

OVERVIEW of the Daf

1) Collecting from encumbered property (cont.)

R' Pappa rules that an undocumented loan could be collected from heirs but not from buyers.

2) A handwritten note

Rabbah bar Nosson asked whether a handwritten note that was authenticated in Bais Din allows the lender to collect from buyers subsequent to the authentication.

R' Yochanan ruled that even when the handwritten note is authenticated the lender may only collect from unencumbered property.

Rami bar Chama unsuccessfully challenges this ruling.

3) Guarantor

Two contradictory rulings of Rav are cited concerning the collection of encumbered property belonging to a guarantor who signed before the signatures of the document.

The Gemara differentiates how the guarantor is mentioned in the document.

R' Yochanan rules that in all circumstances the lender may only collect the guarantor's unencumbered property.

Rava unsuccessfully challenges R' Yochanan's position.

4) The dispute between R' Yishmael and Ben Nannas

Rabbah bar Chana in the name of R' Yochanan ruled in favor of R' Yishmael despite his praise for Ben Nannas's position.

The Gemara wonders about R' Yishmael's position of one who guarantees a loan to save a strangled borrower.

R' Yochanan is quoted as ruling that R' Yishmael would maintain that the guarantor is liable.

The Gemara rules in accordance with R' Yishmael's position even regarding this matter.

R' Yehudah in the name of Shmuel rules that if the guarantor trying to save the strangled borrower made a kinyan he is liable.

This implies that a regular guarantor does not make a kinyan which is not R' Nachman's position.

The Gemara gives final rulings related to when a guarantor makes a kinyan. ■

הדרן עלך גט פשוט

וסליקא לה מסכת בבא בתרא



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

Distinctive INSIGHT

How does the guarantor become committed?

חלוק היה רבי ישמעאל אף בחנוק

The Mishnah (175b) discussed the case of a guarantor whose name appeared on a document below the signatures of the witnesses. R' Yishmael holds that the lender may collect from the guarantor, but only from land which is free and clear of any claims (בני חורין). The point is that the commitment of the guarantor is not public knowledge, and any buyers of the guarantor's property could not have known that he was indebted to this particular loan. They therefore cannot be held responsible to forfeit any land which they bought subsequent to the loan.

Ben Nannas disagrees with R' Yishmael, and he holds that the lender cannot collect from any land of the guarantor, not from his land that is free and clear of claims, and certainly not from any lands which were sold in the meantime (משועבדים). As he explains in the Mishnah, the fact that the signature of the guarantor appears only after the signature of the witnesses indicates that the lender lent the money without any expectation of the guarantor's being a backup to his being able to collect.

The Gemara in Kesubos (102a) notes that the dispute between R' Yishmael and Ben Nannas is related to a disagreement between R' Yochanan and Reish Lakish. The discussion there is in a case where Reuven made a commitment to pay Shimon money, but he did so by merely writing down this promise on a piece of paper (a document), without making any formal קנין. R' Yochanan holds that the very writing of this commitment on a document creates a legal obligation. This opinion of R' Yochanan seems to agree with R' Yishmael, who also holds that the signature of the guarantor at the bottom of

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REVIEW and Remember

1. Is an undocumented loan collected from orphans?

2. What is the point of dispute between Rav and R' Yochanan concerning the encumbrance of the property of a guarantor?

3. According to R' Yishmael, does a guarantor become obligated if he made his commitment to save a borrower who was being strangled?

4. What is the Gemara's final ruling concerning the liability of a guarantor?

HALACHAH Highlight

The status of a document certified in Bais Din

שאני התם דמשעת כתיבה הוא דמשעבד נפשיה

It is different over there since he encumbered himself from the moment the document was written

Rabbeinu Yonah¹ explains that when a document is written with the intent that it would be delivered in the presence of witnesses the borrower understood from the outset that he was putting a lien on his property. If, however, the loan document was drawn up as a written statement of the borrower admitting that he borrowed money, he did not intend to create a lien with the document. For this reason R' Yochanan stated that even after Bais Din certifies the document, a lien cannot be created at that time. Sema² further explains that since the document was not drawn up with the intention that it would be delivered in the presence of witnesses there is no public knowledge (קול) of the loan and thus the borrower's property is not encumbered.

Shach³ questions the Gemara's premise that we could equate a document certified by Bais Din and a document that was delivered in the presence of Bais Din. When a document is delivered in the presence of witnesses they bear the responsibility to publicize the contents of the document and that is the basis for allowing a creditor to collect from purchasers of the borrower's property. A document that is merely certified in Bais Din does not have that characteristic, as the Gemara in Kesubos (109b) is clear that the judges who certify a document are not expected to read or even be aware of the contents of the document. Obviously, if the judges are unaware of the contents of the document they will be unable to publicize its contents. Why then did the Gemara think this case was similar to the document delivered in the presence of witnesses?

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the document represents a legal commitment. Reish Lakish holds that a person does not become obligated without a formal קנין, and words written on a document cannot create a new commitment. This seems to concur with Ben Nannas, who says that the signature of the guarantor does not constitute a legal pledge.

Tosafos notes that the opinion of R' Yishmael does not seem to be due to a commitment based upon the guarantor's signature, but rather due to a response of the guarantor to help the borrower. This is evidenced in the fact that R' Yishmael holds that the guarantor is committed even if he sees the borrower being strangled by the lender in the street. Yet, the case must be that the guarantor obligated himself not just with words, but with recording his commitment in writing as well, and it is specifically the written commitment which is key.

The conclusion of the Gemara in Kesubos is that Reish Lakish could actually hold like R' Yishmael, but that the commitment in our Mishnah is not due to his written promise, but due to his being a guarantor, which is not a new commitment, but rather an extension of a שיעבוד דאורייתא of the borrower. ■

Tumim⁴ answers that when the Gemara initially entertained the possibility that the certification of the judges would create a document that carries a lien it was assumed that the judges would have to read the document in order to publicize its contents. It is only according to the Gemara's conclusion that the certification of judges does not create a lien do we conclude that the judges are not expected to even read the document in accordance with the Gemara in Kesubos. ■

1. רבינו יונה ד"ה אמר.
2. סמ"ע סי' ס"ט סק"ה.
3. ש"ך שם סק"ז.
4. תומים שם סק"ג. ■

STORIES Off the Daf

The wicked borrows and does not repay

"כדי שלא תנעול דלת בפני לויך..."

The Pele Yo'etz, ז"ל, explains the vast importance of lending money to those who need it.

"It is important for a person who borrowed a small sum of money from his friend to fulfill the mitzvah to repay his loan. The same is true of other mitzvos; a conscientious person will find a way to enable him to fulfill them.

"Unfortunately, in our time, most people who owe money are ignorant of this

mitzvah and can't even be bothered to scale down their lifestyles to fulfill it. This kind of insensitivity causes many problems. Firstly, they 'seal the door on others who require loans,' since people will be unwilling to take a chance and lend money when those in debt refuse to pay them back. In addition, the creditors are disgusted when they see how those who owe them money eat delicacies and clothe their wives and children in the latest fashions. Often they feel such anger that they cannot prevent themselves from cursing their debtors.

"And of course these debtors are halachically רשעים, as we find in the verse:

— 'לוה רשע ולא ישלם' — 'The wicked man borrows and does not repay.' One who owes another human being is likened to owing Hashem, since Hashem obligates him to repay his debts. It would be better for debtors to pressure themselves and sell off their possessions to avoid this designation even momentarily. At the very least one must do his utmost to repay his debts a little at a time since every penny he repaid joins with all the others and eventually adds up to a large sum of money. In this manner the debtor will be blessed by Hashem who does not withhold good from those who follow Him in simplicity." ■

1. פלא יועץ, ערך לוה. ■