

**שבת קודש פרשת בהעלותך | מסכת כתובות דף צ"ג**

לע"נ ישראל בן מרדכי אברהם

**INSIGHTS FROM OUR CHABUROS**

**Partners dividing the profits of their investment**

אמר שמואל שנים שהטילו לכיס זה מנה זה מאתים השכר לאמצע

**S**hmuel teaches about a case where two investors contribute to a common venture, with one contributing two hundred toward the deal, and the other offering one hundred. The halacha is that the profits from the investment are divided equally. Rosh (#10) explains that the reason the profits are not divided proportionally to their contributions is that the one who gave more than his friend should have clearly stipulated that he expects to receive a larger amount of the profit, commensurate to his contribution. The fact that he did not state his intentions indicates to us that he agrees that the other contributor should receive an equal part in the proceeds of the business. It is clear from the comments of the Rosh that our evaluation of this situation is based upon the fact that the partner who gave a larger amount toward the investment should have stated his intentions. Therefore, in a case where there is no expectation, the profits would be divided proportionately. For example, in a case where a firstborn and a younger brother inherit an ox, and there is a profit due to its performing various farm tasks. Here, the firstborn who owns a double portion (2/3 of the animal versus 1/3 for the other brother) would receive two thirds of the profit (see הותירו). Here, the brothers did not knowingly enter into a partnership, but it instead was a natural outcome of the inheritance process. The firstborn is not expected to have stipulated his intent, and his lack of clarifying his position is not to be interpreted as a forfeiture of his advantage.

The Rosh provides a number of approaches to understand why the investor who gives a larger sum toward the venture is expected to stipulate his expectations, and without doing so he automatically agrees to divide the profits equally with the other partners. One reason is that although he is giving a larger amount of money, he understands that a business deal is not only based upon cash contributions. The partner who gives less money may be providing more experience or ingenuity towards the deal. There are intangible aspects of the deal, and unless the one who gives more cash says so explicitly, we can assume that the profit will be split evenly due to everyone taking into consideration all factors, financial as well as otherwise.

Another approach is that the total profit could not have been realized unless the complete investment had been made. The profit does not reflect a dollar for dollar linear return. It is not necessarily true that half of the investment could have resulted in half the profit. Perhaps it is only through a combination of the entire package amount that the profit was realized. Therefore, in this regard, every one of the investors can be seen as an equal member of the team. Therefore, it is only when the larger investor clearly states his understanding that he can receive an amount of the profit corresponding to his contribution.

**POINT TO PONDER**

מטלטלין רבינא אמר writes that we are talking about a case whereby they grabbed מטלטלין of יתומים can't be collected to satisfy their father's obligations. How can they do that,

**Response to last week's Point to Ponder:**

The Gemara says that ראובן sold a field to שמעון without אחריות and then bought it back from שמעון with אחריות then if אבא חוב comes to collect a debt from ראובן and takes this field ראובן has to compensate ראובן. How can we understand this, given the fact that this was always ראובן's debt? The שיטה מקובצת suggests that once ראובן didn't have money to pay off the debt the debt became attached to the field which ראובן owned. Once שמעון bought the field he bought it with a lien already attached to it.

**STORIES OF THE DAF** **The Winning Ticket**

"שנים שהטילו לכיס"

**T**hree young married men from a yeshiva in Yerushalayim wished to purchase raffle tickets sold for fifty shekels each. One of them purchased a full ticket. The two others split a second ticket, and each contributed twenty-five shekels. The rule was that any purchase of two tickets entitled the purchaser to a third ticket free. At the drawing, the young men were all elated—the third ticket won a new car. They were not wealthy and each one's portion of the car's resale value would be very helpful indeed. However, they were not sure how to divide their winnings. The one who had paid in full for his ticket said, "Since the free ticket is given out for every two tickets purchased, it stands to reason that I get half the price of the car and you each get a quarter. I invested half of the total money for the tickets, which each of you only invested a quarter each." His friends were not convinced. "Without the two of us there would not have been a third ticket, since one ticket alone is not entitled to the third ticket that won the raffle. Since we all enabled the purchase of the third ticket, we feel the sale price of the car should be split equally."

They presented their problem to the Vayomer Avraham, and he replied, "Actually this is a clear Gemara in Kesuvos 93. There, we find a similar difference of opinions. Shmuel says that profits are shared equally even when the investment of two parties was unequal. Rabbah says that if the terms of the initial investment changed, then profits are split in proportion to each partner's original investment. Rav Hammuna argues, however, and says that even in such a case, the profits are split evenly. The Rif and Rambam follow Rav Hammuna's opinion, as do most Meforshim. The rationale is that if there was no specification at the outset of a partnership of what the profit-sharing would be, it is assumed that both agree that the profits be split evenly. The Rav concluded, "So you split it equally, especially in view of the reason cited by the Shita Mekubetzes: 'The mazal of two is better than that of one!'"

## HALACHA HIGHLIGHT

### Reversing a sale of land

עד שלא החזיק בה יכול לחזור בו וכו'

*As long as he did not take legal possession of the land he can pull out from the transaction etc.*

If a person sells a piece of property to his friend and protesters step forward to assert that the land is theirs, under certain conditions the buyer has the option to reverse the sale and demand a refund of his money. If the buyer made a kinyan but did not yet use the land he has the right to return the land and demand a refund because a land that has protesters claiming legal ownership of the land is considered blemished property. On the other hand, if the protesters did not lodge their complaint until after the buyer derived benefit from the property, the sale is considered final and the buyer will have the responsibility to litigate with the protesters about the property. In the event that the protesters succeed and prove that the property is theirs, the buyer will be able to return to the seller for a refund, assuming that the sale included a guarantee.<sup>1</sup>

This discussion pertaining to whether or not the buyer can reverse his purchase of the land applies when the protest seems to be well founded, although it has not been fully tested in Beis Din. If, however, the claim is nothing more than a rumor (קול בעלמא) the sale cannot be reversed. When the sale was reversed because there was a well-founded protest against the land and it turns out that the protesters had no legal claim to the land both parties maintain the right to refuse to go forward with the transaction since it was undermined by a well founded rumor.<sup>2</sup>

Tosafos<sup>3</sup> on our Gemara teaches that the issue of שפרע, a curse pronounced on a person who backs out on a deal after money was paid but the buyer did not yet take the property into his domain, applies to the purchase of land the same as it applies to the purchase of movable merchandise. Therefore, if the buyer backs out of the sale because of mere rumors he is subject to the שפרע curse since he is not authorized to back out of the agreement. On the other hand, if there was a well founded claim to the land from the protesters the buyer is within his right to reverse the sale and will thus not be subject to the שפרע curse.

1. שו"ע חו"מ סי' רכ"ו סע"ה.
2. רמ"א שם.
3. תוס' ד"ה עד.

## MUSSAR FROM THE DAF

### Use Your Tools; Don't Let Your Tools Use You

ומאימת מחזיק בה? מכי דייש אמצרי

The Gemara tells us a way to acquire a field is to walk the boundaries of that partial field. Why should that be a method of acquisition?

Perhaps if one knows how far they can go within the land, this demonstrates that one understands its limits and is thereby in control of the land.

There are many great tools in this world that can elevate us, or they can destroy us. When does one know if they can use such a tool? The גדר (test) is if the tool controls the person or if the person controls the tool. How do we control and own our tools? By "walking the boundaries". By establishing and knowing red lines, where and when our involvement starts and stops. And if a person doesn't own it, they will be owned by it and they have to be very careful to stay far away from any boundary. Without knowing where the boundaries are, it becomes very easy to cross over the boundary. For example, a phone can be a great way to connect to others. However, if a person uses it in times that aren't helpful to themselves or others (they break the normal boundaries that are meant for the phone) then the phone owns them. Another example is wealth. If a person is owned by the wealth and therefore, they buy items they don't need, flaunting it to others and even crossing halacha to acquire wealth, the money owns them. However, if they use it within the boundaries that the Torah tells us, by using wealth to help others, not breaking halacha to acquire it and only purchasing what they need, they own the wealth. A person who owns these tools can prove that they own it by walking along the boundaries of the acceptable use of these gifts without falling over the boundaries. They can go to the edge but won't fall over the "cliff".

## PARSHA CONNECTION

In this week's daf the גמרא quotes ר' רבי's opinion that multiple wives should share equally in their late husband's estate, regardless of their original כתובה amounts. We find the same concept of things being equal in פרשת בהעלותך with respect to the חצוצרות. The Possuk (במדבר י ב) says: עשה לך שתי חצוצרות. כסף מקשה תעשה אתם והיו לך למקרא העדה ולמסע את-המחנות. The two trumpets had to be identical. שתי learn this from the fact that it says שתי, which is an extra word. Since the minimum of חצוצרות is two, why did the תורה need to say שתי. If the תורה didn't say שתי we would know that it must be two, because that is the minimum of a plural expression. (ירושלמי יומא פרק ו'). The same דרשה is said regarding the two שעירים where the תורה says שני שעירים, עיזים, and שני learn that the two must be identical in size, value, and appearance. The תורה explains that the חצוצרות will be used in times of trouble, like it says וכי-תבאו מלחמה בארצכם עלי-הצר הצר אתכם: (במדבר פרק י פסוק ט) והרעתם בחצוצרת ונזכרתם לפני ה'אלהיכם ונושעתם מאיביכם. What does it mean when it says הצר הצורר אתכם? If it is meant to describe an enemy it should simply say אויביכם. Why does it use this expression? The אלשיך הקודש explains that there is a very important message in this פסוק. While people may view the physical enemy as their צרה, we should always realize that it's our internal עבירות which caused the הקב"ה to bring this physical enemy upon us. It therefore says in this way describing our internal enemy, namely our עבירות which have caused צרות. The correct course of action is to do תשובה which will eliminate the root cause of the צרה. This same idea can be applied in various facets of our daily lives.

For more points to ponder by Rabbi Yechiel Grunhaus, or insights by Rabbi Yitzchok Gutterman, please visit our website, [dafaweek.org](http://dafaweek.org), or download the app

To share an insight from your Chabura please email [info@dafaweek.org](mailto:info@dafaweek.org)

The shavua matters is published by the Daf a week program under the rabbinical guidance of Harav Meir Stern shlita and Harav Shmuel Kamenetsky shlita

To sponsor a publication, please contact Rabbi Zacharia Adler, Executive Director at [info@dafaweek.org](mailto:info@dafaweek.org) or call 507-daf-week. Sponsorship for one week is \$100

Sections reprinted with permission from the Chicago Torah Center