

**שבת קודש פרשת מטות מסעי | מסכת כתובות דף צ"ט**

**INSIGHTS FROM OUR CHABUROS**

**Did the agent act in the interests of the seller**

**כי תיבעי לך דאמר ליה זיל זבין לי כורא ואזל וזבין ליה ליתכא, מאי? מי אמרינן אמר ליה דטבא עבדי לך וכו'**

**A**n agent was sent with instructions to sell a certain amount of land, but he bought a different amount. The Gemara brings a version of this discussion where the agent was told to sell a כור (a relatively large area), but he went and sold half that amount, a לתך. The question is whether the sale is binding or not. On the one hand, the agent can say that he acted in accordance with the interests of the seller. Most people sell land only if they need to raise cash. The agent therefore claims to the seller, "Had I sold the entire amount, and had you not needed the entire sum of the purchase price, you would not have been able to cancel the sale. I thereby saved you by not selling more land than necessary." If this claim were true, the sale of the half size field would be valid.

On the other hand, the seller might be able to argue that what the agent did was detrimental to him. Had he sold the land at once, only one deed written would have had to be written, indicating the sale of the entire כור at once. Now that the field will be sold in two parts, there will be two deeds written to complete the sale of the land, and the seller will now appear as a person who is somewhat desperate in that he is continually selling his land. As indicated above, people only sell land when they are in need of cash. The ש"ר in Bava Basra (5:5) and Sanhedrin (3:27) writes that one who is always selling off his assets earns a reputation as being strapped for cash, and his fields all drop in price. He will also find it difficult to borrow money, as lenders will think that all his fields are already mortgaged. Therefore, the agent acted against the interests of the seller, and the sale would be invalid.

Tosafos (עמוד ב' ד"ה אמר לאחד) writes that the reason the seller might not want to sell the land in two parts is that he will now have to scrounge around to find more witnesses for each document. He would have rather been able to suffice with one set of witnesses for the land, as it would have been sold at one time. In this way, the agent caused him unnecessary hardship, and the sale is not valid.

**PARSHA CONNECTION**

**In this week's daf** the גמרא discusses a messenger who did not follow the instructions of the sender. רבינו משה recounts what happened when he sent messengers some 40 years earlier to check out ארץ ישראל. The מרגלים did not follow the instructions given to them by Moshe and caused בני ישראל a delay of 40 years before entering ארץ ישראל. When telling בני גד ובני ראובן what happened, רבינו משה seems to add unnecessary details. The פסוק (לכ יב) says: בלתי כלב בן יפנה הקנזי ויהושע בן נון כי מלאו אחריה. Since the point that רבינו משה is telling them is that the מרגלים caused בני ישראל to doubt that they will succeed in capturing ארץ כנען and this of course was done by the other 10 מרגלים, why is he mentioning ויהושע ככלב? The הקדוש explains that בני ישראל were guilty of multiple עבירות in the מדבר, as it says

עשרה נסיונות ניסו אבותינו את הקב"ה במדבר, which means that it's possible that the punishment of staying 40 years in the מדבר could have been cumulative, meaning many עבירות, plus the המרגלים. Therefore רבינו משה stressed that כלב and יהושע will be entering ארץ ישראל. כי מלאו אחריה - ארץ ישראל. The only reason why they are entering ארץ

ישראל is because they didn't follow the המרגלים, and conversely the only reason why everyone else died in the מדבר is because they didn't have the אמונה that they will be able to conquer ארץ ישראל. This point reinforces the charge against בני גד ובני ראובן שבטים. who thought will cause the exact same affect on the other בני ישראל.

**STORIES OF THE DAF**

**The Appraisal**

**"אין אונאה לקרקעות"**

**T**here was once a man who owned a fairly large and valuable piece of property. He was in need of some capital, so he decided to sell it. He found a willing buyer but they didn't really know the exact value of the property, so the two agreed to bring in a very well known appraiser to provide them with a fair sale price. That day was one of the most difficult days the appraiser had known. He was exceedingly preoccupied and came to the appraisal in a fog. He quickly fixed a price and left. The prospective buyer and owner of the property went to a lawyer's office and drew up a binding contract for the quoted price.

Subsequently, the seller found out that the appraiser had made a significant mistake in favor of the buyer. He confronted the appraiser about this, and the man apologized profoundly. However, this didn't help the seller who wished to receive the true value of the property. When he told the buyer that the price should really have been much more, the new owner had a simple answer, "Well that's a pity isn't it? Chazal say there is no ona'ah on land, so I guess it's just your tough luck."

The seller wasn't so easily convinced. They decided to take their question to Rav Yitzchak Zilberstein, shlit"a. "The Nesivos does write that if two people made a קנין, a formal transaction, to set up the price in accordance with a third person's evaluation and the person evaluating made an error, there is no sale since the seller assumed that the appraisal was a professional evaluation and it wasn't. However that doesn't apply here, since there was no קנין to follow the appraiser's evaluation.

Rav Zilberstein concluded, "However, the appraiser may very well have to pay the difference since he took money for his service. Perhaps that includes responsibility for such mistakes!"

## HALACHA HIGHLIGHT

An agent who errs

אבל טעה שליח אמר ליה לתקוני שדרתיך ולא לעוותי

However, when an agent errs the principal can say, "I sent you to benefit me and not to harm me."

When an agent violates the instructions of the principal, his action is rendered null and void. Similarly, if the agent makes an error regarding the price of an item, whether land or movable objects, the sale is reversed because the principal can claim that the agent was empowered to act in his best interest and not to harm his interests – לעוותי ולא לתקוני שדרתיך. Although halacha normally allows for an error of up to one-sixth of the price, and concerning slaves and land there can be an error of even greater than a sixth, nonetheless, that allowance does not apply if the error was made by an agent. That flexibility applies only for the principal.<sup>1</sup>

If, however, the principal stipulated that the agent is authorized to act on his behalf whether the outcome is beneficial or detrimental, the principal must accept the consequences of those decisions. Thus, even if the agent were to sell items worth a maneh for a dinar or if the agent were to purchase an item worth a dinar for a maneh the transaction is valid<sup>2</sup> Shach<sup>3</sup> questions this ruling because why should the agent be any worse than the principal? If the principal himself had made a stipulation at the time of the transaction that there will be no ona'ah the stipulation is invalid, so why should the principal be forced to honor the detrimental transaction performed on his behalf? Shach answers that we are forced to conclude that the case must refer to an item that is not subject to the laws of ona'ah, e.g. land and slaves. Another important qualification to this halacha is explained by Sma.<sup>4</sup> Halacha binds the principal to honor the transactions made by his agent whether for good or for bad, when thus stipulated, only when the principal's instructions were carefully followed. If, however, the agent did not accurately carry out the instructions of the principal the transactions are reversed despite the fact that the agent was given the flexibility to make decisions that are beneficial or detrimental since he is nonetheless bound to follow his instructions.

1. רמב"ם פ"א מהל' שלוחין ה"ב.
2. שו"ע חו"מ סי' קפ"ב סע"א.
3. ש"ך שם סק"ג.
4. סמ"ע שם סק"ז.

## MUSSAR FROM THE DAF

Mekadesh Shem Shamayim

הני מילי היכא דטעה בעל הבית, אבל טעה שליח, אמר ליה: "לתקוני שדרתיך ולא לעוותי"

The Gemorah discusses a case when somebody sends a shliach to sell land, and the shliach sold it for less than its market value. The sale is void because the שליחות was to be for the sender's benefit and not his determinan (ולא לעוותי). However, if the owner of the land had sold the land himself for below its market value, the deal would go through (אין אונאה לקרקעות).

Why should the 2 cases be different? Don't we say shliach shel adam kimoso? (a shliach has the status of the one who sends him) It seems from our gemorah that there is an inherent stipulation when somebody appoints a shliach that he is only there on the condition that he benefits the sender. Once he is doing something that doesn't benefit the sender, then the שליחות becomes nullified.

There is a great practical lesson we can learn from here על פי דרש. We are all shlichim in this world sent here with the understanding that we must be מקדש שם שמים. Anytime we try to fulfill our individual shlichus in this world through doing mitzvos and fulfilling our personal tafkid, we must realize that "לתקוני שדרתיך ולא לעוותי" (we were sent to not מקדש שם שמים ח"ו the opposite through a Chillul Hashem) Therefore, just like in our sugya, the shliach couldn't accomplish his goals in a situation of a detriment to the sender (לעוותי), so too any mitzvah or role we play in this world which is לעוותי, to Hashem's detriment, than we also our not accomplishing anything and our שליחות to do mitzvos is immediately nullified.

## POINT TO PONDER

The Mishna writes that דיינים who made a mistake of more than one sixth when selling off assets of an estate the sale is void. Does this pertain to קרקע or even מטלטלין? The difference being that by מטלטלין there is אונאה דין whereas by קרקע there is no אונאה דין.

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

The משנה says that a אלמנה who sold assets of the יתומים to collect her כתובה and she sold דינר more than she should have, the sale is void. Is דינר דווקא, meaning that if it was less than a דינר the sale stands, or דינר is only an example and even if it was less than דינר the sale is בטל?

The משנה cites the רא"ש who brings two opinions, one maintains that it's specifically דינר and less than דינר the sale remains, while the רא"ש maintains that it's דינר and even less than דינר voids the sale.