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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

Two documents in Nissan

There were two documents regarding the sale of the same piece of property that were brought before Rav Yosef. In one of the documents, it was recorded that the document had been written on the fifth of Nissan, while the other document said that it had been written in Nissan (*but no specific date was mentioned*). Rav Yosef gave the property to the one whose document was dated on the fifth of Nissan. The other fellow asked Rav Yosef, “Why should I lose out”? Rav Yosef replied, “You are at a disadvantage because perhaps your document was signed on the twenty-ninth of Nissan.” He asked Rav Yosef, “Will the master write for me a document stating that I may seize any properties sold by the seller from Iyar and on?” Rav Yosef responded, “The purchasers can tell you, ‘your document was signed on the first of Nissan (*and therefore, the buyer holding the document dated on the fifth of Nissan took the property that actually belongs to you*).”

The *Gemora* asks: is there any remedy for this buyer?

The *Gemora* answers: The holders of the two documents should write out authorizations for each other (*so that the purchasers cannot rebuff any of them because he can demand reimbursement for himself or on behalf of the other fellow, who appointed him as a “power of attorney” to seize the property for him*). (94b4 – 95a1)

Mishnah

The *Mishnah* states: If one was married to two wives, and sold his field (*which was pledged for their kesuvos*), and

the first wife wrote to the purchaser, “I have no right or claim against you,” (*after the husband dies*) the second wife may take from the purchaser, and the first one from the second one (*since the first one waived her rights in this property only to the purchaser*), and the purchaser from the first one (*since she waived her rights to him*); and they go around in circles until they reach a compromise among themselves. And similarly, this would apply to a creditor and a woman who is her husband’s creditor. (95a1)

Surrendering her Rights

The *Gemora* asks: Does she in fact surrender her rights to the property when she waived her rights to the purchaser? But we learned in a *Baraisa*: If one says to his fellow (*a partner in the field*): “I have no claim or rights regarding this field,” or he says: “I have no business with it,” or he says: “My hand is removed from it,” it is considered as if he said nothing (*since he is not stating that he is giving his share to his partner*)?

The *Gemora* answers: The *Mishnah* is discussing a case where the buyer made a *kinyan* (*chalipin; one took a kerchief from the other in order to formalize the transfer*) with the wife.

The *Gemora* asks: Why does the *kinyan* help? Let the wife say that she only agreed to the sale in order to please her husband (*for this way, it would be easier for him to sell the property*)? The *Gemora* proves that this is a valid claim from a *Mishnah* in Gittin (55b): If one purchased a field from a man and then purchased (*the lien*) from his wife (*in order that she should not collect her kesuvah from this*

field), his purchase is void. Evidently, we may assume that she only consented to please her husband.

Rav Zeira answers in the name of Rav Chisda: Our *Mishnah* is following the opinion of Rabbi Meir and the *Mishnah* in Gittin is following the opinion of Rabbi Yehudah. For we learned in a *Baraisa*: If a husband wrote a contract for the first buyer of a field of his wife, and she did not sign a consent form and then he wrote a contract for another buyer of a field of hers and that she did sign for, she loses thereby her claim to her *kesuvah* (if her husband has no free property left; she cannot obviously collect from the second field because she has agreed that the husband should sell it; she cannot recover her *kesuvah* even from the first buyer since he will claim that when he had bought his field, her husband was still left in the possession of that field which he subsequently sold to the second purchaser); these are the words of Rabbi Meir. Rabbi Yehudah, however, said: She may claim, "I merely meant to please my husband; what claim can you have against me?" Rebbe ruled anonymously in our *Mishnah* in accordance with Rabbi Meir and he ruled in Gittin like Rabbi Yehudah.

Rav Pappa answers: Our *Mishnah* can be referring to a divorcee (where, she obviously cannot claim that she only waived her right to please her husband), and it would be according to everyone.

Rav Ashi offers an alternative answer: Both *Mishnah*os reflect the view of Rabbi Meir, for Rabbi Meir maintains his view (that she would forfeit her *kesuvah*) only there, where two buyers are concerned, since in such a case, they can tell her, "If you only consented in order to please your husband, you should have done so in the case of the first buyer," but where there is only one buyer, even Rabbi Meir would admit that the sale is invalid. And our *Mishnah* is referring to a case where the husband had first written a contract for another buyer (and his wife did not agree, and then he made another sale, which is the case

of our *Mishnah*, where she did agree; she cannot present the claim that she only consented to please her husband, for she should have done the same by the first sale as well). (95a1 – 95a3)

Collecting from Mortgaged Property when Free Property has been Ruined

The *Gemora* cites a *Mishnah* in Gittin (48b): A creditor may not collect from mortgaged property (that has been sold) when there is still available free property (by the debtor).

The *Gemora* inquires: If the free property became ruined, may the creditor collect from the properties that have been sold?

The *Gemora* attempts to resolve this inquiry from the following *Baraisa*: If a husband wrote a contract for the first buyer of a field of his wife, and she did not sign a consent form and then he wrote a contract for another buyer of a field of hers and that she did sign for, she loses thereby her claim to her *kesuvah*; these are the words of Rabbi Meir. Now, if you would think that if the free property became ruined, the creditor may collect from the properties that have been sold; while it is understandable that she has lost the right to collect her *kesuvah* from the second field, shouldn't she be entitled to collect her *kesuvah* from the first field (which was akin to being ruined when she initially lost her right to collect from it)?

Rav Nachman bar Yitzchak answers: The *Baraisa* only meant that she lost her right to collect her *kesuvah* from the second field.

Rava challenges this answer: Firstly, the language of the *Baraisa* strongly indicates that she has completely lost her right to the *kesuvah*. Secondly, there is a different *Baraisa*, where it can be derived that in our case, the

woman, after forfeiting her right to collect from the second field, cannot go and collect it from the first one!

The *Gemora* answers: There (*by signing an agreement on the second sale*), she has caused the loss with her own hands (*and that is why she cannot collect from the first one; it is not similar to the case of our inquiry, where the field became ruined by itself*).

Rav Yeimar said to Rav Ashi (*attempting to resolve this inquiry*): It is everyday incidents (*that creditors collect from sold properties after free property has been ruined*). For there was a borrower who once pledge a vineyard to the lender for ten years (*the terms of this deal were that the creditor was to enjoy the produce of the vineyard during the ten years in payment of his loan, while the vineyard itself was to return to the borrower at the end of that period without any further payment or obligation on his part*) but it aged after five years (*and could not produce grapes any longer*). When the lender came to the Rabbis, they wrote out a document allowing him to collect from the purchasers. (*This demonstrates that creditors collect from sold properties after free property has been ruined.*)

The *Gemora* notes: There also, it was they who caused the loss with their own hands to themselves. For, it is common knowledge that a vineyard should age, and they should not have bought any of the debtor's mortgaged land.

The *Gemora* rules: The law, however, is that where free property has been ruined; they may collect from mortgaged property. (95a3 – 95b1)

Abaye's Ruling

Abaye said: If a man said to a woman, "My property shall be yours and after you (*your death*) it shall be given to so-and-so," and then she got married (*and later died*), her husband is regarded as a purchaser of her property, and her successor has nothing in place of her husband.

The *Gemora* asks: In accordance with whose view was Abaye's ruling made?

The *Gemora* answers: It is reflecting the opinion of the following *Tanna*. For it has been taught in a *Baraisa*: If one man said to another, "My property shall be yours and after you it shall be given to so-and-so," and the first recipient went down and sold the property, the second one may take the property from those who bought it (*after the first one dies*); these are the words of Rebbe. Rabbi Shimon ben Gamliel ruled: The second one may receive only that which the first has left.

The *Gemora* asks: But could Abaye have issued such a ruling? Didn't Abaye say: Who is a cunning rogue? One who advises (*the first recipient*) to sell the property in accordance with the ruling of Rabbi Shimon ben Gamliel.?

The *Gemora* answers: Did he say that she may marry? He only said that the woman got married. (95b1 – 95b2)

Abaye's Second Ruling

Abaye said: If a man said to a woman, "My property shall be yours and after you (*your death*) it shall be given to so-and-so," and the woman sold the property and then died, her husband may take the property from the buyer, and the woman's successor may take it from the husband, and the buyer may take it from the successor. And ultimately, the property remains in the possession of the buyer.

The *Gemora* asks: But why should this case be different from our *Mishnah* which ruled in a similar case that and they go around in circles until they reach a compromise among themselves?

The *Gemora* answers: in the *Mishnah's* case, they are all suffering some loss (*because the women are owed their kesuvah and the purchaser spent money on the property*) but here, it is only the buyer who suffers the loss.



Rafram reported this ruling to Rav Ashi and he asked: Could Abaye have issued such a ruling? Didn't he, in fact, rule that a man said to a woman, "My property shall be yours and after you (*your death*) it shall be given to so-and-so," and then she got married (*and later died*), her husband is regarded as a purchaser of her property, and her successor has nothing in place of her husband.? (*How could he rule in the second case that the successor takes it away from the husband?*) Rav Ashi replied: There, Abaye was discussing an unmarried woman (*and perhaps the man did not wish that the property should go to the successor even if she would get married*), but here, where she was already married, he was obviously saying that the successor should acquire it, and the husband should not. (95b2 – 95b3)

The Mishnah had stated: And similarly, this would apply to a creditor and a woman who is her husband's creditor. The Gemora cites a Baraisa: And so it is with a creditor and two buyers, and so it is with a woman creditor and two buyers. (95b3)

WE SHALL RETURN TO YOU, MI SHEHAYA NASUI

DAILY MASHAL

Pleasing the Husband

The Gemora notes that a woman can sometimes argue, "I did this (a consent to a certain transaction) merely to please my husband."

Rabbi Forsythe relates the following story: A few years after Reb Yaakov Kaminetzky's first wife passed away, he felt ready to re-marry. He was about sixty. Reb Yaakov was Lithuanian and followed the customs of Lithuanian Jewry. His second wife was Polish and followed the customs of her section of Poland. Reb Yaakov, also, had a private custom of never eating dairy on Fridays. He said he had no idea why, but not eating milchigs (dairy foods)

Fridays was a custom in his father's family. He was confident that it had a holy basis and he observed it uncompromisingly. He married his second wife shortly before the holiday of Shavuos. It is customary to eat dairy on Shavuos. As it turned out, Shavuos that year came out on Friday. His wife's custom for the first day of Shavuos was to prepare a lavish dairy kiddush, and then serve a traditional meat meal after the kiddush. They were married such a short time that they couldn't have possibly learned all of each other's customs. The rebitzen thought that she would please her husband by preparing a generous dairy kiddush featuring that Shavuos favorite: cheesecake! Milchigs on a Friday!

Rabbi Kaminetsky came home from synagogue with a gathering of guests, all yeshiva scholars. When he walked in, his bride was proud as a peacock. She honored yom tov as if for a king. The house was nearly wall-papered in cheesecake! She had evidently spent enormous time and care, buying, baking and preparing a royal spread. It was obvious that her intentions had been extremely selfless and noble. Inside himself, he was aghast. While he knew he had to express delighted and appreciative surprise to his rebitzen, he was in a real dilemma. He had a vow never to eat dairy on Friday. He also had a vow to keep a wife happy. Not eating the milchigs would break her heart. Eating, and breaking the vow to never eat dairy on Friday, was not an option. She said that she had to go into the kitchen to make some last minute arrangements. This gave him a moment to think. He turned to the three among his guests who were the greatest scholars. He explained the dilemma. "You three are Torah scholars. You can form a *bais din* [court]. You will do '*hataras nedarim*' [the Torah court procedure for canceling vows, which may only be done under certain conditions - fortunately this case contained an allowable condition - ask your local orthodox rabbi if you have practical questions]. They finished the vow-canceling ceremony just in time. He ate his wife's cheesecake.