

OVERVIEW of the Daf

1) Avoiding forgeries

Abaye gives practical advice for a witness to protect himself from fraud.

A related incident is presented.

Abaye offers additional advice for the scribe concerning the writing of numbers.

Three incidents of attempted forgeries are retold.

2) **MISHNAH:** The Mishnah discusses whose authorization is needed for different types of documents.

3) Clarifying the Mishnah

The Gemara questions the meaning of the Mishnah's phrase concerning a טג that "we must recognize them."

R' Yehudah in the name of Rav explains that we must recognize the man in the case of the טג and the woman in the case of the receipt.

This explanation is unsuccessfully challenged.

In the course of this discussion the Gemara talks about the concern of two people who share the same name.

4) Claiming a receipt was a forgery

An incident is recorded related to a woman who claimed that the receipt for her kesubah was issued by an imposter. ■

REVIEW and Remember

1. Where should a person sign on a blank document?

2. Is a confession valid if it was beaten out of a defendant?

3. Who pays for the betrothal document?

4. How long does it take for a person to establish his identity in a new place?

Distinctive INSIGHT

Writing a loan or sales document before the event

כותבין שטר ללוה אף על פי שאין מלוה עמו וכו' כותבין שטר למוכר אף על פי שאין לוקח עמו

The Mishnah teaches that we may write a sales document for a seller even though the buyer is not present. For example, witnesses may arrange to write and sign upon a contract for a seller, representing the sale of a land to a buyer, even though the transaction is not taking place. The reason is that the seller is eager to have the document ready and available in order to quickly follow through with the sale in the event that he finds a buyer who has cash. There is, however, a disadvantage for the seller for such a document to be prepared ahead of time. He might lose it, and the buyer might find it and be able to claim that he already paid for the land and is the owner. Nevertheless, if the seller wishes to have the document prepared, we will furnish it to him.

The Gemara in Bava Metzia (12b) notes that writing a loan document for the borrower without his yet having borrowed the money presents a serious problem which must be solved. If Reuven has a document dated today (א' ניסן) and he does not borrow the money until תמוז א', there is a possibility that Reuven may sell property he owns in the meantime, between ניסן and תמוז, and when he finally borrows the money, the document will make it appear as if the lender has rights to collect land from Reuven due to a loan dated ניסן. This gives him precedence over the buyers from ניסן until תמוז, which is not legitimate. The answer given in the Gemara is that the case must be where Reuven commits himself and his land fully to the lender as of ניסן, provided the loan will actually take place, even if it be later. In this way, the lender has a legitimate claim to the land of Reuven from ניסן.

Magid Mishnah (to Rambam א: כד: מלוה ולוה) notes that there is a similar concern in preparing a sales document ahead of the actual sale. If the date of the sale of land to Reuven is recorded as taking place today (א' ניסן), and the actual sale takes place three months later (א' תמוז), the seller might sell this same land to Shimon in the meantime (א' אייר). In this case, the actual owner should be Shimon, but Reuven will have a document in his possession which states that he bought the land first, on א' ניסן. Why does writing a sales document ahead of time for the seller not present a risk of the "first" buyer's improperly taking the land legitimately sold to the "second" buyer?

HALACHAH Highlight

Is a גט invalid if a person used a new name?

כל שהוחזק שמו בעיר לי יום אין חוששין לו

Anyone whose name was established in town for thirty days – we are not concerned regarding him

There was once a man who came to a new country and used the name Reuven ben Shimon. After using that name for more than thirty days he married a woman using the name Reuven ben Shimon. The couple had irreconcilable differences and divorced. Some time after the divorce people came from his home town and testified that his name was not Reuven ben Shimon. This raised the question of whether the גט is invalid now that we know he used an alias rather than his real name.

Mahari ben Lev¹ cited our Gemara that once a person has established his name for thirty days we assume he is being truthful regarding his name. Rashbam² explains that a person would not use a false name for such a long period of time out of fear that his deceit would be discovered. Nimeukei Yosef³ explains that if he actually had another name the matter would have been discovered over the course of thirty days. Being that there is no indication that he has another name we can safely assume that this is his name. According to both explanations it would seem that if we were presented with witness testimony that this person used a name other than his real name the document should be in-

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Some Rishonim say that we only write a sales document ahead of time where the seller made a formal קנין to sell the land as of the first date. Nesivos HaMishpat (238:#2) writes that Rambam holds that we only write a sales document for the seller if he has already received the money for the land.

ר"ן writes that we do not worry that a seller will prepare a document for one buyer, and then sell that same land to someone else in the meantime. ■

valid. Rosh⁴, however, writes that even after we discover that he had another name in his old town we do not have to be concerned with anything other than the name he has adopted in this new location. Seemingly, this would mean that the גט in our case is valid. Yet, the reason the גט is in reality invalid is that he changed his father's name and that alone invalidates the גט. This is based on another ruling of Rosh concerning a man who did not want to be known by his father's name since the father had become an apostate. Rosh⁵ ruled that when Yosef ben Shimon changed his father's name in his גט and wrote Yosef ben Shmuel he invalidated the גט since there is no way for a person to correctly identify the man who divorced his wife once the name is inaccurate. ■

1. שו"ת מהר"י בן לב ח"ב סי' צ"י.
2. רשב"ם ד"ה אין חוששין.
3. ניםוקי יוסף ד"ה הוחזק.
4. רא"ש גיוין פ"ד סי' ז'.
5. שו"ת הרא"ש כלל י"ז פרט י"ב. ■

STORIES Off the Daf

A fumbled phrase

"אין כותבין שטרי אירוסיו ונישואין..."

Our sages warn that anyone lacking expertise in the halachos of גיטין and קידושין should not officiate at weddings or divorces. Although officiating at a wedding may seem fairly complicated, it is not as simple as one may think, since when a chosson is under the chuppah he is nervous and is prone to make mistakes.

When a certain rabbi who was not well versed in the minutiae of these halachos officiated at a wedding despite his ignorance, the chosson blundered. In-

stead of saying, "הרי את מקודשת לי..." he said, "הרי את נשואה לי..."

The rabbi did not think this made a difference and neither did anyone else. Many years later, a person who had attended the wedding asked Rav Yitzchak Zilberstein, shlit"a, if the chosson's strange language was valid. "The Mishnah on Bava Basra 167 mentions documents of nisuin. On Kiddushin 9 we find that a document cannot establish nesuin. The documents discussed here are documents delineating the monetary obligations of each side and when they commit to effect the eirusin or nisuin. But since a document cannot make nisuin, what might have led us to believe that the Mishnah may have been discussing something else?

"The Hafla'ah, like the Mishneh L'Melech, uses this as a proof that if one performs the chupah before kiddushin it is valid. In this context, we might have been discussing a document of nisuin written for a couple who had already done nisuin but not kiddushin. This document could then constitute eirusin.

"According to this opinion, they were married, since nisuin can also connote eirusin after or during nisuin. But other authorities learn that the chupah itself does not establish nisuin—only the actual yichud period after the chupah. According to these authorities, the term that the chosson used is ineffective—and the couple has a serious problem!"¹ ■

1. אבני חושן, ח"ג, ע' תקכ"ו. ■