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Kesuvos Daf 92

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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

Rami bar Chama said: If Reuven sold a field to Shimon without a guarantee (if anyone collected the field from Shimon – even rightfully, Reuven will not provide compensation to Shimon), and Shimon then sold it back to Reuven with a guarantee (if anyone rightfully collected the field from Reuven, Shimon will provide compensation to Reuven), and Reuven's creditor came and seized it from him, the law is that Shimon must proceed to save it for Reuven (as if Reuven had not been the original seller). [As Shimon, who guaranteed compensation, would have to fulfill his obligation in the ease of any other buyer he incurs the same liability towards Reuven who, not having given any guarantee for his sale has the same status as any other buyer.]

Rava, however, said to him: Granted that Shimon had accepted responsibility for a claim from anyone else, but did he also accept responsibility for claims from Reuven himself?

The Gemora qualifies: Rava admits, however, that where Reuven inherited a field from Yaakov and sold it to Shimon without a guarantee and Shimon then sold it back to Reuven with a guarantee, whereupon Yaakov's creditor came and seized it from him (Reuven). The law is that Shimon must proceed to save it for Reuven from the creditor (or offer him compensation for the loss). What is the reason? Yaakov's creditor is regarded as the creditor (of anyone else). [We treat this case as if Yaakov had been a stranger and the creditor had no claim against Reuven's father but against the man from whom Reuven had bought the field. Since the claim of the creditor is not against Reuven himself, the claim against his father does not affect his right if he once sold the field without guarantee and Shimon sold it back to him with a guarantee.]

Rami bar Chama said: If Reuven sold a field to Shimon with a guarantee and (because Shimon didn't have the funds to pay for the field) converted the price of the field to stand as a loan (and a document was written stating that). [It emerges that Shimon owes money to Reuven, but is also his potential creditor – if the land will eventually be seized.] Reuven died, and his creditor came to seize the field from Shimon. Shimon satisfied him by paying him money (the money which he owed for the purchase of the field). The law is that Reuven's children can tell Shimon, “As far as we are concerned, our father has left movables with you (referring to the money he owed for the purchase of the field), and the movables of orphans are not pledged to a creditor (of the father; only land is).” [They are claiming that the money should not have been paid to the creditor, and Shimon is still liable to pay his debt to the orphans.]

Rava remarked: If the other one (Shimon) is clever, he gives them (Reuven's children) land (in settlement of the debt), and then he collects it from them (for Reuven provided him with a guarantee) in accordance with a ruling of Rav Nachman, for Rav Nachman stated in the name of Rabbah bar Avahu: Orphans who collect land as payment for a debt owed to their father can have that land seized by creditors of the estate (as if they had inherited it directly from their father). (91b3 – 92a2)

Rabbah said: If Reuven sells all of his fields to Shimon and Shimon sells one field to Levi, the creditor of Reuven may collect from either Shimon or Levi. However, he only may collect from Levi if he bought a field of average quality land, but if he bought superior and inferior quality land, and he left average quality land by Shimon, Levi can say to him, “I



was careful and bought superior and inferior quality land, for those are lands that are not fit for you." And even if he bought average quality land from Shimon, but he left average quality land by him, Levi can say to him, "I left for you a place to collect from."

[The Rosh says that since Reuven sold the average quality land to Shimon, the creditor can insist that Shimon give him the land of worst quality land that remains in his possession. Even though normally the creditor cannot force the debtor to give worst quality land instead of average quality land; however, in this case he can say to Reuven that you are my disputant because you bought the land that was mortgaged to me. Now that you sold that land that was mortgaged to me I will take the worst quality land that remains in your possession.]

Abaye said: If Reuven sells his field to Shimon with a guarantee (*that he will refund his money if Reuven's creditor takes it from him*) and the creditor of Reuven attempts to take the field, Reuven may contest the creditor in *Beis Din*. The creditor cannot say that you are not my disputant because Reuven could respond that if the field gets taken from Shimon, he is going to demand compensation from me.

The *Gemora* cites an alternate version: Even if Reuven sold the field to Shimon without a guarantee he may contest the creditor in *Beis Din*. This is true because he can say that I do not want Shimon to have complaints against me.

Abaye further stated: If Reuven sold a field to Shimon without a guarantee and protestors appeared against him (disputing his title to the field), before he has performed a propriety act (*chazakah*) on the field (he did not demonstrate any form of ownership on it, such as locking it, or breaching a fence; he therefore has not taken possession of it), he may withdraw (from the purchase, and he is not required to pay for it), but after he has performed a propriety act on it, he may no longer withdraw from the purchase (and he must proceed to pay for it), because Reuven can say to him, "You understood and have agreed to

accept a bag filled with knots" (for you did not insist on a guarantee). And from what moment is it considered that a propriety act has been performed? It is as soon as he walks upon the borders of the field.

Others say: Even if the sale was made with a guarantee, the same law applies, since Reuven (the seller) can say to Shimon, "Produce the collection document (from the courts, stating that the land was lawfully taken from you) and I shall pay you." (92a2 – 93a1)

## DAILY MASHAL

### *Epicurean Theory*

The Avnei Nezer asks: Tosfos states that when a document is produced in court, which contains the signature of witnesses, the Torah does not require that the signatures be verified. Even if a thief produced the document, the signatures are to be trusted because a thief is afraid of getting caught in a forgery. If so, he asks, a thief should also be believed to testify for a widow since it is something that will eventually come to light, and he would be fearful of getting caught in a lie?

He answers that the Ramban comments on: *Va-yivez Aisav es ha-bechorah* - that fools such as Aisav subscribe to the Epicurean theory of eat and drink today, without thinking of tomorrow. As such, although a thief might be afraid to forge a document's signature, it is because he fears exposure today as he presents it. However, regarding the testimony needed to permit a woman to marry, even if the husband shows up alive someday, the fear is far away in the future and a thief would not be concerned.