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Bava Basra Daf 114

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Daf Notes is currently being dedicated to the neshamot of

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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

Retracting from a Chalifin

It was stated: With regard to a *kinyan* (*chalifin* - the buyer gives the seller something as a token exchange to settle the transaction), how long afterwards may they retract (*from the deal*)? Rabbah said: As long as they are both still sitting there. Rav Yosef said: As long as they are dealing with that subject.

Rav Yosef said: Logical reasoning supports my opinion, for Rav Yehudah said that if three people enter to visit a deathly ill person who wishes to distribute his inheritance, they may act as witnesses and write down his instructions, or as judges, directly implementing his instructions. Now, if we would hold that they may retract during the whole time that they are sitting there, how can they act as judges, implementing his instructions, let us be concerned that he (*the sick person*) might have retracted (*since they are still sitting there*)?

Rav Ashi said: I was discussing this discourse in the presence of Rav Kahana, and I asked him: Is it any better according to Rav Yosef? How can they act as judges, implementing his instructions, let us be concerned that he (*the sick person*) might have retracted (*since they are still dealing with that subject*)? But what can you say in reply? The ruling applies when they switched subjects (*according to Rav Yosef*); so too, it can be said (*according to Rabbah*) that the ruling applies when they stood up from their place (*so they cannot retract any longer*) and then sat down again.

The *Gemora* rules: the *halachah* follows Rav Yosef (*in three places in this Masechta*): By a field. [*This is found above on 12b: A certain man bought a field adjacent to the property of his father. When they came to divide the father’s estate, he said, “Give me my share next to my own field.” Rabbah said: This is a case where a man (the other brother) can be compelled not to act in the traits of the people of Sodom (since the brother will not be losing at all). Rav Yosef strongly objected to this, on the ground that the brothers can say to him, “We consider this field to be especially valuable like the property of the rich Bar Meryon.”*] By the subject (*the dispute mentioned here*). By half. [*This will be discussed below on 143b: If a man said to his wife, “After I die, my possessions shall belong to you and your children,” he rules that they divide the property between them.*] (114a – 114b)

Potential Inheritance

The *Mishna* had stated: A woman bequeaths to her son etc.

The *Gemora* asks: What is the necessity for the *Mishna* to state these *halachos*? It was already taught in the beginning of the *Mishna*, which stated: A man inherits from his mother or his wife, but does not bequeath to them. [*It also states: Sons of a sister (text of the Rashbam) inherit their uncle (their mother’s brother), but do not bequeath to him.*]

The *Gemora* answers: The *Mishna* teaches us that the bequeathing of the estate of a woman to her son is to be in the same manner as the bequeathing of the estate of a woman to her husband. Just as in the case of the



bequeathing of the estate of a wife to her husband, the husband is not heir to his wife in the grave (*a husband only inherits property actually owned by his wife when she died, but not her potential property, which she would only inherit after death*); so too in the case of the bequeathing of the estate of a woman to her son, the son in the grave does not inherit from his mother to bequeath the inheritance to his paternal brothers. [A woman has one son, who also has paternal brothers. First the son died and then his mother died. The son does not inherit from his mother in the grave in order to bequeath her estate to his brothers.] (114b)

Mother Inheriting her Son

Rabbi Yochanan said in the name of Rabbi Yehudah the son of Rabbi Shimon: We can derive from the words of the Torah that a father inherits his son and that a woman inherits her son, for it is written: *tribes*. We compare the tribe of the mother to the tribe of the father. Just as in the case of the father's tribe, a father inherits his son, so too, in the case of the mother's tribe, a mother inherits her son. [This is a dissenting opinion from that which was taught in our Mishna.] (114b)

INSIGHTS TO THE DAF

Retracting a Kinyan

Rabbah and Rav Yosef argue about when a *kinyan* may be retracted. Rabbah rules that a *kinyan* may be retracted as long as the parties are still sitting. Rav Yosef rules that a *kinyan* may be retracted as long as the parties are still discussing the transaction.

What type of *kinyan* are Rabbah and Rav Yosef discussing?

The **CHIDUSHEI HA'RAN** quotes an opinion that explains that the *Gemora* refers only to a *matnas shechiv mei'ra* (*the gift of a deathly ill person*), because a sick person is likely to retract his words as long as they are talking about the topic of his estate. In contrast, in the case of a *matnas bari* (*the*

gift of a healthy person), the person may retract his words only "*toch ke'dei dibbur*" – (*within the time of an utterance*).

The **RASHBAM** (D"R Hachi Garsinan) explains that the *Gemora* clearly refers to the type of *kinyan* which the *Gemora* discussed previously, a *matnas bari* or a *matnas shechiv mei'ra*. The Ran quotes this opinion in the name of most of the Rishonim, including the **RAMBAM** and **RAMBAN**. The Rashbam explains that one certainly may retract the *kinyan* as long as the parties are still discussing the conditions of the transaction (*the gift*). The *Chachamim* understood that a person does not finalize the gift until he is satisfied with all of the conditions which he stipulates.

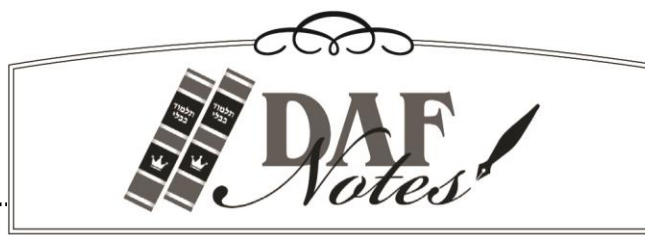
Does this reasoning apply to other forms of *kinyanim*?

The **ROSH** (#5) writes that the *Chachamim* gave time for the parties to consider the conditions of the transaction only in the case of a *kinyan chalifin* (*which is often used to finalize a matanah*). However, "in other *kinyanim*, such as where the person picks up, pulls, or gives over an object... a person cannot retract the *kinyan* after *ke'dei dibbur*." The Rosh clearly says that although there is no *extended* time period in which one may retract in the case of other *kinyanim*, one may retract *any kinyan* within the time of "*toch ke'dei dibbur*."

RABEINU YONAH initially agrees with the Rosh, but then he says that one can argue that when one takes possession of an object (*movable objects*) through *meshichah* or one takes possession of land through *chazakah*, the *kinyan* is finalized with the action of the *kinyan*, and it cannot be retracted even within "*toch ke'dei dibbur*."

Why, though, should *meshichah* and *chazakah* differ from all other forms of *kinyan*?

RAV GERSHON EIDELSTEIN shlit'a writes that Rabeinu Yonah clearly understands that the degree of finality of an act of *kinyan* in the mind of the person depends on the specific type of *kinyan*. For example, when the *Gemora* in Nedarim (87a) states that acts of *kidushin* and *gerushin* cannot be retracted even within



“*toch ke’dei dibbur,*” it is because the acts of *kidushin* and *gerushin* are so serious that a person deems them final at the moment he performs the act. Similarly, when one performs an act of *meshichah* or *chazakah*, such an act may be considered more final and conclusive than other forms of *kinyanim*.

INSIGHTS INTO THE DAILY DAF

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A person wants his relatives to inherit his estate: In his aforesaid work, Rav Abramsky explains that the inner logic of the Torah’s property-related statutes conforms to human understanding since the Torah sees deeply into human nature. The first rule of inheritance, for example, determines that the closest relative takes precedence in inheriting the estate if there are no children. We understand this rule quite well as any person who has toiled his whole life to amass an estate wants the person closest to him, of all his family, to inherit it. The Torah also explains the firstborn’s double portion of the estate as his due because of his being the first of his father’s “strength” (Devarim 21:17). A firstborn is beloved to his father like an only child before he has more children, with a love unshared with others. Moreover, a firstborn usually helps his father in his business to increase his wealth and therefore earns a double portion.

“And it will be to you...a statute of judgment”: What about twin boys born within minutes of each other or other instances where the above characteristics of a firstborn do not actually apply? Rav Abramsky therefore explains the following important point: The laws of inheritance express the deceased’s intention and conform to human understanding. Once the Torah rules them, however, their observance does not depend on our understanding, as the final verse in the chapter on inheritance concludes: “...and it will be to you...a statute of judgment” (Bemidbar 27:11). A general rule of the Torah is that many halachos are based

on logical estimation, such as that a wife only makes a vow that her husband would approve, etc., but once the Torah determines them, they cannot be changed.

DAILY MASHAL

The Torah viewpoint on the rights of inheritance

The Torah says in Bemidbar 27:8 that “if a man dies **without a son**, pass his estate to his daughter”. Now, had we been asked to formulate the verse, we would probably write “if a man dies, pass his estate **to his son** and if he has no son, to his daughter”. In his Torah Temimah (ibid), Rabbi Baruch Epstein explains that the Torah thus hints that a son is his father’s natural heir and that there is no need to state this detail. The Torah starts to dictate the order of inheritance from the point where a father has no son. The *Torah Temimah* is just one of the commentators who elucidate that the Torah’s order of inheritance may be understood by ordinary intelligence. For many reasons, a son is his father’s natural heir. Even his name, *ben*, is related to the word *boneh* – “builder” – as a son builds and perpetuates his father’s family. *Nachalah* – “inheritance” – comes from *nachal*, a “stream”, in the sense that it forms a continuity and, in contrast, the Torah calls passing an estate to a daughter *ha’avarah* – “transfer” (HaGaon Rav Binyamin Tsvi Rabinovitz-Teomim zt”l in *Be’inyan Yerushas HaBas*). In his *Dinei Mamonos*, HaGaon Rav Yechezkel Abramsky zt”l asserts that a son’s inheritance is not a statute beyond our understanding – a *chok* – as our *sugya* in 119b quotes *Tzlofchod*’s daughters as saying “had he a son, we would not have spoken”; i.e., they themselves understood that a son would have been the natural heir (see Tosfos, s.v. *Ilu*).