

Bava Basra – Simanim

דף ע – Daf 70

פרק ד – המוכר את הבית

1. חוץ מחרוב פלוני, חוץ מחצי חרוב פלוני

Rav Acha bar Huna asked Rav Sheishess: חוץ מחרוב פלוני – If the seller said he is selling his field “except for [that specific] *carob tree*, חוץ מסדן פלוני – or “except for [that specific] *pruned sycamore*, what is the *halachah*? Although one normally does not acquire such significant trees with a field, does this phrase imply that the buyer should acquire all the other carobs? Or is this added term presumed to be increasing his rights, or just making absolutely sure he retains it? Rav Sheishess answered that he does not acquire the other carobs either, and brought as proof, that if one said: חוץ משרדה פלונית: שדי מכורה לך חוץ משדה פלונית – “My field is sold to you, except for [that specific] *field*,” certainly we do not infer that the buyer acquires all his other fields! Carob trees are also viewed as independent properties. In another version, Rav Sheishess was asked about one who said: חוץ מחצי חרוב פלוני – “except for half of [that specific] *carob tree*.” Although he definitely does not acquire the other trees (as above), do we infer that he acquires the other half of this tree? Rav Sheishess answered that he does not, based on a similar argument.

2. Claiming "החזרתים לך" on a שטר recorded in a שטר

Rav Amram asked Rav Chisda: המפקיד אצל חבירו בשטר – if someone left a פקדון with his fellow and it is recorded in a שטר, and the נפקד said: "החזרתים לך" – “I returned it to you,” is he believed? Do we say: מיגו דאי בעי אמר נאנסו מהימן – since if he wanted to lie, he could have said, “[The פקדון] was lost through an unavoidable accident,” and he would be believed, so he is also believed to claim he returned it? Or can the שטר מפקיד reply: שטרך בידי מאי בעי – “If you returned it, what is your שטר doing in my hand? Had you returned the פקדון, you would have demanded the שטר!” The Rashbam notes that the נפקד should be like a שטר במקום עדים. Rav Chisda said the נפקד believed and explained that since the נפקד knew he could claim נאנסו at any time, and the שטר מפקיד could not disprove this by arguing שטרך בידי מאי בעי, the נפקד felt no urgency to retrieve the שטר. Still, since the נפקד would have to swear if he would claim נאנסו, he must also swear if he claims he returned it.

3. A שטר of עיסקא brought against orphans

The Gemara suggests that Rav Chisda’s ruling above is a *machlokes* Tannaim in a Baraisa: שטר כיוס היוצא – a certificate of investment which is brought against orphans, i.e., an “עיסקא” investment which was managed by the father, which the investor claims from his heirs’ estate, the דיני גולה say: נשבע וגובה כולו – he swears he was never paid and collects it fully, and the דיני ארץ ישראל say he swears and collects only half. Since half the money of an עיסקא is considered like a loan, and half is like a פקדון, the “loan-half” is definitely collected, since the father would have had to pay it as well (having no defense against the שטר). The Tannaim argue about the “half-פקדון,” and the Gemara suggests they argue about Rav Chisda’s ruling (whether the father could have claimed he returned it). The Gemara concludes that they can all agree with Rav Chisda, but the דיני גולה argue: אם איתא דפרעיה מימר הוה – if it happened that he repaid him, he certainly would have said so to his children before his death. The דיני ארץ ישראל respond: אימור מלאך המות הוא דאנסיה – We can say the מלאך המות snatched him before he could instruct his children.

Siman – Eye Doctor

The eye doctor testing the patient by having him find the carob tree a seller of a field specifically said was not sold, even though all carob trees are excluded when selling a field, was distracted by a *shomer* in the waiting room screaming at the receptionist “I returned your glasses and I don’t care that you have a *shetar*”, and an investor arguing with *yesomim* about how much of an *iska* they must return, just the מלוה-half or the פקדון-half as well.

דף ע | DAF 70

Eye Doctor



The eye doctor testing the patient by having him find the carob tree a seller of a field specifically said was not sold, even though all carob trees are excluded when selling a field, was distracted by a *shomer* in the waiting room screaming at the receptionist "I returned your glasses and I don't care that you have a *shetar*", and an investor arguing with *yesomim* about how much of an *iska* they must return, just the מלוה-half or the פקדון-half as well.

3 things to remember

1. חוץ מחרוב פלוני, חוץ מחצי חרוב פלוני
2. Claiming "החזרתים לך" on a פקדון recorded in a שטר
3. A שטר of עיסקא brought against orphans

