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בס״ד Intro

Today we will Be"H learn דף "דף of מסכת בבא מציעא. Some of the topics we will learn about include:

אחריות טעות סופר הוא

Every documented loan establishes a lien, even when not mentioned explicitly in the document;

אחריות

A seller may guarantee the purchase against any possible claims by a creditor or someone claiming to be the original owner. The Gemara discusses several scenarios and Halachos regarding this idea, including צריך לימלך

The scribe must consult with the seller whether to include this provision;

משתעי דינא בהדיה

The seller is entitled to challenge a claimant in court, since he is affected by the guarantee; and יצאו עליה עסיקין

If claimants come forth, whether the buyer can back out after finalizing the sale?

נמצאת שאינה שלו

If someone purchased land and subsequently discovered it was stolen, it is a מחלוקת whether יש לו שבח או לא

Whether he can also collect for improvements he made to the land, or whether this resembles ; רבית;

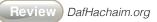
אין מוציאין מנכסים משועבדים

The הכמים instituted that certain claims cannot be collected from lands that the defendant sold, because they are very common and people would refrain from purchasing land.

אחריות טעות סופר הוא אחריות צריך לימלך









So let's review...

The Gemara earlier cited the opinion of שמואל, אחריות טעות סופר הוא

All loans establish a lien on the debtor's property, even if not explicitly written in the document.

The Gemara challenges this from another ruling of שמואל: שבח שפר ושעבוד צריך לימלך

As Rashi explains;

The establishment of a lien in a שטר מכירה, a sale document, guaranteeing a refund in the event that a previous creditor seizes the property; and

Additional restitution for improvements to the property by the buyer before it was seized by the creditor;

The right for the buyer to be compensated from the seller's choice properties;

צריך לימלך

Before writing them into the document the scribe must consult with the seller whether he wants to commit to

This ruling implies that if they are not written in the שטר, they do not take effect?



The Gemara differentiates כאן בשטר הלואה

דלא יהיב אינש זוזי בכדי

A loan document automatically creates a lien, because no

one lends their money unless they are assured that it will be returned.

כאן במקח וממכר

דעביד אינש דזבין ארעא ליומיה

A sale does not automatically create a lien, because people will often buy something to use for now, even at the risk of losing it later.









The Gemara on דף ט"ו rules

אחריות טעות סופר בין בשטרי הלואה בין בשטרי מקח וממכר

A lien is always created, both for loans and for sales.

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The Gemara on 1"6 \$\int \frac{1}{2}\$ rules

הלכתא

אחריות טעות סופר

בין בשטרי הלואה

בין בשטרי מקח וממכר

The Gemara discusses several scenarios involving אחריות, guaranteeing the sale of property:

1.

ראובן שמכר שדה לשמעון באחריות

If אמעון sells a field to אמעון and guarantees to refund the money if a creditor claims this field;

ובא בעל חוב דראובן

וקא טריף ליה מיניה

And יראובן's creditor later claims the field as payment for a prior debt;

דינא הוא

דאזיל ראובן

ומשתעי דינא בהדיה

is entitled to engage his creditor in court, and as Rashi explains, to say

פרעתיך

I paid you; or

כך וכך יש לי עליך תביעה

ואני מעכב חוב זה תחתיו

You owe me money, and so I do not have to pay this debt. And

לא מצי א"ל

לאו בעל דברים דידי את

The creditor cannot argue that he is claiming the field from שמעון and the case does not involve , because ראובן can respond

דמפקת מיניה עלי דידי הדר

The case concerns me, because I will now have to repay שמעון, since I guaranteed it.

Alternately,

אפילו שלא באחריות נמי

Even if he did not guarantee the sale, ראובן can engage the creditor in court, because he can argue

לא ניחא ליה

Dedicated By: \_

דליהוי לשמעון תרעומת עלי

I don't want שמעון to hold a grudge against me.









2.

Another related Halachah;

ראובן שמכר שדה לשמעון

שלא באחריות

ויצאו עליה עסיקין

If ראובן sold a field to שמעון without a guarantee, and someone then claimed ownership of the field;

עד שלא החזיק בה

יכול לחזור בו

If he has not yet performed a קנין, the buyer can withdraw from the sale.

משהחזיק בה

אינו יכול לחזור בו

But if he already performed a קנין, he cannot withdraw,

because ראובן can argue

חייתא דקטרי סברת וקבלת

You agreed to the sale without a guarantee, thereby accepting the obvious risk.

The Gemara adds

מאימתי הויא חזקה

מכי דייש אמצרי

He finalizes the transaction when he performs a חזקה, by walking around the borders and making some repair or improvement.

Alternately,

אפילו באחריות נמי

Even if there was a guarantee, he may not withdraw from the sale after performing a קנין, because the seller can argue

אחוי טרפך ואשלם לך

Right now, the sale is binding; and if it will be taken from you, I will then reimburse you.









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A third Halachah, in which there is a Machlokes;

המוכר שדה לחבירו

ונמצאת שאינה שלו

If someone sold a field, and it was discovered to have been stolen;

רב אמר

יש לו מעות

ויש לו שבח

The buyer can demand that the seller reimburse him for both the principal and any improvements he made to the property.

שמואל אמר

מעות יש לו

שבח אין לו

He is reimbursed for the principal, but not for his improvements.

The Gemara explains

אע"פ שפירש לו את השבח

Even if he stipulated that he would be reimbursed for the שבח, he may not do so, because

כיון דלית ליה קרקע

מחזי כרבית

דשכר מעותיו עומד ונוטל

Since the buyer never actually owned the property, it appears as if the purchase money was a loan and he is collecting his money with interest.

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## המוכר שדה לחבירו ונמצאת שאינה שלו

If someone sold a field, and it was discovered to have been stolen

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מעות יש לו שבח אין לו ONE AS

יש לו מעות ויש לו שבח



The Gemara explains

## אע"פ שפירש לו את השבח

Even if he stipulated he would be reimbursed for the עבה, he may not do so

because

כיון דלית ליה קרקע מחזי כרבית דשכר מעותיו עומד ונוטל

Since the buyer never actually owned the property, it appears as if the purchase money was a loan and he is collecting his money with interest







The Gemara challenges this from a Mishnah:

If someone bought land and it was then confiscated from him:

אין מוציאין לאכילת פירות

ולשבח קרקעות

מנכסים משועבדים

The buyer cannot collect compensation for the ripe produce, nor for improvements, from properties that were sold to others AFTER his purchase.

## The Gemara points out

בעל חוב גובה את השבח

אבל פירות לא

When a creditor claims land, he can take it with the improvements, but he cannot take the produce; therefore, the Mishnah clearly refers to

לוקח מגזלן

The seller stole the land, and the owner collects it from the buyer. Yet the Mishnah also refers to the שבח, indicating שבח יש לו

He can collect the שבח, and we are not concerned that it resembles רבית?



The Gemara answers רישא בגוזל ונגזל

סיפא בבעל חוב

(Ed note; put the earlier statement on the SB)

אין מוציאין לאכילת פירות)

ולשבח קרקעות

(מנכסים משועבדים

The Halachah regarding the produce refers to a case of stolen land; however, the Halachah regarding שבח refers to land seized by a creditor, and this case certainly does NOT resemble רבית, as Rashi explains

דמכירה מעלייתא היא

כל זמן שלא טרפה ממנו

The sale IS effective, and he would keep it if the seller were to pay the creditor. Therefore, when the buyer collects from the seller for the produce as well, it appears as if he sold the property back for a profit.

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The Gemara assumes that the Halachah of פירות refers to a case

שגזל שדה מחבירו

ומכרה לאחר והשביחה

He stole the field, and then sold it to someone who improved it; therefore, as Rashi explains,

נגזל לוקחה עם פירותיה

ואינו נותן אלא יציאה

דקאמר ארעאי אשבח

The original owner may seize the produce as well, because it grew on his land, and he only reimburses him for his expenses. Therefore, the buyer is now demanding compensation for the difference from the seller. In this case, the Mishnah rules

גובה את הקרן מנכסים משועבדים

ופירות גובה מנכסים בני חורין

He collects the principal even from land that is sold, but can only collect the cost of the produce from property currently owned by the seller.

However, the Gemara asks that when the buyer collects the cost of the produce from the seller, it also resembles , rείπ, and he should not be allowed to collect it?

The Gemara assumes that the Halachah of איוס refers to a case שגזל שדה מחבירו

ומכרה לאחר והשביחה He stole the field, and then sold it to someone who improved it

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ואינו נותן אלא יליאה דקאמר ארעאי אשבח

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גובה את הקרן מנכסים משועבדים ופירות גובה מנכסים בני חורין

However, the Gemara asks...



When the buyer collects the cost of the produce from the seller, it also resembles רבית?







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The Gemara offers several alternate scenarios:

1.

כגון שגזל שדה מחבירו מלאה פירות ואכל את הפירות וחפר בה בורות שיחין ומערות

The thief stole the field laden with produce and ate it, AND damaged the land, and the owner is demanding payment from the thief. Therefore,

בא נגזל לגבות קרן

גובה מנכסים משועבדים

The owner collects for the land from property sold after the robbery, but

בא נגזל לגבות פירות

גובה מנכסים בני חורין

He can only collect the produce from the thief's current possessions.

2.

כגון שנטלוה מסיקין

Non-Jews confiscated the land because of the thief.
Therefore, he is liable for both the land and the produce.











3.

לצדדין קתני

The Mishnah refers to two separate incidents;

כגון שגזל שדה מחבירו מלאה פירות

ואכל את הפירות

ומכר את השדה

The גזלן ate the produce and then sold the property. The נזלן then took back his property from the buyer.

בא לוקח לגבות קרן

גובה מנכסים משועבדים

The buyer collects the principal, his purchase money, from the גזלן, even from property the גזלן subsequently sold. While

בא נגזל לגבות פירות

גובה מנכסים בני חורין

The original owner only collects his produce from the thief's current possessions.

In all of these scenarios, it does not resemble רבית, since the גולן is taking back from the גזלן that which is rightfully his





