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The Chicago Center

OVERVIEW of the Daf

1) Finding a lost document (cont.)

In response to the Gemara's challenge R' Assi explains that the Mishnah refers to a loan document that is drawn up that grants a lender a lien even if the loan has not yet occurred.

This explanation is unsuccessfully challenged.

Abaye offers an alternative circumstance where a loan document could be drawn up without the presence of the lender.

Two unsuccessful challenges to Abaye's explanation are presented.

It is explained how Shmuel who normally is not concerned about payment or collusion can fit with Abaye's explanation.

This interpretation is unsuccessfully challenged.

2) Clarifying the dispute between R' Meir and Rabanan

R' Elazar offers an explanation of the dispute between R' Meir and Rabanan and mentions a case that is not subject to their dispute.

R' Yochanan offers an alternative explanation of the dis pute and as well, mentions the case that is not subject to their debate.

A Baraisa is cited that supports the explanation presented by R' Yochanan.

It is explained how this same Baraisa refutes R' Elazar's position on one point.

The Gemara notes that the Baraisa seems to refute R' Elazar on two points. ■

REVIEW and Remember

1. What is a שטר הקנאה?
2. Explain עדיו בחתומיו זכין לו.
3. According to R' Elazar what is the point of dispute between R' Meir and Rabanan?
4. How does the Baraisa cited in support of R' Yochanan refute R' Elazar's position on two points?

Distinctive INSIGHT

Returning a found document which does not have a lien in it

אי הכי כי אין בהן אחריות נכסים אמאי יחזיר? נהי דלא גבי מן משעבדי, מבני חרי מגבי גבי

The Mishnah (12b) taught that a loan document may not be returned to the creditor listed therein if the document has within it a lien on land as a provision for collection. If the document lacks this provision, the document may be returned to the creditor. The Gemara inquired what would be the circumstances whereby this outcome would be warranted, and it concluded that we are dealing with a case where the debtor admitted that he had not paid back the loan. Still, if there is a lien we do not return the document to the creditor, because we are afraid that this found document might have been written up in Nissan, but the loan and the actual lien might not have taken place until Tishrei.

The Gemara then cited a Mishnah (Bava Basra 167b) which teaches that we may write a loan document for a borrower who plans to take out a loan, even if the lender is not here. Why should we not be concerned that the lien contained in the document may pre-date that actual loan? Abaye answers with the rule "עדיו בחותמיו זכין לו" which means that the note's witnesses acquire the lien fully, by means of their very signatures, even if the loan does not take place until a later date.

This premise of Abaye is found to be inconsistent with our Mishnah, where we rule that even if the borrower admits that he did not pay back the loan, if there is a lien in the note we do not return it because we are afraid that the loan was actually made later than the date recorded in the document. Yet, according to Abaye this is not a problem, as the lien was valid from the date when the signatures of the witnesses were affixed to it. Why, then, should the document not be returned to the creditor?

The Gemara concludes that Shmuel understood that the Mishnah is dealing with a case where the debtor does not admit that he still owes the loan. Shmuel is also of the

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In memory of David ben Mendel HaKohen
By Craig Cowan and family
London, England

HALACHAH Highlight

Are tefillin found in genizah assumed to be invalid?

כיון דנפל אתרע ליה וחיישינן דלמא אקרי וכתוב

Since it was lost its validity is questionable and we are concerned that it was written [but the loan never occurred.]

The Gemara makes it clear that a contract that was lost is suspect and we will not enforce its contents. The reason is that we are concerned for the possibility that it was drawn up for a loan which never actually occurred. Based on this Gemara, Teshuvas Halachos Ketanos[1] issued a novel ruling. If someone finds tefillin that were in genizah he must be concerned that they are unfit for use even if they are examined and the scribe cannot find anything physically wrong with them. The very fact that the tefillin were found in genizah raises the suspicion that the tefillin may not have been written for the sake of the mitzvah and are thus invalid. The basis of this concern comes from our Gemara. Just as a lost contract is considered suspect, so too, tefillin found in genizah must be considered suspect even if one does not find any specific disqualification to render the tefillin invalid.

He then questions whether our Gemara is parallel to the case of tefillin. In the case of the Gemara the fact that the contract was lost raises a suspicion regarding its validity and since there is a principle המוציא מחבירו עליו הראיה we do not allow the lender to collect with a questionable contract. Concerning tefillin where there is no such principle, perhaps the fact that it was found in genizah is not sufficient cause to declare the tefillin invalid if one cannot find a disqualification. Therefore, if the tefillin were found intact, i.e. the batim are closed and the retzuos are still in place, one does not have to be concerned that the tefillin are invalid but if the tefillin were not intact, one must be concerned that they are invalid. He then reverses his opinion again and suggests that tefillin found in genizah may be worse than finding a lost contract. A lender would certainly be careful with a contract that is valid but once it is no longer in force there is the possibility that it was lost. Valid tefillin are worth money and it is unlikely that a person would put tefillin into genizah that are worth money and thus one must be concerned that the owner found them to be worthless due to some disqualification. Teshuvas Mishnah Halachos[2] also discusses the matter and presents numerous practical guidelines for determining whether one should be concerned that the tefillin are invalid and when there is no need for such a concern. ■

1. שו"ת הלכות קטנות ח"ב סי' קס"ו.
2. שו"ת משנה הלכות ח"ו סי' י"א. ■

(Insight. Continued from page 1)

opinion that a document without a lien cannot collect from encumbered land, and it also cannot be used to collect from unencumbered land. We then return it to the creditor, who will pose no threat of collection from the debtor.

Rashi points out that there still seems to be a risk to the debtor that the lender will take the document and have it verified (falsely) by its signatories, and he will be able to then collect the loan. Rashi answers that once the document has fallen and was found by others, we will not validate it even if the lender finds witnesses who corroborate their signatures. We will suspect that the document was forged, and collection will not be allowed. ■

STORIES Off the Daf

Tricking the Tricksters

"דחייש...לקנוניא"

On today's daf we find that Abaye was suspicious of trickery. This is a very important lesson. One must always be aware of unscrupu lous people and their methods and determine how to thwart them. The Ponevezher Rav, zt"l, was renowned for his acumen in dealing with people who attempted to hoodwink him

He would often travel abroad raising much-needed funds for his many projects. On one trip, people expressed worry for him since a certain group of young Jewish boys were targeting meshulachim and other foreigners. These unscrupulous youths would follow their victim to an abandoned place and rob him. The Rav traveled on the train alone despite this danger. Once he noticed a group of Jewish youths who seemed to be joking about him and he figured they were probably the notorious gang. He stumbled over to them and asked them in a very weak voice if they knew where he should get off to go to a certain street. The young man lit up as if the Rav's question had made his day and with a wicked smile he assured the Rav that they were also getting off at that stop and would be happy to point it out to him. Right before they came to the stop, the hoodlums told the Rav and he slowly started to gather up his things. Meanwhile the hoodlums disembarked but somehow the Rav was moving very slowly. He purposely dragged his feet and "missed" the stop. Now that he was safe at last, he heaved a sigh of relief and strolled back to his seat![1] ■

1. שמעתי מדודי תלמידו, רב שמחה גולשבסקי ז"ל

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