

A בס"ד

Intro

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

שבח

The Gemara discusses various scenarios regarding compensation for a buyer's improvements to land that was seized from him, including:

נמצאת שאינה שלו

If it was discovered to be stolen land;

בעל חוב

If it was seized by a creditor;

שבח המגיע לכתפים

Whether produce that is still growing is the equivalent of ripe produce; and

A

שבח

בעל חוב

שבח
המגיע
לכתפים
B אפותיקי

If the land was specifically designated for collection;

רבית

The Gemara discusses several Halachos pertaining to the prohibition against charging interest, including:

סאה בסאה

It is forbidden מדרבנן to lend a measure of produce to be repaid with an equal measure, because the price may fluctuate and go up, and he may receive more value than he lent; and

זביני

Whether compensation for improvements to stolen land resembles interest?

B

אפותיקי

רבית

סאה בסאה

זביני

C הכיר בה שאינה שלו
If the buyer was aware that the land was stolen, the Gemara debates whether his payment was intended as a פקדון, a deposit, OR a מתנה, a gift.

חזר ולקחה מבעלים ראשונים
If a thief subsequently bought the land from the owner, the Gemara discusses whether he can act in place of the owner and claim it from the buyer.

C

הכיר בה
שאינה שלו

חזר ולקחה
מבעלים ראשונים

1 So let's review...

The Gemara earlier cited שמואל's ruling:

המוכר שדה לחבירו
ונמצאת שאינה שלו

If someone sold a field, and it was discovered to be stolen property;

מעות יש לו
שבח אין לו

The buyer is reimbursed for the principal, but not for his improvements, 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 now collecting his money with interest.

The Gemara cites a contradictory ruling of שמואל from which it seems that

יש לו שבח

Because שמואל said;

אמליך וכתוב

שופרא שבחא ופירי

A scribe must consult with a seller whether he wants to obligate himself to reimburse for improvements and produce.

Now, שמואל could not have been referring to a חוב, a creditor, because שמואל ruled

בעל חוב גובה את השבח

אבל פירות לא

A creditor can collect the field with its improvements, but cannot collect ripe produce. Clearly, שמואל must be referring to

לוקח מגזלן

If the land is discovered to be stolen, and yet the buyer collects for שבח;

1

משנה

**המוכר שדה לחבירו
ונמצאת שאינה שלו**

*If someone sold a field,
and it was discovered to be stolen property;*

**מעות יש לו
שבח אין לו**

*The buyer is reimbursed for the principal,
but not for his improvements, 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 now collecting his money with interest.*



*A contradictory ruling of שמואל
from which it seems that - יש לו שבח*

אמליך וכתוב

שופרא שבחא ופירי

*A scribe must consult with a seller
whether he wants to obligate himself to reimburse
for improvements and produce.*

*שמואל could not be referring
to a בעל חוב,
because שמואל ruled
בעל חוב גובה את השבח
אבל פירות לא*

*A creditor can collect
the field with its improvements,
but cannot collect ripe produce.*

*Clearly, שמואל must
be referring to
לוקח מגזלן
If the land is
discovered to be stolen,
and yet the buye
collects for שבח*



2 The Gemara suggests two answers:

1.
כגון שיש לו קרקע
If the seller reimburses the buyer with land, it does not resemble רבית.
2.
כגון שקנו מידו
If the seller performed a קנין at the time of the sale, committing to pay for the שבח if the property is seized, it does not resemble רבית.

Although

אסור ללות סאה בסאה

If is forbidden מדרבנן to lend a measure of produce to be repaid with an equal measure, because the price may fluctuate and go up and he may receive more value than he lent, and this is a form of רבית. Furthermore, this is true even

במקום שיש לו קרקע

And even

במקום שקנו מידו

Whether or not he pays with land, or if he made such a קנין;

The Gemara answers however,

התם הלואה

הכא זביני

We are more stringent regarding a loan, because it strongly resembles רבית; but we are more lenient regarding a sale, because it does not resemble רבית as much.

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2

2

כגון שקנו מידו

If the seller performed a קנין at the time of the sale, committing to pay for the שבח if the property is seized, it does not resemble רבית.

1

כגון שיש לו קרקע

If the seller reimburses the buyer with land, it does not resemble רבית.



אסור ללות סאה בסאה

If is forbidden מדרבנן to lend a measure of produce to be repaid with an equal measure, because the price may fluctuate and go up and he may receive more value than he lent, and this is a form of רבית.

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And even

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Whether or not he pays with land, or if he made such a קנין.

התם הלואה – הכא זביני

We are more lenient regarding a sale, because it does not resemble רבית as much.

We are more stringent regarding a loan, because it strongly resembles רבית.

3 The Gemara returns to discuss a creditor claiming the שבח:
 בעל חוב גובה את השבח
 A creditor collects the improvements, and, as Rashi explains,
 לא מצי לוקח למימר
 אגא אשבח
 The buyer cannot argue that since he improved the land, the creditor must compensate him.
 רבא adds
 תדע שכך כותב לו מוכר ללוקח
 Indeed, the seller accepts this obligation by writing in the document of sale:
 אגא איקום ואשפי ואדכי ואמריק זביני אילין
 I guarantee the sale against any claims,
 אינון ועמליהון ושבחיהון
 For the principal and the improvements;
 And so, as Rashi explains,
 כיון דעל המוכר הדר
 גבי שבחא בעל חוב מלוקח
 The creditor may take the שבח as well, because the buyer will not suffer a loss since the seller will reimburse him.

Therefore, the Gemara continues,
 מתנה דלא כתיב ליה הכי
 לא טריף שבחא
 If the land was given as a gift, the creditor cannot claim the שבח, because the gift was not guaranteed.
 =====

3

בעל חוב גובה את השבח
A creditor collects the improvements

לח מצי לוקח למימר
 אגא אשבח
The buyer cannot argue that since he improved the land, the creditor must compensate him.

רבא
תדע שכך כותב לו מוכר ללוקח
Indeed, the seller accepts this obligation by writing in the document of sale:

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*I guarantee the sale against any claims,
 אינון ועמליהון ושבחיהון*
אינון ועמליהון ושבחיהון
For the principal and the improvements;

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The creditor may take the שבח as well, because the buyer will not suffer a loss since the seller will reimburse him.

Therefore
**מתנה דלא כתיב ליה הכי
 לא טריף שבחא**
If the land was given as a gift, the creditor cannot claim the שבח, because the gift was not guaranteed.

4 The Gemara cites a ברייתא:
המוכר שדה לחבירו והשביחה
ובא בעל חוב וטרפה
If someone sold a field and the buyer improved it, and the
land was then seized by a creditor;
אם השבח יותר על היציאה
נוטל את השבח מבעל הקרקע
והיציאה מבעל חוב
If the improvements are worth more than their cost, he
collects his expenses from the creditor, and the additional
value of the improvements from the seller, because as
Rashi explains, the additional value of the improvements
defrayed part of the loan.

ואם היציאה יתירה על השבח
אין לו אלא הוצאה שיעור שבח מבעל חוב
But if the expenses exceeded the value of the improve-
ments, he is only entitled to collect his expenses up to the
value of the שבח from the creditor.

4 *בריתא*
**המוכר שדה לחבירו והשביחה
ובא בעל חוב וטרפה**
*If someone sold a field and the buyer improved it,
and the land was then seized by a creditor;*
**אם השבח יותר על היציאה
נוטל את השבח מבעל הקרקע
והיציאה מבעל חוב**
*If the improvements are worth more than their cost,
he collects his expenses from the creditor,
and the additional value of the improvements from the seller,*
*Because, as Rashi explains,
the additional value of the improvements
defrayed part of the loan.*
**ואם היציאה יתירה על השבח
אין לו אלא הוצאה שיעור שבח
מבעל חוב**
*But if the expenses exceeded the value of the improvements,
he is only entitled to collect his expenses
up to the value of the שבח
from the creditor.*

5 The Gemara offers two approaches how שמואל understands this ברייתא:

1.
בלוקח מגזלן
The original owner seized the land, and yet the buyer claims the שבח from the seller and there's no concern of רביית, כגון שיש לו קרקע א"נ בשקנו מידו
Because the seller paid with land; alternately, he pre-committed to this obligation.

2.
בבעל חוב
A creditor seized the land;
However, regarding the שבח that he seizes, it depends: הא דמסיק ביה כשיעור ארעא ושבחא
The בעל חוב does not pay for the שבח, if the amount owed is equal to the field AND the שבח;
הא דלא מסיק ביה אלא כשיעור ארעא
The בעל חוב does pay for the שבח, if the amount owed is only equal to the field.

However, the Gemara asks that this that the בעל חוב has the option of seizing the שבח and paying for it, is only according to the opinion that אי אית ליה זוזי ללוקח
לא מצי מסליק ליה לבעל חוב
The buyer does not have the option of compelling the creditor to accept payment in lieu of the field. Rather, the creditor has the option of seizing the field or accepting the money. Therefore, the בעל חוב also has the option of seizing the שבח as part of the field and then pay for the excess.

5 Two approaches how שמואל understands this ברייתא

1

בלוקח מגזלן
The original owner seized the land, and yet the buyer claims the שבח from the seller and there's no concern of רביית,
כגון שיש לו קרקע א"נ בשקנו מידו
Because the seller paid with land; alternately, he pre-committed to this obligation.

2

בבעל חוב
A creditor seized the land;
However, regarding the שבח that he seizes, it depends:

הא דלא מסיק ביה אלא כשיעור ארעא The בעל חוב does pay for the שבח, if the amount owed is only equal to the field.	הא דמסיק ביה כשיעור ארעא ושבחא The בעל חוב does not pay for the שבח, if the amount owed is equal to the field AND the שבח;
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But this is only according to the opinion that
אי אית ליה זוזי ללוקח לא מצי מסליק ליה לבעל חוב
The buyer does not have the option of compelling the creditor to accept payment in lieu of the field. Rather, the creditor has the option of seizing the field or accepting the money.
Therefore, the בעל חוב also has the option of seizing the שבח as part of the field and then pay for the excess.

6 However, according to the opinion
כי אית ליה זוזי ללוקה
מצי מסליק ליה לבעל חוב
The buyer does have the option of paying off the loan and
keeping the land, the buyer can argue
אילו הוה לי זוזי
הוה מסלקינך מכולה ארעא
If I had money, I would keep the entire property;
השתא דלית לי זוזי
הב לי גרבא דארעא בארעא
שיעור שבחאי
Therefore, I am least entitled to keep a portion of the land
equivalent to the value of the improvements above the
amount of the loan?

The Gemara answers
כגון שעשאו אפותיקי
The seller initially designated this particular land for
collection, telling the creditor:
לא יהא לך פרעון אלא מזו
You can only collect from this property; therefore, the
buyer does not have any rights to it.

6
However, according to the opinion
**כי אית ליה זוזי ללוקה
מצי מסליק ליה לבעל חוב**
*The buyer does have the option of paying off the loan
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**אילו הוה לי זוזי
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If I had money, I would keep the entire property;
**השתא דלית לי זוזי
הב לי גרבא דארעא בארעא
שיעור שבחאי**
*Therefore, I am least entitled to keep a portion of the land
equivalent to the value of the improvements above the
amount of the loan?*

כגון שעשאו אפותיקי
*The seller initially designated this land for collection,
telling the creditor:*
לא יהא לך פרעון אלא מזו
*You can only collect from this property
therefore, the buyer does not have any rights to it.*

7 The Gemara discusses several additional scenarios of buying stolen property:

1.

הכיר בה שאינה שלו
ולקחה

If the buyer was aware that the field was stolen and nevertheless bought it, and the original owner then seized it;

אמר רב
מעות יש לו
שבח אין לו

He is still entitled to reimbursement, because

אדם יודע שקרקע אין לו
וגמר ונתן לשום פקדון

He knew the sale was not binding, and so he intended to give the money as a deposit, but did not say so outright, because

סבר לא מקבל

He thought the seller would not accept the deposit.

However,

שמואל אמר
אפילו מעות אין לו

He is NOT reimbursed, because

אדם יודע שקרקע אין לו
וגמר ונתן לשום מתנה

He knew the sale was not binding, and so he intended to give the money as a gift, but did not say so outright, because

כסיפא ליה מילתא

He though the seller might be embarrassed, and decline.

7

Several scenarios of buying stolen property

1

**הכיר בה שאינה שלו
ולקחה**

If the buyer was aware that the field was stolen and nevertheless bought it, and the original owner then seized it;

אמר רב

מעות יש לו – שבח אין לו

He is still entitled to reimbursement, because

**אדם יודע שקרקע אין לו
וגמר ונתן לשום פקדון**

He knew the sale was not binding, and so he intended to give the money as a deposit, but did not say so outright, because

סבר לא מקבל

He thought the seller would not accept the deposit.

שמואל אמר

אפילו מעות אין לו

He is not reimbursed, because

**אדם יודע שקרקע אין לו
וגמר ונתן לשום מתנה**

He knew the sale was not binding, and so he intended to give the money as a gift, but did not say so outright, because

כסיפא ליה מילתא

He though the seller might be embarrassed, and decline.

8 However the Gemara asks
האי לארעא במאי קא נחית
ופירות היכי אכיל
If he only intended to give a deposit or a gift, by what right
does he acquire and use the land and eat the produce?

The Gemara explains

סבר אנא איחות לארעא

ואיעביד ואיכול בגויה

כי היכי דהוה קא עביד איהו

He reasons: in the interim, I will eat the produce, just as
the thief would, and

לכי אתי מריה דארעא

זוזאי נהוו לפקדון או למתנה

If the owner claims the land, the payment will then be a
deposit or a gift.

=====

8

?

**האי לארעא במאי קא נחית
ופירות היכי אכיל**

*If he only intended to give a deposit or a gift,
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land and eat the produce?*

**סבר אנא איחות לארעא
ואיעביד ואיכול בגויה
כי היכי דהוה קא עביד איהו**

*He reasons: in the interim,
I will eat the produce, just as the thief would, and*

**לכי אתי מריה דארעא
זוזאי נהוו לפקדון או למתנה**

*If the owner claims the land,
the payment will then be a deposit or a gift.*

9 2.
An additional scenario:
חזר ולקחה מבעלים הראשונים
If after selling the field, the thief then bought it from its
true owner;
We cannot say, as Rashi writes;
שגזלן במקום בעלים
ויוציאה מיד הלוקח
He can act in place of the owner and seize the field from
the buyer, since the original sale was never valid, as it was
stolen at that time, and reimburse him for it;
He cannot do that, because
מה מכר לו ראשון לשני
כל זכות שתבא לידו
A seller gives all his rights to the buyer; and as Rashi
explains
וכשלקחה לא לקחה אלא
כדי שתהא מקוים ביד הלוקח
He bought it with the intention that it should remain with
the buyer.

9

2

חזר ולקחה מבעלים הראשונים

*If after selling the field, the thief then bought it from its
true owner;
We cannot say,
As Rashi writes;
שגזלן במקום בעלים ויוציאה מיד הלוקח
He can act in place of the owner and seize the
field from the buyer, since the original sale
was never valid, as it was stolen at that time,
and reimburse him for it;*

**מה מכר לו ראשון לשני
כל זכות שתבא לידו**

*A seller gives all his rights to the buyer;
and as Rashi explains
וכשלקחה לא לקחה אלא
כדי שתהא מקוים ביד הלוקח
He bought it with the intention that it
should remain with the buyer.*

10 The Gemara suggests two reasons for this ruling:

1.
ניחא ליה דלא נקרייה גולנא
He does not want to be maligned by the buyer.
However, in the case of a מתנה
If he gave it as a gift, he is not concerned, because he can say
מאי גולינא מינך
I have not stolen anything from you.

2.
ניחא ליה דליקו בהמנותיה
He wants to maintain a reputation of honesty, and this IS
equally applicable to a מתנה.
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11 The Gemara rules on several of the disputes mentioned in this Daf regarding לוקח מגולן

1.
הלכתא
יש לו מעות ויש לו שבח
ואע"פ שלא פירש לו את השבח
If someone bought land and it was discovered to be stolen,
the seller must compensate him for improvements he
made to the property, and we are not concerned that it
resembles רבית.

2.
הלכתא
הכיר בה שאינה שלו ולקחה
מעות יש לו שבח אין לו
If someone bought land that he knew was stolen, the
money is considered a deposit, and must be returned.

10

2

**ניחא ליה
דליקו בהמנותיה**
He wants to
maintain a reputation
of honesty,
and this is
equally applicable
to a מתנה.

1

**ניחא ליה
דלא נקרייה גולנא**
He does not want to be
maligned by the buyer.
However, in the case of a
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He is not concerned,
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מאי גולינא מינך
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הלכתא
יש לו מעות ויש לו שבח
ואע"פ שלא פירש לו
את השבח

If someone bought land
and it was discovered to be stolen,
the seller must compensate him for improvements
he made to the property,
and we are not concerned that it resembles רבית.



הלכתא
הכיר בה שאינה שלו ולקחה
מעות יש לו
שבח אין לו

If someone bought land that he knew was stolen,
the money is considered a deposit,
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