

OVERVIEW of the Daf

1) Selling real estate (cont.)

Rava objects to Rami bar Chama's ruling concerning the outcome of a case where Reuven sold land to Shimon without a guarantee and Shimon then sold it back to Reuven with a guarantee.

The Gemara cites a case where Rava would also agree with Rami bar Chama's ruling.

Another ruling of Rami bar Chama related to real estate is presented. In this case land was sold and a payment plan was set up for the cost of the field. After the seller died the buyer paid off one of the seller's debts and wanted to apply that money to his debt to the seller's estate. Rami bar Chama ruled against his claim.

Rava offered a suggestion for the buyer to protect his interests.

Rabbah discusses the halacha of Reuven who sold his fields to Shimon who in turn sold one of those fields to Levi. Rabbah ruled that Reuven's creditor can collect land from Shimon or Levi.

Some qualifications are put onto this ruling.

2) Guarantees

Abaye rules that when Reuven's creditor comes to collect a field that Reuven sold to Shimon with a guarantee, Reuven is permitted to argue for the benefit of Shimon because the case is relevant to him since Shimon will come to Reuven to collect if the creditor seizes the field.

According to a second version Abaye's ruling applies even if Reuven sold the property without a guarantee.

3) Selling land without a guarantee

Abaye begins to rule on a case of land sold without a guarantee. ■

Distinctive INSIGHT

The buyer can say, "I left room for you to collect"

אבל שבק בינונית דכוותה מצי אמר ליה הנחתי לך מקום לגבות הימנו

Rabba taught a case involving a sale of land which was sold with a guarantee. Reuven sold all his land to Shimon. Shimon then went and sold one of the tracts of land to Levi. The creditor of Reuven now comes to collect his loan from the properties which Reuven, his debtor, sold. The creditor can collect from either Shimon or from Levi. However, if Levi specifically bought the better quality land (עידית) or the poor quality land (זיבורית) from Shimon, Levi can defer the attempt of the creditor to collect from him, saying to him that it was for that reason he avoided buying the middle quality land (בינונית) from Shimon, in order to leave it for collection for the loan. And even if Levi bought middle quality land, he can still avoid having the loan taken from him as long as he left an adequate amount of middle quality land with Shimon. Here, too, he can claim, "I left land from which you could collect."

Tosafos (ד"ה אבל) writes that technically speaking, the only one who owes money to the creditor is Reuven. Once Reuven sells his lands, whether they are in the possession of Shimon or Levi does not make a difference to the lender, as all the lands were encumbered to him. The claim of "I left you room to collect" is only applicable when used by a buyer as he tells the creditor that he left land with the original debtor. When our Gemara says that Levi pushes away the creditor of Reuven back to Shimon using this claim (הנחתי לך מקום לגבות), Levi is actually using a different argument, and that is that when he (Levi) bought land from Shimon, he bought it with all the rights which Shimon himself would have exercised vis-à-vis the land. Shimon himself would have told the creditor that only the middle-grade land will be used for payment, or Shimon could have selected the particular middle-grade land to be used for payment. Therefore, Levi can tell the creditor that payment will be made from the בינונית which was left with Shimon, and not from the best or worst quality lands which are the ones he bought. ■

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Yitzhak Pinchas Kofman.
He loved learning Daf Yomi

HALACHAH Highlight

Encumbered property

אנן מטלטלי שבק אבון גבך ומטלטלי דיתמי לבעל חוב לא משתעבדי

Our father left movable objects with you and movable objects are not encumbered to the creditor

Rambam¹ discusses the following case. Reuven sold a piece of land to Shimon with a guarantee that if it is taken from Shimon because of Reuven, e.g. Reuven defaults on a loan or it is demonstrated the land never belonged to Reuven in the first place, he (Reuven) will reimburse him (Shimon) for the loss. At the time of the transaction, instead of paying the entire cost of the land, Shimon made a down payment and the remainder of the cost of the field was set up as a loan. Reuven subsequently died and Reuven's creditor came to collect the land from Shimon to satisfy the debt Reuven owed him. Shimon wanted very much to keep possession of the land so he paid the creditor the amount he was seeking to collect. At this point a disagreement arises between Shimon and Reuven's heirs. Reuven's heirs claim that Shimon is still obligated to pay the debt that he owes their father's estate for the purchase of the land whereas Shimon asserts that paying Reuven's debt to the creditor should cover the debt that he owed Reuven.

Rambam rules that halachically Reuven's heirs can collect the outstanding balance that Shimon owes them for the purchase of the land because that loan is not encumbered to the debt that Reuven owed his creditor. Consequently,

REVIEW and Remember

1. What types of claims are not included in a guarantee?

2. When is a creditor authorized to repossess land from a buyer?

3. What grade of property does a creditor collect from a buyer?

4. What makes the debtor a litigant when the creditor comes to take possession of a field from a buyer?

the claim of Shimon that paying Reuven's debt to the creditor should satisfy his obligation to Reuven is not accepted. If, however, Shimon is wise he should give Reuven's heirs the purchased land as payment for the remaining balance that he owes them. He could then take the land back from those heirs as reimbursement for the money he paid to prevent Reuven's creditor from taking the land since he bought the land with a guarantee.

Beis Yosef² adds that subsequent to the enactment of the Gaonim³, i.e. that a creditor is permitted to collect even movable items, it will not matter whether he pays the heirs with land or money because in all cases he will be authorized to recover the amount he paid Reuven's creditor. ■

1. רמב"ם פ"א מה"ל מלוה ה"י.
2. בדק הבית חו"מ סי' ק"א ד"ה ועל מה.
3. עי' טור חו"מ סי' ק"ז סעי' י"ג. ■

STORIES Off the Daf

The Stolen Ring

"ואתא בעל חוב וקטריף..."

Today's daf discusses a debtor who took something in lieu of a debt owed.

A certain new kallah arrived in beis din demanding a divorce. She told the judges her tale of woe. "During the chasunah, I found out that my chosson is up to his ears in debt. I am certain this will disturb our married life and I feel it simply isn't worth it. Although this subject never came up when we

were dating, I regret that we didn't discuss finances. So much emotional energy has been wasted!"

When the dayanim asked if things were so bad that there was really nothing to be done, the kallah said, "Some of my chosson's creditors even tried to confiscate our wedding gifts! I told them that most of them were from my family and friends and were not his property at all, and this calmed them down. Even so, he owes each of them substantial sums of money. Why, even the jeweler who sold him the ring that he gave me under the chuppah threatened to repossess it since my chosson

paid him with a bad check!"

The judges were astounded. Perhaps the sale of the ring was void and the woman needed no divorce at all!

This question made it all the way to Rav Yosef Shalom Eliyashiv. He said, "Although the woman doesn't need a divorce at this time because the sale of the ring really was invalid, she should still be officially divorced. If the husband ever pays off the jeweler who sold him the ring, it is quite possible that the sale will be retroactively good and she will have always been considered a married woman!" ■