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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

The *Gemara* relates another case. [If there are two claimants to a property and] one says, “It belonged to my father,” while the other says, “It belonged to my father” [without either of them bringing any evidence], Rav Nachman says that whichever is stronger can take possession.

Why, [it may be asked,] should the ruling be different here from the case in which two deeds [of sale or gift relating to the same property and] bearing the same date are presented in court, in which case Rav rules that the property should be divided between the claimants, and Shmuel says that the judges should assign it according to their own discretion?

The *Gemara* answers: In that case there is no chance that further evidence should come to light, but here there is a chance that further evidence may come to light.

The *Gemara* asks: But why should the ruling here be different from what we have learned in a Mishnah: If a man exchanges a cow for a donkey and it calves, and similarly if a man sells a female slave and she bears a child, if the seller says that the birth took place before the sale and the purchaser claims that it took place after the sale, they must share the offspring?

The *Gemara* answers: In that case this litigant had a clear-cut claim to the article in dispute and that litigant

had a clear-cut claim to the article in dispute, but in this case of Rav Nachman, if the property belonged to the first one, it never belonged to the other, and if it belonged to the other, it never belonged to the first one. (34b1 – 35b1)

The *Nehardeans* laid down that if someone from the street (an outsider) comes and seizes the property, he is not forced to surrender it, because Rabbi Chiya taught a Baraisa: He who robs the public is not a robber in the legal sense (and in such cases, he is not forced to return it).

Rav Ashi said: He is indeed a robber in the legal sense, and why [does Rabbi Chiya say that] he is not a robber in the legal sense? Because he is unable to make restitution like an ordinary robber. (35b1)

The *Mishnah* had stated: their period of *chazakah* is three years from day to day.

Rabbi Abba said: If [the claimant of a piece of land] helps [the man in possession] to lift a basket of produce on to his shoulders, this at once creates a presumption [that the land belongs to the latter].

Rav Zevid said: If, however, he pleads, “I have installed him [as a sharecropper] with a right to the produce [but not the ownership of the land],” his plea is accepted.



This too is only the case if the plea is made within three years [of the alleged transfer], but not later.

Rav Ashi said to Rav Kahana: If he had made him a sharecropper [for more than three years], what was he to do? He said: He should have lodged a protest within three years. For, were you not to say so, then what about the so-called 'mortgage of Sura' containing the stipulation, "On the termination of these years this land shall be given up without payment." Now suppose the mortgagee suppresses the mortgage bond and asserts that he has bought the land; are we indeed to say that his plea is to be accepted? Would the Rabbis make a regulation which would expose the mortgager to unfair loss? But the fact is that he can protect himself by lodging a protest within three years; and so in this case also he can protect himself by lodging a protest within three years. (35b1 – 35b3)

#### ***Chazakah when Buying a Field from an Idolater***

Rav Yehudah quoted Rav saying that a Jew who bought a field from an idolater has the same claiming rights in court as his seller – he must produce a contract to prove ownership, and a *chazakah* claim is not accepted. Rava says that if he claims that the idolater told him that he bought it from the original owner, his *chazakah* is accepted.

The *Gemara* rejects this statement, since the Jew relating what the idolater told him cannot be more credible than the idolater. Just as we would not believe such a statement from the seller without further evidence, we will not believe the buyer. Instead, Rava said that if the Jew says that he saw the idolater buy the field from the original owner, he is believed. Since he has lived on the field for three years, he would be believed if he claimed to buy the field from the original

owner. This gives him credibility in his current claim through *migu* – if he were to lie, he would have had a better claim - and we therefore accept his current claim. (35b3 – 36a1)

#### **DAILY MASHAL**

##### The Perspicacity of Rav Se'adyah Gaon

Our sugya rules that if someone gave identical gift certificates (*shtar matanah*) to two people, each of them for the same land, a *beis din* should decide its ownership according to their understanding: Who was liked more by the original owner, etc. The following tale illustrates the principle:

A rich Babylonian Jew often journeyed abroad on business, accompanied by his trusted servant. One day, in a far country, he fell suddenly ill and, before dying, entrusted a will with his servant: "All my property", he wrote, "I bequeath to my talented servant but if my son wants an inheritance, he should be given as much as the servant wants." The son, understanding his father intended to leave him all his wealth but powerless to contest the will, appealed to Rav Se'adyah Gaon, who asked the servant, "What do you mean to do with the property?"

"I mean", he replied, "to take everything for myself and give 1,000 dinars to my master's son."

"Very good", smiled Rav Se'adyah, "Take 1,000 dinars and give the rest of the inheritance to the son! After all, the will says, „If my son wants an inheritance, he should be given as much as the servant wants". Whatever the servant wants for himself should go to the son!" (*Otzar Chayim*, II, p. 130).