

OVERVIEW of the Daf

1) Selling land without a guarantee (cont.)

Abaye concludes his ruling concerning the right of a buyer to back out of his purchase of land without a guarantee when people step forward and dispute the ownership of the land.

The Gemara defines when it is considered as if the buyer took possession of the land.

According to a second version, Abaye's ruling applies even when the land was sold with a guarantee.

2) **MISHNAH:** The Mishnah describes how a person's estate will be divided when he has to pay multiple kesubos and does not have the funds to satisfy all of them. The Mishnah notes that the same guidelines will apply when dividing the gain or loss from money invested by three people.

3) Clarifying the Mishnah

Shmuel explains the rationale why the money is divided amongst the three wives as described in the third case of the Mishnah.

Ravina is cited as offering an alternative explanation for the second and third rulings of the Mishnah.

A Baraisa teaches that our Mishnah follows the opinion of R' Nosson but according to Rebbi the money divided equally.

4) Money deposited into a fund

Shmuel ruled that when two people invest money together, each putting into the account different amounts, the profit or loss is shared equally.

Rabbah and R' Hamnuna disagree which cases are encompassed by Shmuel's ruling.

Rabbah's understanding of Shmuel is unsuccessfully challenged.

Shmuel's ruling is unsuccessfully challenged.

5) **MISHNAH:** The Mishnah discusses how a husband's estate will be divided if he has four kesubos to pay.

6) Clarifying the Mishnah

The Gemara asks for an explanation of the dispute between Tanna Kamma and Ben Nannas. ■

Distinctive INSIGHT

Partners dividing the profits of their investment

אמר שמואל שנים שהטילו לכיס זה מנה וזה מאתים השכר לאמצע

Shmuel teaches about a case where two investors contribute to a common venture, with one contributing two hundred toward the deal, and the other offering one hundred. The halacha is that the profits from the investment are divided equally. Rosh (#10) explains that the reason the profits are not divided proportionally to their contributions is that the one who gave more than his friend should have clearly stipulated that he expects to receive a larger amount of the profit, commensurate to his contribution. The fact that he did not state his intentions indicates to us that he agrees that the other contributor should receive an equal part in the proceeds of the business.

It is clear from the comments of the Rosh that our evaluation of this situation is based upon the fact that the partner who gave a larger amount toward the investment should have stated his intentions. Therefore, in a case where there is no expectation, the profits would be divided proportionately. For example, in a case where a firstborn and a younger brother inherit an ox, and there is a profit due to its performing various farm tasks. Here, the firstborn who owns a double portion (2/3 of the animal versus 1/3 for the other brother) would receive two thirds of the profit (see *תד"ה הותירו*). Here, the brothers did not knowingly enter into a partnership, but it instead was a natural outcome of the inheritance process. The firstborn is not expected to have stipulated his intent, and his lack of clarifying his position is not to be interpreted as a forfeiture of his advantage.

The Rosh provides a number of approaches to understand why the investor who gives a larger sum toward the venture is expected to stipulate his expectations, and without doing so he automatically agrees to divide the profits equally with the other partners. One reason is that although he is giving a larger amount of money, he understands that a business deal is not only based upon cash contributions. The partner who gives less money may be providing more experience or ingenuity towards the deal. There are intangible aspects of the deal, and unless the one who gives more cash says so explicitly, we can assume that the profit will be split evenly due to everyone taking into consideration all factors, financial as well as otherwise.

Another approach is that the total profit could not have been realized unless the complete investment had been made. The profit does not reflect a dollar for dollar linear return. It is not necessarily true that half of the investment could have resulted in half the profit. Perhaps it is only through a combination of the entire package amount that the profit was realized. Therefore, in this regard, every one of the investors can be seen as an equal member of the team. Therefore, it is only when the larger investor clearly states his understanding that he can receive an amount of the profit corresponding to his contribution. ■

HALACHAH Highlight

Reversing a sale of land

עד שלא החזיק בה יכול לחזור בו וכו'

As long as he did not take legal possession of the land he can pull out from the transaction etc.

If a person sells a piece of property to his friend and protesters step forward to assert that the land is theirs, under certain conditions the buyer has the option to reverse the sale and demand a refund of his money. If the buyer made a kinyan but did not yet use the land he has the right to return the land and demand a refund because a land that has protesters claiming legal ownership of the land is considered blemished property. On the other hand, if the protesters did not lodge their complaint until after the buyer derived benefit from the property, the sale is considered final and the buyer will have the responsibility to litigate with the protesters about the property. In the event that the protesters succeed and prove that the property is theirs, the buyer will be able to return to the seller for a refund, assuming that the sale included a guarantee.¹

This discussion pertaining to whether or not the buyer can reverse his purchase of the land applies when the protest seems to be well founded, although it has not been fully tested in Beis Din. If, however, the claim is nothing more than a rumor (קול) (בעלמא) the sale cannot be reversed. When the sale was reversed because there was a well-founded protest against the land and it turns out that the protesters had no legal claim to the land both parties maintain the right to refuse to go forward with the trans-

REVIEW and Remember

1. How are a man's assets divided in order to pay multiple kesubos?

2. How does Ravina explain the two cases of the Mishnah?

3. Why do partners share the profits of their investment when they invested different amounts?

4. Is it necessary to include the hour of a transaction in a contract?

action since it was undermined by a well founded rumor.²

Tosafos³ on our Gemara teaches that the issue of מי שפרע, a curse pronounced on a person who backs out on a deal after money was paid but the buyer did not yet take the property into his domain, applies to the purchase of land the same as it applies to the purchase of movable merchandise. Therefore, if the buyer backs out of the sale because of mere rumors he is subject to the מי שפרע curse since he is not authorized to back out of the agreement. On the other hand, if there was a well-founded claim to the land from the protesters the buyer is within his right to reverse the sale and will thus not be subject to the מי שפרע curse. ■

1. שו"ע חו"מ סי' רכ"ו סעי' ה'.

2. רמ"א שם.

3. תוס' ד"ה עד. ■

STORIES Off the Daf

The Winning Ticket

"שנים שהטילו לכיס"

Three young married men from a yeshiva in Yerushalayim wished to purchase raffle tickets sold for fifty shekels each. One of them purchased a full ticket. The two others split a second ticket, and each contributed twenty-five shekels. The rule was that any purchase of two tickets entitled the purchaser to a third ticket free. At the drawing, the young men were all elated—the third ticket won a new car. They were not wealthy and each one's portion of the car's resale value would be very helpful indeed. However, they were not sure how to divide their winnings.

The one who had paid in full for his ticket said, "Since the free ticket is given out for every two tickets purchased, it stands to reason that I get half the price of the car and you each get a quarter. I invested half of the total money for the tickets, which each of you only invested a quarter each."

His friends were not convinced. "Without the two of us there would not have been a third ticket, since one ticket alone is not entitled to the third ticket that won the raffle. Since we all enabled the purchase of the third ticket, we feel the sale price of the car should be split equally."

They presented their problem to the Vayomer Avraham, and he replied, "Actually this is a clear Gemara in Kesuvos 93. There, we find a similar differ-

ence of opinions. Shmuel says that profits are shared equally even when the investment of two parties was unequal. Rabbah says that if the terms of the initial investment changed, then profits are split in proportion to each partner's original investment. Rav Hamenuna argues, however, and says that even in such a case, the profits are split evenly. The Rif and Rambam follow Rav Hamenuna's opinion, as do most Meforshim. The rationale is that if there was no specification at the outset of a partnership of what the profit-sharing would be, it is assumed that both agree that the profits be split evenly.

The Rav concluded, "So you split it equally, especially in view of the reason cited by the Shita Mekubetzes: 'The mazal of two is better than that of one!'" ■

