



Today's Daf In Review is being sent l'zecher nishmas Habachur Yechezkel Shraga A"H ben R' Avrohom Yehuda

### Bava Metzia Daf Yud Gimmel

- **Q:** The Gemara stated that there is a concern that a loan document was written in anticipation of a loan in Nissan, but was not actually used until Tishrei, thus improperly creating a lien on properties sold between Nissan and Tishrei. The Gemara asks, a Mishna says that we may write and sign a loan document at the request of the debtor even if the creditor is not present. How can that be done? Why are we not concerned that it will not be used until a later time and will therefore improperly create liens? **A: R' Assi** said, The Mishna is talking about a document in which the debtor gives the creditor an immediate lien against his real estate, even if the loan is never given. Therefore, any lien would be proper.
  - **Q:** If so, why does our Mishna say that if a found promissory note allows for a lien on real property it may not be returned, and we explained that the case is where the debtor admitted to the debt, and the reason it may not be returned to the creditor is out of concern that it was prepared in advance of the actual loan, thereby creating an improper lien? Let us look into the document and make a determination – if it is a document where the debtor gave an immediate lien, it is not a problem to return it to the creditor, and if it is not such a document, we explained that the Mishna would not allow such a document to be written without the creditor present!? **A: R' Assi** would say, although such a document may not be written if the creditor is not present, in our Mishna, where there is suspicion about the document since it was lost and then found, we must be concerned that the document was improperly written without the creditor being present and therefore creates an improper lien.
  - **Abaye** said, the reason a promissory note may be prewritten is because when the document is signed, the borrower's property is subject to a lien beginning at that time, even if the loan is not given at that date, and even if it is not the type of document where the debtor gives an immediate lien. **Abaye** says we must say this, and not like **R' Assi's** answer, because if we are not allowed to prewrite a document, there would be no reason for us to be concerned that such a document was prewritten.
    - **Q:** A Mishna says, if someone found a get, a shtar shichrur, a document stating the gift of a dying man or of a healthy man, or a receipt for a loan payment, he may not return them to the named recipient, because we are concerned that they were written to be given, but were never actually given. Now, according to **Abaye**, even if it was never given, once it was signed it created the obligation in the document, and it should be given to the recipient!? **A: Abaye** only says that once it was actually given. However, if it was never given, we would not say this.
    - **Q:** Our Mishna said, if someone finds a promissory note which provides for a lien on his properties, it may not be returned to the creditor. We explained that the Mishna is discussing where the debtor admits to taking the loan and still owing the loan, and the reason it can't be given to the creditor is because we are concerned that it was prewritten before the loan was given. Now, according to **R' Assi**, this was explained above. However, according to **Abaye**, the lien was created when the document was signed, and therefore the document should be returned to the creditor!? **A: Abaye** would say, the reason we don't give it to the creditor in the Mishna is because we are concerned that the loan was truly repaid, and that the creditor and debtor devised a plan to now go and take the real estate from purchasers.
      - **Q:** Are we to say that **Shmuel** can't hold like **Abaye**, because **Shmuel** is not concerned that a loan was repaid and that the parties are then planning to claim it wasn't paid just to get the property from the

purchasers? **A: Shmuel** will say the Mishna is discussing where the debtor does not admit that the debt is owed.

- **Q:** If the debtor does not admit to the loan, why does the Mishna say that the document is returned to the creditor if it doesn't provide for a lien on his properties? Although the document could not be used to collect from encumbered property, it could still be used to collect from unencumbered property, so why do we give it to the creditor!? **A: Shmuel** is following his view from elsewhere, that **R' Meir** holds, if a document is written without "achrayus" (providing for a lien), it cannot be used to collect from encumbered *or* unencumbered property.
- **Q:** Then what is the purpose of giving it to the creditor altogether? **A: R' Nosson bar Oshaya** said, it can be used to cover a bottle.
- **Q:** Why give it to the creditor for that use rather than the debtor? **A:** The debtor says the document is false, so clearly it is not his to use.
- **R' Elazar** said, the machlokes between **R' Meir and the Rabanan** in our Mishna is where the debtor does not admit to owing the loan. In that case, **R' Meir** holds that a document written without achrayus cannot be used to collect encumbered or unencumbered properties, and it therefore can be returned to the creditor, since he can't use it to collect anyway. The **Rabanan** hold that such a document could be used to collect from unencumbered property, and therefore it cannot be returned to the creditor. However, if the debtor admits to owing the money, all would agree that it would be returned to the creditor, and all would agree that we are not concerned that it was truly paid off and there is now a plan to try and defraud the purchasers of the real estate. **R' Yochanan** said, the machlokes is in a case where the debtor admits to owing the money. **R' Meir** says the document written without achrayus would only allow collection from unencumbered property. Therefore we return it to the creditor. The **Rabanan** say that even such a document can be used to collect from encumbered property. Therefore, the document cannot be returned.
  - There is a Braisa that says like **R' Yochanan**, and refutes **R' Elazar** on one point, and **Shmuel** on two points. The Braisa says, **R' Meir** says, if someone finds a loan document that has achrayus, even if both parties agree that it is a valid document, it may not be returned. If there is no achrayus, then if the debtor admits to owing the money, it is returned to the creditor, if he does not admit to it, it is not returned to either party. This is based on the fact that **R' Meir** says a loan document with achrayus can be used to collect even from encumbered property, whereas if it does not have achrayus it can only be used to collect from unencumbered property. The **Chachomim** say, even if written without achrayus it may be used to collect from encumbered property.
    - This Braisa refutes **R' Elazar** on one point, because he says that **R' Meir** says a document without achrayus cannot be used to collect even from unencumbered property, and he also says that **R' Meir and the Rabanan** agree that we are not concerned for a plan to defraud the purchasers. The Braisa says that **R' Meir** says a document without achrayus can be used to collect from unencumbered property, and says that all agree that we are concerned for a plan to defraud, because the Braisa says that even when both parties agree, it may not be returned to either party. We see that the Braisa is concerned for the defrauding of the purchaser.
      - **Q:** This is a refutation on two points, not one!? **A:** They are both based on the fact that he says the machlokes is when the debtor does not admit to owing the loan. That is why it is considered to be one.
    - The Braisa also refutes **Shmuel** on two points. One point is the same way that it refutes **R' Elazar**, because he also says that machlokes in the Mishna is where the debtor does not admit to owing the loan. The second point is that **Shmuel** says we are never concerned that a loan has been paid, and the Braisa says that we are concerned.