

OVERVIEW of the Daf

1) Collecting from a guarantor (cont.)

R' Yochanan is quoted as stating that although halacha generally follows R' Shimon ben Gamliel the case of the guarantor is one of the three exceptions to that rule.

2) The guarantor and the kablán

R' Huna discusses what statements create a standard guarantor obligation and what statements create a kablán obligation.

Two related inquiries are recorded.

Three resolutions to the inquiries are presented.

Mar bar Ameimar notes that his father disagreed with one of R' Huna's rulings but the Gemara rejects this position.

Two related incidents are recorded.

R' Pappa's position in the second incident that orphans do not pay their father's loans until they reach the age of majority is unsuccessfully challenged.

Another related incident is recorded.

3) A guarantor for a kesubah

An incident involving a guarantor for a kesubah is presented.

Abaye's advice for a man to divorce and remarry his wife to collect her kesubah is unsuccessfully challenged.

The Gemara questions why in the incident the guarantor was liable when a guarantor for a kesubah is not liable.

Two resolutions are suggested.

The differing opinions of when a guarantor or kablán is liable or not, are presented.

The Gemara issues final rulings on these matters.

4) Conspiring against hekdesh

R' Huna rules that a dying person who sanctified his property and then declared that he is in possession of a maneh belonging to another person is believed since people do not conspire against hekdesh.

R' Nachman challenges this ruling from a similar ruling of Rav and Shmuel concerning orphans. ■

REVIEW and Remember

1. What is the difference between an ערב and a קבלן?
2. Why did Rava refer to R' Chanin the son of R' Yeiva as wise?
3. What was Abaye's financial advice for R' Huna?
4. What type of commitment makes one responsible to pay for a woman's kesubah?

Distinctive INSIGHT

The orphans do not pay the loan of their father

אמר רב פפא פריעת בעל חוב מצוה ויתמי לאו בני מיעבד מצוה נינהו, ורב הונא בריה דרב יהושע אמר אימר צררי אתפסיה

The Gemara teaches that orphans are not required to pay back their father's loan. Rav Pappa explains that this is because orphans are not obligated to perform the mitzvah of paying back a loan.

Ramban, Rashba and Ritva explain that the rationale of Rav Pappa is that the loan is not earmarked to be collected from the property of the borrower, but rather from the borrower himself. In the event the borrower dies, the obligation is upon his heirs to fulfill the mitzvah of paying back a creditor, but orphans who are minors are not responsible to fulfill this mitzvah.

This approach also helps to explain the opinion of Rav Pappa (176a) that an oral loan may collect from unencumbered land "שלא תנעול דלת בפני לוי"—in order not to shut the door of lenders in front of the borrowers." When someone lends money without recording it in a document, the sages enacted a special rule to allow him to collect from land which is in the possession of the borrower. We see that the reason given is not that there is an automatic lien established against the land of the borrower, but the ability to collect is rather a special dispensation arranged by the rabbis to provide some sense of security for the lender.

Ri"ף and Rosh, however, explain that Rav Pappa holds שאעבודא דאורייתא—encumbrance of land for a loan is a Torah concept. Accordingly, even an oral loan should allow the lender to establish a lien against the property of the borrower, including land which might subsequently be sold. An oral loan should be able to collect from משועבדים. Nevertheless, the sages suspended this right, in consideration of the buyers, and their inability to know about and to therefore protect themselves against financial obligations of the their seller (the borrower) which are only oral. Ri"ף and Rosh explain further that when Rav Pappa gives a reason of לא תנעול דלת to clarify the limits of collection for an oral loan, this reasoning is aimed to explain why the lender can at least still collect from unencumbered land, although we did suspend collection from buyers (לקוחות).

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 לע"נ ר' אהרן בן ר' יעקב מאיר ע"ה
 By his children
 Mr. and Mrs. David Friedman

HALACHAH Highlight

Does a גט require a beis din?

אטו כל דמגרש בבי דינא מגרש

Does everyone who divorces his wife divorce her in court?

Many Poskim discuss whether a Beis Din is necessary for the delivery of a גט. From our Gemara's comment, "Does everyone who divorces his wife divorce her in court?" it seems evident that a beis din is not needed for a divorce to be valid. Teshuvos Noda B'yehudah¹, however, cites the Mishnah at the beginning of Sanhedrin (2a) that states that מיאון requires a beis din of three. Rashi² explains that although מיאון is only a Rabbinic enactment, it was set up to parallel the Biblical law and thus a beis din of three is required for מיאון. Noda B'yehudah assumes the Biblical law referenced by Rashi is the case of a גט and this is a source that a גט requires a beis din of three. Maham Shif³ disagrees with Noda B'yehudah and asserts that the reason the Mishnah in Sanhedrin did not mention that a גט requires a beis din of three is that only witnesses are necessary to affect a valid גט and the Biblical case that Rashi mentioned was chalitzah which Biblically requires a beis din of three.

Gaon Chida⁴ mentions in the name of Tumim that common custom is for there to be a beis din of three when writing and delivering a גט and the practice could be traced to the commentary of Yonatan ben Uziel who writes (Devarim 24:1), "And he will write for her a document of severance in the presence of a beis din." Although he mentions that he has heard of isolated communities in which the rov wrote גיטין without a

(Insight...continued from page 1)

יד רמה explains that Rav Pappa holds that the obligation to pay back a loan is rooted in the fact that this is a mitzvah. This is why orphans are ultimately not required to repay the loan, as they are not obliged to do the mitzvah. Rav Huna contends that the need to pay back a loan is not specifically due to the mitzvah, but due to the loan itself, which obligates a person to repay. Orphans are actually not exempt from dealing with this debt and the need to repay it, but they are protected due to the possibility that the money to pay the loan had previously been set aside by their father, and the lender has already collected. Until this doubt can be clarified, the orphans need not pay. ■

beis din, nevertheless common custom is to hold the גט proceedings in the presence of a beis din.

It seems that Rema⁵ follows the opinion that a גט does not require a beis din. He cites Rav Ovadia Birtenoro's criticism of judges who took more than unemployment (שכר בטלה) for arranging a גט. It seems that Birtenoro is assuming that those who arrange a גט are acting as judges and thus may not collect more than unemployment. The truth is that arranging a גט is not categorized as דין and it is considered nothing more than Torah study. From these comments it seems that Rema does not require a beis din of three for a גט. ■

1. שו"ת נודע ביהודה תנינא אה"ע סי' קי"ד.
2. רש"י לסנהדרין ב. ד"ה מיאונין.
3. מהר"ם שיף שם ד"ה החליצה.
4. שו"ת חיים שאל ח"א סי' ל"ט.
5. רמ"א בהגה בסדר הגט סי' קנ"ד סעי' ד'. ■

STORIES Off the Daf

The needs of orphans

"וייתמי לאו בני מיעבד מצוה ניהו..."

Rav Bentzion Yadler, zt"l, founded the pioneering Beis Yaakov HaYashan in Yerushalayim. Although today it is a well established school with hundreds of students, when he was first starting out, he had few students and money was very tight. Understandably, he went to any address he could to procure much needed funds for his fledgling institution, but even with all of his efforts, he only managed to eke out the minimum expenses to prevent the school from closing.

When Rav Yadler approached Rav Yitzchak Yerucham Diskin, zt"l, the head of the well established Diskin Orphanage, he was astounded to receive not only encouragement, but a large donation from the coffers of the orphanage.

Rav Yadler could not stop himself from blurting out, "It is true that every penny makes a big difference, but how can I possibly accept this generous donation? Do we not find in Bava Basra 174 that one may not take money from orphans even for mitzvos?"

Rav Diskin immediately reassured Rav Yadler. "This donation is for the orphans, since if there are no suitable schools for girls, how will I find then brides with yiras shamayim?"

Rav Diskin then told a story about his father, Rav Yehoshua Leib Diskin, zt"l. "My father would take this much further. It was his practice to hire young married men to go from apartment to apartment checking people's mezuzos. When I asked him how he justified this he explained that regarding mezuzah the verse states, 'למען ירבו ימיכם וימי בניכם'. Since good mezuzos lengthens the life spans of parents, making sure mezuzos are valid is an excellent way to ensure that there are less orphans and therefore more money for each individual orphan!" ■

1. השרף מבריסק, ע' 66 ■