

OVERVIEW of the Daf

1) The number of required witnesses

Rava in the name of R' Nachman states that a protest requires two witnesses, and the witnesses do not need to be told to record the protest. Notification of coercion requires two witnesses and they do not need to be told to record the protest. A transaction requires two witnesses and they do not need to be told to record the protest. Finally, he states that certification of documents requires three judges.

Rava elaborates on the ruling related to a transaction.

Abaye and Rava disagree with Rabbah and R' Yosef about the circumstances when a notification of coercion would be issued.

Nehardai discusses the language of a valid notification of coercion.

The Gemara explains the transaction that would necessitate written notification of coercion.

A related incident is recounted.

2) A hidden gift document

R' Yehudah rules that one may not collect with a hidden gift document.

Two explanations of the nature of a hidden gift document are presented.

The practical difference between these two opinions is explained.

Rava rules that a hidden gift document is effective to serve as a notification of coercion for another gift.

R' Pappa claims that Rava did not make this statement and it was based on an observer's misunderstanding of a ruling he issued. ■

REVIEW and Remember

1. What is a מודעה?
2. What is the point of disputed between Rabbah and R' Yosef against Abaye and Rava?
3. What is a מתנתא טמירתא?
4. What was the incident that led to a misunderstanding of Rava's position?

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 By Mr. and Mrs. Harlan Loeb
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 ר' אליעזר בן ר' חיים ע"ה

Distinctive INSIGHT

Admitting to a financial obligation in front of witnesses

הודאה בפני שנים וצריך לומר כתוב

Rava, in the name of R' Nachman, provides a summary of verbal statements which, when made in front of witnesses, have legal consequences. Among the issues he discusses is when a person admits that he owes money to someone. If this confession is made in front of two witnesses, this constitutes a legal obligation. However, the witnesses who hear this statement may not record this information as a formal document unless the one admitting to this obligation instructs them to write it down. The reason the witnesses cannot act on their own to record this loan on paper is that once the loan is recorded, the borrower is committed to guaranteeing the loan with his land, just like a written loan (מלוה בשטר). The borrower only admits that he owes money, but he does not necessarily express a willingness to secure the loan with his property, unless he specifically says so.

Meiri explains that there are three categories of admitting to an obligation. One is where the lender approaches and demands that the alleged borrower pay him money he owes. Here, even if the borrower admits in front of two witnesses that he does owe the money, he may later retract his confession and claim that he was just joking. He did not initiate the confession, and he can say that he was just responding in kind to what he felt was a baseless claim.

A second category is where a person makes a casual comment in front of two witnesses admitting that he owes money to someone. Here, again, he can walk away from his statement and claim that he was just responding to the discussion. For example, if people were saying that he was wealthy, and he responded in front of two people that it was not true, because, after all, if he had money he would have paid back the money he owed to various specific people. When those people later come to collect the money he admitted owing them, he can deny it and claim that he was not being truthful. He can explain that he was just trying to point out that he was not as rich as people thought.

If, however, he admits in the presence of two witnesses in a clear and informative manner that he owes money to someone, for example if he calls them over and says, "You should know that I owe a hundred dollars to Reuven," this is the

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HALACHAH Highlight

Is writing the same as speaking?

מודעא בפני שנים ואין צריך לומר כתוב

Notification must be made in the presence of two people and he is not required to tell them to record the testimony.

Rabbeinu Tam¹ reports that it was common practice for witnesses to transcribe their testimony and send it to Bais Din. Regarding the exposition that teaches that testimony must come from the mouth of the witnesses and not from their writing (מפיהם ולא מפי כתבם), Rabbeinu Tam suggests that the limitation is limited to one who is mute. Since he cannot verbalize his testimony he is excluded from delivering his testimony in writing as well. Those who have the capacity to verbalize their testimony can also transcribe it and send it to Bais Din.

Although other Rishonim disagree with Rabbeinu Tam and maintain that testimony may never be transcribed and sent to Bais Din, Acharonim discuss whether it can be assumed that Rabbeinu Tam equates the written word with the spoken word (כתיבה כדיבור או לאו כדיבור). Taz² writes that halacha does not treat the written word the same as the

spoken word and as proof to his position he cites the exposition of מפיהם ולא מפי כתבם. This implies that according to Rabbeinu Tam who holds that the exposition of מפיהם ולא מפי כתבם precludes a mute from writing his testimony and submitting it to Bais Din, since other people can transcribe their testimony and submit that to Bais Din. It must be that he treats the written word the same as the spoken word.

Noda B'yehudah³ disagrees and asserts that Rabbeinu Tam would agree that the written word is not the same as the spoken word and the point of dispute between Rabbeinu Tam and the other Rishonim revolves around a different issue. Since the Torah uses the word יגיד with regards to testimony, but does not emphasize that the testimony must be retold by mouth, it is possible to maintain that written testimony is also a means of retelling the testimony. In other cases, however, such as taking oaths, since the Torah uses the phrase לבטא בשפתים – to express with one's mouth – all opinions would agree that merely writing an oath is meaningless. ■

¹ דברי ר"ת מובא בתוס' בריש ע"א.

² ט"ז או"ח סי' מ"ז סק"ב.

³ שו"ת נודע בהיודה יו"ד סי' ס"ו ד"ה ועוד נראה. ■

STORIES Off the Daf

Making a Kinyan

"קנין בפני שנים..."

A certain person was an expert gambler. One time he won the astronomical sum of one thousand golden coins from a fellow Jew who was fairly wealthy. The two made a document and a kinyan, but when the gambler tried to collect the money, he was surprised when the wealthy man began to laugh.

The wealthy man chuckled, "Listen, my friend, the witnesses who signed the document are relatives and it is therefore halachically worthless. I knew this, and it was only for this reason that I allowed them to write it."

The gambler was flummoxed by this unpleasant surprise. "But what about the kinyan you made? Surely you cannot deny this! If you try to deny it I will de-

mand that you swear in beis din that you never made a kinyan!"

But the wealthy man remained completely unruffled. "I don't deny it, but this too is immaterial. After all, I knew the witnesses on the document were worthless and my kinyan was regarding the bogus document. But this is only fair. You cheat me and win the money, and I cheat you by making a fake kinyan!"

This question came before the Rosh, zt"l. He answered, "Know, my son, that a document made with witnesses who are halachically invalid is worthless. But if a person admits to having made a kinyan, this is generally like a loan without a document which is collected from any of his assets except land which was already sold to someone else. Although we find in Bava Basra 40 that a kinyan must be in front of two people, this is not necessarily so. The only difference is if the person refuses to admit the kinyan. In this case,

he must swear that there was no kinyan. But if he admits to it, the kinyan is valid even with no witnesses.

"In our case, there is the added element that the money was won in a game of chance. In this situation, if the wealthy man claims to have said that he is making a kinyan on the thousand coins he admitted to owing, we see clearly that he is joking since he did not obligate himself to anything. And even if he said only that he was transferring a thousand zuz from his property, if it is well known that he had 'lost' a thousand zuz, this too is nothing since everyone understands that he means this thousand zuz which he does not truly owe him!"¹ ■

1. שו"ת הרא"ש, כלל ס"ו, סי' ח' ■

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case of our Gemara which rules that the confession is binding, but the witnesses may not record it without explicit instructions to do so. ■