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Bava Basra Daf 133

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Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h
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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

[Once] a certain [dying] man said to [his executors], “A third [of my estate shall be given] to [one] daughter [of mine], a third to [the other] daughter, and a third to [my] wife.” [Then] one of his daughters died. Rav Pappi intended to give his decision [that the wife] receives only a third. Rav Kahana, [however], said to him: If [her husband] had [subsequently] bought other property, would she not [have been entitled to] seize [it]? Now, since if he had bought other property she would [have been entitled to] seize [it], in this case too she [is] also [entitled to] seize [the dead daughter's third]. (132b – 133a)

[Once] a certain [dying] man divided his estate between his wife and his son, [and] left over one date palm. Ravina intended to give his decision [that] she can only have [that] one date palm. Rav Yeimar, [however], said to Ravina: If she had no [claim upon the son's share], she [should] have no [claim] even [upon] the one date palm. But since she retains her right to the date palm, she retains her right to the entire estate. (133a)

Rav Huna said: [If] a dying man assigned all his estate, in writing, to another [person], the matter is to be investigated. If he (the recipient) is entitled to be his heir, he receives it as an inheritance; and if not, he receives it as a gift.

Rav Nachman said to him: Why should you indulge in subterfuge? If you hold [the same view] as Rabbi Yochanan ben Berokah, say: The halachah is according to Rabbi

Yochanan ben Berokah, for, indeed, your statement runs on [the same lines] as [those of] Rabbi Yochanan ben Berokah?

[But], perhaps, you meant [your statement to apply to a case] like the following: Once, while a person was in a dying condition he was asked to whom his estate shall be given. [Shall it] perhaps [be given] to So-and-so, he was asked. And he replied to them: To whom [else] then? And [is it] on [such a case as] this [that] you told us: [If that person] is entitled to be his heir he receives it as an inheritance, and if not, he receives it as a gift?

He replied to him: Yes, this [is exactly] what I meant.

The Gemora asks: In respect of what legal practice (is there a difference if he receives it as an inheritance or as a gift)?

Rav Adda bar Ahavah wished to explain before Rava [that] if he is entitled to be his heir his widow is maintained out of his estate, and if not, his widow is not maintained out of his estate.

Rava, however, said to him: Should she be worse off [in the case of a gift]? If in [the case of] an inheritance which is Biblical, it has been said [that] his widow is to be maintained out of his estate, how much more [should that be so] in [the case of] a gift which is only Rabbinical?

But, said Rava, [the difference lies in a case] like [the following] which [was] sent [by] Rav Acha son of Rav Avya: According to the view of Rabbi Yochanan ben Berokah, [if a



dying man said]: My estate [shall be] yours, and after you [it shall be given] to So-and-so, if the first was [one] entitled to be his heir, the second has no [claim] whatsoever beside the first, for this is not a [specific] expression of 'gift,' but [rather] of 'inheritance,' and an inheritance cannot be terminated.

Rava said to Rav Nachman: Surely, he (the benefactor) has [already] intercepted it!?

He (Rav Nachman) thought [erroneously] that it could be intercepted but the Merciful One said: It cannot be terminated.

Once a certain man said to his friend: My estate [shall be] yours and after you [it shall pass over] to So-and-so. The first [was one] entitled to be his heir. [When] the first died, the second came to claim [the estate]. Rav Ilsh proposed in the presence of Rava to give his decision that the second also is entitled to receive the bequest.

[Rava, however], said to him: Such decisions are given by arbitration judges; [is] not [the case exactly] the same as [that] which [was] sent [by] Rav Acha son of Avya? As he became embarrassed, [Rava] applied to him the Scriptural text: I am Hashem; I will hasten it in its time. (133a – 133b)

If a person gives his estate, in writing, to strangers, and leaves out his children, his arrangements are legally valid, but the spirit of the sages finds no delight in him. Rabban Shimon ben Gamliel said: If his children did not conduct themselves in a proper manner he will be remembered for good. (133b)

The question was raised whether the Rabbis were in disagreement with [the view of] Rabban Shimon ben Gamliel or not.

Come and hear: Yosef ben Yoezer had a son who did not conduct himself in a proper manner. He had a purse [full] of

golden dinars and he consecrated it [for the Temple]. He, [the son], went away and married the daughter of King Yannai's crown maker. [On the occasion when] his wife gave birth to a son he bought for her a fish. Opening it he found inside of it a pearl. "Do not take it to the king," she said to him, "for they will take it away from you for a small sum of money. Go take it rather to the Treasurers [of the Temple], but do not you suggest its price, since the making of an offer to the Most High is [as binding] as [actual] delivery in ordinary transactions, but let them fix the price." On being brought [to the Temple] it was valued at thirteen purses of golden dinars. "Seven [of them]," they said to him, "are available, [but the remaining] six are not available." He said to them, "Give me the seven; and the six are, [hereby] consecrated to the Temple." Thereupon it was recorded: Yosef ben Yoezer brought in one, but his son brought in six. Others say, [the record read as follows]: Yosef ben Yoezer brought in one, but his son took out seven.

Now, since the expression used [in the record was], 'he brought in,' it may be inferred that [in their opinion] he acted properly.

The Gemora disagrees: On the contrary! Since the expression used was, 'he took out,' it may be inferred that he did not act properly. Rather, [the fact is that] from this [record] nothing may be inferred.

The Gemora asks: What, then, is the answer to the inquiry?

Come and hear: Shmuel said to Rav Yehudah. Sharp one! Keep away from transfers of inheritance even [if they be] from a bad son to a good son, and certainly [when they are] from a son to a daughter. (133b)

INSIGHTS TO THE DAF

An event in Barcelona aroused a stormy difference of opinions between the leaders of Spanish Jewry, the Rashba



and the ReAH - Rabeinu Aharon HaLevi. A certain person left only one daughter as his sole heir but commanded on his deathbed that if she would die without children, his estate should be distributed to charity. The halachah is that “words commanded on a deathbed are as good as written and delivered” – i.e., they are halachically binding just as giving a written document and the Rishonim were requested to judge the validity of his bequest.

The Rashba held that the father’s bequest was invalid (Responsa, III, 122) as our *sugya* explains that if a person says to one of his heirs, “My estate should go to you and after your demise, **to a certain other person**”, his secondary bequest is invalid: After all, as soon as the bequeather dies, the heir acquires complete mastery of the estate and the previous owner’s wishes can no longer be considered. In other words, the deceased can no longer determine what the heir does with the estate. Rabeinu Aharon HaLevi did not negate this principle but asserted that such words commanded on a deathbed **are** valid if the deceased stipulated that at the heir’s demise, the estate should be distributed to **charity**. The halachah was ruled according to Rashba (*Shulchan ‘Aruch*, C.M. 248:1; some of the discussion appears in the Responsa of Ritva, 79, and the altercation is mentioned by other Rishonim: the Meiri and Ritva on our *sugya*, for instance, express their opinions regarding both views) but their difference of opinions serves as definite proof for identifying the author of *Sefer HaChinuch*.

DAILY MASHAL

The immense popularity of *Sefer HaChinuch*, a concise treatment of each of the 613 mitzvos, was matched by the mystery concerning its author, who left no hint of his identity aside from being “a Jew from a Barcelonian family”, as stated at the end of his preface. For some reason, the first printers guessed he was Rabeinu Aharon HaLevi, a pupil of Ramban, a contemporary of the Rashba and prominent mentor of the Ritva (printing was invented in Europe only

about 200 years after the completion of *Sefer HaChinuch*). Almost all later editions follow suit and the author was also thus named by many *poskim*, including the *Remo*, *Shach*, *Peri Chadash* and Rabbi Akiva Eiger.

Was the Rashba his own “teacher”? In his *Rosh Efrayim*, however, Rabbi Efrayim Zalman Margalios zt”l proved that the above identification is essentially wrong: The author of *Sefer HaChinuch* writes (in Mitzvah 400) that his teachers informed him that if the deceased commanded “...and after your demise, to a holy purpose (*hekdesh*)”, his will is **invalid** – in other words, in accordance with Rashba’s opinion. The author of *Sefer HaChinuch* even raises several objections in conformity with Rabeinu Aharon HaLevi’s opinion but rejects them one by one. We have obvious proof, then, that Rabeinu Aharon HaLevi did **not** write *Sefer HaChinuch*! An encompassing examination of the work shows that wherever the author mentions his “teacher”, we find those same remarks in Rashba’s writings. A bold estimation has recently been expressed that Rashba was, himself, the author, calling himself “my teacher” in the sense that his other works served as his instructors. Similarly, Rashba authored *Mishmeres HaBayis* anonymously but the whole theory has yet to be clarified.

In the foreword to the Machon Yerushalayim edition of *Minchas Chinuch* the question of the authorship of *Sefer HaChinuch* is given halachic implications: In a certain case (388:22) the *Shach* rules that a person may claim he holds differently to *Shulchan ‘Aruch*, as Rashba **and** *Sefer HaChinuch* in the name of “his teacher”, disagree with *Shulchan ‘Aruch* concerning that halachah. If, however, Rashba was the teacher (or author) of *Sefer HaChinuch*, we have only one opponent to *Shulchan ‘Aruch* and not two!