

OVERVIEW of the Daf

1) Repaying a loan in the presence of witnesses (cont.)

The Gemara continues to present different incidents regarding monetary claims and the discussions that ensue from those incidents.

2) Clarifying the Mishnah

The reason the claim of a deaf-mute, child or insane person does not generate an oath is explained.

A contradiction in the Mishnah is noted whether the claim of a minor can generate an obligation to take an oath.

Rav resolves the contradiction by distinguishing between the positions of R' Eliezer ben Yaakov and Chachamim related to a minor who comes with a claim of his father.

The position of R' Eliezer ben Yaakov is analyzed.

It is decided that the dispute between R' Eliezer ben Yaakov and Chachamim revolves around Rabbah's explanation for why someone who makes a partial admission must take an oath.

Rav's explanation is unsuccessfully challenged.

Shmuel offers an alternative explanation of the Mishnah.

The Gemara presents a number of unsuccessful challenges to Shmuel's explanation.

3) **MISHNAH:** The Mishnah enumerates things that are not subject to the oath of judges. Additional related cases are presented and discussed.

4) Clarifying the Mishnah

The Gemara provides the source that kefel is not paid for the properties listed in the Mishnah.

The reason the fourfold and fivefold payment is not paid for the properties listed in the Mishnah is explained. ■

REVIEW and Remember

1. What is the point of dispute between R' Nachman and R' Pappa?
2. Explain בא בטענת אביו.
3. What is the point of dispute between R' Eliezer and Rabbah concerning the explanation of Rabbah?
4. Regarding which properties does one not swear?

Distinctive INSIGHT

Rav Nachman's ruling that the document is weakened

אמר רב נחמן איתרע שטרא

The Gemara brings a series of six cases regarding a borrower who may claim that he paid back a loan. The sixth case is where a lender asked for repayment of a loan, and he produced a loan document to verify his claim. The borrower claimed that he had already repaid the loan, and although the lender admitted that he received money, he counter-claimed that the money paid was for a different obligation the borrower owed him, and he is now asking for the funds for this document. What should the halacha be in this case?

Rav Nachman declared that the loan document being produced in court was weakened and compromised (איתרא) (שטרא). Once the lender admitted that he had received money as payment for a loan, he is not able to claim that the payment was for a different, unknown loan.

The Rishonim discuss the precise intent of R' Nachman regarding the loan document, when he referred to it as "being weakened." Ri"ף writes, in the name of Rav Shirira Gaon and Rav Hai Gaon, that the document is completely invalid. It should be destroyed just as any document that is known to be paid. The claim of the lender and the counter-claim of the borrower should be treated as any claim and denial, where the borrower is exempt, and only has to offer a שבועת היסט, an oath of denial.

Rabbeinu Chananel notes that R' Nachman did not say that the document was ruined or cancelled, but rather that it was "weakened." This suggests that the document still has some validity. Therefore, the borrower may use it to collect the loan, but the lender must first take an oath to reinforce its validity in regard to the current loan.

Ramban also deals with the words of R' Nachman who said that the document was "weak." Ramban understands that the document may be used, but only to collect from land of the borrower that is free and clear of any encumbrance. Any lands that were owned by the borrower at the time of the loan, but that were subsequently sold, are no longer able to be taken by the lender using a lien he might have placed upon them due to the document. Furthermore, the lender can only collect with this document after he takes an oath that the loan was not paid. Ramban rites that his view closely parallels that of Rabbeinu Chananel.

Tosafos (ד"ה איתרא) explains that the document is "weak" in that it cannot be used to collect from land, neither משועבד nor בני חורין. The document, however, should not be destroyed. Ritva notes that according to Tosafos, if the borrower grabs the funds he claims he has coming to him, he may keep the money. ■

Today's Daf Digest is dedicated

By the Mauer family

In loving memory of their mother Mrs. Sonia Mauer ע"ה
 מרת שפרה בת ר' משה אהרן הלוי, ע"ה

HALACHAH Highlight

Are we concerned that a father would sin for the benefit of his son?

שכיב מרע שהקדיש כל נכסיו ואמר מנה לפלוני וכו'

A deathly-ill person who consecrated all of his property and then declared that Ploni has a maneh in my possession etc.

There was once a person who examined animals to determine whether they are kosher whose son moved to town and became a partner with the local butcher. People became concerned that the father will no longer be able to remain impartial since his decisions regarding the kashrus of animals will affect his son's livelihood. They turned to the author of Teshuvos Teshuras Shai¹ for guidance. He cited a similar case from the work, Da'as Torah² where he discussed the case in which the brother or father of the one appointed to examine the kashrus of animals was a partner of an animal in question. He ruled that technically there is no problem since relatives are considered trustworthy when it comes to issues related to prohibitions. If, however, the community becomes suspicious and begins to question his ability to perform his job reliably he should be cautious. Da'as Torah cites other authorities who maintain that even if the son is supported financially by his father there is no

prohibition for the father to issue halachic rulings on the animals from his son's butcher business. Da'as Torah disagrees with those authorities and maintains that if the son is supported by his father it is the same as though the father was ruling for himself, which he is certainly not permitted to do.

Teshuras Shai points to our Gemara as proof that a father may rule on his son's animals and we do not suspect that a father would sin for the benefit of his children. The Gemara discusses a dying person who made all of his possessions sacred. If he reports later that he is in possession of a maneh that belongs to Ploni he is believed and the declaration of sanctity does not take effect on that maneh. The reason he is believed, explains the Gemara, is that a person would not sin without receiving some benefit. Rashi³ explains that a person will not sin for the benefit of his heirs. In other words, there is no reason to be concerned with the possibility that the father made the declaration that he owes money to Ploni so that his sons would not have to pay this debt. The reason we are not concerned about this possibility is that a person does not sin if it is not to his benefit. We see that a person would not transgress a prohibition for the benefit of his children. ■

1. שו"ת תשורת ש"י תניינא סי' קמ"ד.

2. דעת תורה יו"ד סי' י"ח ס"ק מ"ב.

3. רש"י ד"ה אין. ■

STORIES Off the Daf

An opportunity taken

"איתרע שטרא..."

Today's daf discusses various halachos of promissory notes.

A certain man brought his friend to court, claiming to have lent him five thousand dollars. The accused admitted that the signature on the document looked exactly like his, but strongly denied having borrowed a penny from his friend. "Don't ask me how he got my signature, but I am absolutely certain that I never borrowed and I certainly never signed any document verifying that I borrowed money—not from him or from anyone else."

When the dayanim saw the man's adamant position they suspected that

the document might somehow be a forgery. In such cases the halachah is that they are obligated to carefully investigate so as not to be guilty of a miscarriage of justice. However, the judges were at a loss how to proceed. There were no witnesses on the document in question, and they had no way to check if there was a loan. Perhaps the plaintiff who was known to be meticulously honest was actually a practiced liar.

The beis din sent them to the Minchas Yitzchak, zt"l, the famed rav of Yerushalayim, who was known for his great scholarship as well as his innovative approach to solving difficult problems. After giving the matter due consideration the Minchas Yitzchak asked the defendant, "Did you have any other dealings with your accuser?"

"I know him for quite a few years, but we haven't had any dealings, espe-

cially not monetary."

The Minchas Yitzchak asked another seemingly irrelevant question. "Are you sure you never lent him a sefer or anything else?"

"Oh yes. He borrowed a book a couple of months ago, but it was returned on time."

"Go home and bring it quickly," the Minchas Yitzchak ordered.

When the sefer was in the Minchas Yitzchak's hands he looked it over, quickly noticing that the first page—where people often sign their name—was missing. He took the smallish loan document and showed that it was indeed that page. The pretender had ripped out the page and written a few lines that suited his purpose above the defendant's signature!¹ ■

1. מעשה צדיקים, ח"א, ע"ר כ"ה ■