



Volume 3. Issue 16.

## Fraud

The *Mishnah* in *Ketubot* (11:5) is based on the *Halacha* that a *Beit Din* can sell the movable property of a deceased husband's estate in order to pay for his wife's ketubah. In order to do this, the *Beit Din* must make an evaluation of the property which will be sold. The *Mishnah* states:

The appraisal of the judges, who undervalued it by a sixth, or overvalued it by a sixth, the sale is void.

These guidelines form the parameters of another *Halacha*, namely *Ona'ah*.

A sale that has occurred based upon the appraisal of the judges cannot be undervalued or overvalued by more than a sixth. *Rashi* questions this *Mishnah*. The sale would be void if the property was undervalued by *Beit Din* because the *Beit Din* are acting as the agents of the orphans, and by undervaluing their property, they are not acting in the orphans' best interest. However, if they overvalue the property, why should the sale be nullified? *Rashi* therefore explains, that the sale would be void if the property was overvalued in order to ensure that both parties are treated equally.

However, the *Ran* further explains the reason why the sale is nullified if the *Beit Din* overestimates the value of the orphan's property. There is a concept that a *shaliach* (agent) is only ever sent in order to act in the best interests of those that appoint them. If a case arose where the agent did not act in the senders best interest, the sender is able to nullify the actions of the *shaliach*, by stating that he did not wish the *shaliach* to act to his detriment. This concept can apply to our case as well. In a case where *Beit Din* undervalues an orphan's property, the orphan is able to nullify the sale since *Beit Din* (their agents) are not acting in their best interests. The *Ran* adds that the buyer too, relies on the evaluation of the *Beit Din* (that they are not overcharging), and in that way, the *Beit Din* are acting as the agents of the buyer. Therefore, if the *Beit Din* were to overcharge by more than a sixth, the buyer is

able to nullify the sale as their agent (*Beit Din*) were not acting in their best interest.

The *Sefer HaChinnuch* (*Mitzvah* 337) explains the reason why property that is overvalued by less than a sixth is deemed a proper sale. Surely, a buyer has a right to renege on a sale if he finds out that he is being overcharged! The *Sefer HaChinnuch* writes that a merchant is able to overcharge up to a sixth of a product's value in order to make a profit. He writes that above this he is unable, as these laws were set in place to improve communal life and civilise habitation. Although a merchant is able to slightly overcharge in order to make a profit, overcharging by anything higher than a sixth would be detrimental to communal and societal living.

In the case of a seller undercharging or overcharging less than a sixth, the *Rambam* writes that the seller is not obligated to give the buyer back the value that he was overcharged (and vice versa) as people are not *makpid* (particular) on anything less than a sixth. It seems that this would be the case even if the buyer still had possession of the money and indicated that he was particular about *Ona'ah*. Nevertheless we would take the money out of his possession and force him to complete the sale, because his *da'at* is *mevatel* (nullified) as the majority of people are not particular about this insignificant amount.

However, the *Machaneh Ephraim* disagrees with this view and states that if a buyer is still in possession of his money, he does not have to complete the sale as he is able to claim that he belongs to the minority of people that *are* indeed particular about this amount of money. Additionally, there is a *klal* which the buyer can rely on – the fact that we do not follow the majority in monetary cases. Therefore, since we do not follow the majority, he is able to claim that he is particular about the amount he is being overcharged, and therefore will not have to complete the sale.

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**Revision Questions**

כתובות ט' ח'- י"א ר'

- Explain the following cases: (ט' ח':)
  - *Pogemet ketubah.*
  - Claiming a *ketubah* from *nechasim meshubadim.*
  - Claiming a *ketubah shelo befanav.*
- Can a lender claim money from the borrower if his has the loan contract, but claims he lost the *pruzbul*? (ט' ב':)
- What can a woman collect if she presents the following: (ט' ב':)
  - Two *ketubot* and two *gittin*?
  - Two *ketubot* and one *get* – with the *ketubot* dated before the *get*?
  - One *ketubah* and two *gittin*?
- If a man married two women, when is the *ketubah* of the first wife collected first and when is the *ketubah* of the second wife collected first? (א':)
- In a case where a man had two wives, and he and his wives die, how is the *yerusha* divided if: (י' ב':)
  - The value of the estate is equal to the value of the two *ketubot.*
  - The value of the estate is slightly more than the value of the two *ketubot.*
- Regarding the previous question, what are the two opinions regarding how the estate is valued? (י' ג':)
- If a man has three wives, one with a *ketubah* 100 *dinar*, another with a *ketubah* of 200 *dinar* and another with a *ketubah* of 300 *dinar* – how is the property divided if: (י' ד':)
  - The estate is valued at 100 *dinar*?
  - The estate is valued at 200 *dinar*?
  - The estate is valued at 300 *dinar*?
- What is the order of *ketubah* collection in a case where there are four wives? (י' ה':)
- According to the *Tana Kama* what is different about the way the final wife collects her *ketubah*? (י' ה':)
- What is the law in a case where the first of two wives writes “*din u’dvarim ein li imach*” to the purchaser of her husband’s field? (י' ו':)
- With respect to an *almanah* are the *yorshim* required to: (א"א':)
  - Support her?
  - Bury her?
- According to *R’ Shimon* what is the difference between the manner in which a widow sells property to collect her *ketubah* if she is widowed from *eirusin* and if she is widowed from *nisuin*? (י"א': ב')
- Explain the debate regarding a case where a widow had sold part of her *ketubah* and her ability to sell part of the estate to support herself. (י"א': ג')
- Explain the debate regarding a case where the widow sold part of the estate that was more than the value of her *ketubah.* (י"א': ד')
- Explain the debate regarding a case where *beit din* sold property of the *yetomim* at a value that was tantamount to *ona’ah*? (י"א': ה')
- When does an *aylonit* have a *ketubah*? (י"א': ו')
- Does a divorcee that marries a *kohen* have a *ketubah*? (י"א': ז')

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Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
26 <sup>th</sup> November ה' כסלו	27 <sup>th</sup> November ו' כסלו	28 <sup>th</sup> November ז' כסלו	29 <sup>th</sup> November ח' כסלו	30 <sup>th</sup> November ט' כסלו	1 <sup>st</sup> December י' כסלו	2 <sup>nd</sup> December י"א כסלו
Ketubot 12:1-2	Ketubot 12:3-4	Ketubot 13:1-2	Ketubot 13:3-4	Ketubot 13:5-6	Ketubot 13:7-8	Ketubot 13:9-10

