The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
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סימן קנ"ג סעיף י"ב-ט"ו

Halacha Highlight

Redirecting property donated to a Bais HaKnesses

Shulchan Aruch Siman 153 Seif 14
לא מצי ראובן הדר ביה
Reuven cannot retract his gift

Shulchan Aruch (סע' י"ד) discusses the case of Reuven who donated land for the construction of a Bais HaKnesses. The local gentile government refused to grant permission for the construction of the Bais HaKnesses so the tzibbur decided that they would use the property to build a school. The halacha is that even if Reuven protests the use of the land for this purpose he may not take back his property. The reason is that his pledge to donate the land constitutes a vow that is binding and since he did not stipulate that the land may only be used for a Bais HaKnesses we assume that his gift was given for the tzibbur to with it as they please and he is now trying to take it back from them.

In Yoreh Deah, (סי' רנ"ט סע' ג') Shulchan Aruch rules that the allowance for a tzibbur to use property that is inconsistent with the donor's wishes is if he donated something that is non-distinct, e.g. money, or the name of the donor was forgotten. If a distinct object was donated and the donor's identity is still known, the tzibbur may not sell the object and use the proceeds for a mundane purpose. It may only be sold to purchase another sacred item and that item must retain the name of the original donor. The reason this halacha is different from our halacha is that in Yoreh Deah the donated object had already been used in accordance with the wishes of the donor, indicating that they accept his wishes. In our case the land was donated for the construction of a Bais HaKnesses but it was never yet used for that purpose. Since the owner did not stipulate that it must be used for a Bais HaKnesses and the tzibbur never indicated that they would use the land for a Bais HaKnesses as opposed to some other purpose, they may use for another purpose (פסקי תשובות אותכ"ג הע' 105).

Stories to Share

An Estimation

ש"ע, ס' קנ"ג, י"ד: "ראובן שאמר קרקע זה אני נותן לבנות עליה בהכ"נ..."

Today's amud discusses a person who donated land to build a shul.

A businessman once made a vow to purchase a plot of land of a particular dimension for the purpose of building a new shul. When he heard about a plot of land that exactly matched the dimensions he had vowed, he contacted the owner and agreed to buy it.

Shortly after their kinyan, the owner told him that he had had the field measured and it was actually significantly larger than he had thought, so the price would be more than the buyer had agreed.

"I don't need or want more land. If you do not wish to give me the land as a gift, I guess I can't do business with you," answered the buyer.

When this question was brought before the rav of the town, he ruled that the buyer was in the right. "This seems clear from the סמ"ע. He explains that although the gemara in Bava Basra 104 tells us that providing a dimension is approximate in which case the sale should be valid, in our case, the buyer was not standing on the field and so the principle is not relevant. This minor detail actually invalidates the sale altogether."

סמ"ע, חו"מ, ס' ר"ח, ס"ק כ"ז

But when this question was placed before Rabbi Akiva Eiger he questioned it. "Although he is correct that this is implied by the language of the סמ"ע, this seems difficult. I have an alternate solution that satisfies all possibilities: why can't the buyer just purchase what was originally agreed? The extra land can simply remain in the possession of the seller!"

חידושי רעק"א, שם

Overview

Siman 153 Seif 12:

Someone who has an agreement with the community that only he or his descendants may construct a Bais HaKnesses may not sell that right to someone else.

- It seems logical that the agreement was with this person and his descendants but not for him to sell the rights to someone else unless this was stipulated. Taz asserts that this ruling is limited to where the community honored him with this right but if he purchased the right he may sell it to someone else. It is clear, however, he may only sell it to someone who is worthy. (M.B. 76)

Siman 153 Seif 13:

If money was raised for a Bais HaKnesses and a mitzvah opportunity presented itself, they may used the raised funds for that mitzvah. If they purchased stones and beams they should not be sold for any mitzvah other than redeeming captives. Even if the stones and beams were prepared for construction they may be sold only for redemption of captives. If the Bais HaKnesses was built and completed it should not be sold; rather they should raise separate funds from the tzibbur to redeem the captives.

- The implication is that the money may be used for any mitzvah purpose, even one which is lower than a Bais HaKnesses and it refers to where it was sold by the seven trustees in the presence of the tzibbur when the money may even be used for non-sacred purposes. Taz maintains that the sale is not in the presence of the seven trustees and Shulchan Aruch refers to where the money is merely lent out and will be repaid. (M.B. 77)
- If they are not finished constructing the Bais HaKnesses it is the same as purchased stones and beams. (M.B. 79)
- It is not proper to sell the Bais HaKnesses but technically it is permitted even if the sale is not done under the authority of the seven trustees. (M.B. 80)

Siman 153 Seif 14:

If Reuven declares that he is donating land for the construction of a Bais HaKnesses and the idolaters did not permit its construction so the community decides to build a Talmud Torah but Reuven claims that this purpose is not consistent with his vow, Reuven may not retract his pledge. If Reuven is not a citizen they may redirect the land for another purpose but if he is a citizen they may not redirect its purpose if he screams in protest unless there is a Torah scholar to whom everyone submits his authority (and the seven trustees have the same status as the Torah authority.)

- His pledge constitutes a vow. (M.B. 81)
- It may even be redirected for a non-sacred purpose and even if Reuven stands in protest we do not pay attention since he did not make a halachic stipulation. (M.B. 82)
- In other words he may prevent them from building a Bais HaMidrash and the reason is that he is no worse than any other citizen who may protest when they want to redirect it to something else. (M.B. 83)

Siman 153 Seif 15:

A person may not prohibit his portion of a Bais HaKnesses or the sefarim and if he does so it has no effect.

- This is an enactment of the Gaonim to prevent people from doing so and causing the Bais HaKnesses to become prohibited. (M.B. 87)