

OVERVIEW of the Daf

1) Postdated documents (cont.)

R' Ashi or R' Kahana was asked why nowadays we do not use the safeguards put in place to prevent fraud.

He answered that people who follow the safeguards will be protected, and those that don't follow them bring harm upon themselves.

The instructions different Amoraim gave to their scribes are recorded.

2) Replacing a document

Rava teaches that one may not break down a hundred-zuz loan document into two fifty-zuz documents nor may one combine two fifty-zuz documents into a single one hundred-zuz document.

R' Ashi teaches that we would not even replace a hundred-zuz document with a fifty-zuz document.

3) MISHNAH: The Mishnah begins with a discussion of how a rich and poor brother share certain items of their father's estate and it concludes with halachos that apply when there are two people in town that share the same name.

4) A loan document in which the lender is not identified

R' Huna ruled that a loan document that does not identify the owner may not be used to collect a debt.

On R' Chisda's instructions, Rabbah went and found a Baraisa that seems to refute R' Huna's ruling.

Abaye unsuccessfully challenged Rabbah's position.

Rabbah cites proof from our Mishnah for his assertion that we are not concerned for the possibility that the lender lost the document and the one holding the document found it.

Abaye suggests an alternative explanation for the Mishnah. ■

REVIEW and Remember

1. Why is one not permitted to split a 100-zuz loan document into two 50-zuz loan documents?

2. How do two people with the same name differentiate from one another in legal documents?

3. Explain לנפילה לא חיישינן.

4. Why does Abaye reject Rabbah's proof from the Mishnah?

Distinctive INSIGHT

Considering יוסף בן שמעון from a different city

שנים שהיו בעיר אחת שם אחד יוסף בן שמעון ושם אחר יוסף בן שמעון אין יכולין להוציא שטר חוב זה על זה

Tur (C.M. 49), in the name of ר' ישעיה, writes that the name of the city in which the document is being written must be recorded in the document. If the name of the city is not listed, even if there is only one person with the name of the lender (יוסף בן שמעון) in that city, the borrower can claim that he did not borrow from the יוסף בן שמעון in this city, but rather from someone with that name in a different city. Beis Yosef explains that if the name of the city is not listed, we do not say that the document is not valid, but merely that the borrower has the ability to claim that he borrowed from someone other than the יוסף בן שמעון in this city. If the borrower did not make this claim, the document produced by the lender in this city would be valid and effective for the collection of the loan.

K'tzos HaChoshen (ibid., #5) writes that even if the name of the city was not listed in the document, it would be possible to collect from the one person named יוסף בן שמעון in this city, using the concept of קרוב—close proximity. It is legally reasonable to rely upon the assumption that the closest person named יוסף בן שמעון to the document is the one listed in the document, and that the person discussed is not someone else who lives farther away in another city, even if there are several people in the more distant city who have that name. In fact, even though we have the rule of R' Chanina (earlier, 23b) that when we have conflicting considerations of רוב (majority) versus קרוב (proximity), we follow majority, and we would thus be inclined to assume that the name יוסף בן שמעון belongs to one of the many people with that name, even though they might be in a more distant city, still that is not the case here. As Ramban explains, the person named יוסף בן שמעון in this city is not *close*, he is *here*. We have a rule of כהן נמצא כאן היה—if it is found here, it was here. In other words, this is a case of קרוב ומצוי—close and readily found, and all opinions agree that in this situation we do not follow רוב. Accordingly, even without the name of the city appearing

(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

Today's Daf Digest is dedicated
 לע"נ מרת רחל פריידא בת ר' ישראל ע"ה

by her family

HALACHAH Highlight

Lying when it affects no one

כי קיימיתו בשילי כתבו בשילי וכו'

When standing in Shili you should write that you are in Shili etc.

The Gemara relates that Rav instructed his scribes that when writing a document in Shili the document should identify Shili as the place of the transaction even though the matter was presented in another town. Yad Ramah¹ explains that writing another town in the document when the scribes are presently in Shili violates the Biblical prohibition against lying mentioned in the Torah with the words (Shemos 27:7) מדבר שקר תרחק. Nimukei Yosef² writes that identifying an alternative location creates an appearance of a falsehood but he stops short of referring to it as an actual falsehood.

This touches upon the question of whether there is a Biblical prohibition against lying when the lie does not harm anyone nor does it allow someone to realize an unlawful profit. Sefer Yeraim³ asserts that the Torah does not prohibit a person from lying when it does not cause someone else harm. The context of the phrase מדבר שקר תרחק – distance one's self from falsehood – refers to a case where someone is harmed by the lie and that context limits the prohibition to that circumstance. Rav Yerucham Fishel Perlow⁴, in his commentary to Sefer Mitzvos of Rabbeinu Sa'adya Gaon, maintains that since the phrase of מדבר שקר תרחק is found in the context of beis din the Biblical prohibition against lying is also limited to lying in the presence of beis din, but there is no source to indicate that

(Insight...continued from page 1)

on the document we would say that the יוסף בן שמעון who is in the document is certainly the local individual with that name.

explains that even according to the opinions that we apply the rule of following the "majority" and not "proximity" even in the local city, this is only when these two considerations are balanced (שוים). However, here the factor to follow the local aspect of the case is compelling (קרוב) (מוכח, as it is more reasonable to say that the יוסף בן שמעון in the document is the one who lives in this city, rather than some other unknown person among the many who might have the same name in other cities. ■

there is a Biblical prohibition against lying when not speaking to beis din.

Sefer Charedim⁵ disagrees and writes that there is a positive command to speak the truth even when a falsehood would not damage someone financially. This is derived from the verse מדבר שקר תרחק which teaches that even a word – דבר – without any damage is prohibited. Shelah⁶ mentions authorities who maintain that the Biblical prohibition against lying is limited to beis din, but he disagrees, asserting that the majority of Poskim maintain that any lie violates the prohibition. ■

1. יד רמ"ה אות ק"ח ד"ה אמר.
2. נימוקי יוסף לסוגיין.
3. ספר יראים סי' רל"ה.
4. פירוש הגר"י פערלא בספר מצוות דסמ"ג עשה כ"ב.
5. ספר חרדים מ"ע פ"ד מצוב כ"ו.
6. שלי"ה הקדוש סוכה עמוד השלום. ■

STORIES Off the Daf

"I hated and abhor falsehood..."

כי היכי דלא מתחזי כשיקרא..."

On today's daf we find that one should avoid even that which only appears to be false. Rav Shlomo Zalman Auerbach, zt"l, was exceedingly careful that his every word or action should never appear false in even the slightest degree. Many times a day, he was heard to repeat to himself the verse from Tehillim: 'שקר שנאתי ואתעבה' – I hated and abhor falsehood."¹

We can see to what degree Rav Shlomo Zalman fled from untruth from a conversation that he had with a student. The student asked him a question which

the Rav did not comprehend, and the Rav used the usual Hebrew equivalent of "I'm sorry" which is, 'אני מצטער' – "I am pained." Rav Shlomo Zalman at first said, "אני מצטער" that I did not understand what you are asking." But then he immediately corrected himself. "סליחה, excuse me. I am not truly pained, but nevertheless I did not understand your question..."²

Chazal tell us that eating olives causes one to forget his learning, but since they also say that olive oil is conducive to remembering, the prevalent custom is to put oil on the olives and eat them that way. When Rav Shlomo Zalman saw in one of Rav Chaim Kanievsky's many seforim that olive oil does not mitigate the ill effects of olives on memory, he stopped eating olives.

However, when he was close to the end of his life and Rav Shlomo Zalman had a difficult time eating most foods, he decided to go back to eating olives with olive oil since they were one of the few foods that still agreed with him. Now that he was going to no longer be in compliance with the stringency of R' Chaim, Rav Shlomo Zalman did not want to misrepresent his conduct before R' Chaim, so he immediately sent a message to Rav Kanievsky, שליט"א, informing him of this change. The moment Rav Shlomo Zalman stopped acting in accordance with this chumrah, it was abhorrent to him that Rav Chaim Kanievsky should believe that he still did.³ ■

1. חכו ממתקים, ח"א, ע' מ"א
2. מ"ז שם, ע'
3. שם, ע' מ"ד ■