

OVERVIEW of the Daf

1) Debtors (cont.)

Rava concludes citing a ruling from R' Nachman related to a debtor who is told to pay his loan.

R' Zevid presents an alternative version of R' Nachman's ruling.

2) An assumed liar

Rabbah bar bar Chana in the name of R' Yochanan rules that if someone initially denies owing his friend money and after witnesses testify against him he claims that he paid he is assumed to be a liar.

A related incident is presented.

R' Yochanan is cited as ruling that one is presumed to be a liar to take an oath if he claimed that he took an oath and witnesses testified that he did not take an oath.

A qualification to this ruling is presented and support for this qualification is noted.

3) Finding a loan document

R' Assi in the name of R' Yochanan rules that one who finds a certified loan document that was dated on that day may return it to the creditor.

R' Zeira unsuccessfully challenges this ruling.

R' Kahana offers an explanation.

The novelty of this explanation is explained.

This ruling is unsuccessfully challenged.

4) An assumed liar (cont.)

R' Chiya bar Abba in the name of R' Yochanan ruled that someone who claims to have paid an obligation imposed by Beis Din is not believed.

R' Yochanan explains to R' Chiya bar Abba why this rul-

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REVIEW and Remember

1. When should one return a lost loan document to the lender?

2. What is the difference between the phrase **צא תן לו** and the phrase **חייב אתה ליתן לו**?

3. What was R' Yochanan's response to the assertion that his teaching could be found in a Mishnah?

4. What is the position of R' Elazar ben Azaryah concerning a kesubah written for an arusah?

Distinctive INSIGHT

A loan document which has been paid, but is used for a subsequent loan

שטר שלוחה בו ופרעו אינו חוזר ולוה בו שכבר נמחל שיעבודו

R' Assi in the name of R' Yochanan taught the law that after a document was used as verification for a loan and the loan was paid back, it is prohibited to reuse that document again as the written verification of a different, subsequent loan. The reason for this is that that first document contains a record of a property which was promised as collateral for the first loan. With the payment of the first loan, the lien on that land has been settled. If a new loan is given using that first document, it would erroneously indicate a lien against that first land from the date of the original loan. The S"ma (C.M. 48:1) cites the **עיר שושן** who says that the document cannot be used to collect the loan even from land found with the borrower which is free and clear of any liens. The document is considered invalid. Because the signatures have no validity regarding the lien on the land, which has been released, their testimony has no legal meaning regarding the loan, as well. In fact, if the borrower would claim that he paid the loan, the lender could not even use this document as proof that the money is still owed. It is simply has no validity at all.

The S"ma himself argues against this view, and he holds that although the old document used for the new loan cannot be used to collect from the land which had a lien and was later sold (**משועבדים**) it can be used to collect land which is owned by the borrower and is free and clear (**בני חורין**).

The S"ma brings a proof to his contention from the opinion of Rosh (Nedarim 27b). The case is where a loan was paid partially. Instead of writing a new loan document, the original document was given to a third party. The borrower instructed that if he does not pay the balance by thirty days, he would pay the entire amount again. The term expired. R' Yose says the borrower must pay the entire amount, as his exaggerated offer is binding (**אסמכתא קניא**). R' Yehuda holds that the borrower does not pay the entire amount. Rosh offers two explanations for R' Yose. One approach is that the lender may collect the entire loan, but only from **בני חורין** (land that is free and clear), as the amount paid back earlier had its lien cancelled. The other explanation, which Rosh prefers, is that the entire amount may be collected from **משועבדים** (encumbered land), and the partial amount collected was a gift, and the entire loan is still outstanding.

S"ma notes that the first answer of Rosh indicates that a document which has been paid (even partially) may be used for collection from **בני חורין**. We see that the document and its signatures are not considered void. ■

HALACHAH Highlight

The disqualification of מזויף מתוכו

שטר שלוח בו ופרעו אינו חוזר ולוח בו שכבר נמחל שיעבודו

A document used for a loan and he paid back the loan may not be used for another loan since the lien was already released

Rema¹ asserts that a document whose lien was released could be used for a second loan, according to the opinion who maintains עדי מסירה כרתי—the witnesses to the delivery are the ones who legalize a document. Shach² writes in the name of Mordechai that this ruling is limited to a case where the witnesses to the second delivery of the document are the same witnesses who signed on the document as witnesses for the first loan. If, however, there was one set of witnesses to the first loan who signed the document and a second pair of witnesses were used to witness the second delivery of the document the document is invalid because it is מזויף מתוכו—disqualified from within, meaning that the details recorded in the document are not consistent with the details of the actual loan. Later authorities question the objection of Shach since according to his approach the document that is delivered a second time in the presence of the original witnesses should also be invalid. If witnesses sign on a document שלא לשמה—without intent for the contents of the document the document is invalid. Therefore, when a document is reused and one relies on the witnesses to the delivery of the document - the document should be considered מזויף מתוכו since it contains

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ing is not merely an echo of a similar ruling found in a Mishnah.

Abaye challenges this ruling and then retracts the challenge.

Tangentially, Mar Kashisha the son of R' Chisda questions Abaye's assumption that a widow from eirusin collects a kesubah.

One possible source is cited but dismissed. ■

signatures that are invalid.

Nesivos Hamishpat³ answers that witnesses who sign on a document essentially testify that they are responsible for the public's awareness of the lien created by the loan. Therefore, if there are witnesses to the delivery of the document a second time it is not a lie since they are testifying a second time that the awareness of the lien created by the loan is their responsibility. Ketzos Hachoshen⁴ suggests that the issue of מזויף מתוכו applies only when there are people testifying to the contents of the document who are unfit to testify, e.g. they are related to the parties, they are disqualified witnesses or signed the document without intent to testify. The witnesses to a document whose lien was released are considered to be non-existent and thus the document is not מזויף מתוכו. ■

1. רמ"א חו"מ סי' מ"ח סע' א'
2. ש"ך שם סק"ה
3. נה"מ שם סק"ב
4. קצה"ח שם סק"ו ■

STORIES Off the Daf

To Tell the Truth...

הוחזק כפרן

On today's daf we find different claims that, if disproved, establish a person as a kafran, a denier of the truth who might swear falsely.

The Shelah Hakadosh, זת"ל, writes that one who wishes to be certain that his children will follow in the way of Torah will do his utmost to inculcate in them the importance of being truthful. He tells of a certain man, with whom he often spent time. "He was one of the noble and pious Sefardim who would not tell even the smallest lie for any price. When I asked him how he had attained this precious trait, he explained that this was all

due to his father. He would reward his children with many coins for every truthful word. At the same time, any falsehood uttered would be severely punished. In this manner, he inculcated in his children the importance of truth to such an extent that truthfulness entered his blood and soul."¹

The Midrash recounts the power of always being truthful with the following inspiring story:

A certain young man had a natural propensity to steal. After he acted on this impulse numerous times, he felt so bad about himself that he decided that he would do anything to enable him to stop such sinful behavior. But he did not know what to do or how to rectify this character defect. He went before Rav Shimon ben Shetach and begged the Rav to tell him how to do a true teshuvah.

The Rav recommended that the young man accept upon himself never to lie under any circumstances. "This is a small thing!" the young man commented. He immediately took upon himself never to speak a false word no matter what.

A short time went by and this young man was once again assailed by an inner desire to steal. He broke into a stranger's house and took everything of value. As he was ready to leave with his ill gotten gains, he was struck with a sudden thought. "What will I do if I am accused of emptying this house of its valuables? I cannot deny that I am guilty as charged since that would be a lie!"

He immediately returned everything he had taken and became a complete ba'al teshuvah!² ■

1. של"ה הקדוש שער האותיות אות ד' דרך ארץ
2. מדרש מי השלוח או"מ עמוד רב"ו