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כתובות פ״א
The Chicago Center

This month's Daf Digest is dedicated
L'ilui Nishmas Yosef ben Chaim haKohen Weiss (8 Elul) & Mrs. Yenta Weiss, Rivke Yenta bas Asher Anshel (13 Elul)
Family Weiss, London

OVERVIEW of the Daf

1) Burying a yevama (cont.)

R' Amram rules that if a yevama dies it is her father's family that is obligated to bury her.

Abaye suggests a proof to this ruling from a Mishnah.

Rava rejects the proof and their exchange is recorded.

As part of Abaye's defense he proves that Beis Shammai maintain that a contract that stands to be collected is treated as if it were already collected.

The exchange between Abaye and Rava continues.

2) The yavam's rights to his brother's estate

An incident is presented in which R' Yosef ruled that a yavam is not permitted to sell the property that he will inherit when he performs yibum.

Abaye disputes this ruling.

The question is sent to different authorities who rule differently on the matter.

R' Yosef suggests another source for his ruling.

Abaye rejects this proof as well.

The inquiry was resent with R' Yosef's new source.

R' Nachman is cited as asserting that the Baraisa is not authoritative.

The Gemara begins to search for the reason R' Nachman did not consider the Baraisa authoritative. ■

REVIEW and Remember

1. Who is responsible to bury a yevama?

2. Explain the principle שטר העומד לגבות כגבוי דמי.

3. Why is a yavam restricted from sharing his deceased brother's property with his living brothers?

4. Is a sale of property valid if Chazal prohibited the sale of the property?

Today's Daf Digest is dedicated
In memory of
מרת עלקא בת ר׳ מנחם מנדל, ע״ה

Distinctive INSIGHT

The kesubah from the first or second husband

דתניא מי שמת וכו׳ אע״פ שכתובתה אינה אלא מנה

Rabbi Akiva Eiger notes that the amount of the kesubah of a yevama should be determined by the commitment her first husband had to her, which was for two hundred zuz. Why, then, does the Baraisa say that her kesubah is only one hundred? We must say, therefore, that the Bersaisa is assuming that the former husband married this woman when she was a widow, and her kesubah was, in fact, only one hundred zuz.

We have to wonder, however, what difference does it make that the Baraisa uses this example with its scaled back amount? The point of the Baraisa is that the yavam may not sell any of the property of his deceased brother, as it is all encumbered to pay the kesubah. The case is one where the deceased brother had left one hundred maneh, which is a huge sum as compared to the kesubah, whether the kesubah is one maneh or two maneh.

Earlier, Tosafos (ד״ה הרוצה) asks why the sale of the property of the former husband by the latter husband should be cancelled. It does not seem as if the woman stands to lose in any way by such a sale, as the rule is that if there are no assets of the former husband to pay for the kesubah, the obligation to back the value of the kesubah resorts to being the responsibility of the latter husband. In reference to this question of Tosafos, Rabbi Akiva Eiger presents a strong objection. Of course there is a great difference whether the kesubah is paid by the assets of the former husband or provided by the latter husband. If it is paid by the former husband, she stands to collect a full two hundred zuz, while if the kesubah is from the latter husband, she would only collect one hundred. Rather, we see that Tosafos understood that the case is where the woman was a widow when she married the former husband. This is why there does not seem to be any difference to her at this point whether the kesubah is paid from the property of the former or latter the second husband. Tosafos answers that if the property of the former husband is sold, she will be forced to contend with the buyers and to try to extract the property from them.

We now see that the wording of the Baraisa is precise in that the kesubah of the woman is only one hundred. If the kesubah of the woman would have been two hundred, she

(Continued on page 2)

HALACHAH Highlight

Is a borrower a מוחזק ?

בית שמאי דאמרי שטר העומד לגבות כגבוי דמי

Beis Shammai who maintain that a document that awaits collection is like it was collected

A question that arises regarding loans is who is considered מוחזק— in possession of the money? The reason this question is so fundamental is that when there is a dispute between the borrower and lender or there is some doubt regarding some of the conditions of the loan, the money under dispute will remain with the party that is מוחזק on that money. Rav Ovadiah Yosef[1] quotes the position of Panim Bamishpat that the borrower is always considered to be מוחזק on the money. The rationale behind this position is that although the borrower has a responsibility to pay back the lender, nonetheless the money that he borrowed becomes his property (מלוה להוצאה ניתנה). Therefore, if a doubt arises concerning details or obligations of the loan the borrower is considered מוחזק on the money and the burden of proof will fall upon the lender.

Rav Ovadiah Yosef disputes this conclusion and maintains that the lender is considered מוחזק. He cites a teshuvah of Rashba[2] to support his position. Rashba addresses a case where there is an uncertainty whether a wife waived her right to financial support. The husband claimed that since the wife is in possession of a kesubah the principle יד בעל השטר על התחתונה - the contract owner has the lower hand should be applied and the burden of proof should rest on her shoulders. Rashba disagreed with this assertion and wrote that in this case the husband is considered the "owner of the contract" since he didn't pay off his obligation and is merely asserting that his wife waived her rights. Therefore, the burden of proof rests on the husband's shoulders. This clearly indicates that in cases involving a question of whether one may have waived his rights (מחילה) the other party has to prove that a מחילה took place. One should not, continued Rav Yosef, assert that the case of a loan and the case of a kesubah are not parallel since in the kesubah case she is in possession of a kesubah which makes her מוחזק on her rights because our Gemara states that a contract that stands ready for collection is not considered as if it is collected. Thus in both cases the money stands to be collected and there is precedent to the assertion that the one alleged to have waived his rights is considered the מוחזק. ■

1. שו"ת יביע אומר ח"ג חו"מ סי' ג' אות ט"ז וי"ז.
2. מובא דבריו בב"י אה"ע סי' צ"ג. ■

(Overview. Continued from page 1)

would have every right to protest the sale of the property of the former husband, as she could have collected a full two hundred from those assets, whereas the kesubah from the second husband would not be more than one hundred. The answer is, as we have seen, that the case must be where she was already a widow when she married the first husband. ■

STORIES Off the Daf

The Segulah

"אלא דרבי אבא קשיא..."

On today's daf, we find a reference to a situation where a husband might consider divorcing and then re-marrying his wife in order to gain the benefit of funds designated in the kesuvah. The following anecdote illustrates another situation where a husband might consider following a similar course of action.

A young couple who were childless for several years heard about an unusual segulah that was rumored to help the infertile. According to the rumor, if they divorced and then remarried it could enable them to have children. The husband was all for it. "What have we got to lose?" he asked his wife. His wife, however, was against it.

They decided to ask the Steipler Gaon, zt"l, this unusual question.

The Steipler Gaon replied, "I have never heard of such a segulah. Now let us examine the different issues raised by this possible segulah: The first question to ask is if the wife can feel secure that her husband will remarry her. Perhaps this is just an excellent pretext to give a get with minimum difficulty? Perhaps the true plan here is to put off the remarriage with various pretexts and to marry someone else?"

Immediately the Gaon answered his own question, "The truth is that this is a very unlikely contingency. This would be the ultimate betrayal and we should not suspect the husband of such a despicable intention. Surely, if they agree to remarry, there is no reason to suspect foul play on the husband's part. So I will say that, halachically speaking, you may do this without question. Since I have never even heard of this segulah, however, how can I possibly advise you about what is unknown to me?"

When recounting this story, Rav Yitzchak Zilberstein, shlit"a, added, "If the woman's reason for not wanting a divorce is that she feels that this is a disgrace, she has a good claim. We learn this from Rashi in Kesuvos 81a, on the word v'elah, where he states clearly that divorce is a disgrace for both of them.

"In any event," Rav Zilberstein concluded, "They would be better off doing a less drastic segulah, like establishing a gemach. Whether this works or not, at the very least it will increase their merits in the next world!" ■

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