Pruzbol 5

Rabbanit Leah Sarna | Drisha Institute for Jewish Education | התשפ"ב

Mishnah Sheviit 10:1

The sabbatical year cancels a debt written in a document or one not written in a document. A debt to a shop is not cancelled, but if it had been converted into the form of a loan, then it is cancelled. Rabbi Judah says: the former debt is always cancelled. A wage-debt to a worker is not cancelled, but if it had been converted into a loan it is cancelled. Rabbi Yose says: the [payment for] any work that must cease with the seventh year, is cancelled, but if it need not cease with the seventh year, then it is not cancelled.

Bartenura on Mishnah Sheviit 10:1:2

ם that he wrote for him a document [for which] an obligation for which property is pledged and he mortgaged land upon the lender that looks like he who deposits as surety lands with him, nevertheless, the Seventh Year cancels it (i.e., the loan).

Mishnah Sheviit 10:2

One who slaughters a cow and divides it up on Rosh Hashanah [at the end of the seventh year]: If the month had been intercalated, [the debt] is remitted. But if it had not been intercalated, it is not remitted. [Fines for] rape, for seduction, for defamation, and all other obligations arising from legal procedure, are not remitted. One who loans and takes a pledge, and one who hands over his debt documents to a court, [these debts] are not remitted.

Gittin 37a:9-16

§ We learned in a mishna there (Shevi'it 10:1): The Sabbatical Year abrogates debt both for loans that were contracted with a promissory note and for loans that were contracted without a promissory note. The amora'im disagree with regard to the interpretation of the mishna: It is Rav and Shmuel who both say: Loans that were contracted with a promissory note, is referring to loans that were contracted with a promissory note that contains a property guarantee; loans that were contracted without a promissory note, is referring even to loans that were contracted with a promissory note that does not contain a

משנה שביעית יי:א'

שְׁבִיעִית, מְשַׁמֶּטֶת אֶת הַמִּלְוָה בִּשְׁטָר וְשֶׁלֹּא בִשְּׁטָר. הַקָּפַת הַחֲנוּת, אֵינָהּ מְשַׁמֶּטֶת, וְאִם עֲשָׂאָהּ מִלְוָה, הֲבִי זֶה מְשַׁמֵּט. רַבִּי יְהוּדָה אוֹמֵר, הָרִאשׁוֹן הָרִאשׁוֹן מְשַׁמֵט. שְׂכַר שָׂכִיר, אֵינוֹ מְשַׁמֵט, וְאִם עֲשָׂאוֹ מִלְוָה, הֲבִי זֶה מְשַׁמֵּט. רַבִּי יוֹסֵי אוֹמֵר, כָּל מְלָאכָה שֶׁפּוֹסֶקֶת בַּשְׁבִיעִית, מְשַׁמֶּטֶת, וְשֶׁאֵינָהּ פּוֹסֶקֶת בַּשְׁבִיעִית, אֵינָהּ מִשְׁמֵּטֵת:

ברטנורא על משנה שביעית י':א':ב'

בשטר. שכתב לו שטר באחריות נכסים ושעבד קרקעות על המלוה דמיחזי כמי שמשכן קרקעות אצלו, אעפ"כ שביעית משמטתו:

משנה שביעית יי:בי

הַשּׁוֹחֵט אֶת הַפָּּרָה וְחִלְּקָהּ בְּרֹאשׁ הַשָּׁנָה, אָם הָיָה הַחֹדֶשׁ מְעָבָּר, מְשַׁמֵט. וְאִם לָאו, אֵינוֹ מְשַׁמֵט. הָאוֹנֵס, וְהַמְפַתֶּה, וְהַמּוֹצִיא שֵׁם רָע, וְכָל מַעֲשֵׂה בֵית דִּין, אֵין מְשַׁמְטִין. הַמַּלְנֶה עַל הַמַּשְׁכּוֹן, וְהַמּוֹסֵר שְׁטָרוֹתָיו לְבֵית דִּין, אֵינָן מְשַׁמְּטִין:

גיטין ל"ז א:ט'-ט"ז

תְּנֵן הָתָם הַשְּׁבִיעִית מְשַׁמֶּטֶת אֶת הַמִּלְוָה בֵּין בִּשְׁטָר בֵּין שֶׁלֹא בִּשְׁטָר רַב וּשְׁמוּאֵל דְּאָמְרִי תַּרְוַיִיהוּ בִּשְׁטָר שְׁטָר שֶׁיֵשׁ בּוֹ אַחְרָיוּת נְכָסִים שֶׁלֹא בִּשְׁטָר שֶׁאֵין בּוֹ אַחְרָיוּת נְכָסִים כָּל שֶׁבֵּן מִלְוֶה עַל כָּה

property guarantee. All the more so, a loan by oral agreement is canceled by the Sabbatical Year. By contrast, it is Rabbi Yoḥanan and Rabbi Shimon ben Lakish who both say: Loans that were contracted with a promissory note is referring to loans that were contracted with a promissory note that does not contain a property guarantee, whereas loans that were contracted without a promissory note is referring to a loan by oral agreement. However, the Sabbatical Year does not abrogate a loan contracted with a promissory note that contains a **property guarantee**, as it is as though the creditor had already taken possession of the debtor's land. It is taught in a baraita in accordance with the opinion of Rabbi Yohanan and Rabbi Shimon ben Lakish: The Sabbatical Year **abrogates a promissory note**, **but if** the promissory note contains a property guarantee the Sabbatical Year does not abrogate it. Similarly, it is taught in another baraita: If the debtor specified one field for the repayment of his loan, then it is not canceled. And not only that, but even if he wrote: All of my property is pledged and guaranteed to you, then the Sabbatical Year **does not abrogate it,** even if he does not specify a field for the repayment of the loan. The Gemara relates: The relative of Rabbi Asi had a certain promissory note that had a property guarantee written in it. He came before Rabbi Asi and said to him: Does the Sabbatical Year abrogate this loan, or does it not abrogate it? He said to him: It does not abrogate it. He left Rabbi Asi and came before Rabbi Yohanan and asked him the same question. Rabbi Yohanan said to him: It does abrogate it. Rabbi Asi came before Rabbi Yohanan and said to him: Does the Sabbatical Year abrogate this loan, or does it not abrogate it? He said to him: It does abrogate it. Rabbi Asi challenged him: But wasn't it the Master himself who said that the Sabbatical Year does not abrogate a promissory note that contains a property guarantee? Rabbi Yoḥanan said to him: Because we think that this should be the halakha should we perform an action based on this? Rabbi Asi said to him: But isn't it taught in a baraita in accordance with the opinion of the Master? He said to him: Perhaps that baraita is in accordance with the opinion of **Beit Shammai**, who say more generally: A promissory note that stands to be collected is considered as though it has been **collected**, and this is why the loan is not abrogated, as it is considered as though the loan had already been repaid. And the halakha is not in accordance with the opinion of Beit Shammai in that issue. § We learned in a mishna **there** (*Shevi'it* 10:2): With regard to **one who lends money** to another based on collateral, and one who transfers his promissory **notes to a court**, the debt owed to them **is not canceled**. The Gemara asks: Granted, the debt is not canceled when one transfers his promissory **notes to a court, as** the **court seizes** the promissory notes, and they are able to collect this debt. **But what is the reason** that the debt is not canceled for one who lends money based on collateral? Rava said: Due to the fact that the creditor has seized an item that belongs to the debtor, it is considered as though the debt has already been collected. Abaye said to him: If that is so, then if a creditor loaned money to

רַבִּי יוֹחָנֶן וְרַבִּי שִׁמְעוֹן בֶּן לָקִישׁ דְּאָמְרִי תַּרְוַיְיהוּ בִּשְׁטָר שְׁטָר שֶׁאֵין בּוֹ אַחְרָיוּת נְכָסִים שֶׁלֹּא בִּשְׁטָר מִלְנֶה עַל פֶּה אֲבָל שְׁטָר שֶׁיֵשׁ בּוֹ אַחְרָיוּת נְכָסִים אֵינוֹ מְשַׁמֵט

תַּנָיָא כָּוָתֵיה דְּרַבִּי יוֹחַנָן וְרַבִּי שִׁמְעוֹן בֵּן לַקִּישׁ שָׁטַר חוֹב מִשַּׁמֵט וָאָם יֵשׁ בּוֹ אַחָרֵיוּת נָכַסִים אֵינוֹ מִשַּׁמֵט תַּנְיֵא אִידַּךְ סְיֵּים לוֹ שַׂדֵה אַחַת בָּהַלְווֹאַתוֹ אֵינוֹ מִשַּׁמֵט וָלֹא עוֹד אַלַא אַפִּילוּ כָּתַב כַּל נָכָסַיי אַחְרָאִין וְעַרְבָאִין לַך אֵינוֹ מִשַּׁמֵט קריבֵיה דָרַבִּי אַסִי הַוָה לֵיה הַהוּא שָׁטַרַא דַהָוָה כָּתִיב בֵּיה אַחָרֵיוּת נְכַסִים אַתַא לִקמֵיה דְּרַבִּי אַסִי אַמַר לֵיה מְשַׁמֵּט אוֹ אֵינוֹ מְשַׁמֵּט אַמַר לִיהּ אֵינוֹ מְשַׁמֵט שַׁבָקֵיה וָאַתָא לְקַמֵּיה דְּרַבִּי יוֹחַנַן אַמַר לֵיהּ מִשַּׁמֵּט אַתַא רַבִּי אַסִי לְקַמֵּיה דְּרַבִּי יוֹחָנָן אֲמַר לֵיה מִשַּׁמֵט אוֹ אַינוֹ מִשַּׁמֵט אַמַר לֵיהּ מִשַּׁמֵט וָהַא מַר הוּא דָאַמַר אֵינוֹ מִשְׁמֵט אַמַר לֵיהּ וְכִי מִפְּנֵי שֵׁאָנוּ מִדַמִּין נַעֲשֵׂה מַעֲשֵׂה אֲמַר

ְוָהָתַנְיָא כְּווֹתֵיהּ דְּמֶר אֲמֵר לֵיהּ דִּלְמָא הָהִיא בֵּית שַׁמַּאי הִיא דְּאָמְרִי שְׁטָר הָעוֹמֵד לִגְבּוֹת כְּגָבוּי דָּמֵי

תְּנֵן הָתָם הַמַּלְּיֶה אֶת חֲבֵירוֹ מָעוֹת עַל הַמַּשְׁכּוֹן וְהַמּוֹסֵר שְׁטָרוֹתִיו לְבֵית דִין אֵין מְשַׁמְּטִין בִּשְׁלָמָא מוֹסֵר שְׁטָרוֹתִיו לְבֵית דִּין דְתָפְסִי לְהוּ בֵּי דִינָא אֶלָּא מַלְיֶה עַל הַמַּשְׁכּוֹן מַאי טַעְמָא אָמַר רָבָא מִשׁוּם דְּתָפֵס לֵיהּ אֲמֵר לֵיהּ אַבָּיִי אֶלָּא מֵעַתָּה הִלְוָהוּ וְדָר בַּחֵצֵרוֹ דְּתַפֵּיס לֵיהּ הַכִי נָמֵי דְּלָא someone and lives in his courtyard as a collateral for the loan, since he seizes the courtyard, which belongs to the debtor, would you also say that the Sabbatical Year does not abrogate the debt? That would contradict the accepted halakha that in this case the debt is canceled. Rava said to him: Collateral is different, as the creditor acquires it for himself, as learned from the statement of Rabbi Yitzhak, as Rabbi Yitzhak says: From where is it derived that a creditor acquires collateral given to him and is considered its owner so long as the item is in his possession? As it is **stated** in the verse with regard to the obligation of a creditor to return collateral at night: "And it shall be righteousness for you" (Deuteronomy 24:13). Rabbi Yitzhak infers: If the creditor does not acquire the collateral, then from where is the righteousness involved in returning it? He would be simply returning an item to its rightful owner. From here it is learned that a creditor acquires the collateral. Therefore, when he returns the collateral to the debtor he is performing an act of charity.

אֲמַר לֵיהּ שָׁאנֵי מַשְּׁכּוֹן דְּקָנֵי לֵיהּ מִדְּרַבִּי יִצְחָק דְּאָמֵר רַבִּי יִצְחָק מִנַּיִן לְבַעַל חוֹב שֶׁקּוֹנֶה מַשְׁכּוֹן שֶׁנֶּאֱמַר וּלְךְּ תִּהְיֶה צְדָקָה אִם אֵינוֹ קוֹנֶה צְדָקָה מִנַּיִן מִכָּאן לְבַעַל חוֹב שֵׁקּוֹנֵה מַשְׁכּוֹן

Deuteronomy 24:10-13

When you make a loan of any sort to your countryman, you must not enter his house to seize his pledge. You must remain outside, while the man to whom you made the loan brings the pledge out to you. If he is a needy man, you shall not go to sleep in his pledge; you must return the pledge to him at sundown, that he may sleep in his cloth and bless you; and it will be to your merit before the LORD your God.

דברים כ"ד:י"-ר"ג

כִּי־תַשֶּׁה בְרַעֲךָ, מַשַּׁאת מְאוּמָה לֹא־תָבֹא אֶל־בֵּיתוֹ לַצְלֵט צֲבֹטוֹּ. בַּחוּץ תַּצְמֹד וְהָאִישׁ אֲשֶׁר אַתָּה בֹּוֹ יוֹצִיא אֵלֶיִּד אֶת־הַצְבוֹט הַחוּצָה. וְאִם־אִישׁ עָנָי הוּא לֹא תִשְׁכַּב בַּעֲבֹטוֹּ. הָשֵׁב תָשִׁיב לֹוְ אֶת־הַצְבוֹט בְּנוֹא הַשֶּׁמֶשׁ וְשָׁכַב בְּשַׂלְמָתוֹ וּבֵרְכֶךְ וּלְּךְ תִּהְיֵה צְדָקֹה לִפָּנֵי יִהֹוָה אֵלֹהֵיךִּ. {0}

רש'י על גיטין ל"ז א:ט':א'-ט"ז:ב'

אחריות נכסים - ששיעבד לו קרקעותיו:

אינו משמט - דכגבוי דמי וכמו שהקרקעות בחזקת המלוה הן וגבויות ממש ואין כאן חוב:

סיים לו - הלוה למלוה:

שדה אחת בהלואתו - יחדה לו לגבות הימנה:

סיים - הראה בסימניה ובמצריה <u>דכגבוי ממש דמי:</u>

אפילו כתב כל נכסיי אחראין - דלא דמי לגבוי כל כך כסיים אפ"ה אינו משמט:

קריביה דרבי אסי - הוא היה המלוה:

מדמין - נראה בעינינו וכמדומין אנו כן ולא שמענו מרבותינו:

נעשה מעשה - להוציא ממונו בידים:

דבית שמאי - במסכת סוטה (דף כה.) מתו בעליהן עד שלא שתו בית שמאי אומרים נוטלות כתובתו ולא שותות כו':

בו: מאחר ששטר כשר הוא והקרקע משועבד בו:

דתפסי להו בי דינא - והפקרן הפקר וגבי מלוה לא קרינן ביה לא יגוש:

דתפיס ליה - ואינו נוגשו ותובעו כלום:

שאני משכון - דמטלטלי:

דקני ליה - למלוה ואם אבד חייב באחריותו הלכך כגבוי נמי דמי לענין שביעית:

Sotah 24a

If the husbands of sota women died before their wives drank the bitter water, Beit Shammai say: They collect payment of their marriage contracts and they do not drink the bitter water. And Beit Hillel say: They either drink the bitter water or they do not collect payment of their marriage contracts.

סוטה כד.

מתני'...מתו בעליהן עד שלא שתו בית שמאי אומרים נוטלות כתובה ולא שותות ובית הלל אומרים או שותות או לא נוטלות כתובתן

סוטה כה.

The mishna states: If the husbands of the sota women died before their wives drank the bitter water, Beit Shammai say: They collect payment of their marriage contracts and they do not drink the bitter water. And Beit Hillel say: They either drink the bitter water or they do not collect payment of their marriage contracts. The Gemara asks: With regard to what do Beit Shammai and Beit Hillel disagree? The Gemara answers: Beit Shammai hold that a promissory note that stands to be collected is considered to be as though it was already collected, and since the woman possesses the marriage contract, the payment of the marriage contract is considered as though it is already in her possession. Since the burden of proof rests upon the claimant, she does not lose her rights to the money unless the inheritors prove that she committed adultery. And Beit Hillel hold that a promissory note that stands to be collected is not considered as though it was already collected. Therefore, the payment of the marriage contract is not considered to be in the wife's possession, and as this means that she is the claimant, she is not entitled to the money unless she proves that she did not commit adultery.

מתו בעליהן עד שלא שתו בית שמאי כו' במאי קמיפלגי בית שמאי סברי שטר העומד לגבות כגבוי דמי ובית הלל סברי שטר העומד לגבות לאו כגבוי דמי

רשי - ב"ש סברי שטר העומד לגבות כגבוי דמי - מי שיש לו שטר חוב על חבירו ושיעבד לו בו נכסיו מוחזק בעל השטר בנכסים יותר מן הלוה והלכך כיון דנכסי ברשותיה קיימי הוו להו יורשי הבעל תובעין והמוציא מחבירו עליו הראיה ועליהן להביא ראיה שזינתה בסתירה זו ואבדה כתובתה:

תוספות על גיטין ל"ז א:י":א'

שטר שיש בו אחריות נכסים אינו משמט - הא דאמרינן לעיל בפ"ב (גיטין דף יח.) דאונס קנס ופיתוי שזקפן במלוה משמטין ומפרש דהיינו משעת העמדה בדין אע"ג דמשעמד בדין גבי ממשעבדי כדמוכח בכמה דוכתי וכן כתובה משתפגום ותזקוף משמטת אע"ג דגבי ממשעבדי מ"מ אלים טפי כשמפורש שיעבוד בשטר:

Gittin 18a:9-12 ביטין י"ה א:ט"--י"ב

§ The Gemara discusses another dispute between Rav and Shmuel with regard to documents. According to the terms of a marriage contract, a widow is entitled to payment of its value upon the death of her husband. By Torah law,

אִיתְמַר מֵאֵימָתִי כְּתוּבָּה מְשַׁמֶּטֶת רַב אָמַר מִשֶּׁתִּפִּגּוֹם וְתִזְקוֹף וּשָׁמוּאֵל all outstanding debts are canceled at the close of the Sabbatical Year. A woman need not take her marriage settlement as soon as her husband dies. The issue at hand is at what point the marriage contract generates a concrete debt that will be canceled by the Sabbatical Year. It was stated: From when is the debt established by a marriage contract canceled in the Sabbatical Year? Rav says: The marriage contract becomes like a debt and will be canceled in the Sabbatical Year from the time when the woman collects partial payment and establishes the rest as a debt in court. And Shmuel says: This occurs when she either collects partial payment although she did not establish it as debt, or **she established** the entire value of the marriage contract as a debt in court although she did not collect partial payment. With regard to this dispute, it is taught in a baraita in accordance with the opinion of Rav, and it is taught in a baraita in accordance with the opinion of Shmuel. It is taught in a baraita in accordance with the opinion of Rav: From when is the debt established by a marriage contract canceled? From when she accepts partial payment and establishes the rest as a debt in court. However, if **she accepted partial payment but did not establish** the debt, or established the debt but did not accept partial payment, then it is not canceled until she accepts partial payment and establishes the debt. It is taught in another baraita in accordance with the opinion of Shmuel: If the fine and damages paid by one who commits **rape**; or the **fine** paid by one who falsely claims his wife was not a virgin at the time of their wedding; or the fine paid for **seduction**; **or** the debt established by **a woman's marriage contract** was established as a loan, then the Sabbatical Year cancels it. And if one did **not** establish these payments as loans, then the Sabbatical Year **does not** cancel them. From when is it considered that these payments have been established as a loan? From the time of standing trial, because the abstract obligation to pay becomes a debt once the court ruled that one is required to pay.

אָמַר פָּגְמָה אַף עַל פִּי שֶׁלֹּא זָקְפָּה זָקְפָּה אַף עַל פִּי שֶׁלֹא פָּגְמָה תַּנְיָא כְּוֹתֵיהּ דְּרַב תַּנְיָא כְּוֹתֵיהּ דִּשְׁמוּאֵל מַשַּׁמֶטֶת מִשֶּׁתִּפְּגוֹם וְתִזְקוֹף פָּגְמָה וְלֹא זָקְפָּה זָקְפָּה וְלֹא פָּגְמָה אֵינָה כְּוֹתֵיהּ דִּשְׁמוּאֵל אוֹנֶס וּקְנָס וּפִיתוּי מְשַׁמְטִין וְאִם לָאו אֵין מְשַׁמְטִין מֵאֵימָתִי נִזְקָפִים בְּמִלְוָה מִשְׁעַת הַעֲמָדָה בַּדִּין

יד:ב"י-י"ב:ד' אני:א'-י"ב:ד'

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