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Bava Basra Daf 162

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Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h

Tzvi Gershon ben Yoel (Harvey Felsen) o”h

May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

1. *Between One and Two...?*

Disregard the Last Line

Rabbi Yochanan said that the last line of a contract must review the content of the contract.

Rav Amram explains that since anything written in the last line of a contract has no legal validity, we only write something which is already included in the contract, and not necessary.

Rav Nachman asked Rav Amram how he knew that the last line has no legal validity.

Rav Amram answered that he learned this from a *braisa*, which says that if a contract has a gap of two blank lines between the contract text and the signatures of the witnesses, it is invalid, while if the gap is one blank line, it is valid.

Rav Amram says that the reason to invalidate the contract with two blank lines is because we are concerned that someone will fill in the blank space with incorrect information, falsely using the existing signatures. A contract with one blank line is still valid, even though it may similarly be filled in with incorrect information. Rav Amram inferred that this must be because the last line has no legal validity. (161b – 162a)

The *Gemora* asks whether one and a half blank lines invalidate a contract.

The *Gemora* attempts to resolve this question from the *braisa* cited by Rav Amram. Since the *braisa* says that a contract with two blank lines is invalid, this implies that one and a half blank lines are valid. However, the *Gemora* deflects this, since the next statement - that a contract with one blank line is valid - implies that one with one and a half blank lines is invalid. One of its statements must not be meant to imply anything else, and the *braisa* therefore cannot resolve this question.

The *Gemora* proves that it is valid from another *braisa*, which says that if one left two blank lines, the contract is invalid, but if anything less was left blank, the contract is valid.

This *braisa* continues to say that if there were four or five signatures on the contract, and one of them was discovered to be a relative or an (*otherwise*) invalid witness, the contract can be validated from the remaining signatures.

The *Gemora* says that this *braisa* supports Chizkiyah, who said that if someone filled in blank lines on a contract with relatives (*who may not testify*), the



contract is still valid. Chizkiyah explained that it is not illogical to consider invalid witnesses better than blank space, since we have a precedent for such a situation in the rules of a *sukkah* covering. Three *tefachim* of empty space invalidate a *sukkah* covering, but only four *tefachim* of invalid material do so. This is similar to the contract, in which two blank lines invalidate it, but not invalid witnesses. (162b)

2. Margins?

The *Gemora* asks whether the two blank lines that invalidate a contract are measured with or without the usual margin between lines.

Rav Nachman bar Yitzchak said that the lines are measured with the usual margin between lines, since otherwise it is obvious that a gap of one line does not invalidate a contract, since no one can write in a line without a margin. Since the *braisa* had to state that such a contract is valid, it must be a case where one could have filled it in with false information. Just as the one line mentioned in the *braisa* includes a margin, so the two lines include margins. (162b – 163a)

INSIGHTS TO THE DAF

Last Line of the Contract

Rabbi Yochanan says that a contract must review its content in the last line, and Rav Amram explained that this is because we disregard anything in the last line before the signatures.

The Rishonim explain that we fulfill this by writing

vkanina – and we (the witnesses) received authorization regarding everything stated above.

The Rosh rules that if a contract does not summarize its content at the end, it does not conform to the required format of a contract, and is invalid.

The Ramban rules that it is valid, but we disregard whatever is written in the last line.

The Shulchan Aruch (HM 44:1) rules like the Ramban.

The Rishonim state that our custom is to fill in the last line with the phrase “*v’hakol sharir v’kayam*” - *and all of this is in force and validated.*

The Rashbam says that this phrase is a form of validation, and gives the line above it full legal force.

Other Rishonim disagree and state that even with our contracts, the last line has no legal validity.

Rabbeinu Tam explains the form of a *get*, in which we write the following last 2 lines:

v’dain etc. – this should be a contract of divorce k’das moshe v’yisrael – as instituted by Moshe and Yisrael

Rabbeinu Tam says that the first of these lines is an integral part of the *get*, and not just a review of the earlier text. The last line takes the place of the validation of *sharir v’kayam*, and gives the preceding line legal validity.

The Rosh says that nowadays we *require* a contract to end with *sharir v’kayam*, and any contract without it is invalid. We therefore give all the preceding lines full



legal validity.

The Shulchan Aruch (HM 44:9) rules like the Rosh.

See Shach (10-12, 21) for a deeper discussion of the rationale and ruling regarding *sharir v'kayam*.

The *Gemora* explains that a contract with two blank lines is invalid, since we are concerned that one will put false information in one of the blank lines.

The Ramban explains that on a contract with more than one blank line, we are concerned that there may have been more than two blank lines, and the last lines are false.

The Ri Migash says that even if we see nothing that would indicate that (*no content at the end to the advantage of the creditor*), the contract is invalid, since he *could* have forged part of the contract.

The Rema says that this is a fine on the holder of the contract, since he made forgery accessible.

1 ½ lines

The *Gemora* discusses whether a contract with 1 ½ blank lines before the signatures is valid or not, and resolves that it is not.

Tosfos (162b *iba'ya*) states that if the contract finished in the middle of a line, and the remainder of that line, in addition to the next line, was left blank, such a contract is clearly invalid, since the holder of the contract can fill in the space after the text of the contract. The other option is a case where the contract

ended at the end of a line, a blank line was left, and the witnesses started signing half way through the next line. Tosfos says that such a case should clearly be valid, since the only line that can be filled in is the one before the signatures, and we disregard that line. Tosfos concludes that the *Gemora's* question was a width of 1 ½ lines, similar to the measure of one and two lines, discussed in the *braisa*.

Filling in with Relatives

The *Gemora* cites Chizkiyah's statement that if one filled in blank space in a contract with witnesses that are relatives to the parties, the contract is still valid.

The Rishonim debate in what context Chizkiyah made his statement. Rabbeinu Chananel says that Chizkiyah is referring to a get *kereyach* – a bald contract, i.e., a closed contract (*mekushar*), which is missing witnesses. Such a contract must be signed by three witnesses on each of its enclosures. Chizkiyah is saying that if one used relatives for the extra signatures necessary, the contract is valid.

The *Mishna* in Gittin (81b) records a dispute between Rabbi Akiva and Ben Nanas about this case and Chizkiyah is ruling like Rabbi Akiva, who only allows relatives to fill in the necessary signatures.

The Rashbam challenges this position, since Chizkiyah, an *Amora*, would not need to rule or discuss a case that was already discussed in a *Mishna*, nor would he need support from a *braisa*, since he is supported by Rabbi Akiva in a *Mishna*.

Rather, the Rashbam says that Chizkiyah is discussing

the case of our *Gemora*, i.e., a contract that had too much blank space before the signatures, and is stating that if one filled in this space with related witnesses, the contract remains valid.

The *Mishna* in Makkos (5b) states that if a group of witnesses testify, and one is found to be invalid, the whole testimony is invalidated.

Tosfos (162b nimtza) cites different opinions regarding how to reconcile this *Mishna* with Chizkiyah's statement, validating a contract in which relatives signed to fill in blank space.

The Rambam (Edus 5:6) rules that a contract with two valid witnesses is assumed valid, even if the remaining witnesses are not valid. If the witnesses are available, or if others were there, we investigate whether they signed together. If they signed together, the contract is invalid, but it is otherwise valid.

Rav Chaim Brisker explains that the Rambam considers witnesses on a contract to have two parts to their testimony – the witnessing, which takes place at signing, and the testimony, which occurs when the contract is brought to court. When a contract is brought to court, the *Gemora* says that witnesses signed in a contract are considered to be fully examined and accepted, and they therefore exist independently, and the invalid witnesses do not affect the valid ones' testimony. However, if they signed together, they have joined together in their witnessing, and therefore fall under the ruling in Makkos, invalidating the contract they signed.

Invalid Schach and Gaps

Chizkiyah cites the rules for gaps in *s'chach*, and invalid *s'chach*, as a precedent for his ruling that invalid witnesses can be better than blank space in a contract.

Tosfos explains that the measures given for invalid *s'chach* (4 *tefachim*) and gaps (3 *tefachim*) are only in a case where these areas go from one end of the *sukkah* to the other, and thereby make the valid *s'chach* not be surrounded by three walls, or when there isn't the minimum area of valid *s'chach* (7 x 7 *tefachim*). However, if the valid *s'chach* surrounds these areas, or if these areas are in a location where the valid *s'chach* has 3 walls around it, and there is at least 7 x 7 *tefachim* of valid *s'chach*, they do not invalidate the *sukkah*, but only their location itself.