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בבא בתרא קס״ט
CHICAGO CENTER FOR Torah & Chesed
בס״ד

OVERVIEW of the Daf

1) Lost document (cont.)

R' Safra explains the Beraisa's ruling that when rewriting a document the guarantee is omitted.

This explanation is unsuccessfully challenged.

The Gemara explains why the schemer formulates a more complex scheme rather than one that is simple.

The Beraisa's ruling that we do not replace deeds that carry a guarantee is questioned since we could protect the seller by giving him a receipt.

This seemingly indicates that we do not write receipts.

This conclusion is rejected; another reason for not writing a replacement deed is suggested.

This explanation is unsuccessfully challenged.

R' Nachman records the wording of the deed that is written without a guarantee.

Rafram infers from this wording that we assume that a missing guarantee was an error by the scribe.

R' Ashi rejects this inference.

A related incident is presented.

2) Returning a gift document

R' Assi offers an explanation for the position taken by R' Shimon ben Gamliel that when one returns a gift document the gift is returned as well.

Rabbah challenges this explanation and suggests an alternative explanation.

3) Disputed property

A Beraisa presents a dispute between Rebbi and R' Shimon ben Gamliel whether disputed land is adjudged by virtue of the deed or chazakah.

R' Dimi begins an explanation of the point of dispute. ■

REVIEW and Remember

1. Why is there a restriction against writing replacement deeds?

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2. What is the opposition to writing a receipt?

_____

3. Explain אחריות טעות סופר.

_____

4. What is the meaning of the principle אותיות נקנות במסירה?

_____

Distinctive INSIGHT

We destroy the loan document when we issue a collection note

כל טירפא דלא כתיב ביה קרעניה לשטרא דמלוה לאו טירפא הוא

If someone claims that he has lost his deed of sale for a particular land, the Beraisa says that we can write him a replacement, but we omit any guarantee that the seller will reimburse the buyer if the land is confiscated from the buyer by the seller's creditor. Rav Safra initially explains that we cannot include a guarantee due to the concern that Reuven who owes money might sell land to Shimon which was promised to Levi, his lender. When Levi later confiscates the land from Shimon for payment of his loan, Shimon, the buyer, will go to subsequent buyers of land and collect from them. If Shimon is allowed to have multiple documents of his ownership of the field bought from Reuven, there is a risk that Shimon (the buyer) and Levi, the original lender, will conspire together to defraud others who bought land from Reuven. After some time has passed, Shimon will allow Levi the lender to approach him and appear to collect the same land, and although he has already collected from one of the subsequent buyers, he will go back to yet another subsequent buyer and collect from him as well, this being a second and illicit collection.

The Gemara notes that this particular concern is unfounded, as it would be impossible for Levi, the lender, to approach Shimon a second time in order for Shimon to be able to defraud others who bought land from Reuven. The court would never have issued a permit to allow Levi to seize land from Shimon unless his original loan document was taken and destroyed. Therefore, it would be impossible for Levi to participate in this fraud. Rather, the concern of Rav Safra is where land is sold from Reuven to Shimon. Levi proves that the land belonged to his fathers, and that Reuven sold land stolen from his family. Levi takes the land from Shimon, and Shimon approaches subsequent buyers of land from Reuven to collect reimbursement from them. If Shimon has two sales documents, he will conspire and arrange that Levi try to collect from him twice, whereupon he will collect from another of the subsequent buyers from Reuven.

Rav Nachman taught that a collection note (טירפא) is only valid if it clearly states that it was issued only when the loan document was torn by the beis din. The commentators

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HALACHAH Highlight

A claim that the purchase document is lost

הבא לידון בשטר ובחזקה וכו' אלא הכא בלברר קמיפלגי

If someone comes with a claim of a document as well as a chazakah etc. They argue whether it is necessary to verify an unnecessary claim

Reuven owned a seat in the women's section of a shul and for many years his daughter-in-law, Rochel, sat in that seat. After Reuven died, his son, Rochel's husband, claimed that he had purchased the seat from his father and has a document to prove his assertion as well as witnesses who will testify that he made a chazakah on that seat. Reuven's other sons challenged this claim and went to Beis Din who asked Rochel's husband to produce the document of sale. He went home to find the document and returned without the document claiming that as hard as he tried to find the document he could not pinpoint its whereabouts. Since the matter was at a standstill it was decided that they would consult the author of Shvus Yaakov for a ruling.

Shvus Yaakov[1] responded that the son's claim that he had a document of sale and witnesses is subject to the dispute in our Gemara between Tanna Kamma and R' Shimon ben Gamliel whether a person who asserts unnecessarily that he has proof to his claim is obligated to produce that evidence. Shulchan Aruch[2] rules that the claim must be substantiated and furthermore[3] if the person states that he lost his document he is not believed. Bach[4] interprets this to mean that he is not believed to have a document but may still claim ownership based on his chazakah of having used the property for the past three years.

Regarding the chazakah the Gemara taught (42a) that a son cannot make a chazakah on his father's property, but that was limited to a son who is supported by his father. Accordingly, it would seem that in our case the son should be able to claim to have made a chazakah on his father's seat. Poskim, however, write that the matter is subject to the discretion of the judges. If it appears to them that the father is not the type of person who would protest if his son was using his property, a chazakah is not established. In conclusion he writes that if there are other daughters-in-law and it was only Rochel who sat in this seat it is logical to assume that Rochel and her husband purchased the seat since it is unlikely that the father would favor one daughter-in-law over the others. ■

1. שו"ת שבות יעקב ח"ג סי' ק"ס.
2. שו"ע חו"מ סי' ע' סע' ב'.
3. שו"ע שם סי' ק"מ סע' ה'.
4. ב"ח שם סע' ג'. ■

(Insight...continued from page 1)

point out that the Gemara said earlier (138b) that we do not suspect that a beis din is incompetent (אין חוששין לבית דין טועין). Therefore, even if the collection note does not state explicitly that the loan document was torn, we should be able to assume that the court acted correctly and destroyed the loan document, for had they not done so the situation could result in a financial calamity. Ritva explains that we would suspect that the borrower did not bring the loan document to court when the lender insisted that he be given his טירפא. They might write the טירפא and leave out the essential detail about destroying the document, making it פסול.■

STORIES Off the Daf

The unintentional emissary

"לתתקוני שדרתיך ולא לעוותיך..."

The Midrash teaches that when Hashem showed Moshe "all of his goodness," He exhibited the reward set aside for the righteous in His various heavenly treasuries. When Moshe asked what the first one was, Hashem replied, "This storehouse contains the reward for those who attain mastery of Torah."

When he was shown a second repository of reward, Moshe naturally asked about that as well. "This is for those who honor the Torah," Hashem replied.

The final treasury shown to Moshe was bigger than any other. When Moshe asked what it was for, Hashem explained, "One who has done good is rewarded from the appropriate place. But those who do not take of their own receive from this place for free."[1]

The Arvei Nachal, zt"l, asks, "How could Hashem give reward for nothing? Does it not say that Hashem is not a ותרן, that He insists upon each one receiving his due? This Midrash does not mean that Hashem gives something for nothing. Rather, it can be understood in light of the statement of the Chovos Halevavos, that one who speaks slander transfers his good deeds to the person he slandered.[2] Now we can understand the Midrash. While a person is rewarded for his own deeds only according to how he did the mitzvah, one who is rewarded for another person's deed as described will be credited as though that mitzvah had been done to perfection."

The Arvei Nachal explains further, "Why is this person rewarded as if the mitzvah had been done to perfection? Because the slanderer is considered a sh'liach mitzvah for the person whom he slandered, since his mitzvos are actually going to accrue to his victim's heavenly account. The victim, like anyone who sends an emissary, can certainly make the claim that we find on Bava Basra 169, 'I engaged you to my benefit, not to my disadavantage!'"[3] ■

1. מדרש תנחומא, פרשת כי תשא, ס' כ"ז
2. חובות הלבבות, שער הכניעה, ז'
3. ערבי נחל, פרשת שופטים ■

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