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Bava Basra Daf 168

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***Explaining the Mishna***

There was a certain receipt (*for a kesuvah*) on which the signature of Rav Yirmiyah bar Abba appeared, but the woman said to him, “It was not I (*that requested of you to sign this receipt*).” He insisted, “I am sure that it was you.” Abaye said: Although a Torah scholar does not customarily take note of a woman’s appearance, when he does take notice, he is relied upon.

Abaye said: A Torah scholar who is going to betroth a woman should take with him an *am ha’aretz* (*who takes notice of women*), so that another woman should not be substituted for her (*and who would then be taken away from him*).

The *Mishna* had stated: The husband pays for the divorce document.

The *Gemora* notes the reason for this: It is written: And he shall write ... and he shall give. [*We infer from here that he “writes” it by paying for it.*] And the reason that this is not done today (*but rather, the wife pays for the writing of the get*) is because the Rabbis have imposed it upon the woman to order that he should not delay in the giving of the *get*.

The *Mishna* had stated: One can write a loan document for a borrower even if the lender is not present. The borrower must pay for the document.

The *Gemora* asks: Is this *halachah* not obvious (*that he pays for it, for the writing of the document is for his advantage*)?

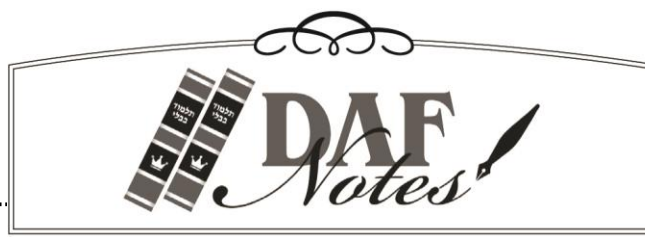
The *Gemora* answers: The novelty is regarding a case where the borrower took the loan in order to invest the money (*and divide the profits with the lender; although it benefits the lender as well, the borrower must pay for it*).

The *Mishna* had stated: One can write a sale document for a seller even if the buyer is not present. The buyer must pay for the document.

The *Gemora* asks: Is this *halachah* not obvious (*that he pays for it, for the writing of the document is for his advantage*)?

The *Gemora* answers: The novelty is regarding a case where the seller sold a field on account of its inferior quality (*and it is to his advantage as well*).

The *Mishna* had stated: One does not writes documents of betrothal or marriage unless both parties are present. The groom pays for the documents.



The *Gemora* asks: Is this *halachah* not obvious (*that he pays for it, for he is taking her*)?

The *Gemora* answers: The novelty is regarding a case where he is a Torah scholar, for he wishes to be called his father-in-law (*and nevertheless, the groom must pay for the documents*).

The *Mishna* had stated: One does not writes documents of sharecropping and working a field etc. The worker pays for the documents.

The *Gemora* asks: Is this *halachah* not obvious (*that the buyer pays for it, for the writing of the document is for his advantage*)?

The *Gemora* answers: The novelty is regarding a case where the field must lie fallow (*for a year or two; although the buyer is not presently having pleasure from it, he still must pay for the writing of the documents*).

The *Mishna* had stated: Documents of "*boririn*" and other documents written by *Beis Din* are only written when both parties know about them.

The *Gemora* explains what documents of "*boririn*" are. In Bavel they explained it to mean the claims of the litigants (*which are recorded by the court scribes and delivered to the judges so they should not alter their claims*). Rav Yirmiyah bar Abba said: It is a document stating that this party chose this judge and that party chose this judge.

The *Mishna* had stated: Rabban Shimon ben Gamliel says: For two people involved in a case, we write two documents. Each receives his own copy.

The *Gemora* suggests that they are arguing regarding the principle of a man being compelled not to act in the traits

of the people of Sodom. The *Tanna Kamma* holds we can force him (*and therefore if one of the litigants demands a separate copy of the document for himself for which he offers to pay, and expects the other to pay for another copy, he is acting in the manner of Sodom, and he is forced by the court to content himself with one common document towards the cost of which both parties contribute in equal shares*). Rabban Shimon ben Gamliel maintains that we do not force him (*and he has the right to say that he will not contribute towards a common document; but rather, he wishes to pay for one himself, and the other is forced to pay for his*).

The *Gemora* rejects this line of reasoning and says that everyone holds that a man can be compelled not to act in the traits of the people of Sodom. The reason Rabban Shimon ben Gamliel holds that he may pay for his own document is because he can claim that he might lose out with a shared document, for he will say to the other, "I do not want your rights to be at the side of my rights, for you appear to me as a lurking lion (*ready to pounce*)."

(168a)

### ***Mishna***

One who paid a portion of his debt and gave his document to a third party, and (*the borrower*) said to him, "If I do not give it (*the remaining portion of the debt*) to you from today until Such-and-such a day, give him (*the lender*) his document (*and he may collect the entire debt*); if the date arrived and he did not pay, Rabbi Yosi says: He may give it to the lender. Rabbi Yehudah says: He may not give it. (168a)

### ***Asmachta***

The *Gemora* explains the point of issue between them: Rabbi Yosi holds that an *asmachta* (*some type of*

commitment that a person undertakes to convince the other party that he is serious regarding the deal) is binding (and it is as if he gave the added amount as a gift). Rabbi Yehudah, however, maintains that an *asmachta* is not legally binding. [He only made that stipulation in order to placate the creditor; he had no intentions, however, to actually pay the first portion of the debt twice.]

Rav Nachman said in the name of Rabbah bar Avuha, who said in the name of Rav: The *halachah* is according to Rabbi Yosi. When such a case came before Rabbi Ammi, he said: Since Rabbi Yochanan has taught us time and again that the *halachah* is in accordance with Rabbi Yosi, what can I do? The *halachah*, however, is not according to Rabbi Yosi. (168a)

### **Mishna**

One, whose document was erased, should produce witnesses to testify about it (as to what was written on it), and they come before a *Beis Din* and write the following validation for him: "Regarding So-and-so, the son of So-and-so, his document was erased on such-and-such a day, and So-and-so and So-and-so were the witnesses who signed on it." (168a – 168b)

### **Erased Documents**

The *Gemora* cites a *braisa*: What is the text of its validation (when the document was erased)? It is written, "We, So-and-so, So-and-so, and So-and-so, were sitting in a court of three. So-and-so, the son of So-and-so produced before us an erased document on such-and-such a date, and So-and-so and So-and-so were the witnesses who signed on it." The *Gemora* adds: If the validation contains the following: "We have examined the testimony of the witnesses and it was found to be

accurate," the creditor may collect his debt (according to the date that was initially written on the document) and he would not be required to produce any further proof; but if not, he would be required to produce proof. If a document was intentionally torn, it is invalid; if it was ripped accidentally, it is valid. If it was erased or obliterated, if the tracing of the letters are legible, it is valid.

The *Gemora* asks: How can we distinguish if it was intentionally torn or ripped accidentally?

Rav Yehudah said: "Intentionally torn" means a tear made by *Beis Din*; "ripped accidentally" means a tear which was not made by *Beis Din*. [If *Beis Din* tore it, we can assume that the loan was paid up.]

The *Gemora* asks: How is "a tear made by *Beis Din*" to be understood?

Rabbi Yehudah said: If it was made at the place of the witnesses, or at the place of the date or by the place of the *toref* (the very essence of the document; where it states the date, the people and the amount borrowed). Abaye said: If it is torn crosswise like an "x."

There were some Arabs who came to Pumbedisa, who seized by force the lands (and the documents, which were proof of ownership) of the inhabitants. The owners (of land which was not yet taken) came to Abaye and said to him: Will the Master examine our documents and write for us duplicates, so that, in case the land and the document is taken away from us, we shall still have proof that it belonged to us (and we can then repossess it from the hands of a purchaser)? Abaye said to them: What can I do for you? Rav Safra has said: Two documents may not be written concerning the same field, since a person (the purchaser of the seller's land) might seize (when he is

being compensated for the field being seized by the seller's creditors) and seize again (with the second document; for he turns in the first document after receiving compensation). As they were insisting of him, he said to his scribe, "Go and write for them the document (and then erase it and write the deed a second time on the erasure). It will emerge that the text is written on the part which was erased and the witnesses will have signed on the clean paper, and such a document is ruled to be invalid. Rav Acha bar Manyumei said to Abaye: Perhaps it might happen that (it will be erased a second time) the original tracing would be legible, and it was taught in the *braisa* above: If it was erased or obliterated, if the tracing of the letters are legible, it is valid!? He replied to him: Did I say that a proper document shall be written? I merely said that letters of the *aleph-beis* shall be written. (168b)

### INSIGHTS TO THE DAF

#### **Must the Witnesses to a Wedding See the Bride's Face?**

The *Gemora* states: A Torah scholar who goes to marry a woman should be accompanied by a worldly person lest she be replaced by another.

Abaye counsels a Torah scholar going to marry a certain woman to take along a person who can verify that she is really his intended. A *talmid chacham*, after all, is completely absorbed in Torah study and, being unfamiliar with the ways of the world, might be swindled.

In connection with this advice, the *poskim* discuss the question as to if the witnesses at a wedding are obligated to see the bride's face. According to the Mabit (Responsa, I, 227, cited by his son the Maharit in his *Chidushim* on Kiddushin 42a), the witnesses must do so in order to testify that she is the woman who received the *kiddushin*.

Actually, about 250 years before the Mabit's generation, Rabbi Yehudah, a son of the *Rosh*, mentioned that the witnesses must see the bride's face, after which she is again covered (Responsa *Zichron Yehudah*, 91).

Still, the *Avnei Miluim* (31, S.K. 4) holds that the Mabit referred only to hasty weddings with few attendants. If the bride is surrounded by many women, though, they surely know her identity and we may rely on the *chazakah* (assumption) that she is the intended without the witnesses' having to see her. Nonetheless, in his Responsa *Chesed L'avraham* (141, E.H. 20), HaGaon Rav Avraham Teomim raises the question that, after all, women are disqualified to testify and cannot be accepted at a *beis din* and, as a result, he enforced the Mabit's ruling in his town.

Many Acharonim strongly opposed his practice, asserting it was immodest and that one mustn't change the custom whereby the witnesses need not see the bride (Responsa *Divrei Chayim*, E.H., II, 71; Responsa *Beis Shlomo*, E.H. 9; Responsa *Toras Chesed*, E.H. 8:4; and see *Kehilas Yaakov* by Rabbi Yaakov of Lissa, 31:1, and *Pischei Teshuvah*, 42, S.K. 12-13).

**One letter can change a *halachah*:** The *Mateh Menasheh* (*Dinei Hachnasas Kalah*, 8) quotes the *Tzeidah LaDerech* that certain communities practiced the custom for the witnesses to see the bride before the *kiddushin* "and in Tulitola they went back to doing so and may they be strong and blessed" – apparently, conforming with the Mabit's opinion. However, a newer edition of *Tzeidah LaDerech* (*Maamar 3, Kelal 2, Ch. 1*) reads "and in Tulitola they went back [refrained] from doing so (*milinhog*, with the addition of a *mem*) and may they be strong and blessed." In conclusion, we emphasize that various communities still have different customs (see *Otzar HaPoskim*, which cites several opinions).

## DAILY MASHAL

### *Asmachta by Har Sinai*

It is written in Parshas Yisro [24, 9 – 11]: And Moshe and Aaron, Nadav and Avihu, and seventy of the elders of Israel ascended, and they perceived the G-d of Israel etc., and they perceived G-d, and they ate and drank.

Rashi cites the *Medrash Tanchuma*: They gazed and peered and because of this were doomed to die, but the Holy One, blessed be He, did not want to disturb the rejoicing of this moment of the giving of the Torah. So He waited to kill Nadav and Avihu until the day of the dedication of the Mishkan, and for the elders until the following incident: *And the people were as if seeking complaints... and a fire of Hashem broke out against them and devoured at the edge (the leaders) of the camp.*

We can ask: What happened by the sin of the complainers that precisely then, Hashem chose to destroy the elders?

The Chasam Sofer answers based upon a *Gemora* in Bava Metzia (66a): Rav Pappa said: An *asmachta* is sometimes binding and sometimes not. If the lender found the borrower (*on the date that the loan was due*) drinking beer (*at a tavern*), it is binding (*for he clearly does not care about the forfeiture of his field*); if, however, he was trying to procure money, it is not binding.

Rav Acha from Difti asked Ravina: Perhaps he was drinking to dismiss his anxiety (*that he could not pay the loan*), or perhaps someone else had assured him of the money (*to repay it*)?

Similarly, it can be said regarding the Jewish people's acceptance of the torah when they said, "we will do and we will listen." Seemingly, this should be regarded as an *asmachta*, and therefore not binding – they were coerced into saying that by the fact that the mountain was placed on top of them.

Accordingly, we can say as follows: when the elders ate and drank, this was a demonstration that they were completely at ease with their decision; they were displaying happiness and joy with the acceptance of the Torah, and that it wasn't an *asmachta* at all. So, on the contrary – they were acting properly, and not deserving of a punishment at all! However, by the sin of the complainers, it is written: *They travelled from the mountain of Hashem.* Rashi explains that they ran away like a child runs when he is leaving school. They were fleeing in order not to receive any more laws. This would then indicate that when they were eating and drinking by Mount Sinai, it was not a sign of happiness, but rather, they were dispelling their anxiety. This was a cause for their demise, and that is why Hashem waited until the time that they demonstrated what their true intentions were.