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The Chicago Center

OVERVIEW of the Daf

1) Returning a receipt for a kesubah (cont.)

Rava explains why there is no concern for fraud when a kesubah receipt is returned to the husband.

Abaye offers an alternative explanation.

The subsequent exchange between Rava and Abaye is recorded.

2) MISHNAH: The Mishnah begins with a discussion of whether other legal documents that were lost should be returned. Additionally, the Mishnah discusses whether contracts could be returned based on certain identifying features.

3) Clarifying the Mishnah

Two explanations of the term שטר בירורין are presented.

An incident related to a lost גט is presented in which the Mishnah's statement regarding an act of court is analyzed.

The terms חפיסה and דלוסקמא are defined.

A Baraisa identifies how many contracts are part of a תכריך or אגודה of contracts.

The Gemara wonders whether one can infer from the Baraisa that a knot is an identifying mark.

This inference is rejected.

The correct method of announcing that one found multiple documents is described.

The reason one who finds three documents related to one borrower returns the documents to the borrower is explained.

The reason one who finds three documents related to one lender returns the documents to the lender is ex-

(Continued on page 2)

REVIEW and Remember

1. What is the point of dispute between Abaye and Rava?

2. What is a שטר בירורין?

3. What caused the cedar column in the Beis Midrash to split?

4. Why is a receipt found in the possession of the lender considered meaningless?

Distinctive INSIGHT

Who found the document among his records?

מצא שטר בין שטרותיו ואינו יודע מה טיבו יהא מונח עד שיבא אליהו

The Mishnah teaches that if a person finds a document among his papers, and he does not know the status of its payment, he must leave it and not collect with it. Only with the arrival of Eliyahu HaNavi will its status be clarified.

Rashi explains that this case is dealing with a third party, one who is neither the lender nor the borrower, who finds a document among his papers. The finder does not recall whether the lender deposited it with him, or if it was the borrower, or even if it might have been partially paid, and it was given to him to safeguard until the balance was paid. This opinion of Rashi seems to suggest that if the lender himself would find a loan document among his records, he could produce it for collection even if he has no recollection whether it is still an active loan.

However, בעל התרומות (53:1.1) explains that the case is where the lender finds the document, and the Mishnah is teaching that he may not collect with the document unless he is certain that it has not yet been paid. This is how the ruling is cited in Shulchan Aruch (C.M. 59:1). S"ma (as well as Nesivos and Ketzos) explains that the case is where the lender says he is not sure if the money is still owed, but the borrower is claiming that he is certain that he did pay it back. Therefore, we invoke the rule ברי ושמא ברי עדיף. When one of the claimants is certain of his position, while the other is unsure of his contention, we give precedence to the claim which is certain. In our case, the borrower would win. Although the halacha concludes that we do not rule that a claim of certainty wins versus a claim of uncertainty (we hold לאו ברי עדיף), this is specifically in a case where the one who wishes to extract money claims that he is certain and the one being claimed against says he is uncertain. A claim of ברי is not strong enough to extract money. Here, however, we have the reverse. Here, the certain claim is that of the borrower, so his claim is strong enough to protect him so that he need not pay.

The Nesivos further explains that there is a difference between where the borrower is alive or whether he is not alive, and the claim is being presented by his heirs. If he is alive, we believe him that the loan was paid, and we even require the lender to forfeit the document he just found, and about which he is unsure of its status. If, however, the borrower is not present, and the claim that the loan was paid is made by his heirs, although we do not make them pay, we leave the document in the possession of the lender. This is the case of our Mishnah, where the document remains with him until the arrival of Eliyahu. ■

HALACHAH Highlight

Finding a lost document

מצא שטר בין שטרותיו ואינו יודע מה טיבו

One who finds a document amongst his documents and does not recall its status

The Gemara discusses the case of someone who finds a document amongst his other documents and cannot recall its origin and rules that the document should remain in his possession until the arrival of Eliyahu Hanavi. Rashi[1] explains that the finder is a third party who does not recall whether it was the borrower or the lender who deposited the document with him. Baal Haterumos[2] cites Gaonim who explain the Gemara differently. They assume the Gemara is referring to a lender who finds a loan document and does not recall whether it was paid and the Gemara's ruling is that the lender may not collect with a document that may no longer be valid. Shulchan Aruch[3] rules that a lender may not collect with a document that he finds and does not recall whether he already collected the money of the loan.

Nesivos Hamishpat[4] explains that the lender has an uncertain claim **(שמא)** and the borrower claims with certainty **(ברי)** that he does not owe the money. Even though in many circumstances we do not say ברי ושמא ברי עדיף, meaning, we do not assume that one with the certain claim is correct; in this case the judgment will be for the one with the certain claim. The reason is that the one with the certain claim is already in possession of the money so his certain claim that he does not have to pay will tilt the scales in his favor.

Rashba[5], following Rashi's interpretation that the Gemara refers to a third party who finds the loan document in his possession, writes that even if the borrower and lender agree that the document is valid, it should not be returned to the lender since there is concern that the lender and borrower are in collusion to illegally take land from a purchaser. Rosh[6] disagrees and explains that the concern for collusion or that the document was drawn up but the loan never occurred applies only when the document was lost since losing the document indicates that it is not valid but where it remained in the possession of a third party and he merely forgot who gave him the document there is no reason to express such a concern. ■

1. רש"י ד"ה מצא שטר
2. בעל התרומות שער נ"ג ח"א אות א'
3. שו"ע חו"מ סי' נ"ט סע' א'
4. נה"מ שם סק"א
5. רשב"א ד"ה מצא
6. רא"ש לפירקין סי' נ"ב ■

(Overview. Continued from page 1)

plained.

4) Receipts

R' Yirmiyah bar Abba in the name of Rav teaches that a receipt that is found in the possession of the lender is meaningless.

The Gemara elaborates on this ruling. Four unsuccessful challenges to this ruling are now presented. ■

STORIES Off the Daf

"He shall restore it to him"

הרי זה יחזיר

Today's daf discusses the mitzvah of returning a lost object to its owner.

A certain doctor was having a rather difficult time. People would come to his house at all hours and expect him to be available to treat them. Very often this interfered with his personal life and he wondered if he could possibly refuse to treat a patient unless it was a real emergency. There were no other doctors in his neighborhood, but he was tired of being everyone's "korban."

This doctor approached the Satmar Rav for help. The hapless physician asked, "Perhaps I can refuse, since the language of the gemara is that a doctor has permission to treat. If so, I have no obligation to treat unless it's a case of pikuach nefesh."

The Satmar Rav disagreed. "A doctor is obligated to heal any sick Jew that approaches him. This obligation is included in the mitzvah of hashavas aveidah..."

When a certain talmid chacham heard about this exchange he was very amused. The next day he went to Zichron Moshe to daven and while there he recounted the "Rebbishe chiddush" he had heard from the Satmar Rav. When he was finished he began to chuckle.

Although even from his tone it was clear that he felt this psak was shoddy scholarship at the very least, one of the many erudite scholars present put an end to his fun. "Please don't laugh at the one who knows better than you. Instead, just listen to the words of the Rambam's commentary on the mishnah."[1]

This scholar then proceeded to read the golden words of the Rambam: "A doctor is obligated from the Torah to treat sick Jews. This is included in the verse, והשיבו לו—'And he shall restore it to him'—which teaches that when we see another Jew is ill, we must help him with our bodies, money, or knowledge."[2] ■

1. פירוש המשניות לרמב"ם נדרים פ"ד מ"ד

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