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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

Maneh is not Mine

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 we assume that people do not conspire to take money away from *hekdesh*.

Rav Nachman challenged him: And does a person conspire to take money away from his children? For Rav and Shmuel both say: If a person on his deathbed says that he owes a *maneh* to someone – if he also said, "Give it to him," we give it to him; if however, he did not say that, we do not give it to him. [*Now seemingly, a person would not conspire to take money away from his children; so why is he not believed?*] It would seem from here that a man does not want his children to appear wealthy (*and that is why he said that a maneh is not his*); here also (*where he is dedicating all of his possessions to hekdesh, but says that he owes a maneh to someone – although one does not conspire against hekdesh*), we can apply the logic that a man does not want to appear wealthy (*and therefore, we should not believe his admission*)!?

The *Gemora* answers: Rav Huna gave his ruling only when the lender was in possession of a loan document (*and the dying man was merely agreeing to him*).

The *Gemora* asks: Does this imply that Rav and Shmuel are discussing a case where the lender is not in possession of a loan document? Why then, is the *maneh* to be given where the dying man said "Give it to him"? This is only a verbal loan, and both Rav and Shmuel stated that an oral loan cannot be collected from the inheritors or from the purchasers!?

Rather, Rav Nachman said, both cases are where the lender is in possession of the loan document, and there is no contradiction, for Rav Huna was dealing with a case where the document was authenticated; and Rav and Shmuel were discussing a case where it was not authenticated. Therefore, if he said, "Give it to him," he has validated the document. If, however, he did not say, "Give it to him," he has not validated it (*and we do not give it to the lender until it has been authenticated; this is because we assume he is saying it only because a man does not want his children to appear wealthy*).

Rabbah said: If a dying man said, "I owe a *maneh* to So-and-so," and the orphans stated, 'We have paid it," they are believed. If he said, "Give a *maneh* to So-and-so," and the orphans stated, "We have paid it," they are not believed.

The *Gemora* asks: Which way is this going; the exact opposite is the correct logic!? If he said, "Give a *maneh*," since their father had given a definite instruction, it makes sense to believe them that they paid; if, however, he said, "I owe a *maneh* to So-and-so," since their father did not give a definite instruction, we should assume that they did not pay it!?

Rather, if such a statement was made, it was made as follows: If a dying man said, "I owe a *maneh* to So-and-so,"

and the orphans stated, "Our father retracted and told us that he paid," they are believed. What is the reason? He might have remembered afterwards that indeed he paid. If, however, he said, "Give a *maneh* to So-and-so," and the orphans stated, "Our father retracted and told us that he paid," they are not believed; for if he would have paid it, he would not have said to them, "Give a *maneh*…" (*for he obviously was certain that he did not pay it*).

Rava inquired: What is the *halachah* where a dying man admitted to a debt? Is he also required to say, "You be my witnesses," (*for otherwise he can claim that he was only joking*) or not? Is he required to tell them to write it or not? Do we assume that a man might joke even while on his deathbed, or will he not joke at such a time? After raising these questions, he answered them himself: People do not joke when they are dying, and the words of a dying man are considered as if they were written and delivered. (174b – 175a)

Mishna

If someone lends money to his friend in a loan document, he can collect from encumbered properties. If he lends money to his friend with witnesses (*but not in a document*), he may (*only*) collect from unencumbered properties. If someone (*the lender*) produced another person's handwriting (*the borrower's*) agreeing that he owes money to him, the lender can collect from unencumbered properties.

If the guarantee of a guarantor appears below the signatures in a debt document (*it says that he will be the guarantor for the loan*), the creditor may recover his debt from the guarantor's free property (*it may not be collect from encumbered property, for witnesses did not sign below the guarantor's statement and therefore, it is regarded as a verbal admission and not as a written guarantee*). There was such an incident that came before Rabbi Yishmael, and he ruled that the lender may collect from the guarantor's free property.

Ben Nanas said to him: He may not collect from free property or encumbered property. He explained: This is just as if a creditor was strangling his debtor in the street, and his friend found him and said to him (*the creditor*), "Leave him be and I will pay you," he is certainly exempt from liability, since the loan was not made based on the trust of this guarantor (*this is why the guarantee written below the signed document does not constitute a valid guarantee, for it was written after the loan transpired*). Which guarantor is obligated? If he said, "Lend him and I will give you," he is obligated, for the loan was made based on the trust of this guarantor.

Rabbi Yishmael said: One who wishes to become wise, let him deal with monetary law, for there is no branch of the Torah greater than it, for it is like a gushing spring. And one who wishes to study monetary law, let him serve Shimon ben Nanas. (175a – 175b)

Encumbrance

Ulla said: Biblically speaking, either a loan recorded in a document or an oral loan may be recovered from mortgaged property. What is the reason for this? It is because encumbrance is Biblical (*a person's property acts as a guarantor to the loan*). Why then has it been said that an oral loan may be collected only from free property? It is because of the potential loss to the buyers (*who did not hear that this property was mortgaged for a loan, and it will emerge that they will lose their purchase money*). The *Gemora* asks: If so, the same law should also apply to a loan recorded in a document!? The *Gemora* answers: There, they have brought the loss upon themselves (*for they heard about the loan and bought this property anyway*).

Rabbah said: Biblically speaking, either a loan recorded in a document or an oral loan may be recovered only from free

property. What is the reason for this? It is because encumbrance is not Biblical. Why then has it been said that a loan recorded in a document may be collected only from encumbered property? It is because people would stop lending out money (*if they cannot collect encumbered properties*). The *Gemora* asks: If so, the same law should also apply to an oral loan!? The *Gemora* answers: There, it is not public knowledge (*and it would be unfair to take their land*).

Rav and Shmuel stated that an oral loan cannot be collected from the inheritors or from the purchasers. What is the reason for this? It is because encumbrance is not Biblical. Rabbi Yochanan and Rish Lakish both hold that an oral loan can be collected from the inheritors or from the purchasers. (175b)

INSIGHTS TO THE DAF

Canceling a Guarantee by Fax

By: Meoros HaDaf HaYomi

A stormy altercation between the owner of a shop for electric appliances and his wholesaler became so complicated that the matter was referred to a *beis din* and, by examining the case, we shall try to clarify some elementary concepts of grantees treated by our *sugya*. The wholesaler claimed that the shopkeeper owed him 9,000 shekalim while the latter insisted he owed him nothing. The wholesaler subsequently stopped supplying him with goods till the shopkeeper was forced to sign a promissory note for the said amount and even provide a guarantor (*anyone may assert that he owes another money without providing a reason*). A few days later the shopkeeper escaped the country, leaving his business bankrupt, and the guarantor – his father-in-law – remained helpless to meet his responsibility. He thought out apparently serious excuses to avoid paying the debt and we shall relate to one of them.

The careless son-in-law: "You should understand," claimed the father-in-law before the *beis din*, "that my dear son-in-law is careless and negligent and that the conniving wholesaler therefore exploited him. Had I known the truth, not only wouldn't I have signed but I'd have taken the necessary steps to invalidate his claim. Unfortunately, my son-in-law fooled me, telling me nothing, and my signature is therefore defined as an erroneous undertaking (*mikach ta'us*) to be completely voided."

A borrower who promised a guarantor: "I'm as rich as Korach": The claim of *mikach ta'us* is commonly heard in cases involving guarantees. In a certain case, for example, a guarantor claimed he agreed to guarantee a loan as the borrower had described his enormous fortune and accumulation of assets throughout the world. Would this, indeed, be a *mikach ta'us*? There is no doubt, after all, that he would not have assumed such a responsibility if he had known about the borrower's shaky financial condition.

A guarantor is only beholden to the lender: Still, such a claim, even if proven true, is not halachically supported, as a guarantor obligates himself only to the **lender**. The borrower merely acts as a mediator to secure guarantors for the lender. In other words, there was indeed a regrettable misunderstanding here but no grounds to invalidate the guarantor's signature. Consider the following example: Reuven hears that a certain shop sells utensils in which diamonds have been hidden. He rushes to the store and buys a huge amount of items from the nonplussed shopkeeper who fails to understand his enthusiasm. After a long night of breaking the articles and poring through them, Reuven realized that they hold no diamonds. Despite his deep disappointment, it is obvious that he cannot claim that his purchase was a *mikach ta'us*. A vendor is not supposed to know a customer's intentions. "He wanted porcelain? I sold him porcelain." Reuven should direct his claims to the rumormongers.

L'zecher Nishmas HaRav Raphael Dov ben HaRav Yosef Yechezkel Marcus O"H

By the same reasoning, a guarantor, in his capacity as responsible to the lender for the borrower's debt, cannot claim that the borrower deceived him. The lender holds the guarantor's signed guarantee and is not supposed to be interested in any such deception. As long as the guarantee is free of conditions, such claims can't invalidate the guarantor's signature. The guarantor assumed the unconditional responsibility to pay in the borrower's stead and has only to learn a lesson for future circumstances (*Eimek HaMishpat,* II, 9).

Only the lender should be informed of the cancellation of a guarantee: The link between a guarantor and a lender is so direct that if the former wishes to retract his guarantee, he must inform the **lender** accordingly before the execution of the loan. It never suffices merely to inform the borrower and if the guarantor does so, he has not invalidated his guarantee (*Nesivos HaMishpat*, 122, *S.K.* 3).

Apropos of this concept, we would like to cite the following case brought before a *beis din* involving the attempted cancellation of a guarantee by fax. Only a few hours before the execution of a loan, a guarantor discovered that the borrower could never repay it and sent a fax to the lender's office informing him that he was canceling his guarantee. However, the lender noticed the fax only after lending the money… To prevent such errors and unpleasantness, the *beis din* advised lenders to add a codicil to loan agreements stipulating that a cancellation of a guarantee is valid only if sent by registered mail, as customary regarding other contracts.

DAILY MASHAL

The Profession of Screaming

He should learn the *halachos* of finance and property as there is no more important profession (*miktzo'a*) in the Torah.

The *Ben Ish Chai* relates the anecdote of a *dayan* who ruled that a certain person should pay another 100 dinars. When the losing party started to scream, the *dayan* asked him, "If you would have forgotten to sell *chametz* before Pesach and I would have commanded you to throw it in the sea, you would still scream at me?" "Certainly not, Rabbi", replied the man, "The *chametz* just gets forfeited but I wouldn't have to give it to another person. Besides, such a ruling would not mean that someone else defeated me."

This concept, says the Ben *Ish Chai*, is indicated by the word *miktzo'a*, used by the *Mishna* to describe the topic of finance and property. The letters of *miktzo'a* also form *tza'akom* – "their screaming" – as money matters cause screaming. The letters of *miktzo'a* can also be rearranged to spell *oktzam* – "their sting" – as litigants sting each other out of jealousy and to protect their honor.

Between the Holy and the Holy

He who wants to be wise should learn the *halachos* of finance and property.

HaGaon Rav Y. Hutner zt"l explained that all the halachos of the Torah, aside from those dealing with finance and property, treat distinctions between the sacred and the secular, such as the *halachos* of the *sedarim* Zeraim, Kodoshim and Taharos. Such distinctions are relatively easy.

A Jew's money is holy. Those learning the *halachos* of finance and property must learn to distinguish between equal degrees of sanctity – between one Jew's money and another's. This distinction is very difficult and therefore he who wants to be wise should learn these *halachos*.