

OVERVIEW of the Daf

1) Appraisals

A Baraisa presents different opinions regarding the duration of the announcement necessary before selling different properties.

R' Chisda in the name of Avimi rules that the property of orphans is announced for sixty days.

Discussion regarding this ruling is recorded.

2) Selling the property of minors

R' Yehudah in the name of R' Assi and R' Yochanan debate whether property belonging to orphans who are minors is sold to pay a woman's kesubah.

The rationales behind their respective opinions are presented.

Three unsuccessful challenges to R' Assi's position that orphan's property may not be sold to pay a woman's kesubah are presented.

A related incident is recorded.

R' Nachman reports that he used to not get involved in selling the property of minors but then changed his practice.

R' Pappa and R' Huna the son of R' Yehoshua offer different explanations why R' Nachman did not want to be involved in selling the property of orphans.

The practical difference between these two explanations is identified.

A final decision regarding this dispute is presented.

Although the Gemara ruled in favor of the explanation of R' Huna the son of R' Yehoshua it nevertheless makes two unsuccessful attempts to prove his opinion correct.

Rava suggests another reason why R' Nachman would avoid becoming involved in the sale of the property of orphans.

This explanation is unsuccessfully challenged.

Rava and Nehardai dispute whether beis din should involve itself in the collection of property from orphans.

R' Ashi issues a final ruling about this matter. ■

Distinctive INSIGHT

The mitzvah for the orphans to pay their father's debt

פריעת בעל חוב מצורה

Rav Nachman stated that originally he did not allow collection of a father's loans from orphans who were minors. However, after he heard Rav Huna's declaration that orphans who benefit from land that does not belong to them deserve to follow in the path of their deceased father, Rav Nachman realized that he should allow the collection of such loans. This would protect the orphans from being subject to the curse of dying early.

Rav Pappa clarifies that the reason Rav Nachman initially did not feel that orphans should pay their father's loan is that "paying back a loan is a mitzvah," and orphans who are minors are exempt from mitzvos. The lender would have to wait until the orphans attain majority before contending with them in court. Rav Huna b. R' Yehoshua argues with R' Pappa, and he explains that the reason Rav Nachman did not wish to collect loans from orphans was that we suspect that the father had designated a specific item for collection by the lender, and that the lender might have already collected his loan by taking this item. Consequently, orphans should not have to pay back a loan which might very well already be paid.

The Gemara notes that a practical difference between these reasons would be in a case where the father clearly admitted before he died that he never paid the loan or set aside anything for payment. In this case, there is still no mitzvah for the minor orphans to pay their father's loan. However, there is no suspicion that the orphans were unaware of an arrangement made to pay. Based upon this consideration,

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REVIEW and Remember

1. For how many days must Beis Din announce that they will be selling the property belonging to orphans?
2. What is the point of dispute between R' Pappa and R' Huna the son of R' Yehoshua?
3. What is the practical difference between the positions of the Amoraim in Question #2?
4. What is R' Ashi's final rulings regarding Beis Din's involvement with the property of orphans?

Today's Daf Digest is dedicated
In memory of
Florence bas Louis, a"h
Mrs. Florence Sonnenschine
By her friends and neighbors

HALACHAH Highlight

The presumption that someone is honest and upright

אחזוקי סהדי בשקרי לא מחזיקין

We do not presume the witnesses to be liars

The Gemara teaches that when witnesses testify that someone stole a field prior to his death we do not appoint an administrator for the deceased's orphans to protect their interests (such as we do in the case when a field has to be selected to pay the deceased's debts) since we do not presume the witnesses to be liars. Ritva¹ explains that the basis for this assumption is that people have a **חזקת כשרות** – a presumption of being honest and upright. Teshuvah Maharshdam² also explains that people are assumed to be honest. Just as regarding animals we say that they are assumed not to be kosher until it is established that they were properly slaughtered but once it is established that they were properly slaughtered they are presumed kosher absent evidence to the contrary, so too, every Jew was created upright (see Koheles 7:29) until there is evidence that he deviated from that upright path.

Teshuvah Chavos Yair³ was asked to rule about the following incident. Every year an appraisal was made to determine exactly how much each family had to give towards taxes. One person would year after year claim that he was poor and was assessed only a small amount. After his death it was discovered that he had a small fortune in his possession and the question was whether the community could obligate his heirs to pay a higher tax to make up for the taxes that he did not pay all those years that he claimed he was poor. On the other hand perhaps he was indeed poor all those years and just before his death he amassed the small fortune found in his possession. Chavos Yair answered that the presumption that one is honest

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the orphans would be expected to pay the loan now.

Another practical difference between the cases would be if the father was asked to pay the loan, and due to his refusal he was placed in a state of banishment, and he died without the issue having been resolved. Again, there is still no mitzvah for the minor orphans to pay this loan, but there is also no possibility that the father set aside money to pay the loan.

The Rishonim discuss whether the mitzvah to pay one's loan is a Torah law or if it is rabbinic. Rosh concludes that this is a Torah law. He writes that if someone owes money and he takes a vow not to pay it, the vow is not binding because he is already committed to pay the loan based upon the Jewish people's oath at Sinai to observe the Torah. The opinion of the Yerei'im is that this is a rabbinic mitzvah.

According to Rosh that this is a Torah law, there are varying suggestions regarding the scriptural source for this obligation. Rashi (Kesubos 86a) learns it from Vayikra (19:37), "a correct *hin*," which is interpreted to refer to one's remaining sincere and truthful to his commitments. Ritva and Ramban learn this from Devarim (24:11) which says that a borrower must pay his debts. ■

and upright applies only when there is no evidence to the contrary or if there is no benefit for the person in question from his alleged wrongdoing. However, when there is evidence that indicates that someone was not honest and there was a benefit for the accused to be dishonest the presumption that one is upright is lost. For this reason Chavos Yair ruled that they could charge the orphans a higher tax to cover for the years that their father was dishonest about his wealth. ■

1. ריטב"א ליבמות ז: ד"ה אחזוקי.

2. שו"ת מהרשד"ם חו"מ סי' ש"י.

3. שו"ת חות יאיר סי' נ"ח. ■

STORIES Off the Daf

The Widowed Mother

המובעת כתובתה

A widowed woman living in her deceased husband's home is in a difficult position. One woman who had been widowed of her second husband (and both he and she had only had children from their first marriages) was being supported by the proceeds of her husband's estate. However, she worried about the kesubah money that she hoped to pass

on to her own children after she died. Of course, she was obligated to swear that she had never received any of the money owed to her for the kesubah before collecting. The trouble was that she was not very healthy and was always afraid her time would come suddenly and that her children would lose out on her kesubah. At the same time, she could not afford to lose the support afforded to her by her husband's estate. And, as we find on today's daf, a widow who demands her kesubah in *beis din* loses any such support.

This widow wondered whether she

could swear without collecting her kesubah. Was this the same as asking to be paid? She desired to swear without her late husband's heirs knowing she had done so. That way, if she died suddenly, her children would collect in full.

When this question reached the Maharitatz, *zt"l*, he ruled that one who swears in this manner does not lose anything. "The Gemara merely says that one who demands her kesubah loses support. But this widow is not demanding anything right now, so why should she lose her support?"¹ ■

1. שו"ת מהריט"ץ החדשות, סי' נ"ה. ■