would infer that the buyer collects the value of the improvement from the seller who had no title to the field — a contradiction to the view of Rav Nachman.

[20] The original (rightful) owner is not expected to pay for the produce of the field, with the exception of the buyer's outlay in looking after the field, as he is entitled to the produce of his own land. The buyer is therefore entitled to compensation from the person who sold him the field unlawfully, and from him the buyer can claim the value of the field as well as the value of the produce, which he may collect from unencumbered property — again a contradiction to the view of Rav Nachman.

fruit he may exact payment from unencumbered property [only].

Rabbah son of Rav Huna said: [It refers to a case] where bandits took away [the field from the person who acquired it unlawfully]. When the [original owner who was] robbed [of his field] comes to demand the capital [value of the field] he may exact payment from encumbered property. But if he comes to demand the value of the fruit he may exact payment from unencumbered property [only].

Rava does not give the same explanation as Rabbah son of Rav Huna because it says: He has had to give it up again, which obviously means through the [intervention of the] court. And Rabbah son of Rav Huna does not give the same explanation as Rava, because it says: He has had to give it up again, which obviously means in its original condition [and not full of holes].

Rav Ashi said: It refers partly to one and partly to the other, viz., if one stole from a fellow a field full of fruit, and ate the fruit and sold the field, when the buyer comes to demand the capital [value of the field itself] he may exact payment from encumbered property; when the robbed [fellow] comes to demand [the value of] the fruit he may exact payment from unencumbered property [only]. [The question now arises:] Both according to Rava and according to Rabbah son of Rav Huna this is [like] a debt contracted verbally, and a verbally contracted debt does not entitle [the creditor] to exact payment from encumbered property? — Here we deal with a case where [the robber first] stood his trial and then sold [the field]. - But if so, the produce [of the field should] also [be recoverable from encumbered property]? — [The case is one where the robber] has stood his trial as regards the capital [value of the field itself] but has not stood his trial as regards the produce. - But how can this be presumed? — It is the usual practice: When a person demands compensation, he demands compensation first for the principal.

But does Shmuel [really] hold the view that he who bought [a field] from a robber is not entitled to [compensation for the] improvement [he made in the field]? Didn't Shmuel say to Rav Chinena bar Shilas [the scribe]: Consult [the seller, when drawing up a deed of sale], and write, 'best property, improvement, and produce'? Now, to what [kind of transaction does this apply]? If [it applies] to a creditor [claiming the field for his debt], is he entitled to the produce of the field? Hasn't Shmuel said: The creditor exacts payment from the improvement, [which means] from the improvement only, but not from the produce? It must therefore [be said that it applies] to one who bought [a field] from a robber! — Rav Yosef said: Here we deal with a case where [the robber] owns land.

Abaye said to him: Is it permitted to borrow a se'ah [of grain and to repay the loan] with [the same] se'ah, when [the borrower] has land? — He [Rav Yosef] answered him: There [it is] a loan; here [it is] a sale.

Some say: Rav Yosef said: Here we deal with a case where there was a formal act of acquisition [whereby the seller pledged himself to be immediately responsible to the buyer for the improvement]. - [But] Abaye said to him: Is it permitted to borrow a se'ah [of grain and to repay the loan] with [the same] se'ah, when there was a formal act of acquisition [whereby the borrower pledged himself to be immediately responsible to the lender for an increase in price]? — He [Rav Yosef] answered him: There [it is] a loan; here [it is] a sale. (14b2 – 15a3)

INSIGHTS TO THE DAF

A Mistake of the Scribe

Shmuel says that the Chachamim hold that even a contract without explicit responsibility taken by the debtor is considered to obligate him with this responsibility, since we assume that the omission was a mistake by the scribe. The Ritva explains that Shmuel does not mean that we assume the responsibility was taken, but omitted in the written document, but rather that even if the responsibility was

never discussed, it is implicit in every loan, and the scribe was mistaken in not writing this implicit responsibility. The Ritva proves this from the discussion of the Gemora. The Gemora challenges this statement of Shmuel from his statement that a scribe must ask his client before including a clause for responsibility. If Shmuel only meant that after the fact, we assume responsibility was taken, but fundamentally, responsibility must be explicitly taken, then there would be no contradiction. Even though we assume later that all was done correctly, the proper way to write a contract would be to spell out the responsibility. The contradiction cited by the Gemora proves that Shmuel's first statement was that responsibility is implicit in all debts.

Legal Standing

Abaye stated that a seller has legal standing against a creditor trying to seize land he sold. The Rishonim discuss why this legal standing is relevant, since superficially, we would assume that any claim the seller could advance could also be advanced by the buyer. In fact, Tosfos (14a Dina) points out that the court will sometimes offer a theoretical claim for the buyer, even if he does not do so, since he is not fully apprised of the land and loan's history. The Rishonim enumerate the following possibilities:

1. Any witnesses that are related to the seller and not the buyer are disqualified. (Rosh) Tosfos rejects this option, since we disqualify relatives of any party affected by the case, even if they do not have legal standing. The Gemora (Makkos 7a) disqualifies witnesses related to a guarantor, since he would have to pay if the debtor cannot.
2. If the buyer stated to the court that he exhausted his evidence, he may not enter any further claims. However, since the seller is a party to the case, he may still enter evidence and claims. (Tosfos)
3. If the creditor was obligated in a Torah oath to the seller (for some other case), the seller may demand that he swear a Torah oath that he did not already collect his debt, through *gilgul* (attaching an oath on an existing oath). The buyer can only demand a Rabbinic oath, which is less severe. (Tosfos)
4. The seller may be a wiser litigant, and advance better claims than the buyer. (Tosfos)
5. The creditor will be less likely to lie to the seller, since he knows what truly happened (Tosfos)
6. If the creditor demands to go to a higher court, he can force his counter party to go there, or else pay. If the buyer cannot go, but the seller can, the seller can continue the case there. (Tosfos)
7. If the seller claims that the creditor also owed him the same amount of money from a different debt, he can defer the case until both claims are adjudicated. (Tosfos Rid)
8. If the land was designated as an *apotiki* (land assigned to this loan), the buyer cannot offer to pay the creditor in lieu of the land, but the seller can. (Rashba)
9. If the land was designated as an *apotiki*, and the buyer improved the land, if the creditor seizes it from the buyer, he must only pay the buyer for his labor. However, if he seizes it from the seller, he may only seize the amount of the land equal to the debt. (Rashba)

Taking Possession

Abaye states that if one buys land and then discovers that there are those who claim the land already, he may back out of the sale if he has not taken possession. The Gemora explains that taking possession means elevating the boundaries of the field. The Mishna in Kiddushin states that land is acquired through money, a contract, or taking possession (*chazaka*), and the Gemora uses the same *chazaka* term for the elevation of the boundaries. Rashi says that the Gemora's case is a buyer who has not yet paid for the field, and is acquiring it through the act of elevating the boundaries. Tosfos (14a Ad) and the Ritva disagree, citing two difficulties with Rashi's explanation:

1. The Gemora's first version of Abaye said that if the seller accepted responsibility for the sale, the buyer can back out even after taking possession. According to Rashi, at that point the sale is

complete, so why should any buyer be able to back out?

2. The Gemora asks what taking possession means, and specifies the elevation of the boundaries. The Gemora here does not seem the place to discuss general rules of taking possession (the Gemora in Babba Basra discusses land possession at length), and this form of taking possession is not listed anywhere else as a form of acquiring a field.

Therefore, Tosfos and the Ritva say that Abaye is discussing a buyer who has fully acquired the field, in any way that is valid. However, until he actually starts using the field, if he finds out about any claims, he can void the sale, as a mistaken sale (*mekach ta'us*). Therefore, the elevation of boundaries is only discussed here, since it is not to acquire the field, but to indicate that the buyer has assumed the role of owner, and disregarded any other claims.

DAILY MASHAL

There is a repetition with Avraham, when Hashem tells him in Parshas Lech Lecha: "Raise your eyes and see from the place where you are ... for the entire land that you see I will give to you and your descendants forever." Later it says: "Go and walk around in the land to its length and width, for I will give it to you." (Bereishis 13:14-17)

The Kli Yakar comments on this and asks why there is this repetition of walking and seeing? He also notes that regarding seeing it says: "I will give to you and your descendants," whereas regarding walking it only says: "I will give it to you. He explains that Eretz Yisrael is good and special in two ways. First, it is a good land, a land of flowing rivers, of wheat and barley, a land in which you will not eat bread in poverty ... you will eat and be satiated and bless Hashem, your G-d for the good land that He gave you." (Devarim 8:7-10)

The second is the Divine status and spiritual benefits of Eretz Yisrael. "A land that the eyes of Hashem, your G-d, are on it from the beginning of the year until the end of the year." The Ramban deals at length with the special spirituality of the land at the end of Parshas Acharei Mos, and calls it "the Sanctuary of Hashem." He writes that the mitzvos are intended primarily for those who live in the Land. He concludes with these words: "If you are worthy of understanding the first 'land' that is mentioned in Parshas Bereishis and Parshas Bechukosai, you will understand a great and hidden secret, and you will understand what Chazal said that the Temple above is parallel to the Temple below."

The physical "land" on earth is acquired through possession. The Gemara that "by walking the borders," when a person walks around the borders of a field, he acquires it through possession. Therefore, Avraham was told: "Go and walk around in the Land". However, the spiritual "land" in heaven is acquired through a special vision, through a spiritual force.

Therefore Hashem promised Avraham two things: 1. "To the land that I will show you." This parallels Moshe's request: "and I will see the land," to which Hashem responds: "Go up to the top of the peak and raise your eyes west and north and south and east, and see with your eyes, for you will not cross this Jordan [River]".

Hashem granted the request of seeing the Land, but not the request of walking through it. This was also Moshe's request for the good land – the revealed, and the good mountain – the Temple.

The spiritual virtue of the land will exist eternally, and even when the Temple below is destroyed, the Temple above is never destroyed. Therefore, it says to Avraham: "for the entire land that you see I will give to you and your descendants forever." What is acquired through seeing is never forfeited, whereas what is acquired through walking in the material land: "Go and walk around in the land ... for I will give it to you." There is no guarantee that it will be also to your descendants, and if, heaven forbid they shall sin – it will be taken away from them.

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