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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

Bar Kappara taught: If an owner protests [against the occupation of his land] and [after an interval] repeats his protest a second and a third time, if he [always] adheres to his first plea the occupant has not established a chazakah, but if he does not, then he has established a chazakah. (39b2)

Notification of Coercion

Rava relates several *halachos* which he heard in the name of Rav Nachman.

1. A protest must be done in the presence of two witnesses and the witnesses may write a formal document even if the protester did not ask them to do so. [*If there is a squatter on a field, the owner may lodge a protest in order that a chazakah should not take effect. This protest must be done in front of two witnesses. The witnesses may write a document even though it is really the prerogative of the protester to do so. The witnesses may take this initiative through a principle called zachin. One may act on behalf of another person, if it's to that person's advantage, even in the absence of expressed permission from that person.*]

2. A statement of coercion must be made in front of two witnesses and they may write a document without being asked to do so. [*If one is being forced to sell property, he may tell two witnesses that he is selling under duress and he really does not want to sell. This will nullify the sale. This also may be written down by the witnesses because of the same principle of acting on another's behalf without their being told to do so.*]

3. An admission of debt must be in front of two people and they cannot write a document unless told to do so by the one who is admitting. [*The admission is to the detriment of the one admitting. Therefore the principle of zachin does not apply. It is the prerogative of the one who is obligating himself to write the document.*]

4. An acquisition is done in front of two witnesses and they may write a document without being asked by the seller.

5. The verification of a document must be done in front of three witnesses. [*In order to collect with an IOU one must first establish the authenticity of the signatures. The witnesses must testify in front of Beis Din that these are indeed their signatures. The court then signs that the document is authentic. This process requires testifying in front three people because three constitutes a complete Beis Din.*] [the mnemonic is: m'm'h'k'.] (39b2 – 40a1)

Rava has a question concerning the statement about acquisition. If there is a difficulty, this is my difficulty: If the reason the witnesses are allowed to write a document of sale is because they are similar to *Beis Din*, then it

should require three (*like a standard Beis Din*)! [*A bill of sale is not to advantage of the seller and therefore not subject to the principle of zachin. If, however, we say that these witnesses are similar to a Beis Din, (just as Beis Din can transfer ownership so two these witnesses facilitate a transfer of ownership) they would have the right to write a document just as the court has a right to write documents.*] If they are not considered similar to a court, how are they permitted to write the document?

After he asked the question, he answered it himself: A transaction is not like an act of the court. The witnesses can write the document because this type of acquisition is known that the seller wishes it to be written down. [*This particular transaction the Gemara is speaking of is called chalipin. It is a transaction which takes effect when the seller symbolically lifts something which belongs to the buyer. Since the seller was interested in affecting the sale quickly without waiting for the buyer to actually take the property, it is clear he wants the sale to be as strong as possible, and would want a bill of sale to be written.*] (40a1 – 40a2)

Rava and Rav Yosef say that one may only write a statement of coercion if the coercer will not listen to a court. Rava and Abaye say that one could write a statement of coercion even about people as upstanding as themselves.

It was stated in Nehardea that a notification of coercion must state that the witnesses are aware of the circumstances of the coercion.

The *Gemara* asks: What coercion were they referring to. If it is referring to a *get* (*bill of divorce*) the husband is believed to say he is being coerced. [*If he wasn't being coerced and he did not want to get divorced, he would simply not give a get. The fact that he is giving a get with a statement of coercion is proof to the coercion, and there is no need for the witnesses to know the circumstances of the coercion!?*] And if they were referring to coercion to the sale of property, Rava said there is no such thing of a statement of coercion when it comes to selling property. [*Rava is of the opinion that if one is forced to sell property, but given the opportunity to choose which property he will sell, this does not constitute duress. A statement of coercion would be, therefore, invalid. If one is forced to sell a specific field, Rava holds the sale is automatically nullified. There is no need, therefore, to make a statement of coercion.*]

The *Gemara* brings a case where a statement of coercion is applicable. A man is holding a field as collateral for a loan. After the loan is paid, the lender tells the borrower, "Either sell me the field or I will hide the document that says the field is collateral and I will claim that I bought it." In such a case, since the coercion was not observed by anyone, a notification of coercion is applicable. This is the case where Nehardea says the witnesses must be aware of the coercion. 940a2 – 40b1)

Rav Yehudah says that a present that was given in secret cannot be collected. – How is a "present given secretly" understood? Rav Yosef said: It's when one tells the witnesses to hide when they write the gift document. Another version of Rav Yosef says it's when you do not tell the witnesses to go out publically to the market and write the document. – what is the difference between them? The difference between the two opinions is when one plainly tells the witnesses to write the document. [According to the first opinion, this is not considered secretly, while according to the second opinion, this is considered secretly, since it was not specified that it should be written in public.]

Rava says a gift document given secretly can be used as a notification of coercion for future sales. [*If one is being forced to sell property, he may give a secret gift prior to the sale in order to show that he is not willingly selling to the second party.*]

Rav Pappa said: This *halachah* that a secret gift can be used as a notification of coercion for a future sale was not specifically stated, but rather, it was (incorrectly) deduced from a story which happened. A man wished to marry a certain woman. The woman said she would marry him if he would give her all his property and the man agreed. The oldest son of the man was upset that all his inheritance would be given to this woman. So the man told witnesses to go and secretly write a gift document to his son. When the case came before Rava, he said neither the wife nor the son acquires the property. The son doesn't acquire because it is a secret gift and the wife doesn't because it is apparent by making a gift document for the son that he is not interested in giving the property to her.

Those who witnessed this proceeding thought that Rava's reason was because the one deed constituted notification in respect of the other. This is not entirely correct. [The secret gift] in that case [did indeed annul the later assignment] because the circumstances showed that the assignment to the woman was made under constraint. Here, however, it is [evidently] the giver's desire that the one [the latter assignee] should obtain possession and not that the other should obtain possession.[1] (40b1 – 40b3)

INSIGHTS TO THE DAF

The Testimony of a Shtar

The Mefarshim are bothered how does a *shtar* (*document*) work? Chazal have a rule that testimony must be said orally and not written. If this is the case, how can we rely upon the testimony of a *shtar*?

There are a number of different answers to this question. Rabeinu Tam says the prohibition of writing testimony only refers to someone who is mute. Anyone who can say testimony may also write testimony. This follows a principle taught by *karbonos*. We are commanded in the Torah to mix the meal offering with oil. Chazal tell us that it if there is enough oil that it can be mixed, the mixing is not necessary. The same is true here; as long as a person can speak, speaking is not necessary.

The Rambam is of the opinion that testimony in a *shtar* is only Rabbinic. According to Biblical law, a *shtar* is invalid. Since, however, they are necessary for the functioning of society, the Rabbis decreed that this form of testimony should be considered valid.

Rashi and the Baal HaMaor have a different explanation. They explain that a *shtar* is written by the person obligating himself in some fashion (*i.e. a borrower or a seller*). The witnesses here are not regular witnesses in a court case, rather, they are agent of an obligated party who which to obligate themselves by means of a *shtar*. This form of testimony is not what the Torah was referring to when it disqualified written testimony.

The *Gemara* Chagigah (10b) cites Shmuel who states that one who resolves to make a vow must express the vow with his lips; otherwise, it is meaningless.

The Noda b'Yehudah (Y"D I: 66) inquires if an oath that was written down but not expressed would be valid as an oath. His underlying question is: Do we regard his written word as an expression of his lips?

This should be dependent on the dispute mentioned above regarding the validity of testimony from a written document. The Rambam maintains that testimony must

[1] In the case of the wife, it is clear from circumstances that he is not interested in giving her the property. In the case of a sale which followed a secret gift, however, there is no reason not to believe that this was meant to be a binding sale.

be from the mouth of the witnesses and a document will not be Biblically acceptable for testimony. Rabbeinu Tam disagrees and holds that one who is physically capable of testifying may testify through the means of a document.

He concludes, however, that even the Rambam would agree that writing is considered testimony and yet, a written document cannot be accepted by *Beis Din*. The logic for this is as follows: An act of writing can constitute speech, but only during the time that it is being written. *Beis Din* will only accept an oral testimony when they hear it directly; hearsay is disqualified. Witnesses who signed a document are testifying, but *Beis Din* is not present at that time. If they would sign in front of *Beis Din*, that would be considered valid testimony.

With this principle, you can answer what would seemingly be a contradiction in the Rambam. He rules in Hilchos Eidus (3:7) that testimony must be from the mouth of the witnesses and a document will not be Biblically acceptable for testimony; yet later in Perek 9:11, he writes that one is required to testify with his mouth or at least that he is fitting to testify with his mouth. This would imply that if he is fitting to testify with his mouth, he would be permitted to testify through the means of a document. According to the Noda b'Yehudah's explanation, it can be said that the Rambam allows witnesses to testify through the means of a document, but only if they sign the document when *Beis Din* is present. Accordingly, we can say that an oath taken through writing will be binding.

DAILY MASHAL

Rav Yosef Shalom Elyashiv became head of the Beis Din Hagadol in Jerusalem in 1952. At the time, Chief Rabbi Yitzchak Isaac HaLevi Herzog encountered a serious halachic problem of a Yemenite girl who arrived in Israel after having been betrothed by her mother in Yemen to a man who subsequently converted to Islam. In Israel, her status was officially that of an *agunah*, meaning that she could not marry again. Rav Elyashiv found a way out, ruling that because the girl's father had not been present and she was too young to agree herself to the marriage — she was perhaps 11, though no one knew her precise age — the marriage was annulled. The ruling was praised by rabbanim of all streams as both daring, lenient, and compassionate.