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DAF Notes
Insights into the Daily Daf
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Arachin Daf 23

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

Mishna

If one consecrates his property and he was liable for his wife's *kesuvah*, Rabbi Eliezer says: When he divorces her, he must vow not to derive any benefit from her (*for otherwise, we are afraid that this is a ploy set up by the husband to repossess some of the property; he regretted the consecration of his property, and in an effort to reclaim it, he divorces his wife and she will collect from that property; subsequently, he will remarry her; by taking this oath, he is prevented from doing so*). Rabbi Yehoshua says: He does not need to do so. And so too, Rabban Shimon ben Gamliel said: One who is a guarantor for a woman's *kesuvah*, and her husband divorced her, he must vow not to let her derive any benefit from him, lest they make a conspiracy against this one's property (*for this way, she will collect from him, and afterwards, the husband will remarry her*), and he will take back his wife. (23a)

Conspiracies

The *Gemora* explains the disputing the *Mishna*: Rabbi Eliezer holds that a man may engage in a conspiracy against *hekdesh*, but Rabbi Yehoshua holds that a man will not engage in a conspiracy against *hekdesh*.

The *Gemora* asks: But what of the following ruling of Rav Huna: Rav Huna says: If a person on his deathbed says that he is dedicating all of his possessions to *hekdesh*, but that he owes a *maneh* to someone, he is believed. This is because the presumption is that people do not conspire to take away money from *hekdesh*. Shall we say that he issued this ruling concerning which *Tannaim* are conflicting?

The *Gemora* answers: No! In the case of a healthy man, they disagree, but Rav Huna's ruling is only in the case of a dying man, for a man will not sin without benefit to himself.

There were those who said: In the case of a healthy man they all agree that we certainly are concerned for conspiracy (*even with regard to hekdesh*); but here they differ with regard to a vow made in public: Rabbi Yehoshua holds that such a vow can be annulled (*and therefore, there is nothing to be gained by imposing this vow upon the husband*), whereas Rabbi Eliezer maintains that it cannot be annulled.

Alternatively, you can say that they all agree that a vow made in public can be annulled, and they differ here as to a vow made on the authority of the public (*where the court imposes the vow*).

The *Gemora* asks: But then what of Ameimar's ruling that a vow made in the presence of the public can be annulled, whereas one made on the authority of the public cannot be annulled? Shall we say that he issued this ruling concerning which *Tannaim* are conflicting? And furthermore, why did Rabbi Yehoshua say that he (*the husband*) does not need to vow? He should have said that such a vow would be useless!?

Rather, they are disputing here whether a sage can annul the consecration of an object. [*If it can be annulled, there is no need to make the vow, for if the husband wishes to conspire against hekdesh, he can merely petition a sage to annul the consecration.*]

The *Gemora* cites a supporting *braisa*: If one consecrates his property and he was liable for his wife's *kesuvah*, Rabbi Eliezer says: When he divorces her, he must vow not to derive any benefit from her. Rabbi Yehoshua says: He does not need to do so. And Rabbi Elozar the son of Rabbi Shimon said: These are the very views of Beis Shammai and Beis Hillel, for Beis Shammai holds that a

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consecration made In error is a valid consecration (*and cannot be annulled*), whereas Beis Hillel holds that it is not a valid consecration (*and R' Yehoshua holds like this, so since the consecration can be annulled, there is no necessity to impose a vow upon the husband*).

The *Mishna* had stated: And so too, Rabban Shimon ben Gamliel said, etc. [*One who is a guarantor for a woman's kesuvah, and her husband divorced her, he must vow not to let her derive any benefit from him, lest they make a conspiracy against this one's property (for this way, she will collect from him, and afterwards, the husband will remarry her), and he will take back his wife.*]

The *Gemora* records the following incident: Moshe bar Atzri was the guarantor of the *kesuvah* of his daughter-in-law. His son, Rav Huna, was a Rabbinical student who did not have money. Abaye said: Is there nobody who can go and give Rav Huna advice to divorce his wife, have her collect her *kesuvah* from Moshe bar Atzri, and then remarry her?

Rava asked: Doesn't the *Mishna* say that (*to avoid such a conspiracy*) the husband must swear he will not have any benefit from his ex-wife ever again?

Abaye replied: Does everyone who divorces his wife do so in a *Beis Din* (*where they are careful to make the husband make such a condition when he has guarantor's on his kesuvah*)?

In the end, this advice did not help at all, as Rav Huna was a *Kohen* (*and therefore could not remarry his wife, as she would be a divorcee who is forbidden to a Kohen*).

Abaye commented: This is the meaning of the phrase, "After the poor goes poverty." [*In other words, the poor continue to live in poverty.*]

The *Gemora* asks: How could Abaye have given such advice in the first place? Didn't Abaye himself say: Who is considered a cunning evildoer? It is someone who gives advice to sell property as per the opinion of Rabban Shimon ben Gamliel. [*The case is where someone gave a property to Reuvan, and he said that after you die it should go to Shimon. Rabban Shimon ben Gamliel understands that if Reuven sells the property he keeps all of the money, as the condition was only to give whatever is left of the property to Shimon after Reuven dies. This is similar (if not more) cunning advice.*]

Abaye asks: What is an example of a cunning evildoer? This is referring to one who advises his fellow to sell properties (*that he accepted on the condition that afterwards, it should belong to So-and-so*) in accordance with Rabban Shimon ben Gamliel (*for initially, it should not be sold; he is evil for he is acting contrary to the intent of the giver, and he is cunning for he knows that the sale will be valid*).

The *Gemora* answers: Regarding one's son, and a Rabbinical student, this is permitted.

The *Gemora* asks: How was this an option? A guarantor for a *kesuvah* does not really make himself liable to pay!?

The *Gemora* answers: In this case he was a *kablan*, not just a guarantor.

The *Gemora* asks: This is understandable according to the opinion that a *kablan* indeed accepts the liability to pay for a *kesuvah*, even if the husband has no assets. However, according to the opinion that he only accepts liability if the husband indeed has assets, how could they (*theoretically*) have made Moshe bar Batzri pay (*as his son in law had no money*)?

The *Gemora* answers: It is possible that he had lands originally and they became flooded. Alternatively, it is possible that a father will make himself liable for his son's *kesuvah*, even if his son does not have any assets.

This is as it is taught: According to everyone, a guarantor of a *kesuvah* is not liable. According to everyone, a *kablan* of a loan is liable. The argument is regarding a *kablan* of a *kesuvah* and a guarantor of a loan. One opinion says that if the borrower has assets he accepts liability, but he otherwise does not. Another opinion says that in any event, he indeed makes himself liable.

The *Gemora* concludes: The law is that a guarantor always accepts responsibility to pay unless he is a guarantor for a *kesuvah*. Even if the husband has assets, he does not make himself liable. Why? He is just doing a *mitzvah* (*to help them get married*) and is not making

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anyone lose anything (*as the woman wants to get married for her own benefit as well*).

The *Gemora* relates: There was a man who sold his possessions and divorced his wife. Rav Yosef the son of Rava sent her to Rav Pappa, asking the following: It was taught in our *Mishna* regarding a guarantor (*that the husband must forbid her with a vow*) and concerning consecrated property, what about a purchaser? [*Do we suspect that the purchaser may be victimized by a similar conspiracy between husband and wife? Should we therefore similarly insist that if the wife wishes to collect her kesuvah from the purchased field, the husband must make a vow that he will not in the future derive any benefit from his wife, so as to prevent his receiving the kesuvah from her and remarrying her?*]

He replied: Shall the *Tanna* go on enumerating like a peddler all different cases (*which teach the same thing*)?

The Nehardeans said: What we learned (*in the Mishna*) we learned, and what we did not learn, we did not learn! [*We do not impose a vow upon the husband in this case.*]

Rav Mesharshiya explained the reason of the Nehardeans: With regard to consecrated property the ruling is in order to safeguard the interests of the Temple; also with regard to a guarantor, he performed a *mitzvah* (*by guaranteeing her kesuvah*) and it did not cause her any loss (*we do not want him to be defrauded by them*), but as for a purchaser, since he must have known that upon everyone's possessions there is a *kesuvah* debt, why did he go and buy? It is he who caused damage to himself (*and we do not need to get involved to protect him*). (23a – 23b)

Collecting from Hekdesh

If one consecrated his property and he was liable for his wife's *kesuvah* or in debt to a creditor, the wife cannot collect her *kesuvah* from what was consecrated, nor can the creditor collect his debt, but he who redeems, redeems on condition that he will pay the wife her *kesuvah*, or the creditor his debt. If he consecrated ninety *manehs* and his debt was a hundred *manehs*, he must add another *dinar* and redeems with it this property on condition that he pay the wife her *kesuvah* or the creditor his debt.

The *Gemora* asks: Why is it necessary to state: He who redeems must redeem? [*Why shouldn't the woman and creditor collect their debt from hekdesh without any redemption, seeing that they had a prior lien on the property?*]

The *Gemora* answers: That is because of the teaching of Rabbi Avahu, for Rabbi Avahu said: Lest people say that consecrated property goes out (*from hekdesh*) without any redemption. (23b)

INSIGHTS TO THE DAF

The Origin and Meaning of a "Bon Pour Aval" Guarantee

"I am a guarantor *bon pour* ***aval*** to pay the promissory note…" is a clause appearing in official promissory notes issued by government bodies used for many loans and also by free loan funds. What is an *aval* guarantee, what is the origin of the word and its legal implications and how is the concept regarded by *halachah*?

Our *sugya* discusses varieties of guarantees and explains that there are two sorts of guarantors: (a) An **ordinary** guarantor may be demanded to pay a debt only if it has been proven that the borrower has no assets. (b) An **immediate** guarantor (*arev* ***kablan***) takes the borrower's place in any instance and the lender may demand the debt from him without referring first to the borrower. He is called *kablan*, from the verb *lekabel* – "to receive", as he is regarded as having received the loan from the lender and having passed it on to the borrower (Rashbam, Bava Basra 47a). The holder of a guaranteed promissory note which does not indicate that the guarantor is a *kablan* may demand the debt from him only if it is proven that the borrower has no assets.

Many free loan funds require guarantors to sign the undertaking worded in our *sugya*: *Ten lo ve'eten lecha* – "Give him and I'll give you." In other words, the guarantor instructs the lender to lend to the borrower and, in exchange, undertakes to become an *arev kablan*. Many other loan funds use the government-issued promissory notes with the *bon pour aval* clause. According to civil law, a guarantor signing such a note is regarded as an *'arev kablan* and, as such, should apparently be considered so by *halachah* (see *Pischei Choshen, Hilchos Halvaah, 13, S.K. 7*).

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Bon pour aval: Still, HaGaon Rav Yaakov Avraham Kohen extensively researched the topic with senior jurists and discovered that the French phrase *bon pour aval* merely indicates that the signer undertakes to pay the debt simply as an ordinary guarantor without any reference to being an *arev kablan*. *Aval,* then, does not mean *arev kablan* and, actually, civil law regards a guarantor signing even without the term *aval*, or *bon pour aval*, as an *arev kablan*! In other words, civil law does not recognize the Talmudic category of an **ordinary** guarantor at all and every guarantor is regarded as an *arev kablan*. From the *halachic* viewpoint, however, if a guarantor signed a *bon pour aval* guarantee, it is difficult to obligate him as an *arev kablan* as the literal meaning of *aval* is just not so. Hence, if the guarantor never undertook to be an *arev kablan* we cannot force him to fulfill an obligation he never assumed (*Eimek HaMishpat,* II, 16).

DAILY MASHAL

First Thoughts

The *Gemora* asks: What is an example of a cunning evildoer? Rabbi Yochanan answers: This is someone who tells his side of the story to the judge before the other party shows up.

Rashi explains that once the judge hears the first side, it will be difficult for him to remove that from his mind, and he will not be impartial in the case.

The Mirrer Mashgiach, Reb Chaim Shmuelwitz notes that this is true regarding the way a person thinks as well. The first thought that enters one's mind becomes entrenched in his brain, and he will not pay attention to a different perspective presented to him. He will not even bother thinking that perhaps his opinion is incorrect, and all that will happen in the future will only serve to strengthen his original thought.

Accordingly, he explains that which the Shach (C"M 37:109) brings from the Ball Ha'itur: If witnesses observed something concerning a relative of theirs, they cannot offer testimony even if at the time of the testimony, they were no longer relatives. This is because it is the nature of man to follow his initial thoughts, and their recollection of the incident will be based on their initial perception, which occurred while they were related.

What Are Sandals?

If a person owes money to *hekdesh,* his property is collected to pay his debt and our mishnah details which articles are not collected, including, among others, "a made bed and his sandals". Why does the mishnah mention sandals after it says that they leave him his clothes? Aren't sandals included in the clothes a person needs? The author of *Melo HaRo'im* says (on the mishnah, here) that it seems that these sandals are slippers – "those which a person wears at home and uses before and after sleep". The proof is that they are mentioned next to a "made bed".

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