נידב לע"נ ר' יצחק אייזיק בן ר' חיים מרדכי ז"ל
נלב"ע ט' שבט תשע"ג

ולימדתם אותם

OVERVIEW DAF 13

Section 1: Concern for Fraudulent Collection

Question from a Mishnah:

Mishnah says: We may write a loan document for the borrower even when the lender is ABSENT.

Problem: Why is this allowed from the start? Maybe he won't lend the money on the date written in the document, and he'll improperly take land from people who bought BEFORE the actual loan!

Answer #1 (Rav Asi):

The Mishnah discusses "Hakna'ah" documents. In these documents, the borrower puts a lien (claim) on his land IMMEDIATELY (so any collection is proper).

"Hakna'ah" means the borrower formally transfers a lien on his property right when the document is written, even before getting the loan.

Question on Rav Asi:

Remember our Mishnah says: If the document has Achrayus, the finder may not return it. We said this is when Shimon ADMITS he owes, but we're worried the loan was given AFTER the date, so Reuven might illegally collect from property sold before the actual loan.

Problems:

- If it's a Hakna'ah document → The collection IS proper (the lien was immediate)!
- If it's NOT a Hakna'ah document → It should only be written in front of the lender, so surely the loan was given the same day!

Rav Asi's Answer:

The law is: A document WITHOUT Hakna'ah should only be written in front of the lender.

But since THIS document was LOST, we're worried it was written (improperly) when the lender was absent!

Answer #2 (Abaye):

Even if a document is NOT Hakna'ah, when witnesses SIGN, the lender immediately acquires a lien on the borrower's land!

Why Abaye didn't learn like Rav Asi: Since documents without Hakna'ah are only written in front of the lender, we shouldn't worry that money wasn't given on the date!

Question Against Abaye:

From a Mishnah: If someone finds a Get (divorce document), freedom document, gift document from a dying person, or a receipt, he may NOT return it - maybe they were written but never given.

Problem: Why should this matter? When witnesses sign, the lender acquires immediately (according to Abaye)!

Answer: He only acquires IF the document is ultimately given.

Another Question:

The Mishnah says if it has Achrayus, we don't return it. We said this is when Shimon admits, but we're worried the loan was given after the date.

Answer #1 (Rav Asi): This refers to documents that are NOT Hakna'ah.

Problem: Abaye says when witnesses sign, the lender acquires immediately. How can HE answer?

Answer #2 (Abaye):

We're worried the loan was already PAID BACK! The borrower admits because he's SCHEMING to help the lender collect from buyers illegally (and they'll share the profit).

Section 2: Another Explanation of the Mishnah

Question About Shmuel:

Shmuel is NOT concerned about repayment and scheming. How can HE answer?

Answer #1: If he learns like Rav Asi, he can answer like Rav Asi.

But if he learns like Abaye, how can he answer?

Answer #2:

The Mishnah discusses when Shimon does NOT admit!

Question: If so, when there's NO Achrayus, why do we return the document?

Granted, Reuven can't collect from land Shimon SOLD, but he CAN collect from "Bnei Chorin" (property Shimon still OWNS)!

Answer:

Shmuel says (like he said elsewhere): According to R. Meir, a document WITHOUT Achrayus can't be used to collect AT ALL!

Question: If it can't be used for collection, why return it?

Answer (Rav Nasan bar Oshiya): The lender can use the parchment to cork a bottle!

Question: Why not return it to the BORROWER?

Answer: The borrower claims the lender forged the document.

Section 3: The Argument in the Mishnah

Two Interpretations:

R. Elazar: They argue when Shimon does NOT admit.

- **R. Meir:** A document without Achrayus can't collect at all
- **Chachamim:** It CAN collect from Bnei Chorin (property the borrower still owns)

When Shimon ADMITS, everyone agrees we return it. We're not worried about repayment and scheming.

R. Yochanan: They argue when Shimon DOES admit.

- **R. Meir:** Agrees a document without Achrayus CAN collect from Bnei Chorin
- **Chachamim:** It can collect even from "Meshubadim" (property the borrower sold)

When Shimon does NOT admit, everyone agrees we don't return it. We're worried about repayment.

A Beraisa Settles It:

A Beraisa SUPPORTS R. Yochanan, REFUTES R. Elazar on one point, and REFUTES Shmuel on two points!

The Beraisa says (R. Meir): If Levi found a document:

WITH Achrayus:

- Even if lender and borrower agree, don't return it to either

WITHOUT Achrayus:

- If borrower agrees → Return it to the lender
- If not → Don't return it to either

Why?

- Documents WITH Achrayus can collect even from Meshubadim
- Documents WITHOUT Achrayus can collect from Bnei Chorin

Chachamim say: Either type can collect even from Meshubadim!

What This Refutes:

Refutes R. Elazar:

1. He said R. Meir holds a document without Achrayus can't collect AT ALL - but the Beraisa says it CAN collect from Bnei Chorin!
2. He said neither Tana is concerned for scheming - but the Beraisa IS concerned (says not to return even when both admit)!

Question: R. Elazar is refuted on TWO points! (We said earlier only one!)

Answer: Both stem from one source. Because he says they only argue when Shimon doesn't admit, he was forced to say neither is concerned for scheming.

Bottom Line: This complex section debates when to return found loan documents, exploring concerns about fraud, backdating, scheming between parties, and what types of documents can be used to collect from what types of property.