

OVERVIEW of the Daf

1) Taking an oath to collect one's wages (cont.)

The Gemara concludes its analysis why an employee is not believed to take an oath regarding his salary even after it was due.

2) Witnesses that the employee demanded his wages

R' Assi clarifies what the witnesses inform us with their testimony.

This explanation is questioned but resolved by Abaye.

This explanation is unsuccessfully challenged.

3) **MISHNAH:** The Mishnah discusses the restriction against entering the borrower's home to take an object as security and the obligation to return the object when it is needed.

4) An agent of Beis Din taking an object as security

Shmuel rules that an agent of Beis Din may not enter the borrower's house to take an object as security.

This ruling is unsuccessfully challenged.

Proof to Shmuel's reading of the Mishnah is suggested but rejected.

A number of unsuccessful attempts to refute Shmuel are presented.

5) Providing a second bed

The Gemara questions the Baraisa's statement that the borrower is given two beds.

It is explained that one bed is for eating and the other for sleeping.

A statement of Shmuel is cited that stresses the importance of having separate beds for eating and sleeping.

6) Arrangements

An Amora taught that arrangements (מסדרין) will be made for a delinquent borrower to keep certain essential items.

R' Nachman challenges this ruling.

The Gemara unsuccessfully challenges R' Nachman's position.

7) Treating Jews as the children of kings

Abaye cites statements of different Tannaim who subscribe to the position that we treat Jews as the children of kings.

8) Arrangements (cont.)

The Gemara explains an earlier position that was suggested but rejected.

R' Chaga challenges the premise that a borrower is left with his basic necessities. ■

Distinctive INSIGHT

Taking items as security, and arranging a final settlement

ונותן מטה ומטה ומצע לעשיר, ומטה ומפץ לעני וכו' כדרך שמסדרים בערכין כך מסדרין בבעל חוב

In a worst-case scenario, when a borrower cannot pay back his loan and we are forced to take his household items for collection, we still leave him with certain basics for his survival. The arrangement of leaving him a couch and a mat and certain tools is called "מסדרים לבעל חוב." As the Baraisa describes the procedure of an agent of the court entering the house of a borrower to collect items to pay for the loan which was due, the wording of the Baraisa suggests that the agent does not take any item which is designated for "the arrangement." In other words, the agent of the court does not take anything for collection initially that is designated in the eventual arrangement for the borrower to keep.

Rosh, however, among other Rishonim, points out that the Mishnah teaches that we return his pillow to the borrower each night, and his plow each morning (השבת העבוט). The case is obviously where he has no other pillow or plow, or else we would not have to return these to him regularly. Yet, we do take them away temporarily, even though these are among the things which are left for the borrower if and when an "arrangement" is made.

Furthermore, Tosafos (later, 114a) notes that the Gemara evaluates the difference between how a creditor collects money owed to him as opposed to how the Beis HaMikdash collects money, i.e. a pledge of ערכין (to pay someone's set value, see Vayikra 27). For ערכין, we use a final arrangement, but items taken for security do not have to be returned daily. Again, this contrast seems inconsistent with our rule that items that are essential are not taken as security.

(Continued on page 2)

REVIEW and Remember

1. When is one obligated to return to the borrower an object taken as security?

2. Is one permitted to take the garment of any borrower as security for a loan?

3. How many beds did a person need in the time of Chazal?

4. What are some of the applications that the Jewish People are considered the sons of kings?

HALACHAH Highlight

Lashes for violating the prohibition against taking an item as security for a loan

בעל חוב שבא למשכנו וכו'

A lender who comes to take an object as security etc.

Rambam¹ writes that if a lender violates the prohibition by taking an item as security for a loan when he was not authorized to do so he does not receive lashes since the prohibition is followed by a positive command that rectifies the prohibition (לאור הניתק לעשה), namely, to return the object that was taken. Later authorities point out a weakness to this argument. It seems from Rambam that the lender is exempt from lashes even if the borrower is wealthy and there is no mitzvah for the lender to return the item taken as security. If the exemption is based on the ability to rectify the prohibition by performing the positive command, in this instance the lender should receive lashes since there is no positive command to fulfill.

Taz² suggests that once there are times that a prohibition can be rectified by the performance of a positive command that prohibition is categorized as a prohibition that does not carry the punishment of lashes even if in some circumstances that positive command does not apply. Mishnah Lamelech³ challenges this explanation from a ruling of Rambam. Rambam⁴ rules that one who makes a temurah (the prohibition of transferring the kedusha of one animal onto another) will receive lashes for violating that prohibition despite the fact that it is followed by a positive command that rectifies the prohibition. The reason is that when the prohibition is violated with a communal korban or a korban brought by partners the rectifying positive command of offering both animals does not apply. Since in some circumstances the positive command does not apply and lashes will be administered the prohibition is categorized as a prohibition that carries the punishment of lashes even when the positive command is in force. This explanation is a diametrically opposite approach to

(Insight...continued from page 1)

Rabeinu Tam understands that the rules and guidelines for a final arrangement (מסדרים) are only in place when the collection is precisely that—a final settlement. However, when items are taken from a borrower temporarily as security, the rules are different. In this case, any types of items may be taken, and these items must be returned each evening or morning, as appropriate. According to this approach, Rosh notes that the beginning of the Baraisa is dealing with the agent of the court taking any type of item for security, but where the item must be returned daily. The subsequent statement of the Baraisa is dealing with the rules of a final settlement, where the item being collected will no longer be returned, but there are strict limitations and guidelines in place regarding the type of item which can be taken.

Many Rishonim (Ramban, Rashba, Ran) do learn that items which are essential and are protected in the final arrangement may not be taken even initially as security. The indications in the Mishnah that these items are taken involve a case where the borrower either gave them out of his free will, or where the lender took them, although he was not allowed to do so. ■

the one suggested by Taz.

Some⁵ suggest that the underlying rationale of a לאור הניתק לעשה is that it is the action of the positive command and not the mitzvah that has the capacity to rectify the prohibition. Hence, regarding the positive command to return an item improperly taken as security for a loan it is the return of the object that rectifies the prohibition even when there is no positive command to do so. ■

1. רמב"ם פ"ג מהלי מלוה ה"ד.
2. ט"ז חר"מ סי' צ"ז סעי' י"ד ד"ה מחזירין.
3. משנה למלך על הרמב"ם הנ"ל.
4. רמב"ם פ"א מהלי תמורה ה"א.
5. ע"י משנת ר' אהרן תשובה כ"א. ■

STORIES Off the Daf

Friend to the widow, father to the orphan

"לא תחבל בגד אלמנה..."

On today's daf we find that the special sensitivity we are commanded to demonstrate toward a widow includes not taking a collateral from her. Rav Shlomo Zalman Auerbach, z"l, was exceedingly attentive to the needs of widows and orphans.

When Rav Yitzchak Herzog, zt"l, passed away, one of the few people who

continued to visit the rav's home every chol hamoed was Rav Shlomo Zalman. When someone asked him why, he explained, "While Rav Herzog was still alive, their house was teeming with visitors during chol hamoed. But these people came to see the Rav during the festival. The moment he passed away, they no longer felt the need to visit. How must the poor widow feel after so many years of such lively moadim? Clearly this makes her feel even more pained and it is my job to at least continue coming so as not to pain her further."

When an orphan joined Yeshivas Kol

Torah, Rav Shlomo Zalman would always relate to him with a great deal of warmth, just as a father would.

One bochur who had lost his father before joining the yeshiva once revealed that not only did Rav Shlomo Zalman relate to him in a kindly manner, he also was careful to honor his widowed mother. "Every year before Rosh Hashanah, he would call my mother to wish her a good year filled with blessing. Surprisingly, he continued this practice even in the years after I had already left the yeshiva, without fail!"¹ ■

1. חכו ממתקים, ח"א, ע"י ח"ט