Daf Notes is currently being dedicated to the neshamot of

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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

Stipulated Exclusions

Rav Acha bar Huna enquired of Rav Sheishes: If the seller says, "I am selling you the field except for such-and-such a (*grafted*) carob tree," or "except for such-and-such a sycamore tree," what is the *halachah*? Is it that carob alone which the purchaser fails to acquire, while he acquires all the rest, or does he fail to acquire the rest also (*for if the seller would not have said anything, the buyer would not have acquired the carob trees anyway – why should the seller lose out because of this stipulation*)?

Rav Sheishes replied: He does not acquire them.

Rav Acha raised an objection from the following *braisa*: If the seller says, "I am selling you the field except for such-and-such a (*grafted*) carob tree," or "except for such-and-such a sycamore tree," he does not obtain possession. Does this not mean that he fails to acquire possession of that carob, but he does, in fact, acquire possession of the rest?

Rav Sheishes replied: No, he fails to acquire possession of the other carobs as well. I will prove this to you, for suppose he was selling him a field and said to him, "I am selling you my field except for such-and-such a field (*the one next to this one*)," would this mean that the purchaser failed to acquire ownership of that field alone, but did acquire ownership of all other fields (*owned by the seller*)? Of course not! So here too, he does not acquire ownership.

Others related the above discussion as follows: Rav Acha bar Huna enquired of Rav Sheishes: If the seller says, "I am selling you the field except for half of such-and-such a (*grafted*) carob tree," or "except for half of such-and-such a sycamore tree," what is the *halachah* (*regarding the other half of that tree*)? Do we say that the purchaser certainly fails to acquire the other trees in the field (*for if the seller would not have said anything, the buyer would not have acquired the carob trees anyway – why should the seller lose out because of this stipulation*), but perhaps he does acquire the other portion of this tree, or perhaps he does not acquire even the other portion of this tree?

Rav Sheishes replied: He does not acquire it.

Rav Acha raised an objection from the following *braisa*: If the seller says, "I am selling you the field except for half of such-and-such a (*grafted*) carob tree," or "except for half of such-and-such a sycamore tree," he does not obtain possession of the other trees. Does this not mean that he fails to acquire possession of the other carobs, but he does, in fact, acquire possession of the other portion of this tree?

Rav Sheishes replied: No, he fails to acquire possession of the other portion of this tree as well. I will prove this

to you, for suppose he was selling him a field and said to him, "I am selling you my field except for half of such-and-such a field (*the one next to this one*)," would this mean that the purchaser failed to acquire ownership of half of that field alone, but did acquire ownership of all other fields (*owned by the seller*)? Of course not! So here too, he does not acquire ownership. (70a)

Judges of the Exile

[*The Rashbam writes that the following discussion is introduced here because it contains a ruling from the Judges of the Exile mentioned above.*] Rav Amram enquired of Rav Chisda: If a man deposits something with another and receives a document for it, and the custodian (*when he is asked to return it*) claims, "I gave it back to you already," how do we decide? Do we argue (*with a migo*) that since if he would have claimed that it was unavoidably lost, we would have believed him, now too we should believe him, or can the depositor claim, "If you returned it to me, what is the document doing in my hand?"

Rav Chisda replied: We believe him that it was returned.

But, Rav Amram asked, why can't the depositor claim, "If you returned it to me, what is the document doing in my hand?"

Rav Chisda responded: And even according to your own argument, if the custodian said, "It was unavoidably lost," could the depositor have claimed, "What is the document doing in my hand?" [*Obviously, that would not be a valid counterclaim; so too here, the custodian is believed even though the depositor still retains the document! This is because the depositor, when the object was returned to him, could have said that he lost the document; the custodian would not have insisted on its return, for he knew that he could always claim that it was unavoidably lost!*]

Rav Amram asked: But the bottom line is that even if he would have claimed that it was unavoidably lost, he would be required to take an oath; here too, he should only be believed if he takes an oath!?

Rav Chisda replied: When I said that he is believed, it is only if he takes an oath (*that he returned it*).

The *Gemora* asks if the point at issue (*between Rav Chisda and Rav Amram*) is the same as the dispute between the following *Tannaim*, as it has been taught in the following *braisa*: If a claim is made against orphans regarding a certificate of investment (*a document which states that a financier gave money to the father of the orphans for him to invest; the orphans claim that perhaps their father already returned the principal to him*), the Judges of the Exile say that the claimant may take an oath (*that he was not paid*) and then collect the money, but the Judges of *Eretz Yisroel* say that he takes an oath and then collects only half. The *Gemora* explains: These *Tannaim* accept the view of the Nehardeans who say that an *iska* (*An ordinary iska is one where an investor gives goods to a merchant to sell. The arrangement is that all profits and losses will be split evenly between them. The merchant is responsible for half of the merchandise. He pays back the investor for the initial capital and he adds half the profits; he also accepts the risk on half of the losses.*) is half a loan and half a deposit. [*The Rabbis made an enactment which is satisfactory to both the borrower (i.e. the managing partner - he is not responsible for more than half of the original capital in a case of loss) and the creditor (i.e. the investing partner - he is guaranteed to receive at least half of his original*

investment, even if all is lost).] May we not say then that the point in which they argue is this, that the Judges of the Exile hold that the claimant (*if the father would have been alive and claimed that he returned the principal*) may plead effectively, "What is the document doing in my hand?" (*like Rav Amram, and he would have been able to collect the entire principal, including the half which was a deposit; so too, the financier can collect the entire principal from the orphans when he brings the certificate of investment*), and the Judges of *Eretz Yisroel* maintain (*like Rav Chisda*) that he cannot (*the claimant, had the father been alive, could not have claimed, "What is the document doing in my hand?" rather, the father would have been believed that he returned the deposit; he would not have been believed regarding the half which was a loan, and that is why the financier can only collect half of the principal*)?

The *Gemora* disagrees and states that the *Tannaim* all concur with Rav Chisda (*that the custodian is believed to say that he returned the deposit*), and here the point of disagreement is that the Judges of the Exile maintain that if the father had paid before his death, he would have told his children (*and since he did not, we may presume that he did not return the money*), while the Judges of *Eretz Yisroel* hold that we may presume that the Angel of Death prevented him from telling them (*for he died before having a chance to tell them that he repaid the money*).

The *Gemora* proves that the explanation was correct, for Rav Huna bar Avin sent a message that if a man deposit an object with another and receives a document for it, and the custodian (*when he is asked to return it*) claims, "I gave it back to you already," the custodian is believed. And if a claim is made against orphans regarding a certificate of investment, the claimant may take an oath (*that he was not paid*) and then collect the money.

The *Gemora* asks: Aren't these two contradictory rulings (*for if the custodian is believed that he returned the money, why do we allow the claimant to collect the entire principal; the father would have been believed that he returned the deposit and this claim should be advanced on the orphans' behalf; the claimant should only be entitled to the half which is a loan*)?

The *Gemora* answers (*as a proof to the explanation mentioned above*) that in the second case the reason why the claimant can collect the entire principal is because we may presume that if the father had paid before his death, he would have told his children (*and since he did not, we may presume that he did not return the money*).

Rava said: The *halachah* is that the claimant takes an oath and collects half. Mar Zutra said that the *halachah* follows the decision of the Judges of the Exile (*that he collects the entire principal*).

Ravina asked Mar Zutra: But Rava ruled that the claimant takes an oath and collects only half?

Mar Zutra replied: In our version, the reverse opinion is ascribed to the Judges of the Exile. (70a – 71a)

INSIGHTS TO THE DAF

Assets Discovered Posthumously

Orphans are assumed to know nothing about their parents' business and the Torah therefore empowers *dayanim* to represent them in case of claims, argue for them and demand claimants to take an oath or produce

solid proof. Almost every Rishon expressed an opinion as to the claims a *beis din* may present on an orphan's behalf. Ramban and other Rishonim hold that they may assert **any** claim (see Responsa Maharit, 112; *Shach* in *C.M.* §69 *S.K.* 26, and §297) but Tosfos on our *sugya* (70a, s.v. *Veleima*) and other Rishonim believe a *beis din* is limited to only **reasonable** claims. If, for example, someone produces a document proving he deposited funds with the deceased, the *beis din* may not claim they were subject to force majeure (*oness*), exempting the orphans, as *oness* such as an armed robbery is uncommon and would usually have become known. (*Shulchan 'Aruch* cites both opinions in *C.M.* 108:4; see *Shach,* ibid, *S.K.* 8, who rules according to Ramban). Still, all agree that a *beis din* must not counter with utterly unreasonable claims that, if submitted by the father, would be rejected. Halachic authorities were consequently required to decide which claims should be considered realistic and acceptable.

Taxation in German Communities

Poskim subsequently discussed the autonomous taxation methods practiced in German Jewish communities. Each member of the community had to submit a periodic declaration of assets to enable proportional collection of internal revenue tax to cover expenses such as maintenance of public services (synagogues, medical care, *mikvaos*, etc.); wages of rabbis, *shochatim*, lobbyists and the like; and incidental costs. Declarations had to detail promissory notes, deposits, cash, silver, gold, wine and grain, all to be assessed for taxation (*Minhagei Vormaiza,* II, p. 134). A relevant incident occurred in Nikolsburg, Moravia, now in the Czech Republic but then ruled by Germans.

DAILY MASHAL

Fisk's Tax Declaration

About 350 years ago Yaakov Fisk was one of the richest men in Nikolsburg and, like his companions, periodically declared his assets and paid his taxes. After his demise, his heirs found the inheritance to be worth 300% more than his last assessment and the *gabaim* of the community demanded arrears. Some *dayanim*, though, countered on the heirs' behalf that Fisk could have become richer just before his death, after the last taxation, and they could hence not be forced to pay arrears for previous years (Responsa *Tzemach Tzedek HaKadmon,* 24).

We don't all have the Luck of Yosef Mokir Shabos

A similar case is judged in Responsa *Chavos Yair* (57-58) and ruled that claims of sudden enrichment are unrealistic as most people become wealthy gradually, over a long period: "Should we assume he opened a fish and found a precious stone like Yosef *Mokir Shabos* or got rich by a stroke of luck?" A *beis din*, then, cannot make such claims and the heirs must pay the demanded arrears.