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Bava Basra Daf 170

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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

### **Contract and Chazakah**

The *braisa* cited a dispute between Rabban Shimon ben Gamliel and the Sages. Rabban Shimon ben Gamliel says that if a buyer returned the sales contract to the seller, the sale is reverted, while the Sages say the sale is still in force. Rav Assi explains that Rabban Shimon ben Gamliel considers every sales contract to have an implicit clause that the sale is valid only as long as the buyer retains the contract.

Rabbah challenges this, since this would void the sale if the contract were lost or stolen as well. Instead, Rabbah explains that the dispute is whether a contract is acquired simply by transfer. Rabban Shimon ben Gamliel says it is, so the seller acquires the field by receiving the contract from the buyer, while the Sages say that it is not acquired just by transfer, so the original sale is valid.

The *braisa* cites a dispute between Rebbe and Rabban Shimon ben Gamliel when one wishes to adjudicate with both a contract and usage. Rebbe says that we judge based on the contract, while Rabban Shimon ben Gamliel says that we judge based on the usage.

Rav Dimi says that they are discussing a case of one who claims ownership of a field, and the other litigant claims that *he* owns the field, by virtue of his holding a sales contract from the claimant to a third party, and also by the fact that he has lived on the land for three years.

Rebbe holds that a contract is acquired by a transfer, and therefore his possession of the sales contract suffices, while Rabban Shimon ben Gamliel holds that transferring a contract does not acquire it, and he must therefore rely only on his usage.

Abaye challenges this explanation, since it is inconsistent with Rabbah’s earlier explanation, in which Rabban Shimon ben Gamliel says that a contract *is* acquired by transfer.

Rav Dimi says that he need not be consistent with Rabbah, but Abaye pointed out that Rabbah’s explanation was the only possible explanation for the first *braisa*, and therefore cannot be rejected.

Rather, Abaye explains as follows: The *braisa* is referring to a case (*regular case of selling a field with contract*) where one of them was found to be a relative or otherwise unfit to be a witness; and they differ on the same dispute as Rabbi Meir and Rabbi Elozar. Rebbe holds like Rabbi Elozar, who maintains that the witnesses to the delivery (*of a get*) effect the legal separation (*between the husband and the wife; and therefore, here as well, if witnesses are brought that testify that the field was given over with a contract, it will be valid*), while Rabban Shimon ben Gamliel holds like Rabbi Meir, who maintains that the witnesses who signed the *get* are those who cause the separation (*and here, where the witnesses were disqualified, it will not accomplish anything with*



witnesses testifying to the delivery; therefore, the *chazakah* is necessary).

The *Gemora* asks: But Rabbi Abba had said that Rabbi Elozar agrees that the *get* is invalid if it is flawed from within? [If the *get* is not signed at all, Rabbi Elozar holds that it is valid. However, if it is signed by ineligible witnesses, it is invalid, for we were concerned that the *get* will be given over to the woman before these very same witnesses.]

Rather, Ravina said: All agree that the document is invalid if the witnesses were investigated and their evidence was found to be irregular in accordance with Rabbi Abba. They only argue in the case of a document which bears no signatures of witnesses at all. Rebbe holds like Rabbi Elozar, who maintains that the witnesses to the delivery (of a *get*) effect the legal separation (between the husband and the wife; and therefore, here as well, if witnesses are brought that testify that the field was given over with a contract, it will be valid), while Rabban Shimon ben Gamliel holds like Rabbi Meir, who maintains that the witnesses who signed the *get* are those who cause the separation (and here, where there were no witnesses, it will not accomplish anything with witnesses testifying to the delivery; therefore, the *chazakah* is necessary).

Alternatively, you can answer that they argue on the question whether in the case where a person admitted that he wrote the document (of sale, but he claims that he did not give it to the other person; rather, it fell from him and this fellow found it), does the holder of the document need to have it certified. Rebbe holds that where a person admitted that he wrote a document, no certification is required (and therefore, the deed is valid), while Rabban Shimon ben Gamliel holds that certification is required (and therefore, the *chazakah* is necessary).

The *Gemora* asks: How can this be the correct interpretation when we learned in a *braisa* otherwise? The *braisa* states: A debtor and creditor are both grabbing a debt contract, with the creditor claiming the contract is his and is in force, and the debtor claims that the contract is in his possession, since he paid the debt. Rebbe says that the creditor must validate the contract's signatures (and then the entire debt can be collected), while Rabban Shimon ben Gamliel says that the two must split the contract. And the *Gemora* there asked: Does Rebbe not hold of the following *Mishna* (how can he hold that the debt can be collected): Two people are holding on to a cloak. This one says that he found it, and the other says that he found it. This one should swear that he does not own less than half of the cloak, and the other should swear that he does not own less than half of the cloak, and they should then split the cloak. And Rava answered in the name of Rav Nachman: If the contract is validated, all agree that the creditor and debtor split the contract (like the case with the cloak). The dispute is when the contract has not been validated. Rebbe holds that even if a debtor admits that a contract is genuine; its signatures must be validated. If it can be validated, he may collect half the debt. If the creditor cannot validate the contract, it is considered worthless, like a piece of earthenware. Rabban Shimon ben Gamliel holds that once a debtor agrees that the contract is genuine, it need not be validated. Therefore, in the *braisa*, since the debtor agrees that the contract is genuine, even if the contract is not validated, the debtor and creditor split it. [Our *Gemora* reverses their respective opinions!?!]

The *Gemora* answers: Let us reverse the opinions here (Rebbe would hold that the *chazakah* is required for the contract needs to be validated, and Rabban Shimon ben Gamliel holds that the contract is valid, for in this case, it does not need to be validated).

Alternatively, the *Gemora* answers: Let us not reverse the opinions, but the dispute here is regarding the question of proving all one's claims (*in the case where one of his two claims is essential (the chazakah), and the other (the document) is superfluous; according to Rebbe, he must corroborate both claims since they were both advanced together; it is therefore necessary for the buyer to prove the validity of the document, although, had he based his claim solely on the chazakah, there would have been no need for him to produce any document at all, for no one is expected to safeguard a document after three years; Rabban Shimon ben Gamliel, however, holds that the superfluous claim of the document is altogether disregarded; it is therefore sufficient for the buyer to prove his chazakah*).

This is like the case of Rav Yitzchak bar Yosef, who was owed money from Rabbi Abba. Rav Yitzchak (*wanting his money*) brought Rabbi Abba before Rabbi Yitzchak Nafcha. Rabbi Abba claimed, "I repaid you in the presence of So-and-so and So-and-so." Rabbi Yitzchak Nafcha said to him, "Bring So-and-so and So-and-so and let them testify that you indeed paid." Rabbi Abba asked him, "And if they will not come, am I not to be believed? Surely the *halachah* is that if one lends his friend money in the presence of witnesses, he is not obligated to repay the debt in front of witnesses (*and consequently, the borrower would be believed that he repaid the debt privately*)!?" Rabbi Yitzchak Nafcha responded, "In this case, I agree with that which you reported, for Rabbi Abba said in the name of Rabbi Adda bar Ahavah, who said in the name of Rav: If one said to another, 'I repaid you in the presence of So-and-so and So-and-so,' it is necessary that So-and-so and So-and-so should come and testify." Rabbi Abba protested, "But surely Rav Giddal said in the name of Rav that the *halachah* is in accordance with Rabban Shimon ben Gamliel (*that all of one's claims*

*need not be corroborated*)!?" And even Rebbe only said that only in respect of proving all of his claims (*but if he would not have claimed that he had a contract, he would have won with the chazakah*)!?" Rabbi Yitzchak Nafcha replied to him, "I also require the testimony of your witnesses in order to corroborate your claim (*and if you cannot do so, you will lose the argument*)." (169b – 170b)

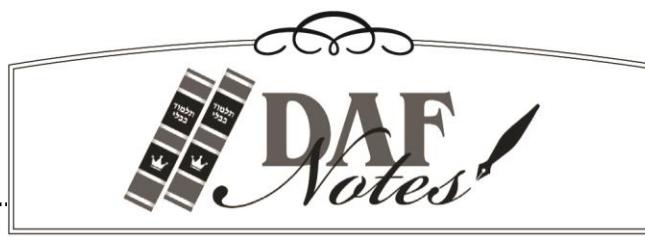
### **Mishna**

If someone pays back a partial amount of a debt, Rabbi Yehudah states that a new document should be written with the new amount and exchanged for the old one. Rabbi Yosi says that a receipt should be written. Rabbi Yehudah noted: If so, it will emerge that the debtor must guard his receipt from mice (*for if he loses it, the creditor will be able to collect the debt again*)! Rabbi Yosi replied: It is better for the lender this way; and the power of this one will not be weakened. (170b)

### **Halachah**

Rav Huna said in the name of Rav: The *halachah* is neither in accordance with Rabbi Yehudah, nor in accordance with Rabbi Yosi; but rather, *Beis Din (not the witnesses)* tears up the document and writes a new one for the creditor entering the original date.

Rav Nachman said to Rav Huna, and others say that Rav Yirmiyah bar Abba said to Rav Huna: Had Rav heard this *braisa*, where it was taught: Witnesses may tear up the document and write a new one for the creditor entering the original date, he would have retracted (*and ruled according to Rabbi Yehudah*). Rav Huna replied: Rav heard it and yet, he did not retract his opinion. In the case of *Beis Din*, it is understandable, because it has the power and authority to confiscate (*people's*) money (*and therefore, they have the power to write a new document – allowing the creditor to seize mortgaged property from the initial date*); but with respect of witnesses, who had



already performed their mission (*by their original signing*), how can they be allowed to perform their mission again (*by writing a new document with the initial date*)? (170b – 171a)

## INSIGHTS TO THE DAF

### ***How to Split a Contract?***

The *Gemora* in Bava Metzia (7a) cited statements of Rabbi Elozar and Rabbi Yochanan about splitting a contract held by the debtor and creditor. Rabbi Elozar said they only split it evenly when they are both holding the detail and form section of the contract, but if one is holding the details and one the form, they each get the section they are holding. Rabbi Yochanan said that they also split the contract evenly when the detail and form section are in the section not held by either side.

The Rif and Rambam do not cite these opinions and limitations on the rules of splitting a contract, and the Shulchan Aruch (HM 65:15) follows their ruling in the first version of this *halachah*.

The Rosh does cite the statement of Rabbi Elozar, and the Shulchan Aruch cites this opinion as well.

The G"ra explains that this dispute depends on the understanding of how a split is done when each is holding the detail or form section. The *Gemora* says that the advantage of holding the detail section is the increased value a date adds to a contract. Rashi (7b Shtara) states that Rabbi Elozar is discussing Rabban Shimon ben Gamliel's statement that we split the contract, even if the signatures were not validated, since Rabban Shimon ben Gamliel does not require validation of the signatures. Therefore, the value of the detail section is not in the signatures, since they need not be validated. The value is not in the names of the parties, since those are repeated

in the form section. The only element which is crucial in the detail section is the date of the contract, and that is the increased value of that section.

Tosfos (7b d'is) disagrees, and says that elements of each section that would render the contract unfit are not included in the possession gained by grabbing, since each party doesn't want the counter party to remove such elements. The only element which is nonessential is the date.

According to Rashi, the statement of Rabbi Elozar, and the discussion following it, are only according to Rabban Shimon ben Gamliel's opinion, that a contract that is not forged need not have its signatures validated. We, however, rule like Rebbe, and therefore will not hold of Rabbi Elozar's statement. However, according to Tosfos, Rabbi Elozar's statement is in accord with Rebbe as well, and therefore *halachah* includes it. See Gr"a HM 65:45 and Note 1 on the Rosh for further discussion.

## DAILY MASHAL

### ***The Tree That Wasn't***

HaGaon Rav Aharon Kotler zt"l, *Rosh Yeshivah* of Lakewood, was known to be extremely heedful to guard the truth. Once he was shown an advertisement with a sketch of the Yeshivah including the surrounding trees. He counted the trees, though, and found that three had been drawn instead of the actual two and not wanting to lend a hand to the misrepresentation, banned the picture. "It's a falsification," he said, "and the Torah is a Torah of truth and any method to maintain it must rely on the strict truth."