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DAF Notes
Insights into the Daily Daf
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Bava Basra Daf 169

Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o"h

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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

Replacement Contract

The *braisa* says that the court does not write a replacement contract for one who lost a loan contract, even if the signing witnesses testify that they signed and gave the contract to the lender. The Sages say that if a buyer lost his sales contract, we may write a replacement, without any guarantee of responsibility by the seller in case the land is seized by a creditor. Rabban Shimon ben Gamliel says that even a sales contract cannot be replaced, as he says that if one bought land, and then returned the contract, the land is returned.

Rav Safra explains that we do not include the guarantee of responsibility in the replacement contract, since we are concerned that the buyer still has his original contract. If we give him a second contract on that field, the buyer may collect twice falsely. If a creditor comes and seizes the field from the buyer, he can then produce one of his contracts, and collect the value of that field from the seller or people who bought from him. The buyer can then collude with the creditor, telling him (the creditor) to allow him (the buyer) to settle back into the field for a while, and then seize the field for the debt again. The buyer can then produce the second contract, and collect the value of the field again.

The *Gemora* questions why this is a concern, since a loan contract used to seize a sold field is torn up, to prevent it from being reused. The *Gemora* rejects the possibility that the contract will not be torn up, since Rav Nachman says that at every step in the seizure process, we ensure that the creditor cannot repeat the process.

Rav Nachman therefore says that any seizure document that does not say, "We tore up the creditor's contract" is not a proper seizure, and any authorization document to sell seized lands that does not say, "We tore up the seizure document" is not a proper authorization, and any appraisal document of seized land that does not say, "We tore up the authorization document" is not a proper appraisal, since the creditor can otherwise falsely collect twice.

The *Gemora* explains that we are concerned that the field bought will be seized by one who has proof that it was his father's field, and was stolen by the seller. Such a claim can be adjudicated twice, leaving room for the buyer to falsely collect from other buyers.

Rav Acha Midifti asked Ravina why the buyer will tell the creditor to wait a while before repeating the seizure process.

Ravina answered that if the process is repeated too quickly, people will notice a lot of activity with this buyer, and investigate, discovering that the same seizure was repeated. (168b – 169a)

What about a Receipt?

The *Gemora* asks why we do not just write a standard sales contract, but, additionally, write a receipt for the seller stating that any contracts not written on the new contract date are void.

The scholars said in front of Rav Pappa (*or Rav Ashi*) that the rejection of this option proves that we do not write receipts, so that the one holding the receipt does not have the responsibility of guarding it.

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

Rav Pappa (*or Rav Ashi*) replied that we may generally write receipts for loan payments, but in this case, a receipt will not solve the problem, since the buyer will collect his land's value from other buyers, who do not know of the receipt. Although they will ultimately return to the seller, the buyer will have eaten produce from their land in the meantime, which will be hard to collect. In addition, some buyers may not have stipulated that the seller is responsible if the land is seized, and will therefore not return to the seller at all.

The *Gemora* asks why we are not similarly concerned in the general case of a receipt for a loan payment - that the creditor will falsely collect land from the debtor's buyers for the whole loan, and they will not have the receipt to refuse.

The *Gemora* answers that when a buyer sees a loan contract, they consider the possibility that it was paid, since that is the normal method of fulfilling a loan contract, and do not give their land until they have checked with the seller. However, when they see a sales contract, they assume that the item to be collected is land, and do not assume that the seller may have paid the responsibility, and will therefore give their land before checking with the seller. (169a – 169b)

Guaranteed?

The *Gemora* asks how we write a contract with no guarantee of responsibility.

Rav Nachman says that we stipulate in the contract that this contract is not in order to collect, either from liquid or illiquid assets, but rather to establish this buyer's ownership of the field.

Since Rav Nachman requires an explicit exclusion, Rafram infers that a contract that is silent about responsibility is assumed to include responsibility, and its omission was simply an oversight by the scribe.

Rav Ashi counters that perhaps we do not assume implicit responsibility in a contract, and the *braisa* only means that we do not include a responsibility clause.

A woman gave a man money to buy a field for her. He bought a field, without the seller's guarantee. When she came to Rav Nachman, he said that she authorized this agent to help her, not put her in a position where she can lose the field. Therefore, the man should sell the field to the woman, with his own guarantee of responsibility in the case of seizure. (169b)

Acquiring a Contract

The *braisa* cited a dispute between Rabban Shimon ben Gamliel and the Sages. Rabban Shimon ben Gamliel says that if a buyer returned the sales contract to the seller, the sale is reverted, while the Sages say the sale is still in force.

Rav Assi explains that Rabban Shimon ben Gamliel considers every sales contract to have an implicit clause that the sale is valid only as long as the buyer retains the contract.

Rabbah challenges this, since this would void the sale if the contract were lost or stolen as well. Instead, Rabbah explains that the dispute is whether a contract is acquired simply by transfer. Rabban Shimon ben Gamliel says it is, so the seller acquires the field by receiving the contract from the buyer, while the Sages say that it is not acquired just by transfer, so the original sale is valid.

The *braisa* cites a dispute between Rebbe and Rabban Shimon ben Gamliel when one wishes to adjudicate with both a contract and usage. Rebbe says that we judge based on the contract, while Rabban Shimon ben Gamliel says that we judge based on the usage.

Rav Dimi says that they are discussing a case of one who claims ownership of a field, and the other litigant claims that *he* owns the field, by virtue of his holding a sales contract from the claimant to a third party, and also by the fact that he has lived on the land for three years. Rebbe holds that a contract is acquired by a transfer, and therefore his possession of the sales contract suffices, while Rabban Shimon ben Gamliel holds that

transferring a contract does not acquire it, and he must therefore rely only on his usage.

Abaye challenges this explanation, since it is inconsistent with Rabbah's earlier explanation, in which Rabban Shimon ben Gamliel says that a contract *is* acquired by transfer.

Rav Dimi says that he need not be consistent with Rabbah, but Abaye pointed out that Rabbah's explanation was the only possible explanation for the first *braisa*, and therefore cannot be rejected. (169b – 170a)

INSIGHTS TO THE DAF

1.

A Returned Contract

Rabban Shimon ben Gamliel says that we may not write a replacement contract for a sale, since a sale is voided if the buyer returned his original sales contract to his seller. If he did return his contract, giving him a replacement contract will allow him to claim that the sale has not been voided.

Tosfos (168b Aval) explains that we are not concerned that he gave the contract to a third party, since we will accept that third party as the owner, even if the buyer has a replacement contract, since the replacement contract – which specifies the buyer and *seller* - only contradicts the *seller's* claim of a returned contract, and not a third party's claim of a transferred contract.

Tosfos asks why we do not allow the witnesses to create a contract which details that this is purely a replacement for a lost contract, in which case it will have no legal weight in the face of a sales contract produced by the seller.

Tosfos answers that we are concerned about a court that will err, and assume that any contract written as a replacement implies that the witnesses corroborated that the original contract was in fact lost, and therefore invalidate the contract produced by the seller.

The Raavad (cited in the Shitah Mekubetzes) explains that although the Sages agree that a contract can be transferred with a formal acquisition, if the seller produces the sales contract, we will require him to validate his claim in any case, so he will not be impacted by the replacement contract.

Who Bought what when?

The *Gemora* explains that the replacement sales contract must not have any guarantee of responsibility, to ensure the buyer does not falsely collect from the seller twice.

The scenario detailed by the *Gemora* includes the following sequence:

1. The seller's creditor (A) seizes the field bought by this buyer (B), for the loan owed to him
2. The buyer (B) seizes a field sold by the seller to another party (C), in payment for the guarantee given by the seller.

The Re'aim (cited in the Shitah Mekubetzes) asks how this could happen. When a creditor tries to seize land based on his lien, he must begin with the later buyers first, since the earlier buyers left that land for the creditor to seize. When exercising his right to a guarantee on his purchase, a buyer can only seize land that was owned by the seller at the time of purchase. Therefore, how can the creditor (A) seize this buyer's (B) land, when there is a later buyer (C), from whom the buyer (B) will seize land?

The Re'aim offers a number of answers:

1. The land bought by the first buyer (B) was designated for the loan (*apotiki*), and therefore, the creditor can seize that land, even though other land was sold later (to C).
2. At the time of the loan, the seller only had the land that he later sold to the buyer (B). The land that he sold to the second buyer (C) was bought after the loan, and not included in the lien.

He offers two possibilities to explain why the first buyer (B) can still collect from the second buyer (C):

1. In his guarantee on the first sale (to B), he stipulated that

it included land which he would purchase later, thereby including the land bought and then sold to the second buyer (C). The loan had no such stipulation.

2. The land he sold to the second buyer (C) was purchased after the loan, but before the sale to the first buyer (B). Therefore, vis a vis the first buyer (B), the land sold to the second buyer (C) was owned by the seller at the time of his obligation by the guarantee.

Exercising a Lien

The *Gemora* cites Rav Nachman who stipulates what must be torn at the different stages of seizing land.

The Ran explains these stages in more detail:

1. When a creditor wishes to collect his loan, he goes to court with his contract. If the debtor has no property from which to pay, the creditor must swear that he has not been paid, and the court then writes him a contract of seizure (*tirfa*), authorizing him to investigate who bought land from the debtor after the loan. At this point, the loan contract must be torn, to prevent the creditor from collecting the loan again in another court. This must be recorded in the *tirfa*, or else it is invalid.
2. When the creditor finds buyers from which he wishes to seize land, he brings them to court. The court gives the buyers the option of paying the creditor with money instead of their land. If they decline, the court then writes a contract of authorization to sell (*adrachta*), authorizing the creditor to begin the process of selling the lands under lien. At this point, the seizure contract (*tirfa*) must be torn, to prevent the creditor from seizing land again in another court.This must be recorded in the *adrachta*, or else it is invalid.
3. The court then sends three appraisers to appraise the amount of land necessary to pay the loan, and then writes an appraisal document (*shuma*). At this point, the authorization to sell (*adrachta*) must be torn, to prevent the creditor from initiating proceedings again in another court. This must be recorded in the *shuma*, or else it is invalid.
4. After a thirty day auction period, if no one bid on the land for higher than the appraised value, the creditor may take the appraised land.

Transferring a Contract

The *Gemora* explains that the Sages and Rabban Shimon ben Gamliel dispute whether transferring a contract transfers the sale in it. The Sages require a separate formal acquisition, while Rabban Shimon ben Gamliel says that the sale is transferred by transferring the contract. The Rosh says that Rabban Shimon ben Gamliel holds this position only when the contract itself was the vehicle of acquisition. However, if the acquisition was done otherwise (e.g., chalipin exchange, or money), and the contract is only a proof to the sale, transferring it does not transfer the sale, since the contract is ancillary to the sale. The Ramban says that in all cases the transfer of the contract is a transfer of the sale.

DAILY MASHAL

The Old Man Fell Asleep on His Coat

On the night following the demise of HaGaon Rav Elchanan Wasserman's wife, his son Rabbi Naftali sat down and wept incessantly while several yeshivah students slept in an adjacent room. Rav Wasserman approached his son and told him, "You shouldn't cry so loudly now. The boys might wake up and you would rob them of their sleep" (*Or Elchanan*, I, p. 13).

A similar story is told of Rabbi Avraham of Purisov. Despite his known tendency to conceal his behavior, he once learnt all night in the *beis midrash*, later explaining that an old man had fallen asleep on the edge of his coat. "I couldn't, after all, stand up for fear of waking him!" (*Chasidim Mesaperim,* I).