A RUBEN SHAS KOLLEL PUBLICATION
# DAF YOMI DIGEST
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בס"ד

## OVERVIEW of the Daf

**1) Selling land with trees (cont.)**

The Judges of the Diaspora provide another method of determining which trees a seller keeps for himself.

The Gemara declares that Rav and the Judges of the Diaspora do not disagree, they merely refer to different varieties of trees.

**2) Grafted carob and cut sycamore tress (cont.)**

R' Acha bar Huna inquired whether one who excludes a grafted carob or cut sycamore intended to sell the others or intended to keep them all.

R' Sheishes answered that the seller keeps all of the trees.

R' Acha bar Huna unsuccessfully challenged this ruling.

A second version of this discussion is presented.

**3) Returning a deposit**

R' Amram inquires whether a custodian who was given a deposit that was recorded in a document and claims to have returned it is believed.

R' Chisda answered that he is believed.

R' Amram unsuccessfully challenged this ruling.

It is suggested that R' Chisda's ruling is subject to a debate between two Tannaim.

This suggestion is rejected in favor of an alternative explanation of the dispute.

A ruling of R' Huna bar Avin is cited and clarified that supports the second explanation of the dispute between the Tannaim.

Rava and Mar Zutra seem to present different rulings on this matter.

When challenged by Ravina, Mar Zutra explained that there is no dispute between them. ■

## REVIEW and Remember

1. According to the Gemara's first version, what is the point of dispute between R' Sheishes and R' Acha?

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2. Explain שטרך בידי מאי בעי.

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3. What was the point of dispute between the Judges of the Exile and the Judges of Eretz Yisroel?

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4. Do we assume that a father informs his children that his debts were paid before he dies?

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## Distinctive INSIGHT

***The father did not instruct his children about the deposit***
אם איתא דפרעיה מימר הוה אמר

Rav Chisda taught that if an item was deposited with a watchman, and a document was written to verify the deposit, the watchman can claim that he returned the object to its owner. Even if the document is found in the possession of the owner, and the owner therefore claims that this proves his contention that the item had not been returned, the watchman is still believed, as he could have claimed that the item had been ruined or lost due to אונס, and he would have been exempt (with an oath). Therefore, the watchman can claim that he returned the item, and he will be believed with this מיגו, even where the document is still in the possession of the owner. Nevertheless, the watchman would have to take an oath to support his claim.

The Gemara brings a dispute regarding a person who claims against orphans that their father owed him money for a business deal they had arranged - an עיסקא which was cash given to the father, half as a deposit and half as a loan. דייני גולה rule that this claimant takes an oath and collects the full amount being claimed, while דייני ארץ ישראל say that he takes an oath and collects half. The conclusion of the Gemara is that all opinions agree with R' Chisda, and because the father himself would not have to pay the claimant the deposit, the orphans also should not pay the part which was a deposit. Nevertheless, דייני גולה hold that here, if the father had paid, he would have informed his children before his death that he had paid. Since he did not say anything about it, we assume that he did not pay.

פסקי הרי"ד asks a question regarding the conclusion of the Gemara. If the reason the orphans must pay is due to the father's not having said anything about having paid, why, then, should the claimant have to take an oath to collect the deposit? We are certain that the father did not pay this money back.

פסקי הרי"ד provides several answers to explain why there is an oath in this case. First of all, although we might be certain that the money which was a deposit was not repaid, we are still not sure whether the money which was given as a loan was paid or not. Therefore, once the claimant must

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By Dr. and Mrs. Samuel Saltzberg
in loving memory of their father
**ר' טובי' בן ר' נחום**
Dr. Ted Saltzberg o.b.m.

# HALACHAH Highlight

***Intent of a contract that is not supported by the language of the contract***

חוץ מחרוב פלוני ... מהו

*[I am selling you the field] except for such-and-such a carob ... what is the law?*

There was once a man who was blessed with one daughter. When she married he gave his son-in-law a generous dowry and promised many years of support. Some time after the couple was married the father-in-law yearned for his daughter to live near him so he made the following offer to his son-in-law. He would lend him money to purchase a nearby house and the loan would not become due until the time the son-in-law sells the house. Both parties agreed to the terms and the house was purchased, but the son-in-law was not able to move into the house due to the presence of a previous tenant. Before the previous tenant's lease expired the son-in-law's wife died. The father-in-law asked his son-in-law to pay back the loan but the son-in-law said that he was going to retain ownership of the house and continue to rent it to others since as far as the language of the contract was concerned the loan does not become due until he sells the house.

The two parties approached Maharsham[1] who wrote that at first glance it would seem that the son-in-law has the stronger position since the language of the contract supports his claim. After further analysis Maharsham makes the following statement. Since the father-in-law was essentially giving his son-in-law a gift and as such it is the intent of the benefactor that is important rather than the intent of the recipient it is assumed that the stipulations he made were for his benefit. Therefore, we do not limit the benefactor's rights due to technicalities in the reading of the contract. Consequently, we would conclude that although the contract says that the son-in-law must pay when the property is sold the same obligation begins when the son-in-law decides that he will not live on the property and will rent it out to others. Proof to this principle is found in our Gemara which discusses the case of a person who sold his field except for such-and-such a carob. Although this clause could be interpreted to mean that the other carobs are included in the sale since a strict reading of the contract supports that conclusion, nevertheless, the conclusion of the Gemara is that he did not intend to limit his rights with this statement and consequently none of the trees is included in the sale. ■

1. שו"ת מהרש"ם ח"ג סי' ק"ד. ■

*(Insight...continued from page 1)*

take an oath for the loan amount, he also includes the deposit amount in the oath, as well. Furthermore, it is appropriate to have an oath for the money which was a deposit, as the sages did not differentiate in a case where the claim is against orphans or whether it is against the father, if he would be alive. Finally, פסקי הרי"ד suggests that the relative certainty that the father did not pay back the deposit is enough to allow the depositor to collect his money from the orphans, but it is not enough to exempt him from an oath. ■

# STORIES Off the Daf

***Rights of a Firstborn Son***

"פלגא מלוה ופלגא פקדון..."

A certain wealthy father invested a large sum of money with a close friend. Their agreement was to split all profits earned evenly.

When the wealthy man passed away, he was mourned by his two sons, who were his only heirs. Since the younger son was something of a scholar he wondered if his brother, who was their father's firstborn, was entitled to a double portion of the invested capital. After all, presumably this income is just like a loan, to which the firstborn was no more entitled than his younger brother. Predictably, the older brother disputed this claim, although he couldn't say why, and the two consulted with the Shvus Yaakov, zt"l, for adjudication on this matter.

The Rav explained that there was a clear precedent regarding this question, which was not so simple as it seemed. "On Bava Basra 70 we find that a financial arrangement like that which existed between your father and his friend is considered to be half a loan and half a deposit. There can be no question that the firstborn son is entitled to a double portion of the half which is a deposit, just as he would collect double from an actual deposit left by your father. The only question is regarding the half that is considered a loan. And my considered opinion is that the first born collects a double portion from the entire sum.

"I learn this from the Rashbam on daf 125. There we find that invested money may not be used for anything except business and it is therefore not like a loan which is given to be spent on anything the recipient wants. We view money invested just as halachically accessible as the land or goods it is invested in. Since the halacha clearly follows this opinion, the first born son receives two thirds of the investment in question and the younger brother is entitled to the remaining third."[1] ■

1. שו"ת שבות יעקב, ח"א, סי' קע"ב ■

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