

OVERVIEW of the Daf

1) Conspiring against hekdesh (cont.)

The Gemara responds to R' Nachman's challenge by stating that R' Huna's ruling (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") applies when the identified man has a document that states that he is owed the money.

This explanation is unsuccessfully challenged.

Rabbah discussed two cases of orphans claiming to have paid money to their father's creditor, in one case they are believed and in the other they are not.

It is noted that the two rulings do not follow what would seem to be logic.

The Gemara presents an alternative version of Rabbah's rulings.

2) A dying person's admission

Rava asks whether a dying person who admits owing money has to appoint those present as witnesses and whether he must give instructions for them to record his admission.

Rava answered that it is not necessary to appoint them as witnesses and it is unnecessary for the dying person to instruct them to record his admission.

3) **MISHNAH:** The Mishnah begins with a discussion of which loans allow for collection from encumbered properties and moves on to discuss the liability of a loan guarantor.

4) Collecting from encumbered property

Ulla states that, Biblically, documented and undocument-

(Continued on page 2)

REVIEW and Remember

1. If a dying person admits having possession of another's money, are the orphans believed to say that they paid the money?

2. What is the significance of the inquiry whether a person jests at the time of his death?

3. What is the point of dispute between R' Yishmael and Ben Nannas?

4. What is the issue debated by Ulla and Rabbah?

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 By Mr. and Mrs. George Saks
 in memory of their uncle
 Samuel C. Gluck, Shmuel ben Zev z"l

Distinctive INSIGHT

Collecting from encumbered property

אמר עולא דבר תורה אחד מלוה בשטר ואחד מלוה על פה גובה מנכסים משועבדים, מאי טעמא שעבודא דאורייתא

The opinion of Ulla is that when someone borrows money, the Torah recognizes that his property becomes subject to collection in case of default, and as of the date of the loan there is a lien on the property for this purpose. If the borrower sells any land in the meantime and the borrower does not pay the loan, the lender can go to the buyers and take land that was bought subsequent to the loan.

Rashbam traces the source of this Torah concept to the verse in Devarim (24:11) which teaches that when one comes to collect money owed to him, he should stand outside the door of his debtor, and "the one who owes to you shall bring out the collateral to you." Tosafos questions this verse as being the source that land is to be subject to collection for a loan, because the verse is discussing a situation where the borrower himself offers an object for collection, and not where the lender is taking property from someone who bought from the borrower. The dispute regarding **שעבודא דאורייתא** cannot be based upon a verse which speaks about the borrower himself offering collateral as payment for his loan, as this is an issue about everyone agrees is appropriate. The question and point of contention is regarding the right of the lender to collect from those who might have bought land from the borrower after the loan took place.

שעבודא דאורייתא explains where Rashbam sees a proof to **שעבודא דאורייתא** from this verse. If the Torah did not recognize the right to collect from the property of the borrower, the lender could not collect collateral, and it would be up to the borrower to liquidate his assets to raise cash to repay his loan. The right of the lender to collect collateral indicates that he has a claim against the property of the borrower. ■

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HALACHAH Highlight

Encumbrances

שעבודא דאורייתא

Encumbrances are Biblical

At first glance it would seem that the discussion whether an encumbrance is Biblical is academic since according to both opinions documented loans are collected from encumbered property and undocumented loans are not collected from encumbered property. What then is the significance of the dispute? Ramban¹ suggests that there will be a difference in a case where there are two creditors and the one with the later lien collected property from the borrower first, leaving no property left for the earlier creditor. According to the position that encumbrance is Biblical, the later creditor did not have the right to collect property from the delinquent borrower ahead of the earlier creditor and the later creditor will have to release the repossessed property to the possession of the earlier creditor. If, however, one subscribes to the view that encumbrance is not Biblical, the essence of the enactment is that a creditor is authorized to take land from a buyer but it does not allow an earlier creditor to repossess land that was taken by a later creditor and as a result the later creditor would retain possession of the land collected from the borrower.

Sha'ar Mishpat² offers a second practical difference whether encumbrance is Biblical or not. Generally it is assumed that a transaction carries a guarantee even when not written into the document (אחריות טעות סופר) since it is assumed that a person would not throw away his money for nothing (לא שדי איניש זוזי

(Insight...continued from page 1)

ed loans could be collected from encumbered property and it was a Rabbinic enactment that prevents lenders from collecting undocumented loans from encumbered property.

Rabbah disagrees and maintains that Biblically a lender may never collect from encumbered property and it was a rabbinic enactment that allows a lender to collect a documented loan from encumbered property.

The Gemara unsuccessfully questions whether this is indeed Rabbah's position.

It is reported that Rav and Shmuel disagree with R' Yochanan and Reish Lakish whether encumbrance is Biblical.

Rav and Shmuel's position that encumbrance is not Biblical is unsuccessfully challenged. ■

בכדי). Consequently, when the assumption is not relevant it would be assumed that the document missing a guarantee was intentionally drafted without a guarantee. Thus, for example, if someone gives away land as a gift where the principle that people don't throw away their money for nothing does not apply, the recipient would not be granted a guarantee for the land if that clause is missing from the gift document. This conclusion, however, is limited to the opinion which maintains that encumbrance is not Biblical. According to the opinion that encumbrance is Biblical the encumbrance is an automatic result of a commitment and would be in force even when the land was given away as a gift since it is in force even for undocumented loans. ■

1. חידושי הרמב"ן לכתובות צ. ד"ה הא.

2. שער משפט סי' ל"ט סק"א. ■

STORIES Off the Daf

"He who wishes to become ise..."

"הרוצה להכחיס יעסוק בדיני ממונות..."

Someone once asked Rav Tzvi Miesels, zt"l, to explain the famous statement in the mishnah on today's daf. "We find in Bava Baras 176: 'One who wishes to become wise should learn the halachos regarding money.' How does one become wise through learning the laws of financial transactions? If it had said that he becomes sharp-witted through this discipline, we could understand it. But it says he will be a חכם, a wise man?"

Rav Miesels explained, "As the

mefarshim point out, Torah wisdom means learning in order to change and act upon what he learns. This differs from secular studies, which often do not lead one to truly change. A person might feel that secular studies deepen or broaden him, but that is usually all they can accomplish. Only Torah imparts fear of heaven."

He continued, "Why, then, does the mishnah specify the laws of financial transactions? This can be understood in light of the words of the Ohel Yaakov, zt"l. He explains that Avraham only recognized Hashem at the age of forty-eight because, had he repented earlier, he would have been unable to rebuke his generation. They would have claimed that he spoke out of ignorance, since he

had never worshiped idols or indulged in immoral behavior. Because Avraham was already mature when he repented, he truly understood their philosophies before rejecting them.

"Through learning the laws of money matters, one sees how sharp our sages were. The halachos demonstrate that they understood human nature and the material world very clearly. From this a person will understand that everything they said, including their words of musar and yiras shamayim, are not the empty words of one who doesn't know what the material world is all about. He will take their words to heart and become truly wise!"¹ ■

1. דברי צבי, ע' רס"ד ■