

OVERVIEW of the Daf

1) Disputed property (cont.)

R' Dimi completes his explanation of the dispute between R' Shimon ben Gamliel and Rebbi.

Abaye refutes this explanation and presents his own explanation of the dispute.

Abaye's explanation is rejected and R' Avina offers a third explanation of the dispute.

A challenge to this explanation is presented from a Beraisa in Bava Metzia.

One resolution to this challenge is to reverse the opinions in the Beraisa from Bava Metzia.

According to a second explanation the point of dispute between R' Shimon ben Gamliel and Rebbi relates to whether there is an obligation to clarify a claim that was unnecessary.

An incident is retold that supports this interpretation of the Beraisa.

2) **MISHNAH:** R' Yehudah and R' Yosi disagree what should be done with a loan that was partially repaid.

3) Partially repaid loan

R' Huna in the name of Rav rules that the document of a partially repaid loan is destroyed and a replacement document is drawn up for the remaining value of the loan.

It is asserted that Rav would have changed his position had he known about a particular Beraisa.

R' Huna rejected this notion asserting that Rav knew the Beraisa and nevertheless did not retract his position.

REVIEW and Remember

1. How does Abaye explain the dispute between R' Shimon ben Gamliel and Rebbi?

2. What is the point of dispute pertaining to לברר?

3. What is the dispute between R' Yehudah and R' Yosi?

4. According to Rav, what is done with the document of a partially repaid loan?

Distinctive INSIGHT

Partial payback of a loan

מי שפרע מקצת חובו ר' יהודה אומר יחליף

The Mishnah deals with a case where a borrower pays back a portion of the loan, and what is to be done with the loan document. Do we compel the lender to issue a new document with the new, updated amount owed, which is the opinion of R' Yehuda, or do we leave the original document as is, but we issue a receipt for the borrower which reflects the amount he has paid, which is the opinion of R' Yose. Meiri and Nimukei Yosef write that this discussion only applies to a case where the lender and borrower do not both agree to deposit the document in the hands of a third party. If the parties agree, both R' Yehuda and R' Yose would agree that the document may be given to the third party with appropriate instructions regarding repayment of the remainder of the loan. When the time comes, the third party is believed regarding the terms of the loan, even if one of the parties disputes his words, as we find in Gittin (64a).

The Mishnah does not deal with the basic question of whether a borrower can insist on repaying a loan partially, or whether the lender can insist that he be paid in full at one time. This is the subject of controversy among the poskim. Ri"ף seems to hold that a borrower cannot pay the loan in installments without consent of the lender. This is indicated from the Gemara in Bava Metzia (48a) which teaches that if a borrower pays a hundred dollar loan one dollar at a time, the payment is acceptable, but the lender has a legitimate reason to be upset (יש לו עליו תרעומת). Ri"ף omits this passage, and Beis Yosef explains that Ri"ף holds that the payment is only valid if the lender accepts it. Yet, this type of payment is otherwise unacceptable. Most Rishonim (et al. - יד רמה, רמב"ן, ריטב"א, מאירי, טור) write that the borrower can pay partial amounts even without the lender's consent. מרדכי writes that once the term of the loan has elapsed, all opinions hold that the borrower may pay the loan in partial payments (see דרכי משה חו"מ ע"ד אות ג').

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Today's Daf Digest is dedicated
 By Mr. and Mrs. Dovid Tessler
 In memory of their family that was
 נהרג על קידוש השם
 יהא זכרם ברוך

HALACHAH Highlight

A chosson signing on a kesubah that is invalid

והא אמר רבי אבא מודה היה ר' אלעזר במזוייף מתוכו שהוא פסול
 But didn't R' Abba teach that R' Elazar agrees that when it is
 forged from within the document is invalid

Teshuvos Tashbatz¹ was asked about a kesubah on which it turned out that the two witnesses were related to each other. He wrote that the kesubah is invalid and may not be used to collect even if it was delivered in the presence of valid witnesses. Although we hold that it is the witnesses to the delivery that make a document effective (עדי מסירה כרת), nevertheless, witnesses to the delivery do not help if the witnesses signed on the document are invalid (מזוייף מתוכו). He then advocates following the enactment of having the chosson sign the kesubah. The primary advantage is that if the witnesses who signed on the kesubah are unavailable to certify their signatures we, nevertheless, consider the document certified from his signature and would not believe him to say that he paid the kesubah. The reason this practice was enacted for a kesubah rather than other documents is that a kesubah is often collected many years after it was written, as opposed to other documents, and the more time that passes the more difficult it becomes to find people who recognize the signatures of the witnesses.

A matter debated by Poskim is whether a kesubah is valid if it is signed by the chosson but contains witnesses that are disqualified. Tashbatz maintains that the signature of the chosson cannot salvage a kesubah signed by disqualified

(Insight...continued from page 1)

According to R' Yehuda, when a loan is paid down partially, the original document is destroyed and is replaced with a new document which reflects the new, lower amount owed. Rashbam and Tosafos write that the date of the new document should be the earlier date which was recorded on the original document. Accordingly, the lender retains his rights to collect from property from the original date of the loan. This understanding of R' Yehuda is found in a Beraisa in the Gemara. Ramban notes that the response of R' Yose to R' Yehuda suggests that the current date is used, which would be to the disadvantage of the lender. ■

witnesses since, as mentioned before, the document is מזוייף מתוכו – disqualified from within. Teshuvos Maharshach³ disagrees and rules that the document is valid. Its validity has nothing to do with the witnesses; rather the kesubah is valid because it is treated as a document that was signed by the obligated party which is a valid and binding document. Sefer Mutzal M'esh⁴ cites the position of Maharshach and disagrees. When a chosson signs his kesubah he does so to confirm the obligation contained in the document, not to create an obligation independent of the rest of the document. Accordingly, once it is determined that the kesubah is invalid the chosson's signature does not have the power to infuse new life into the dead document. ■

1. שו"ת תשב"ץ ח"ד בטור השלישי סי' א'.
2. שו"ת תשב"ץ שם.
3. שו"ת מהרש"ך ח"ג סי' מ"א.
4. ספר מוצל מאש ח"א סי' ל"ד. ■

STORIES Off the Daf

An original copy

Aלא ב"ד מקרעין השטר וכותבין שטר אחר
 certain man once loaned a large sum of money to his friend for an extended period of time. After many years the borrower had still not repaid the loan. The loan contract was now very old and liable to disintegrate at any time. When the lender noticed this, he went to beis din and they took down the document word for word in a special form and disposed of the old document.

After many more years, the date of payment arrived but when the lender requested the money, the borrower claimed that he already paid the loan. When the lender confronted the borrower with the document he had procured from beis din, the man glibly pushed him off. "This is not the original document at all. Although I would not be believed to have repaid the loan if you had presented the original document with witnesses attached, my word is certainly good against this."

The lender highly doubted this assertion, so the two went to beis din. When this question was brought before

the Ra'avad, zt"l, he ruled that the borrower must pay against the copied loan contract. "This paper has the same halachos as the original document. And the same is true regarding the Gemara in Bava Basra 170 which states that if the borrower paid only part of his debt, beis din rips up the old document and writes him a new one. The second document has the same force as the first and can even allow the creditor to collect from land purchased from the borrower after the time of the original loan, even if it was purchased before the second document was written."¹ ■

1. שו"ת הראב"ד, סי' קפ"ג. ■