



OVERVIEW of the Daf

1) A single witness (cont.)

R' Pappa notes that a wise husband can create a circumstance where his wife will take a Biblical oath.

R' Shisha the son of R' Idi rejects this suggestion and offers an alternative method of imposing a Biblical oath.

R' Ashi rejects this suggestion and offers an alternative method of imposing a Biblical oath.

2) Collecting from orphans

A Mishnah is cited that teaches that orphans must take an oath before collecting a debt.

The Gemara explains that the Mishnah refers to orphans collecting from orphans.

R' Zeraikah in the name of R' Yehudah qualifies the ruling of the Mishnah.

Rava successfully challenges this qualification and forces the Gemara to revise the quote of R' Zeraikah in the name of R' Yehudah.

3) Collecting a debt when not in the presence of the borrower

R' Yitzchok of Antochiya and Rava in the name of R' Nachman disagree whether a lender who collects his debt when not in the presence of the borrower is required to take an oath.

4) Clarifying R' Shimon's position

The Gemara wonders which case of the Mishnah does R' Shimon intend to dispute.

R' Yirmiyah suggests that R' Shimon refers to the case

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REVIEW and Remember

1. How does the husband behave wisely and cause his wife to take a Biblical oath?

2. Does one take an oath when collecting a debt when not in the presence of the debtor?

3. What is the procedure for a woman to collect support when her husband is out of the country?

4. Does the guardian of orphans take an oath that he didn't embezzle any of their funds?

Distinctive INSIGHT

Collecting in the absence of the debtor

לא שנו אלא לכתובת אשה משום חינא וכו' אפילו בעל חוב וכו' ואתה נועל דלת

The Mishnah had stated that a woman may collect her kesubah from the estate of her former husband even in his absence. The reason for this, explains R' Yitzchok in Antochya in the Gemara, is because of "חינא—favor." Women will marry only if they feel secure that they will be able to collect their kesubah even if the husband is not present at that time. However, an ordinary creditor may not collect from the borrower's property in his absence, even with an oath.

Rava, in the name of R' Nachman extends this halacha and allows an ordinary creditor to collect from the assets of a borrower even in his absence, in certain circumstances. The reason for this is in order not to discourage people from lending money.

We see that the strict halacha does not allow a lender to collect unless the borrower is present, but the rabbis enacted a special dispensation to allow it. Rambam (Hilchos Malveh u'loveh 13:1) clearly states that this rule is a תקנת חכמים.

The Achronim ask why this ability to collect is not a Torah law. We know that the property of the borrower is mortgaged against the loan, and in case of default, the lender should be able to have direct access to the land, whether or not the borrower is present.

The general approach to answer this question is based upon the Gemara in Arachin (22b). The reason we do not allow collection in the absence of the debtor is that we are concerned that the debt might have been paid, and that the debtor has a receipt to that effect. Another answer is that we consider a person's land to be a guarantor for himself. In other words, the first line of payment is the person himself, and only in the case that he is in default can we go to the "guarantor" to collect from this second level of payment. Therefore, when the person is not present, and we have not approached him, we cannot proceed to the second level of collection. Without the enactment by the rabbis, we would not be able to collect in the absence of the debtor. ■

HALACHAH Highlight

Collecting a debt in the absence of the borrower

שלא יהא כל אי ואי נוטל מעותיו של חברו ... ואתה נועל דלת בפני לווין

So that everyone will not take his friend's money ... and you will lock the door in the face of the borrowers

A lender who wants to collect a debt from a borrower who is not presently in town must follow three steps before he is authorized to collect the loan.¹ The first step is that he must validate (מקיים) the loan document. If the loan document cannot be confirmed or if it was an undocumented loan the lender will not be able to collect his debt in the absence of the borrower. The reason is that if the borrower was present he would be believed to claim that he paid the loan since it is undocumented or the document was not certified. Therefore, Beis Din will file that claim on behalf of a borrower who is not present.²

The next step³ is that the lender must bring evidence that the borrower is out of town and is thus unavailable to make a personal appearance before Beis Din. This means that Beis Din must determine whether the borrower could be notified of the lender's intent to collect his debt and return to appear before Beis Din within thirty days. If that is possible Beis Din sends an agent to the borrower, to inform him that his lender is seeking to collect the debt. If it is not possible to notify the borrower so quickly, the lender takes an oath that he did not receive payment for this loan.

STORIES Off the Daf

The Violent Litigant

אי פיקח הוא מייתי לה לידי שבועה דאורייתא

Today's daf begins by discussing stratagems whereby a clever man can protect himself from paying more than the kesubah. He can insist that his wife make a Torah level oath in court. Many of the gedolim used ingenious methods to outwit those who wished to intimidate or threaten them.

Rav Shmuel Salant, ז"ל, the Rav of Yerushalayim, was well known in this regard. Time and time again he thwarted plots and outmaneuvered the most astute criminals. He was a great scholar

and tzaddik blessed with an almost uncanny astuteness. The Rav of Yerushalayim was no one's fool.

Once there was a complicated din Torah regarding a very significant sum of money. After much consideration, the dayanim ruled in favor of one of the litigants. His opponent would have to suffer the loss. This opponent was known to be a man with a very ugly temperament who could at times be violently explosive. The decision went very much against his grain since he didn't wish to pay. He started to speak with great chutzpah against the judges and accused them of being biased against him. He chose to direct his invective most especially toward Rav Shmuel Salant. "How dare you pervert justice to such an extent?" he

bellowed. "I'll teach you! I will break all your windows!" he threatened.

The Rav didn't blink. He said in a very menacing voice, "Do you think I will just take that lying down?"

The raging litigant suddenly remembered to whom he was making threats and felt a chill of fright. He gruffly apologized and slunk out.

One of the other dayanim couldn't restrain his curiosity. "Rebbi, what would you have done if he had broken your window? Would you really have struck back at him?" he asked the renowned tzaddik.

Rav Shmuel answered, "What's the question? I would certainly have responded. I would have called a glazier to replace the glass!" ■

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immediately prior to his statement and explains the exact point of dispute.

R' Sheishes challenges this explanation and offers an alternative explanation of the case R' Shimon intends to dispute and the exact point of dispute.

Abaye challenges this explanation and offers an alternative explanation of the case R' Shimon intends to dispute and the exact point of dispute.

R' Pappa challenges this explanation and offers an alternative explanation of the case R' Shimon intends to dispute and the exact point of dispute. ■

Once these two steps have been followed the lender is authorized to collect the debt from the borrower's property, whether land or movable objects, but he must confirm that the property he plans to take for the loan is indeed the borrower's property.⁴ Additionally, Beis Din will stand in the place of the borrower to determine which property the borrower would choose to give away to satisfy his debt.⁵ The rationale behind these halachos is that Chazal wanted to ensure that people would not borrow money and run off to another country, because this would inhibit people from lending money.⁶ ■

1. עי שרייע חוי"מ סיי קי"ו סעי ב'.

2. מ"מ פ"י"ג מהלי מלוה ה"ב.

3. שרייע שם סעי א'.

4. שרייע שם סעי ב'.

5. עי שם סעי ג'.

6. רמב"ם פ"י"ג מהלי מלוה ה"א. ■