

OVERVIEW of the Daf

1) Partially repaid loan (cont.)

R' Huna's explanation of Rav's position is unsuccessfully challenged.

The Gemara quotes the full text of the Baraisa cited on the previous daf (170b).

R' Yosi's opinion in the Baraisa is clarified.

2) A document dated on Shabbos or Yom Kippur

R' Yehudah and R' Yosi disagree whether a document that was dated on Shabbos or Yom Kippur is valid.

R' Pedas clarifies the exact circumstance when the dispute between R' Yehudah and R' Yosi applies.

R' Huna the son of R' Yehoshua limits the scope of the dispute between R' Yehudah and R' Yossi.

This qualification is rejected.

The Gemara concludes that a lender can write a receipt if he wants to collect a loan and has lost the loan document.

Abaye unsuccessfully challenges the logic behind this ruling.

3) Postdated documents

The Mishnah in Shvi'is teaches that predated documents are invalid but postdated documents are valid.

R' Hamnuna asserts that this teaching is limited to loan documents but concerning sale documents even postdated documents are invalid.

R' Hamnuna's assertion is unsuccessfully challenged.

R' Kahana was asked why nowadays we write postdated documents and give receipts to lenders who claim to have

(Continued on page 2)

REVIEW and Remember

1. What is the point of dispute between R' Yosef and Rabbah?

2. How is it possible for a valid document to be dated on Shabbos?

3. What is it more logical for a lender to benefit from a lost document than for a borrower to benefit from a lost document?

4. What safeguards did R' Abba and R' Safra put in place to avoid fraud regarding postdated documents?

Distinctive INSIGHT

A post-dated document for a loan, a sale, or a gift

וכי מטי תשרי מפיק ליה ואמר ליה הדר זבנתה מינך

Our Gemara cites the Mishnah in Shevi'is (10:5) which states that a loan document is disqualified if it is dated earlier than when the loan actually took place (מוקדם). The reason for this is that the lender lawfully has the right to collect from property of the borrower from when the loan is given, and the date on a pre-dated document falsely shows that he can claim land from earlier than the date of the actual loan. If a document is post-dated, the document is valid. Rav Hamnuna explains that post-dated documents are only kosher if they are loan documents. If the document is the record of a sale, it is invalid even if it is post-dated. The reason is that Reuven may buy a field from Shimon in Nisan, but the date recorded is for the following Tishrei. In the meantime, Shimon may obtain extra cash and buy the field back from Reuven during the summer months. When Tishrei finally arrives, Reuven may produce the original post-dated document and insist that although he had sold the land back to Shimon during the summer, he has now re-bought the field once again from him in Tishrei, and he will present the document in his possession as proof to his contention.

The ר"ש writes (C.M. 43:#28) that a post-dated gift document is also not valid for the same reason that a post-dated sales document is unlawful. Nesivos HaMishpat (ibid., #11) notes that a gift document generally does not contain a guarantee clause, and that the giver does not promise to replace the field being gifted in the event that the field is confiscated by one of his creditors. The purpose of the document is simply to serve as proof that the gift was made, and that the occupant did not just move into the field on his own. What, therefore, is the significance of declaring the document to be not valid? It is at least valid enough to show that the gift was actually made.

The Nesivos answers that if witnesses intentionally post-dated the date of the gift document, although the giver cannot deny that the gift took place, the witnesses themselves become disqualified from testimony in the future.

(Continued on page 2)

Today's Daf Digest is dedicated
 לע"נ ר' אהרן בן ר' יעקב מאיר ע"ה
 By his children
 Mr. and Mrs. David Friedman

HALACHAH Highlight

Using secular dates

שטר שזמנו כתוב בשבת וכו'

A document that was dated on Shabbos

R' Yehudah in a Baraisa rules that a document that was dated on Shabbos or Yom Kippur is valid because it is assumed to be a postdated document and not one that was actually written on Shabbos or Yom Kippur. Rashbam¹ explains that the document was dated according to the solar calendar and when the corresponding Hebrew date was calculated it was discovered that it coincided with Shabbos or Yom Kippur. This touches upon the issue discussed in the Poskim whether it is permitted for a person to date his correspondence according to the gentile method of calculating the year or not.

Maharam Shick² was asked to comment about a new practice of putting the gentile date on a gravestone. His response was very strong in his opposition since the gentile date is calculated according to their erroneous belief that they are counting from the birth of their "messiah." This violates the Torah prohibition of **ושם אלהים אחרים לא תזכירו** – the name of other gods you should not mention. Chazal include in this prohibition even telling a friend to meet him next to such-and-such house of idolatry. This teaches that any mention of idolatry is prohibited and consequently counting the

(Overview...continued from page 1)

lost their loan documents without concern for fraud.

R' Kahana explains that the practice follows an enactment of R' Abba.

Another unsuccessful challenge to R' Kahana is presented. ■

year according to their calculation which is based on the birth of their "messiah" should certainly be prohibited. Rav Moshe Shternbuch¹ wrote that he did not see anything wrong with using the secular date as it is used for conventional purposes and we find examples in Chazal where they dated documents according to the Greek method of calculating dates. He mentions that there is an author who writes that one should not use a number to represent the month of the year, e.g. Feb. 9 as 2/9 since the Torah writes that Nissan is the first month of the year and writing 2/9 counts the months from January. Rav Shternbuch rejects this approach since the Torah's obligation is to count the lunar months from Nissan but when using the secular calendar one is counting the months according to the solar year and there is no prohibition against using a different numbering system for the solar year. It is, nevertheless, appropriate to use the Jewish calendar to reference dates since it gives recognition to our way of calculating years and months. ■

1. רשב"ם ד"ה ת"ר.
2. שו"ת מהר"ם שיק יו"ד סי' קע"א.
3. שו"ת תשובות והנהגות ח"א סי' תת"ל. ■

STORIES Off the Daf

The value of honesty

"כתבינן שובר..."

We find on today's daf that if the loan document is lost when the borrower repays the debt we write him a receipt.

A certain wealthy man was shocked when a friend confronted him with a document attesting that he had owed him a vast sum of money. Although he hotly denied this, the friend warned that their case would be settled in beis din if the money was not immediately forthcoming.

The wealthy man looked at the document and realized that it was surely

forged, but why should he have to go through all the annoyance of claiming so in beis din? He too understood a little about forgery and just as his friend had produced a faked document, he could draw up a bogus receipt that he had paid the "loan" in full.

But of course, submitting a forged document before a beis din demands a very special kind of brazenness. Although the wealthy man was certain he had never borrowed the money, he was still hesitant to take such a drastic step without consulting a great halachic authority.

When this question was presented to the Rashbah, ז"ל, he ruled that making a fake receipt was definitely forbidden. "Chas v'shalom that any of the children of Avraham should speak falsely in

beis din, even for a clearly just cause or to avoid an unfair loss! This is clear from Shvuos 31. There we find that if three people left large sums of money with an unscrupulous person, two of them may not testify that the thief owes the third man money, since this is false. Although all three are sure that they are correct and this would prevent outright theft, this is forbidden, because it is false. The same is true in your case."¹ ■

1. שו"ת הרשב"א ■

(Insight...continued from page 1)

Furthermore, if the post-dated document was used to effect the transaction (קנין שטר), and it was not only being used as a שטר ראיה – proof of ownership – the transaction itself is nullified. ■