

וְאֵתָא בְּעַל חוּב דְּרֵאוּבֵן וְקִטְרִיף לִיָּה מִיַּיְהוּדָה – דִּינָא הוּא דְּאָוִיל שְׂמֵעוֹן וּמְפָצִי לִיָּה.

אָמַר לִיָּה רַבָּא: נְהִי דְּאֶחְרִיּוֹת דְּעֵלְמָא קִבִּיל עֲלֵיהּ – אֶחְרִיּוֹת דְּנִפְשִׁיָּה מִי קִבִּיל עֲלֵיהּ?

וּמוֹדָה רַבָּא בְּרֵאוּבֵן שְׂרִישׁ שְׂדֵה מִיעֵקֶב, וּמְכָרָה לְשְׂמֵעוֹן שְׂלָא בְּאֶחְרִיּוֹת, וְאֵתָא שְׂמֵעוֹן וּמְכָרָה לְרֵאוּבֵן בְּאֶחְרִיּוֹת, וְאֵתָא בְּעַל חוּב דְּיַעֲקֹב וְקִטְרִיף לִיָּה מִיַּיְהוּדָה – דִּינָא הוּא דְּאָוִיל שְׂמֵעוֹן וּמְפָצִי לִיָּה מִיַּיְהוּדָה.

מֵאִי טַעְמָא – בְּעַל חוּב דְּיַעֲקֹב כְּבַעַל חוּב דְּעֵלְמָא דְּמִי.

אָמַר רַמִּי בַר חֲמָא: רֵאוּבֵן שְׂמֵכֵר שְׂדֵה לְשְׂמֵעוֹן בְּאֶחְרִיּוֹת, וְזָקַף עָלָיו בְּמַלְוָה, וּמַת רֵאוּבֵן, וְאֵתָא בְּעַל חוּב דְּרֵאוּבֵן וְקִטְרִיף לָהּ מִשְׂמֵעוֹן, וּפְיִיסִיָּה בְּזוּזֵי.

דִּינָא הוּא דְּאָמְרֵי לִיָּה בְּנֵי רֵאוּבֵן: אֲנִי מְטַלְטְלֵי שְׂבָק אַבּוּן גַּבְרָא, וּמְטַלְטְלֵי דִּיתְמֵי לְבַעַל חוּב לֹא מִשְׁתַּעֲבָדֵי.

and Reuven's creditor came and repossessed the field from him, i.e., from Reuven, the law is that Shimon must go and compensate [mefatzei]¹ Reuven, since he sold him the field with a guarantee, while Reuven owes Shimon nothing, since he sold him the field without a guarantee.

Rava said to him: Granted, that Shimon took upon himself to guarantee the sale in general, i.e., if the field were to be repossessed by his own creditors or those of a previous owner of the field; did he also take upon himself to guarantee the sale if it were to be repossessed by the purchaser's own creditors?^h

The Gemara notes: And Rava concedes to Rami bar Hama in the following case: Reuven inherited^h a field from his father, Ya'akov, and sold it to Shimonⁿ with no guarantee. Shimon came and sold it back to Reuven with a guarantee. Then, Ya'akov's creditor came and repossessed the field from Reuven. In this case, Rava would concede that the law is that Shimon must go and compensate Reuven for his loss.

The Gemara asks: What is the reason for this halakha? The Gemara answers: Ya'akov's creditor is comparable to a general case of a creditor, i.e., a creditor of a previous owner. Even Rava would agree that this is not comparable to a case where Reuven's creditor repossessed the field. Consequently, Shimon bears responsibility to compensate Reuven.

Rami bar Hama said: Consider a case where Reuven sold a field to Shimon with a guarantee that if it is repossessed he will compensate Shimon for his loss. Shimon did not pay for the purchase, and instead set up the value of the field as a loan by writing a promissory note for this amount. Reuven subsequently died, and a creditor of Reuven came and repossessed the field from Shimon. Shimon, not wanting the creditor to take the field from him, tried to appease him with money so the creditor would allow him to keep the field.

The law is that the sons of Reuven can say to Shimon that he must pay them the money he owes for the field, and they are not required to pay Shimon if he demands compensation for the repossession of the field. They may say to him: Our father left us movable property with you, i.e., the money you owe us for the field, and the movable property of orphans is not liened to a creditor. The orphans can claim that the field belongs to Shimon, and as there is no land left for the orphans, there is no way for Shimon to recover the compensation that he is owed. The money he owes Reuven is considered movable property, and therefore he cannot recover his losses from these funds.

LANGUAGE

Compensate [mefatzei] – מְפָצִי: The general definition of this verb is to rescue, as the verse states: "Who rescues [hapotze] David your servant" (Psalms 144:10). Here too, it refers to someone who rescues his fellow from claims raised against him. With time, the meaning of this word evolved to refer to compensation for damages.

HALAKHA

Did he also take upon himself to guarantee the sale if it were to be repossessed by the purchaser's own creditors – אֶחְרִיּוֹת דְּנִפְשִׁיָּה מִי קִבִּיל: If Reuven sold Shimon a field with no guarantee, and then bought the same field back from Shimon with a guarantee, and then one of Reuven's creditors came and repossessed the field from him, Reuven cannot return to Shimon and sue him for reimbursement of the cost of the field. The reason for this is that even though he did not guarantee his initial sale of the land to Shimon, he nevertheless guaranteed the sale from the claims of his own creditors. This is in accordance with the opinion of Rava (Rambam Sefer Kinyan, Hilkhoh Mekhira 19:10; Shulhan Arukh, Hoshen Mishpat 226:2).

And Rava concedes to Rami bar Hama in the following case: Reuven inherited, etc. – וּמוֹדָה רַבָּא בְּרֵאוּבֵן שְׂרִישׁ – וְכִי: If Reuven inherited a field from his father and sold it to Shimon with no guarantee, and he then purchased it back from him with a guarantee, and subsequently, a creditor of Reuven's father repossessed the field, Reuven can sue Shimon for reimbursement, as Reuven did not take it upon himself to guarantee his father's debts (Rambam Sefer Kinyan, Hilkhoh Mekhira 19:10; Shulhan Arukh, Hoshen Mishpat 226:2).

NOTES

And sold it to Shimon – וּמְכָרָה לְשְׂמֵעוֹן: It appears that when the Gemara speaks of Shimon in this context it means any person, not necessarily Reuven's brother, in keeping with the general usage of the names Reuven and Shimon as a reference to two ordinary, random people (Rivan; Rabbeinu Yehonatan). The Rivan

also explains how it is possible to claim that Reuven and Shimon are brothers: When they divided their father's estate, they stipulated that Shimon would be released from responsibility for their father's debts.

אָמַר רַבָּא: אִי פִקְחַ אֵידֶךְ – מִגְבִּי לָהּ נִיְהַלְיִיהּ אַרְעָא, וְהֵדְר גְּבִי לָהּ מִיַּמֵּיהּ, כְּרַב נַחְמָן. דְּאָמַר רַב נַחְמָן אָמַר רַבָּא בַר אֲבוּהּ: יְתוּמִים שְׁגִבּוּ קִרְקַע בְּחֻבַּת אֲבִיהֶן – בְּעַל חוּב חוּזַר וְגֻבְהָ אֹתָהּ מֵהֶן.

Rava said with regard to this case: **If the other individual, Shimon, is clever^h he will pay them** what he owes with real estate and not with money. Since they now have real estate inherited from their father's estate, Shimon **can then collect the field from them** as compensation for the repossession of the original field that Reuven sold to Shimon. This is in accordance with the opinion of Rav Nahman, as Rav Nahman said: **When orphans collect real estate^h for a debt owed to their father** from one person, their father's creditor can come and seize this land from them.

אָמַר רַבָּא: רְאוּבֵן שָׁמַכְר כָּל שְׂדוּתֵי לְשִׁמְעוֹן, וְחִזְר שְׁמֵעוֹן וּמְכַר שְׂדֵה אַחַת לְלוֹי, וְאֵתָא בְּעַל חוּב דְּרְאוּבֵן, רְצָה – מִזְה גֻּבְהָ, רְצָה – מִזְה גֻּבְהָ.

The Gemara addresses a similar matter. **Rabba said: If Reuven sold all his fields to Shimon, and Shimon then sold one field to Levi, and then Reuven's creditor came** to repossess one of the fields that was mortgaged to him: **If he desires, he can collect from this one,**^{HN} Shimon, and **if he desires, he can collect from that one, Levi,** since he has a lien that applies equally to all the properties that once belonged to Reuven.

וְלֹא אָמַרְן אֲלֵא דְזַבְנָה בִּיְנוּמִית, אֲבָל זַבְנָה עֵידִית וְזַבְנָה – מִצִּי אָמַר לִיהּ: לְהַכִּי טְרַחֵי וְזַבְנֵי אַרְעָא דְלֵא חוּזַר לָהּ.

And we said this **only if Shimon sold Levi land of intermediate quality, but if he sold him land of superior quality or inferior quality,**^B Levi can say to the creditor: **It was for this reason that I made an effort to buy land that is not fit for you,** as a creditor is supposed to repossess land of intermediate quality. Therefore, go to Shimon and collect your debt from the land of intermediate quality that is in his possession.

וּבִיְנוּמִית נִמְי לֵא אָמַרְן אֲלֵא דְלֵא שְׂבַק בִּיְנוּמִית דְּכֻוּתָהּ,

The Gemara notes further: **And even if Shimon sold Levi land of intermediate quality, we said that the creditor may repossess Levi's land only** in a case where Levi did not leave Shimon with equivalent land of intermediate quality.

HALAKHA

אי פיקח אידיך – If Shimon is clever, he will pay off the debt that he owes the orphans with the land that he purchased from their father, and then subsequently repossess the land as reimbursement for the money he used to pay their father's creditor. This is in accordance with the opinion of Rava (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 11:10).

רצה מזה גובה – If Reuven sold all of his fields to Shimon in a single transaction (*Sefer Me'irat Einayim*), and Shimon sold one of the fields to Levi, when Reuven's creditor comes to repossess a field in payment of the debt owed to him, he may repossess land either from Shimon or from Levi, as he desires. This is the case when Levi purchased land of intermediate quality and Shimon did not retain any land of comparable quality. However, if Levi purchased land of inferior quality or of superior quality, or even if Levi purchased land of intermediate quality but Shimon still has intermediate quality land left in his possession, the creditor can collect only from Shimon (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 19:3; *Shulhan Arukh*, *Hoshen Mishpat* 119:1).

יתומים שגבבו קרקע וכו' – When orphans collect real estate, etc. – If orphans collected real estate from an individual who owed money to their father, their father's creditor can repossess this land in payment of a debt owed to him. This is in accordance with the statement of Rabba bar Avuh (Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 11:9).

NOTES

רצה מזה גובה – According to the *ge'onim* and Rashi, this is the case only if Shimon purchased all the fields from Reuven in a single transaction. However, if he purchased them separately, the lien is

attached to the last field that he purchased from Reuven, as this field was unencumbered while all the others were already mortgaged. Although some authorities disagree with this (see *Tosafot*), most of the commentaries concur with this opinion.

BACKGROUND

Land of superior quality, intermediate quality, and inferior quality – Landed property falls into three categories: Superior quality, intermediate quality, and inferior quality. If the *halakha* requires one to make a payment and he lacks the funds to pay it, his land may be confiscated as

payment. In such circumstances the following principles apply: Compensation for damage must be paid from land of superior quality; debts must be paid from land that is at least of intermediate quality; and one's obligations to his wife resulting from her marriage contract may be paid from land of inferior quality.

אָבֵל שְׂבֵק בִּינוּמֵת דְּכוּתָהּ – מְצִי אָמֵר לִיה: הִנְחַתִּי לְךָ מְקוֹם לְגִבּוֹת הַיָּמֵנוּ.

אָמֵר אַבְי: רְאוּבֵן שָׁמְכַר שְׂדֵה לְשִׁמְעוֹן בְּאַחֲרֵי, וְאַתָּא בְּעַל חוּב דְּרְאוּבֵן וְקִטְרוּף לֵה מִינְיָה – דִּינָא הוּא דְּאִזְוִיל רְאוּבֵן וּמִפְצִי לִיה, וְלֹא מְצִי אָמֵר לִיה: לֹא בְּעַל דְּבָרִים דִּי אֵת. מְשוּם דְּאָמֵר לִיה: דְּמִפְקַת מִינְיָה – עַלִּי הָדָר.

וְאִיכָא דְּאָמְרִי: אֶפִּילוּ שְׂלֵא בְּאַחֲרֵי נִמְי, דְּאָמֵר לִיה: לֹא נִחָא לִי דְּתַהֲוִי לִיה לְשִׁמְעוֹן תְּרַעוּמַת עַלִּי.

אָמֵר אַבְי: רְאוּבֵן שָׁמְכַר שְׂדֵה לְשִׁמְעוֹן שְׂלֵא בְּאַחֲרֵי, וְיִצְאוּ עַלִּי

However, if Levi left similar land of intermediate quality with Shimon, he can say to the creditor: I have left you a place from which to collect; go and collect from Shimon.

Abaye said: In a case where Reuven sold a field to Shimon with a guarantee that if the field is repossessed, he will compensate Shimon for his loss and Reuven's creditor comes and repossesses the land from Shimon, the law is that Reuven goesⁿ and rescues Shimonⁿ by attempting to forestall the repossession,ⁿ and the creditor cannot say to Reuven: I am not legally answerable to you since I am taking the field from Shimon. This is because Reuven can retort: What you take from him comes back to me: Since I guaranteed the sale and will ultimately have to compensate Shimon, you cannot claim that I am not a legal party in this matter.

And there are those who say that even if Reuven sold Shimon the field with no guarantee, he can also join in the deliberations and attempt to forestall the repossession of the land. This is because Reuven can say to the creditor: It is not amenable to me that Shimon will have a grievance against me for having sold him land that was then repossessed.

Abaye said: In a case where Reuven sold a field to Shimon with no guarantee, and it emerged that he had

HALAKHA

That Reuven goes and rescues Shimon – דְּאִזְוִיל רְאוּבֵן וּמִפְצִי לִיה: If Reuven sold a field to Shimon, even if he sold it without a guarantee, and his creditor then repossesses the field from Shimon, if Reuven so desires, he can take up the matter with the creditor, and the latter cannot object to his involvement by saying that he is not a legal party to the proceedings. This follows the principle that the *halakha* is decided in accordance with opinions introduced by the phrase: There are those who say (Rambam *Sefer Kinyan*, *Hilkhot Mekhira* 19:9; *Shulhan Arukh*, *Hoshen Mishpat* 226:1).

NOTES

The law is that Reuven goes – דִּינָא הוּא דְּאִזְוִיל רְאוּבֵן – The Netziv, in his novellae on tractate *Bava Kamma*, claims that Reuven is legally obligated to assist Shimon, as this assistance to Shimon is included in the guarantee that Reuven provided to him. It appears that the wording of the Gemara supports this understanding, as it states: The law is, denoting an obligation. However, the Ritva, in his commentary on this passage, expressly writes that this assistance does not constitute a legal requirement. This may be indicated by the Gemara's statement (93a): Show me the document of authorization and I will pay you. Rather, the Gemara's intention is that Reuven has the right to provide such assistance. Rabbeinu Crescas Vidal agrees with the Ritva.

That Reuven goes, etc. – דְּאִזְוִיל רְאוּבֵן וּכְרִי: The early commentaries discuss the following question extensively: What difference does it make whether Reuven or Shimon litigates with the creditor? What advantage is there if Reuven does so? Rashi is of the opinion that Reuven can demand that the creditor take an oath confirming that he has not yet received payment for the debt. Alternatively, Reuven may have a counterclaim against the creditor that will cancel out the debt. *Tosafot* and others question the first explanation since in any event, a creditor cannot extract payment from lien property without taking an oath. The author of *Penei Yehoshua* defends Rashi by pointing out a distinction between Reuven and Shimon: It is possible that if Reuven himself presents the claim against the creditor, the latter may be shamed into admitting the truth. The Rivan writes that Reuven can claim that the due date for the loan has not yet arrived.

Tosafot offer an additional argument which only Reuven would be able to put forth: That the promissory note is a forgery. Other commentaries question this because it is obvious that the document would, in any event, be authenticated before the debt was repaid. *Tosafot* in *Bava Kamma* (8b) write that Reuven's ability to take the creditor to court is relevant to cases in which Shimon has declared that he does not have any further evidence and is therefore banned by legal procedure

from submitting any further evidence. This restriction would not apply to Reuven. Others explain that in this case, Shimon trusted the creditor and did not require him to take an oath; Reuven may still come and require him to take the oath. Alternatively, Shimon may have agreed to accept the reliability of a particular individual without further litigation, whereas Reuven is not bound by this agreement. Some commentaries say that if the creditor must take an oath to Reuven with regard to some other matter, Reuven can require him to extend the oath to this matter as well.

The Ramban suggests another possibility: Over the course of time, the price of the land changed, and now Reuven prefers to pay off his debt with cash rather than real estate. The Rosh offers yet another solution: It is possible for Reuven to insist that the case be litigated by the High Court, whereas Shimon may be unable to travel there.

A completely different opinion is offered by the author of *Sefer Hattur*, also cited by the Ramban and his students. The situation under discussion is one where Reuven defined this tract of land as designated repayment for that particular debt, and the purchaser enhanced the property. Under these circumstances, the purchaser cannot fend off the creditor with cash in order to keep the enhanced property. He must give up the property and then receive compensation from the creditor for his expenses related to enhancing the property, and compensation from Reuven for the value of the field including the enhancements. Reuven, however, can pay off the debt with cash, thereby saving himself from having to pay Shimon for his enhancements to the field, and saving Shimon the trouble of losing land that he took pains to enhance. The Ritva is of the opinion that this approach is the most correct.

The Rosh cites Rabbi Yitzhak ben Mordekhai's fairly simple explanation, that there is no legal difference between Reuven and Shimon. Rather, it is known that some people are more clever and experienced than others when it comes to presenting their arguments in court. Should Reuven be the more experienced one, it is preferred that he handle the deliberations with the creditor.