

## OVERVIEW of the Daf

### 1) Accepting deposits (cont.)

The Baraisa discussing from whom one may take deposits concludes with a discussion of what should be done if one of the people under discussion identifies the owner of the deposit on his deathbed.

A related incident is presented.

R' Chisda and R' Huna disagree what should be done with a deposit taken from a child.

### 2) A father and son establishing a chazakah

R' Yosef and Rava disagree whether the Mishnah's ruling that a father and son may not establish a chazakah on one another's property applies even if the son is no longer supported by the father.

Different Amoraim lend support to Rava's opinion that the Mishnah's ruling does not apply if the son is no longer supported by the father.

The Gemara rules in accordance with the position of Rava and a Baraisa is cited that further supports this position.

### 3) The brother who manages the family's inheritance

Rav and Shmuel disagree in a case of one brother who manages the family's inheritance and all the documents are made in his name. Rav maintains that the managing brother must prove that the inheritance is exclusively his, whereas Shmuel asserts that the burden of proof is on the brothers to prove that they have part ownership in those assets.

Shmuel argues that Rav would agree with his position if the managing brother died.

R' Pappa successfully challenges Shmuel's position.

R' Chisda adds a qualification to Rav's ruling.

Rabbah and R' Sheishes disagree about the type of proof the managing brother must produce to prove his claim that he used his own funds.

Rava asked R' Nachman about his opinion concerning these disputes and R' Nachman cited a Baraisa in support of Rav's position.

A phrase of the Baraisa is clarified.

### 4) Clarifying the Mishnah

The Gemara explains that the end of the Mishnah is missing a phrase which makes it more comprehensible.

### 5) The acquisition of chazakah

R' Hoshaya cites a Baraisa that rules that a chazakah must be done in the seller's presence.

Rava explains that when in the seller's presence it is unnecessary for the seller to instruct the buyer to make a chazakah but when not in his presence that instruction is necessary. ■

## Distinctive INSIGHT

### *Items which are lent or rented to others*

כדשלה רב הונא בר אבין דברים העשויין להשאיל ולהשכיר ואמר לקוחין הן בידי אינו נאמן

The Rishonim have varied definitions for the term "דברים" – items which are common to lend and to rent out.

Rambam (טוען ונטען ח:ט) explains that this category of items refers to objects which are used exclusively for rental or to lend. For example, someone may invest in purchasing large cooking pots in order to rent them out to a caterer. These items are not just rented out occasionally, but they are designated specifically to be rented out in order to generate rental income for their owner. However, routine personal items which are sometimes lent out and even rented to others do not fall into this category. For example, one's jacket or household tools which are rented out on occasion do not have the designation of "things which are lent or rented out," and a chazakah may be established by another person who is in possession of them.

Rambam proves his contention (ibid., Halacha 10) from the case of Rava (52a) who collected a pair of shears and some books from orphans. Even though we do not usually take any items away from orphans to pay for their father's obligations, those items were known to have been borrowed by their father. If, however, it was not known as a fact that those items had been borrowed by their father, Rava would not have collected from them just because the items are the type which are sometimes lent to neighbors. We see, therefore, that other such items, which are able to be lent or rented, are not in this category, and it is only when such items are known to have been lent out that they may be collected.

Other Rishonim (Rabeinu Tam in Tosafos, ד"ה דברים) rule that this category is not limited to things which are used exclusively for rental, but it also encompasses items which may be lent or rented out. If such items are often rented to others, no chazakah can be established by another person just because he has them in his possession. Categorizing any specific item would depend upon local customs and standards. Rashba brings a proof for the approach of Rabeinu Tam from the very case mentioned earlier, where Rava collected certain books from the orphans. Rashba notes that it is unlikely that these scrolls or texts were purchased originally in order to be used for rental purposes. Still, Rava collected them from the orphans because they were the type of item which was known to occasionally be lent out by their owner. We see, notes Rashba, that even occasional rental of an item precludes its being able to have a chazakah being established for it. ■

## HALACHAH Highlight

### Giving away a Sefer Torah

מאי סגולה ר' חסדא אמר ספר תורה

What is the trust? R' Chisda says it is a Sefer Torah

Sefer Toras Chaim<sup>1</sup> writes that a person who writes a Sefer Torah in fulfillment of the last mitzvah of the Torah and then gives that Sefer Torah away as a gift to another loses the mitzvah. Included in the mitzvah is to retain possession of a Sefer Torah; therefore one should not give away a Sefer Torah he wrote unless he has another Sefer Torah in his possession. Many other Poskim disagree with this position and maintain that once a person fulfilled the mitzvah of writing a Sefer Torah that mitzvah is not lost if he gives the Sefer Torah to a friend or even if the Sefer Torah is lost.

Teshuvah Mahari Ashkenazi<sup>2</sup> writes that although the king has a responsibility to keep a Sefer Torah with him at all times, the mitzvah for all others is merely to write a Sefer Torah. Da'as Kedoshim<sup>3</sup> also subscribes to this position but adds that ideally one should not give away a Sefer Torah that he wrote. Even if one wants to give a Sefer Torah to a shul so that it should be used for reading on a regular basis, nevertheless, he should not transfer ownership to the shul but should give to the shul on loan.

In the Torah journal Tzohar<sup>4</sup> a proof is cited in the name of Marcheshes from our Gemara that supports the position that the mitzvah is fulfilled even if the Sefer Torah is given away. The Gemara discusses what one should do with a deposit that was accepted from a minor and presents a dispute whether the money should be used to purchase for the minor a Sefer Torah or a palm tree that produces fruit. The intent is to provide the

## REVIEW and Remember

1. What should be done with money that is in trust for minors?
2. What is the point of dispute between Rav and Shmuel concerning documents made out to the managing brother's name?
3. What is the issue debated by Rabbah and R' Sheishes concerning the case of the documents made out to the managing brother's name?
4. What is the unique halacha concerning making a chazakah in the presence of the seller?

minor with a trust that will be lasting. Purchasing a tree that produces fruit is easily understood since it is not something that will be lost but a Sefer Torah is seemingly no more secure than any other movable object. Why then is this seen as a reliable form of a trust for the minor? Answers Marcheshes, if we adopt the position that once the mitzvah is fulfilled it cannot be taken away if the Sefer Torah is no longer in the possession of the minor the matter is understood. The money is used to purchase a Sefer Torah for the child who fulfills the mitzvah of writing a Sefer Torah. That reward is everlasting and is thus a worthwhile investment for the minor's deposit. ■

1. תורת חיים למסי סנהדרין כ"א:.
2. שו"ת מהר"י אשכנזי או"ח סי' ז' ד"ה שנית.
3. דעת קדושים סי' ע"ר דף ג.
4. צהר כרך ו' עמ' ל"א. ■

## STORIES Off the Daf

### A home business

"האשה שהיא נושאת ונותנת בתוך הבית..."

A certain person was very disconcerted because he knew that businesswomen were hampered by being unable to deal with gentiles directly. He wondered if there was any way to get around this limitation. After much research he came up with what he thought was a perfect heter.

In Bava Basra 52 we find that a widow can buy and sell בתוך הבית on behalf of the orphans, and if a document or the like is in her name she must prove that it

is really hers. The Rashba, zt"l, learns that the average woman in our time does business בתוך הבית in household matters, and this is the halachah in Shulchan Aruch. Now what can this possibly mean? In this man's view, we can learn from here that a woman may do standard business practices, which includes being meyached with goyim for business purposes.

Although he had what he felt was a great proof to permit this, no one was going to pay attention to him if he did not get approval from someone known to be a great sage and posek. So he decided to consult with the Chavas Ya'ar, zt"l, regarding this matter.

The posek rejected the man's claim

out of hand. "I have no inkling what led you to try to learn a leniency regarding yichud from a Gemara that does not discuss yichud! You can say what you like about regular business practice, but the plain fact is that the Gemara is clearly discussing a situation which does not involve the serious prohibition of yichud, especially with a non-Jew.

"And after all," quipped the sage, "The language of the Gemara and Shulchan Aruch is 'בתוך הבית'—clearly she does business within her household, among her family members, and not where there may be a possibility of yichud!"<sup>1</sup> ■

1. שו"ת חות יאיר, סי' ס"ו. ■