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Bava Basra Daf 45

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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Selling Without Responsibility

The *Gemora* discusses a previous statement. Ravin bar Shmuel says in the name of Shmuel: If someone sells a field to his friend, but does not take responsibility to replace the field if it is seized by his (*the seller's*) creditors, he cannot testify on behalf of the ownership of the buyer. This is because he makes it accessible to his creditor.

The *Gemora* asks: What is the case? If the seller has other land (*that could be seized by his creditors*), they will seize that first. [*The law is that his land is seized before land that he sold to others, even if he did not take responsibility that it would not be seized by creditors.*] If he does not have other land, what difference does it make if they seize the buyer's land? [*If he has no other land and the land is won by his buyer's litigant, his creditors will not be able to collect anything from him, as he has no land! Therefore, why does it matter whether or not the land is in the hands of his buyer?*]

The *Gemora* answers: The case is where he has no other land. It is simply not desirable for him to be considered: “A borrower is evil who does not pay.”

The *Gemora* asks: In any event, he is considered: “A borrower is evil who does not pay”!? [*This is because*

he has sold a field to someone who is ending up having the field seized from him, essentially getting nothing in return for his money!]

The *Gemora* answers: [*He is not considered: “A borrower is evil who does not pay.”*] He can tell the buyer that the reason he sold the field without responsibility was because he indeed thought someone might seize the field. [*This was a risk inherent in the deal that the buyer took when purchasing the field.*]

Rava, and some say Rav Pappa, announced the following proclamation for the purpose of all people who were going to *Eretz Yisroel* or going down to Bavel. If someone sells a donkey to his Jewish friend, and a gentile comes and steals the donkey from him (*but leaves the saddle behind*), the law is that the buyer can demand compensation from the seller. [*The fact that the gentile claimed it was actually his, coupled with the fact that he only took the donkey and stated the saddle was not his, indicates that the Jewish seller indeed may have stolen the donkey.*]

This is only true if the buyer does not know whether or not this donkey indeed belonged to the seller. However, if the buyer recognized that this was clearly the seller's donkey (*as he had always seen it in the seller's possession*), he has no claim.



Additionally, this is only true if the gentile leaves behind the saddle. However, if he takes everything, he is probably just a thief, and therefore the buyer has no claim against the seller.

Ameimar says: Even if none of these conditions are met, the buyer has no claim against the seller. This is because a regular idolater is considered a bandit, as the verse states: *“That their mouths talk lies, and their right hand is one of falseness.”* (44b – 45a)

The Chazakah of a Worker

The *Mishna* says: A worker cannot claim a *chazakah* etc.

Rabbah says: This was only taught regarding a case where there are witnesses who saw him give the object to the worker. If he gave it to the worker without witnesses, the worker has a *migu* claim. He should be believed that he bought it from this person, as he could have said that he denies his ever having owned the item.

Abaye asks: If so, even if the other person has witnesses that he gave it to the worker, the worker should still be believed. Being that he can say that he gave it back to the owner (*being that someone, who deposits an object with witnesses, does not have to give it back with witnesses*), he can also claim that he bought it from him. [*Abaye’s position will become clearer on 45b.*]

Rabbah replied: Do you hold that someone who deposits an object with witnesses does not have to return it with witnesses? This is incorrect. Rather,

someone who deposits an object with witnesses must return it with witnesses.

Abaye asked a question on Rabbah from a *braisa*. The *braisa* states: A person saw his slave in the hands of a worker, or his cloak in the hand of a launderer. He asks him, “What is he/this doing in your possession?” The person answers, “You sold it to me” or, “You gave it to me as a gift.” His claim is meaningless (*and the original owner takes the slave/cloak back*). If he says, “In front of me you told a certain person that he should sell it to me or give it to me as a gift,” his claim is valid.

What is the (*logical*) difference between the first case and the second case of the *braisa*?

Rava says: The second case is where a third party currently has the slave or cloak. The third party claims that in front of him, the original owner told the worker or launderer to sell the item to him. Being that the third party has a *migu*, as he could have said that he bought it from the original owner, he is also believed to say that the owner told the worker or launderer to sell it to him.

The first part of the *braisa* states, “A person saw.” What is the case? If there are witnesses that the item was in the hands of the worker, why is it necessary for him to have seen this? Let him bring the witnesses and he will clearly win! It must be that there are no witnesses, and when he sees the item, he can seize it! [*This implies the worker never has a chazakah, unlike Rabbah.*]



Rabbah answers: No. The case is where there are witnesses and the person saw the slave in the possession of the worker. [*The Rashbam says that Rabbah now retracts his opinion that the Mishna is talking about a case where witnesses saw him give the object to the worker. He now holds that not only must witnesses see this, but the person himself also must have seen the item in the worker's hands.*]

Abaye asks: Didn't you say that if someone deposits an object with witnesses he must return it with witnesses?

Rabbah says: I retract this opinion.

Rava asks on Abaye from a *braisa* which supports Rabbah: If a man gives his cloak to a craftsman to repair, and a disagreement erupts: The craftsman says, "You undertook to give me two *zuzim*," and the owner says, "I only undertook to give you one," as long as the cloak is in possession of the craftsman, it is upon the owner to bring proof (*for the craftsman will be believed with a migu that he could have claimed that he bought it*). If the craftsman has returned it (*and then he has no migu*), then if he is claiming his wages in the prescribed time (*the day that he returned it; the owner is required to pay him on that day*), he can take an oath and collect his claim, but if the prescribed time has elapsed (*after sunset*), then the rule applies that the burden of proof is on the claimant (*the craftsman*). Now what are the circumstances? If the owner gave the garment to the craftsman in the presence of witnesses, then let us see what the witnesses say (*regarding the amount of the wages*)!? It must therefore be referring to a case where there were no

witnesses, and yet the *braisa* rules that the craftsman is believed (*on the amount of the wages*). This must be because he has a *migu* that he could have claimed that he bought it! [*This is like Rabbah, and a challenge to Abaye's opinion!?*]

The *Gemora* answers that the *braisa* can be referring to a case where the owner did not see the cloak in the possession of the craftsman (*it was only through the craftsman's words; in this case, everyone would agree that he has a migu and would be believed*). (45a – 46a)

DAILY MASHAL

The Rudiments of Efficient Partnership

The essence of faithful partnership may be learnt from Rebbe Meir zt"l of Premishlan. Two people, about to found a commercial partnership, came for his blessing. "Have you drawn up a contract?" asked the Rebbe. "Not yet", they replied. "If so", he said, "I'll write one for you." The Rebbe took some paper, inscribed it with the letters alef, beis, gimel, dalet and handed it to them. Seeing their wonderment, he explained: "These initials represent the secret of successful partnership: alef for emunah, beis for berachah, gimel for geneivah and dalet for dalus (poverty). If you treat each other with emunah (faithfully), you'll merit a blessing but if one of you steals or hides anything from the other, you'll be stricken with poverty.