

# INSIGHTS FROM OUR CHABUROS

## The appearance of the signature of the guarantor after the signatures of the witnesses

אמר רבר כתנאי ערב היוצא אחר חיתום שטרות גובה מנכסים בני חורין

Reish Lakish and Rabbi Yochanan argue in a case where a person tells another, "I owe you one hundred dollars." Rabbi Yochanan is of the opinion that the speaker is liable, while Reish Lakish holds that he is not liable. The Gemara discusses the circumstances under which they argue. Rava suggests that this dispute of the Amoraim perhaps coincides with a dispute which we find among the Tannaim.

A loan document with the signature of a guarantor added on allows the lender to collect from free and unencumbered land (land which has not been sold by the borrower in the meantime). This is the opinion of Rabbi Yishmael. ר' ינאי holds that collection cannot be made from any lands of the guarantor at all. Rashi explains that the signature of the guarantor appears below the signature of the witnesses of the original loan document. This being the case, the witnesses of the document do not serve as testimony to the commitment of the guarantor. In Gittin (21a), Rashi explains that at the bottom of the document, the guarantor writes in his own handwriting, "ואני ערב—and I am a guarantor to this." Tosafos, in our Gemara, also writes that the guarantor does not write his name. This indicates that the commitment of the guarantor is established through his admission that he accepted this role at the time when the money was handed over from the lender to the borrower. After this postscript was added, the document was handed to the lender in the presence of two witnesses. Now, however, the one who wrote these words claims that he is not actually responsible, as his name or statement at the bottom of the document was unsigned. The dispute between R' Yishmael and Ben Nannas can possibly be understood to be parallel to the discussion between Reish Lakish and R' Yochanan as the case of "I owe you money."

# REVIEW AND REMEMBER

1. What makes the agreement between in-laws regarding support of the children binding?
2. What is the point of dispute between R' Yishmael and Ben Nannas?
3. Does a person need financial benefit to enter into a binding financial obligation?
4. What inference did R' Chisda draw from the Mishnah?

# STORIES OF THE DAF

## Unexpected Release

"הרי שהיה חונק את חבריו בשוק..."

Our Gemara discusses a case where a creditor was strangling his debtor in an effort to get him to pay. Another man came along and had mercy on the borrower and promised to pay in his stead.

Although debtors don't often get throttled physically, the debts themselves often make the debtor feel as though his life's breath is being choked out of him. At such times, a rescuer is most welcome.

When the Ponevezh Yeshiva built its new building, Rav Kahanaman, זצ"ל, assumed debts of massive proportion on his shoulders. The only conceivable way to cover this was an extended trip to collect funds in America.

This was his first visit to America, and he was fairly unknown in the New World. Not surprisingly, although he collected for many months he didn't make much headway at all. As the day of his departure drew near, he decided to bid the Kapischnitzer Rebbe farewell.

The Rebbe asked, "How much did you succeed in collecting?" The Ponevezher Rav confided to the Rebbe that he had not succeeded in making a fraction of what he owed and didn't know how he was going to deal with the crushing burden of debt that remained on his shoulders.

After the Rav dejectedly left, the Rebbe started making phone calls. An hour later he had \$10,000 for the Rav. The Rebbe's son who told this story was not sure if this vast sum of money was borrowed or donated.

In those years this was a veritable fortune. The Rebbe asked his son to accompany him to the home where Rav Kahanaman was staying to give over the money.

When the Rav saw the money he again burst into tears. "In all the many weary months I spent soliciting donations I didn't make anywhere near this sum!"

The Ponevezher Rav once said to Rav Shlomo Lawrence, "If I were to turn into a chossid I have a ready-made Rebbe, the Rebbe of Kapischnitz!"

## HALACHA HIGHLIGHT

### Child custody

אמר ר' חסדא זאת אומרת בת אצל אמה

*R' Chisda said: This tells us that a daughter is placed with her mother*

**R**ambam<sup>1</sup> rules that a divorced woman has custody of her children until the age of six and the father cannot assert that he will not provide financial assistance unless his son is together with him. Once a son reaches the age of six, his father can refuse to provide his sustenance unless he is with him, but a daughter is always in the custody of her mother. Raavad<sup>2</sup> challenges Rambam's ruling that a son is put into his mother's custody until he reaches the age of six. How could we force a father to release custody of his son to his mother when it is the father who has the obligation to educate and teach his son Torah? How could he be denied the ability to fulfill that mitzvah? Magid Mishnah<sup>3</sup> answers that Rambam's ruling is limited to where the mother will remain in town so that the father will have the opportunity to fulfill his obligation to teach his son Torah during his visitation, but if the mother wants to move to another town the father has the right to protest and to refuse to provide financial assistance.

There is also a dispute whether a mother is permitted to take her daughter and move to a different city. Maharibal<sup>4</sup> rules, based on our Gemara, that a daughter is always placed into her mother's custody even if the mother will move out of town. Maharashdam<sup>5</sup> disagrees and maintains that even though custody of a daughter is given to the mother, nonetheless, the father's rights cannot be denied and it is prohibited to take the daughter to a place where the father will not be able to see her or educate her.

Teshuvos Darkei Noam<sup>6</sup> expresses hesitancy to rule in this case since it is debated by Maharashdam and Maharibal. A further point that relates to this issue is whether there are any consequences if the mother moves out of town. Teshuvos Maharam DiButon<sup>7</sup> rules that even according to Maharashdam if the mother has already moved out of town we cannot compel her to return. Teshuvos Halacha L'Moshe<sup>8</sup> cites sources which disagree and maintain that the mother must return.

1. רמב"ם פכ"א מהל' אישות ה"ז.
2. ראב"ד שם.
3. מגיד משנה שם.
4. שו"ת מהריב"ל ח"א כלל י"א סי' נ"ו.
5. שו"ת מהרשד"ם אה"ע סי' קכ"ג.
6. שו"ת דרכי נועם אה"ע סי' ל"ח.
7. שו"ת מהר"ם די בוטון סי' כ"ד.
8. שו"ת הלכה למשה אה"ע סי' כ"ג.

## PARSHA CONNECTION

**In this week's daf** the Gemara discusses a husband who supports his wife's daughter, והזן את בת אשתו. The expression "הזן" is the same as the description of the first ברכה of פרשת עקב, namely הזן ברכת הזן. This ברכה is described in ויבטל ושבעת וברכת את ד' אלוךך על הארץ, where it says והטובה אשר נתן לך (דברים פרק ח פסוק י'). The next possuk (י') is as follows: השמר לך פיתשכח אתה' אלוךך לבלתי שמר מצותיו ומשפטיו וחקתיו אשר אנכי מצוך היום. What is the connection between these two פסוקים? The אלשיך הקדוש offers a beautiful explanation. The second ברכה of ברכת המזון which is called ברכת הארץ was instituted by יהושע when they entered ארץ ישראל. However the original ברכה was "על" because this was the generation that entered because "על שהנחלת לאבותינו" ארץ ישראל. Today we say "על שהנחלת לאבותינו" because "we" didn't inherit the land but rather our forefathers did. The connection of the two פסוקים is as follows: If you want to continue saying you must be careful not to do עבירות which will cause you to leave ארץ ישראל and go into גלות.

## POINT TO PONDER

**The Gemara says** that if a person writes that he owes a Kohen five סלעים he has to pay him the five סלעים yet his son is not פדוי. Would the כהן need to return the money, if the father says, that he only intended to pay if his son will be redeemed?

### Response to last week's Point to Ponder:

The Gemara says that women like a ממאנת don't get a כתובה but get תוספת כתובה whereas עוברת על דעת and similar cases don't get תוספת כתובה. A שניה is listed in the משנה together with a ממאנת. If עוברת על דעת doesn't get תוספת why would a שניה who is עוברת on the עבירה of marriage to a שניה every minute, get the תוספת כתובה?

Someone who marries a שניה knows when he marries her that she is אסור and since he wrote her a כתובה we assume that he agrees to pay her even though she is אסור. On the other hand a עוברת על דעת is someone who acted properly when they got married and now became עוברת על דעת. Since when he wrote the כתובה he didn't know that she will become עוברת על דעת, we assume that he did not mean to pay her if she changed. (See ריטב"א)

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