

OVERVIEW of the Daf

1) A loan document in which the lender is not identified (cont.)

A Baraisa is cited that seems to differ with our Mishnah.

The Gemara explains that the Tanna of the Mishnah and the Tanna of the Baraisa disagree about whether a document is legally transferred when given to another person.

An alternative explanation of the dispute is suggested.

Abaye and Rava dispute the same issue of whether it is necessary for the holder of a document to prove that it is his when there are at least two people in town who share the same name.

Abaye suggests a proof that the holder must demonstrate legal possession of the document.

Rava rejects the proof.

An alternative version of this exchange is presented.

Another Baraisa is cited that disagrees with our Mishnah.

It is suggested that the point of dispute is whether we may write a loan document for a borrower without the lender being present.

2) Clarifying the Mishnah

A contradiction in the Mishnah is noted pertaining to whether one could produce a loan document against someone who shares the exact same name.

R' Yirmiyah suggests one resolution.

This explanation is unsuccessfully challenged.

Abaye offers an alternative resolution.

A Baraisa writes that if the two people with the same name are both kohanim their ancestor's names should be included until a difference between their names is found.

3) **MISHNAH:** The Mishnah discusses the halachos of a person who knows that a document was paid but does not recall which document.

4) Elaborating on the Mishnah

Rava notes how the words the lender uses when admitting that a loan was repaid effects the halacha.

Ravina unsuccessfully challenges Rava's halachos.

5) **MISHNAH:** The Mishnah discusses collecting a loan from the guarantor.

6) The liability of a guarantor

Rabbah and R' Yosef offer an explanation why a lender may not collect from a guarantor.

R' Nachman successfully challenges this explanation and offers an alternative explanation.

A Baraisa is cited that supports this explanation.

R' Huna cites a source for the liability of a guarantor.

R' Chisda successfully challenges this source and R' Yitzchok suggests an alternative source.

Ameimar asserts that the liability of a guarantor is subject to the debate of whether an **אסמכתא** is binding.

R' Ashi rejects this assertion and offers his own explanation why a guarantor is liable.

7) Collecting from a guarantor

R' Yochanan is cited as ruling that a lender may collect from

(Continued on page 2)

Distinctive INSIGHT

An oath to prevent benefit from each other

הערב לאשה בכתובתה והיה בעלה מגרשה ידירנה הנאה

The Mishnah teaches a halacha regarding someone who has accepted upon himself to be a guarantor for a woman's kesubah from her husband. When the husband comes to divorce his wife, we suspect that the husband and wife might conspire to defraud the guarantor. The couple plans a divorce, and after she collects her kesubah from this third party, the plot is that the husband will remarry his wife and the two of them will enjoy the proceeds collected for her kesubah. In order to prevent this scheme, Rabbah Shimon ben Gamliel rules that in this case, the husband must declare an irrevocable oath that he will never benefit from his wife again. This precludes the possibility that the couple plans to remarry after she collects her kesubah.

When should the husband be required to declare this oath? Rashbam writes that the husband must take the oath to deny benefit after the couple has divorced and before she comes to collect the kesubah. Tur (E.H. 102) explains that the oath must be administered before the husband divorces the woman. However, if he did not yet take the oath at that time, he can still take it later, before the woman collects the money from the guarantor. Rema (שו"ת סי' ל"ג) contends that this halacha is not scheduled at the time of collection, but it is rather a responsibility of the court to administer this oath at the time of the divorce. If the court neglected to have the husband make this oath, the guarantor does not have the option of withholding his payment at that time. Rema determines his understanding based upon the Gemara later (174b) which says that if a man divorces his wife outside of beis din and without their supervision, the woman can collect

(Continued on page 2)

REVIEW and Remember

1. What is the point of dispute between Abaye and Rava concerning one who is holding a document?

2. Who has the upper hand regarding ambiguities in documents of sale; the buyer or the seller?

3. What is the difference between the halachic concept of a guarantor and the Persian concept of a guarantor?

4. What is the source of the obligation of a guarantor?

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

Is there a mitzvah to guarantee a loan?

המלוה את חבירו על ידי ערב

One who lends money to a friend on the basis of a guarantor

Rambam¹ writes that it is a mitzvah, for one who has the ability, to lend money to people in need. Loaning money is the highest form of tzedaka since it saves a person from the disgrace of having to ask for charity. The question is raised whether there is a mitzvah for a person to guarantee a loan. In a circumstance where a potential lender will not lend money without a guarantor, is the guarantor credited with the mitzvah of lending money to the poor since he facilitated the loan, or is that mitzvah reserved for the lender and not those who assist in securing the loan?

It could be suggested that this question is subject to a debate between Nesivos Hamishpat and Tumim. Nesivos² maintains that if Reuven loans an object to Shimon so that Shimon could use the object as security for a loan (משכון) he is not credited with the mitzvah of loaning money to a friend. Tumim³ disagrees and writes that Reuven is credited with the mitzvah of loaning money since he took the necessary step to help Shimon secure a loan. Accordingly, one could assume that according to Nesivos one who guarantees a loan is not credited with the mitzvah of loaning someone money whereas according to Tumim it would seem that the guarantor is credited with the mitzvah of loaning money since he took the necessary step to help the borrower secure a loan.

Sefer Mishpat Ha'arev⁴ questions whether someone who refrains from guaranteeing a loan out of concern for an unlikely out-

(Insight...continued from page 1)

her kesubah without her husband's having taken the oath.

In his commentary to our Mishnah, Rabbi Akiva Eiger asks a question about the opinions of Rashbam and Tur that the husband can be forced to take an oath even after the divorce but before the woman collects her kesubah. At the point this man is no longer this woman's husband, we cannot force him to deny any benefit from her. And if we could do so, and he would refuse, it would not make sense that she would stand to have to forfeit her kesubah due to his being obstinate. If anything, if we want to prevent this ruse among this couple once they are divorced and she has not yet collected her kesubah, it would make more sense for her to have to take an oath not to benefit from her former husband. ■

come (חשש רחוק) that the loan would not be paid back violates a prohibition. The basis of the question is that there is a prohibition against refraining to loan someone money because of an unreasonable concern that the lender will not repay the loan⁵. According to Nesivos who maintains guaranteeing a loan is not a fulfillment of the mitzvah to loan money, one would be permitted to refrain from guaranteeing a loan because of an unreasonable concern. According to Tumim, however, since guaranteeing a loan is a subcategory of the mitzvah of loaning others money one would not be permitted to refrain from guaranteeing a loan due to some unreasonable concern. ■

1. ספר המצוות להרמב"ם עשה קצ"ז
2. נתיבות המשפט סי' ע"ב ס"ק ט"ז
3. תומים שם ס"ק י"ז
4. ספר משפט הערב פ"א אות ג'
5. ע' שו"ת מנחת שלמה ח"א סי' מ"ז ■

STORIES Off the Daf

The importance of fine distinctions

בההיא הנאה דקא משעבד נפשיה

Rav Shlomo Zalman Auerbach, zt"l, once explained the importance of learning Bava Basra to avodas Hashem. "On Bava Basra 173 we find that if a guarantor obligates himself orally, he is required to repay the debt if the debtor cannot. Although this should by rights be אסמכתא, the pleasure that he receives when the lender gives the borrower a loan based on his word causes him to obligate himself.

"This seems to be the opposite of what simple logic would dictate, and is another example of, 'He who wishes to become wise should learn the laws of money.' Through learning the fine distinctions between different monetary cases, one is able to live like a good Jew, since the foundation of being a

good Jew is the ability to act on fine distinctions. This is because the difference between light and darkness—and between living like a Jew and like a non-Jew— is merely a hairsbreadth."

He continued, "Fine distinctions are necessary for attaining and maintaining a proper worldview in our times. Although idolatry is practically extinct nowadays, a discerning person will understand that our challenge is whether we attribute the good in our lives to Hashem or to natural causes. For example, does a person who was ill and was healed by doctors understand that Hashem healed him? Or does he attribute his recovery to natural causes alone? Although we live in a physical world and our deliverance comes to us in the guise of the natural order, we must not be fooled. If one is completely focused on the natural world, how is he different from the idolaters in the time of Enosh? The Rambam tells us that they believed that Hashem was the ultimate source

but felt that their deliverance came from an idol and not from Hashem. The same is true of money. Those who are preoccupied with the natural means of earning money and never give Hashem a thought worship gold and silver instead of Hashem. It is only through the clear discernment that comes from Torah study that a person can avoid such fallacies and truly worship Hashem."

Rav Shlomo Zalman concluded, "Hashem should help us see that the entire expanse of creation is a vehicle for the revelation of Hashem. As the verse states, 'The earth will be filled with knowledge of Hashem as water covers the bed of the sea.'"¹ ■

1. ישורון כרך ט"ו עמוד ת"כ

(Overview...continued from page 1)

the guarantor without pursuing the borrower only when the borrower does not own land.

This explanation is unsuccessfully challenged. ■