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

***Claims***

The *Gemara* relates a story. A rumor was spread that Rava bar Sharshom was eating produce produced on land belonging to orphans. Abaye asked Rava bar Sharshom to explain himself. Rava bar Sharshom replied that he took this land as collateral for a loan from the father of the orphans. [*The Gemara is referring to a special collateral called Mashcanta deSura where the loan is actually repaid by eating from the field which the borrower gives as a deposit to the lender. Once the debt is repaid the field goes back to the borrower.*]

Rava bar Sharshom claimed that the father had an additional debt to him. When Rava bar Sharshom finished eating the fruit from the first debt, he was in a quandary what to do. If he would give the land back to the orphans, and then attempt to collect the second debt, he would require an oath since anyone who wishes to collect from orphans is required to take an oath. He therefore decided to hide his document which said the land was in his possession as collateral. Since he would now be believed to say he bought the field from the father, he would also be believed to say the father owed him another debt. [*Since the land had been in Rava bar Sharahom's possession for three years, it constitutes a chazakah, and could be used as a proof of ownership.*]

Abaye rejects this logic. Since there is a rumor that the land belongs to the orphans, Rava bar Sharshom would not be believed to say he bought the land from the father without providing documentation of the sale. Therefore, the land must be returned to the orphans, and when they grow up, Rava bar Shrashom could take them to court for the second loan. (32b2 – 33a1)

The *Gemara* relates another story. A relative of Rav Idi bar Avin died and left a palm tree as an inheritance. There was an argument between Rav Idi and someone else over who was the closer relative. The other relative took possession of the palm tree. [*The halachah is that in the absence of proof, whoever is stronger may take possession of the item of contention.*]

In the end, the other person admitted that Rav Idi was the closer relative. Rav Chisda awarded Rav Idi the palm. Rav Idi then asked Rav Chisda to force the other relative to pay for the fruit that he had eaten in the interim. Rav Chisda rejected this claim. Since the verdict was based solely on the admission of one the litigants, it is like a gift and Rav Idi has no right to make another claim.

Rava and Abaye disagree with this logic. They are of the opinion that the admission of the other party established Rav Idi as the rightful owner and he has a right to demand reimbursement for the fruit. (33a2 – 33b1)

The *Gemara* brings another case. Two people are arguing over a field. They both claim that this field belonged to their fathers. One brings witnesses that the field indeed belonged to the father and one brought witnesses that he has been on the field the required three years to make a *chazakah.* Rav Chisda says the one who brought witnesses is believed that it belonged to his father under the principle of *migo*, since he would have been believed to make the claim he bought the field. If he had wished to lie, he would have made the better claim that he bought the field. We can therefore believe him when he says the field belonged to his father.

Abaye and Rava, however, do not hold like Rav Chisda, for they say his claim is in direct contradiction to witnesses and we don't apply the principle of *migo* (*since*) if the claim is in direct contradiction to witnesses. (33b1)

The *Gemara* relates another case. One party says to the other, "What are you doing on my land?" The other party claims that he bought it and he's been there for three years and has a *chazakah*. The squatter was only able to provide witnesses that he was on the land for two years. Rav Nachman says both the land and the two years of fruit must be returned to the original owner. [*In the absence of proof it must be assumed that the original owner is still the owner. Since it was proven that the squatter ate two years of produce, he must pay the owner for what he ate.*] (33b1)

Rav Zevid says that if one claims he has eaten fruit from a field because he was a sharecropper or because he has bought the fruit, he is believed. Didn't Rav Yehudah say that if one takes tools and says that he's going to cut fruit from someone else's tree, he is believed because people are not so brazen to cut fruit from someone else's tree if he was not given permission? Here also, we can assume that a person will not be so brazen to consume produce that does not belong to him.

The *Gemara* asks that if this principle is true, a person should be believed to make a claim on the land itself based on the same principle.

The *Gemara* answers that in the case of the land itself, the party making the claim on the land must produce a *shtar,* a document which proves the sale. The absence of a document calls into question the validity of the claim.

The *Gemara* asks: Why is it not necessary to produce a document when a claim is made only on the fruit?

The *Gemara* answers: It is not customary to write a document for the sale of fruit. (33b1 – 33b2)

The *Gemara* relates another case. One person says to another, "What are you doing on my land?" The other person responds that he bought it, he's been there for three years, and he produces one witness who has seen him there for three years.

The Sages who studied before Abaye thought to compare this to the case of Rabbi Abba's silver ingot (in which there was only one witness). A person grabbed a silver ingot from his friend. The latter brought the case before Rabbi Ami, before whom Rabbi Abba was sitting at the time. He brought one witness to prove that the man had snatched the article from him. "Yes," said the other, "I did snatch, but it was my own property that I snatched." [this will be continued.] (33b2)

**Insights to the Daf**

***Claims to Fruit***

The *Gemara* establishes that a person is believed if he claims that fruit was sold to him. The commentators explain that this is not true in every case. A person is believed to have bought the fruit if he has already eaten them. He's also believed to go and cut the fruit down if the owner is not present. *Beis Din* will not stop him even if we know the land belongs to someone else. This is the case in our *Gemara*. If, however, the owner is present and disputes the claim, the owner is believed. The Rashbam says if this were not the case, there would be no way to prevent people from stealing fruit.

Tosfos raises an interesting question. Our *Gemara* gave a case where the squatter could only give proof that he was on the land for two years. Rav Nachman therefore made him give back all the fruit which he ate during those years. Tosfos asks: Why couldn't he keep those fruit by making use of a *migo*. Since he would have been believed if he said he bought the fruit, we should allow him to keep the fruit based on the claim that he bought the land!?

Tosfos answers by establishing a fundamental principle in *migo*. A *migo* is only applicable if one might make the alternative claim. In our case, however, the claimant is attempting to establish ownership on the entire property. A claim on the fruit alone would not accomplish this goal and, therefore, *migo* is not relevant here.

**DAILY MASHAL**

**Avoiding an Oath**

HaGaon Rav Binyamin Aryeh Weiss zt"l, av beis din of Tchernovitz, remarked that people nowadays have adopted a custom to avoid even a truthful oath at all costs (Responsa Even Yekarah, C.M. 6). The Council of Four Lands, a Jewish autonomous regime in Eastern Europe that lasted 250 years (5280-5524), decreed that if a beis din foresees a case to be leading to an oath, they must suggest a settlement avoiding the oath by which the claimant deducts a third from his claim.