

שבת קודש פרשת ויקהל | מסכת כתובות דף ע"ח

INSIGHTS FROM OUR CHABUROS

When is the Sale Valid

על החדשים אנו בושים

The Mishnah discusses the validity of a sale of property owned by a woman. The woman can inherit property either before she is an ארוסה, during the period she is an ארוסה, or while she is married. At one point in the Mishnah, Rabban Gamliel ruled that if a woman inherited property after she became an ארוסה, and she is still an ארוסה, Beis Shammai says she may sell them, and Beis Hillel maintain that she should not sell them. All agree that after the fact, if she did sell the property, the sale is valid. Rabbi Yehuda reported that the rabbis questioned Rabban Gamliel. If the husband acquires the woman, should he not also acquire her property? The Gemara elaborates and discusses whether the rabbis disputed the opinion of Beis Shammai who allow the sale to occur outright, or whether they even find it difficult that the sale is valid even after the fact.

To this inquiry of the rabbis, Rabban Gamliel responded, "We are ashamed of the newer properties, and you wish to impress upon us the old ones?" This statement is a bit enigmatic. Rashi explains that the "new" property refers to property she inherits after the marriage. Rabban Gamliel was saying that he felt it difficult to understand why the husband can remove property from the buyers even if the woman acquired it after the marriage took place.

Why does Rashi understand that Rabban Gamliel was talking about fields that woman acquired after getting married? Why didn't he simply explain that "new" property refers to fields she received after becoming engaged, and that we are ashamed that she should not sell them according to Beis Hillel, notwithstanding that the sale is indeed valid after the fact. Shita Mikubetzes explains that Rashi felt that the expression "we are ashamed" does not refer only to the restrictions of the woman, but it rather suggests that we are ashamed that the husband can collect the land from the buyer after it was sold. This right of the husband might have been a bit out of line, as the husband's right is only for the produce of the field, and yet this is surprisingly strong enough of a connection to enable his nullifying the sale. We would have expected that his right to the produce is only in effect while the land is in his wife's possession, but after it is sold perhaps we would take the cash the woman receives and invest it for the husband's benefit. The fact the purchase of the land is cancelled is something Rabban Gamliel was reluctant to recognize, let alone the case where the husband controls the woman's possessions after marriage.

STORIES OF THE DAF

The Cost of Ignorance

"ר"ש חולק בין נכסים לנכסים..."

An elderly woman passed away in Patterson, New Jersey. After the shivah, her family went through her personal effects and discovered her will. In it, she left a portion of her savings to a worthy charity. Since her husband had recently made a smaller pledge to the same charity, he wondered if he was halachically permitted to somehow change his mind and pay only the sum detailed in the will.

When the man consulted with his Rabbi, Rav Betzalel Hakohen, zt"l, about this issue, the Rabbi said, "This is a difficult question. As soon as I have a definitive answer, I will let you know."

The Rav knew something that the unlearned husband did not. Although the permissibility of annulling the pledge was a complicated question, there was another important consideration in this instance. Why must the husband comply with the will at all? The Chachamim decreed that a husband inherits his wife's possessions, so presumably, her civil will was null and void.

The Rabbi contacted Rav Moshe Feinstein, zt"l, and asked if his analysis was correct.

The Gadol replied, "Where the husband is unaware that the halacha allows him to inherit his wife's property, his rights vanish. This is clear from Kesuvos 78a. Rav Shimon says that if a married woman sells assets that are unknown to her husband, the sale is valid. This is how Tosafos, the Rosh, and all the Poskim hold. What is the difference between a case of assets of which the husband is unaware of their physical existence, or assets over which he is unaware that he has halachic rights? In both cases they are unknown and do not become the husband's property!"

REVIEW AND REMEMBER

1. What halacha did R' Gamliel have difficulty understanding?
2. How does the Gemara explain the difference between the first two cases of the Mishnah?
3. According to the Baraisa, how did R' Gamliel respond to the Chachamim?
4. What is the definition of "unknown" property?

HALACHA HIGHLIGHT

The husband's right to his wife's **מטלוג** field

מתניתין בחייה ולפירות

The Mishnah refers to the field during her lifetime and specifically to the produce

Tur¹ presents a dispute concerning what happens when a wife sells her **מטלוג** property. According to the first opinion the sale of the land is immediately nullified and the husband repossesses the land and the produce. However, in the event that the wife becomes widowed or divorced the property reverts back to the buyer's possession. Rambam disagrees and rules that the husband collects the fruit but not the land itself since he does not have rights to his wife's **מטלוג** property until she dies.

Perisha² asks, since according to both opinions the husband only takes the produce, what is the practical difference between these two opinions? It seems to be a merely academic question of who is in legal possession of the land but there is no practical difference between the two opinions. Two resolutions to this inquiry are suggested by Perisha. The first resolution is that the question of who is in possession of the land is relevant for writing a pruzbul. In order for a pruzbul to be valid there is a requirement that the borrower or the lender should be a landowner. Concerning that matter it is important to know who is considered the legal owner of the property. A second matter that is dependent upon the question of who is the legal owner of the property is what will be done with the property in the event the husband and wife die in a collapsed building and it is not known who died first. If the property is considered in the possession of the buyer, the heirs of the husband would have the burden of proof that the wife died first but if the property is considered in the possession of the husband, the buyer would bear the burden of proof that the husband died first.

Bach³ wonders what forced Perisha to find such seemingly obscure differences between these two opinions when there are a number of more practical differences between the two opinions. The matter of who is the legal owner has relevance for taking possession of a lost object found on the property, who will be able to perform **נשיכה** onto the property and who will have the rights of the **מצרא**, to name just a few.

1. טור אה"ע סי' צ' סע' ט'.
2. פרישה שם ס"ק ל"ד.
3. ב"ח קונטרס אחרון שם ד"ה כיון.

PARSHA CONNECTION

The Mishna in this week's daf says **האשה שנפלו לה נכסים**, taken literally it means that "assets fell". Why is a woman's ob-taining assets described as having fallen into her? Perhaps this is meant to teach us that everything comes to us from above, hence its falls. We find this idea in **פרשת ויקהל** regarding the **אבני שוהם**. **אבני שוהם** and **הנשאים** writes that these precious stones fell from the clouds, and the **נשאים** brought them for the **משכן**. The word **נשאים** is written **חסר** in this week's **פרשה** and **רש"י** writes that it was because they were lazy in contributing to the **משכן** and said that they will bring whatever is missing AFTER everyone else contributed. As a result, they lost a "י" from their name. The **כלי יקר** offers a beautiful explanation for this: The **משה רבינו** was a **כפרה** for the **מעשה עגל** which caused **לוחות** to break the **לוחות**. The **לוחות** had holy letters which flew out from the **לוחות**. By bringing 13 different items for the **משכן** the **Bnei Yisroel** obtained a **כפרה** for the letters of the **תורה** which are expounded through the 13 **מידות** that we recite every morning. Since the **נשאים** did not participate in these items they lost out on bringing a **כפרה** for the "letters", which were contained in the 10 **דברות**. Therefore they lost the letter **יוד** which equals 10. What they brought were 2 precious stones as a **כפרה** for the 2 **לוחות**. The **רבינו בחיי** writes that this should serve as a lesson to every-one, that when we have an opportunity to contribute to a cause we should do so right away.

POINT TO PONDER

The Mishna says that when the **חכמים** came to ask **ר"ג** he responded saying **על החדשים אנו בושים וכו'** Was **ר"ג** arguing with, or complaining about the **תקנת חכמים** that the **בעל** should eat **פירות**?

Response to last week's Point to Ponder:

According to **שמואל** if a husband says that he doesn't want to provide for his wife (**איני זן ואיני מפרנס**) we force him to support her. What happens if he doesn't have the means to support her?

The **שולחן ערוך** **אבן עזר** **סימן ע' סעיף ג'** writes that we force him to give her a **גט**. However the **רמ"א** says that others argue and say that if the husband is too poor to provide this support we don't force him to divorce her.