

OVERVIEW of the Daf

1) An agent who sells more property than he was authorized to sell (cont.)

The Gemara challenges R' Huna's rejection of the Gemara's attempt to resolve the inquiry pertaining to an agent who sells more property than he was authorized to sell.

According to a second version of this discussion it was obvious that an agent who sells more property than he was authorized to sell is considered to be adding to the principal's instructions, and thus what he was authorized to sell is valid. The inquiry is related to where the agent sold less than he was instructed to sell.

R' Chanina from Sura suggested a resolution to this inquiry, but it is rejected.

A Baraisa is cited that supports the Gemara's alternative explanation for the Mishnah cited by R' Chanina from Sura.

Another unsuccessful attempt is made to resolve this inquiry and the inquiry is left unresolved.

2) Instructions to an agent

The Gemara states that if the principal instructs his agent to sell property to one person and he sells the property to two people the sale is invalid. What, however, is the halacha if the principal only mentioned selling the property to one buyer and the agent sold it to two—are the sales invalid?

R' Huna argues with R' Chisda and Rabbah bar R' Huna whether the sale is invalid.

R' Nachman agreed with the position of R' Chisda and Rabbah bar R' Huna that the sale is valid, but made a distinction between an error in price made by the owner and the agent.

A Baraisa and Mishnah are cited as proof to the distinction between the agent and the property owner.

Another unsuccessful attempt to resolve the earlier inquiry is presented.

3) MISHNAH: The Mishnah discusses the halacha pertaining to where Beis Din sells someone's property at an incorrect price.

4) An erroneous sale by an agent

The Gemara inquires whether an erroneous sale by an agent will be similar to the case of an erroneous sale by a widow or by Beis Din. ■

Distinctive INSIGHT

Did the agent act in the interests of the seller?

כי תיבעי לך דאמר ליה זיל זבין לי כורא ואזל זבין ליה ליתכא, מאי? מי אמרינן אמר ליה דטבא עבדי לך וכו'.

An agent was sent with instructions to sell a certain amount of land, but he bought a different amount. The Gemara brings a version of this discussion where the agent was told to sell a כור (a relatively large area), but he went and sold half that amount, a לתך. The question is whether the sale is binding or not. On the one hand, the agent can say that he acted in accordance with the interests of the seller. Most people only sell land only if they need to raise cash. The agent therefore claims to the seller, "Had I sold the entire amount, and had you not needed the entire sum of the purchase price, you would not have been able to cancel the sale. I thereby saved you by not selling more land than necessary." If this claim were true, the sale of the half size field would be valid.

On the other hand, the seller might be able to argue that what the agent did was detrimental to him. Had he sold the land at once, only one deed written would have had to be written, indicating the sale of the entire כור at once. Now that the field will be sold in two parts, there will be two deeds written to complete the sale of the land, and the seller will now appear as a person who is somewhat desperate in that he is continually selling his land. As indicated above, people only sell land when they are in need of cash. The רא"ש in Bava Basra (5:5) and Sanhedrin (3:27) writes that one who is always selling off his assets earns a reputation as being strapped for cash, and his fields all drop in price. He will also find it difficult to borrow money, as lenders will think that all his fields are already mortgaged. Therefore, the agent acted against the interests of the seller, and the sale would be invalid.

Tosafos (עמוד ב' - ד"ה אמר לאחד) writes that the reason the seller might not want to sell the land in two parts is that he will now have to scrounge around to find more witnesses for each document. He would have rather been able to suffice with one set of witnesses for the land, as it would have been sold at one time. In this way, the agent caused him unnecessary hardship, and the sale is not valid. ■

HALACHAH Highlight

An agent who errs

אבל טעה שליח אמר ליה לתקוני שדרתיך ולא לעוותי

However, when an agent errs the principal can say, "I sent you to benefit me and not to harm me."

When an agent violates the instructions of the principal, his action is rendered null and void. Similarly, if the agent makes an error regarding the price of an item, whether land or movable objects, the sale is reversed because the principal can claim that the agent was empowered to act in his best interest and not to harm his interests – לתקוני שדרתיך ולא לעוותי. Although halacha normally allows for an error of up to one-sixth of the price, and concerning slaves and land there can be an error of even greater than a sixth, nonetheless, that allowance does not apply if the error was made by an agent. That flexibility applies only for the principal.¹

If, however, the principal stipulated that the agent is authorized to act on his behalf whether the outcome is beneficial or detrimental, the principal must accept the consequences of those decisions. Thus, even if the agent were to sell items worth a *maneh* for a *dinar* or if the agent were to purchase an item worth a *dinar* for a *maneh* the transaction is valid.² Shach³ questions this ruling because why should the agent be any worse than the principal? If the principal himself had made a stipulation at the time of the transaction that there will be no *ona'ah* the stipulation is invalid, so why should the principal be forced to honor the detrimental transaction performed on his behalf? Shach answers that we are forced to conclude that the

REVIEW and Remember

1. What is the law when an agent sells less property than he was authorized to sell?

2. How is it possible for an agent and the principal to commit מעילה with the same transaction?

3. If a person instructs his agent to sell his property to one person, does he mean to restrict him from selling the property to two people?

4. When is the sale of property by Beis Din considered void?

case must refer to an item that is not subject to the laws of *ona'ah*, e.g. land and slaves. Another important qualification to this halacha is explained by Sma.⁴ Halacha binds the principal to honor the transactions made by his agent whether for good or for bad, when thus stipulated, only when the principal's instructions were carefully followed. If, however, the agent did not accurately carry out the instructions of the principal the transactions are reversed despite the fact that the agent was given the flexibility to make decisions that are beneficial or detrimental since he is nonetheless bound to follow his instructions. ■

1. רמב"ם פ"א מהל' שלוחין ה"ב.
2. שו"ע חו"מ סי' קפ"ב סעי' א'.
3. ש"ך שם סק"ג.
4. סמ"ע שם סק"ז. ■

STORIES Off the Daf

The Appraisal

"אין אונאה לקרקעות"

There was once a man who owned a fairly large and valuable piece of property. He was in need of some capital, so he decided to sell it. He found a willing buyer but they didn't really know the exact value of the property, so the two agreed to bring in a very well known appraiser to provide them with a fair sale price. That day was one of the most difficult days the appraiser had known. He was exceedingly preoccupied and came to the appraisal in a fog. He quickly

fixed a price and left. The prospective buyer and owner of the property went to a lawyer's office and drew up a binding contract for the quoted price.

Subsequently, the seller found out that the appraiser had made a significant mistake in favor of the buyer. He was incensed and confronted the appraiser about this, and the man apologized profoundly. However, this didn't help the seller who wished to receive the true value of the property. When he told the buyer that the price should really have been much more, the new owner had a simple answer, "Well that's a pity isn't it? Chazal say there is no *ona'ah* on land, so I guess it's just your tough luck."

The seller wasn't so easily convinced.

They decided to take their question to Rav Yitzchak Zilberstein, shlit"a. "The *Nesivos* does write that if two people made a קנין, a formal transaction, to set up the price in accordance with a third person's evaluation and the person evaluating made an error, there is no sale since the seller assumed that the appraisal was a professional evaluation and it wasn't. However that doesn't apply here, since there was no קנין to follow the appraiser's evaluation.

Rav Zilberstein concluded, "However, the appraiser may very well have to pay the difference since he took money for his service. Perhaps that includes responsibility for such mistakes!" ■

