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Bava Basra Daf 136

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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

### **Mishna**

If someone writes that his possessions should be given to his sons, he must write that they are given from today (*for the land itself*) and after death (*regarding its produce*). [*The Rashbam explains that the case is where a person wants to marry, but does not want his new wife to be able to lay claim to his properties. He therefore can give his sons his properties as a gift in this manner to avoid her having the ability to claim these properties with a kesuvah.*] These are the words of Rabbi Yehudah. Rabbi Yosi says: This (*writing “from today”*) is not necessary.

If someone gives his property to his son, so that it should be his after he dies, both of them cannot sell the property. The father cannot sell them as they are written to be given to the son, and the son cannot sell them as they are in the possession of the father. If the father does sell them, the sale is only valid until he dies. If the son sells them, the sale is only valid after the father dies. (136a)

### **From Today**

The *Gemora* asks: Why does it help to write, “from today and after death?” Doesn’t the *Mishna* say that if a person gives a *get* and says, “from today and after death,” it is a doubtful *get*, and that if the husband dies, she submits to *chalitzah* and not *yibum*?

The *Gemora* answers: Regarding *gittin*, there is a doubt whether this is a condition or a retraction. However, here,

the father is saying, “The land is yours from today, and the produce (*i.e. benefits such as fruit*) you only acquire after I die.”

The *Mishna* says that Rabbi Yosi says this is not necessary.

Once when Rabbah bar Avuha was ill, Rav Huna and Rav Nachman went to visit him, and Rav Huna said to Rav Nachman, “Ask Rabbah bar Avuha whether the *halachah* follows Rabbi Yosi or not,” and Rav Nachman replied to him, “I do not know Rabbi Yosi’s reasoning, how can I ask him the *halachah*?” Rav Huna responded, “You ask him the *halachah* and I will tell you the reason.” He therefore asked him, and Rabbah bar Rav Huna replied, Rav said, ‘The *halachah* is according to Rabbi Yosi.’” When Rav Nachman came out, Rav Huna said to him, “The reason of Rabbi Yosi is because he held that the date of the document is sufficient indication that he wants it to be retroactively effective.”

The *braisa* also states: Rabbi Yosi says this is not necessary, as the date on the document proves its content.

Rava inquired from Rav Nachman: Does Rabbi Yehudah also argue that one must say, “from today” if there is an acquisition stated in the document (*implying an acquisition was done today*)?

Rav Nachman answered: It is not necessary when there is an acquisition.



Rav Pappi says: Some acquisitions still require this terminology, and some do not. If it says in the document, "I have given over to acquire" and, "And we have acquired from him," it does not have to say, "from today." If it says the same in the reverse order, it does have to say "from today." [The Rashbam explains that if it first says, "And we have acquired from him," the implication of the "I have given over to acquire" is that what was stated above is being given over for acquisition, implying the present that will be after death. However, in the first case, the implication is that these are two separate acts of acquiring, one now and one after death.]

Rav Chanina from Sura asked: Is it possible that there is something that most scholars do not know but that the scribes do know (the scribes also do not realize that this difference exists when they write their documents)?!

They asked the scribes of Abaye and Rava, and both knew the difference between the different orders of these two statements of acquisition.

Rav Huna the son of Rav Yehoshua says: No matter what the order of the above terms, it is not necessary to say "from today." They argue regarding a case where an agreement (but not the acquisition) is recorded and witnessed.

Rav Kahana says: I said this over before Rav Zevid in Nehardea. He said: You teach it this way? We teach it as follows. Rava says in the name of Rav Nachman: When acquisition is stated in the document, "from today" is not necessary. No matter the order of both statements of acquisition in the document, it is not necessary. They argue regarding a case where an agreement (but not the acquisition) is recorded and witnessed. (136a)

### ***The Produce from the Land***

The *Mishna* discusses a case of a person who writes that all of his possessions should go to his son etc.

It was taught: If the son sold during his father's lifetime, and then the son died during his father's lifetime, Rabbi Yochanan says that the buyer does not even acquire the property when the father dies. Rish Lakish says that he does.

Rabbi Yochanan says that he does not acquire, as acquiring the produce is like acquiring the land. [Being that the father always had the benefits, it was as if he had rights to the land as well. Accordingly, the son's sale was dependent on him inheriting the he benefits. Being that this never happened, the sale is invalid.] Rish Lakish says that he does acquire, as acquiring the produce is not like acquiring the land. [Accordingly, the son actually owned the land, and was able to sell it, as his father did not own any part of the land anymore. Once the father's rights to the benefits die along with him, the buyer owns both the land and the benefits.]

The *Gemora* asks: Didn't Rabbi Yochanan and Rish Lakish already argue about this? It was taught: If someone sells the rights to the produce of his field, Rabbi Yochanan says the buyer can bring *bikkurim* (first fruits brought to the *Beis Hamikdash*) and read the verses in the Torah which the Torah commands to read when bringing these fruits. Rish Lakish says: He can bring *bikkurim*, but he cannot read the verses (which include, "the land that You gave me").

Rabbi Yochanan says that he does both because he holds that acquiring the produce is like acquiring the land. Rish Lakish says he can only bring *bikkurim* but not read the verses, as he holds that acquiring the produce is not like acquiring the land.

The *Gemora* says that Rabbi Yochanan will answer in the following manner. Even though he indeed holds that acquiring the produce is like acquiring the land, it is still necessary in our case (regarding the father and son) to be stated explicitly. One might think that because he is giving a present to his son, he waives any rights he has to the land.

This is why Rabbi Yochanan must say that this is not the case, and that the sale is invalid.

Rish Lakish will answer in the following manner: Even though he indeed holds that acquiring the produce is not like acquiring the land, it is still necessary in our case (*regarding the father and son*) to be stated explicitly. One might think that because it affects him personally, even though his son is involved, he made sure to keep certain rights to the land (*along with the fruit*). This is why Rish Lakish must say that this is not the case, and that the sale is valid.

Rabbi Yochanan asked a question on Rish Lakish from a *braisa*. The *braisa* states: If someone says, “My possessions are to you, and after you So-and-so (*a second individual*) should inherit them, and after him So-and-so should inherit them,” if the first person dies, the second person acquires, and if the second person dies, the third person acquires. If the second person dies in the lifetime of the first person, then when the first person dies, the possessions go to his inheritors (*not to the third person*). According to you (*Rish Lakish*), the possessions should go back to the inheritors of the giver (*not the first person*)!

Rish Lakish answered: Rav Hoshiya explained in Bavel that saying “After you” is different (*as it implies that he is giving him both the land and the fruits*). Rabbah bar Rav Huna also asked this question before Rav, and Rav gave the same answer.

The *Gemora* asks: But it was taught in a *braisa* that (if the second one dies during the lifetime of the first, when the first one dies) the land is returned to the inheritors of the giver!? [Evidently, the rights to the produce belonging to the first one is not regarded as acquiring the land; this seemingly refutes Rabbi Yochanan!]

The *Gemora* answers: It is a matter of a *Tannaic* dispute, for it was taught in a *braisa*: If one man said to another, “My

property shall be yours and after you it shall be given to so-and-so,” and the first recipient went down and sold the property, the second one may take the property from those who bought it (*after the first one dies*); these are the words of Rebbe. Rabbi Shimon ben Gamliel ruled: The second one may receive only that which the first has left. (136a - 136b)

## INSIGHTS TO THE DAF

### *Kinyan Peiros for Bikkurim*

The *Gemora* cites the dispute between Rabbi Yochanan and Rish Lakish whether a *kinyan peiros* (*acquiring the produce*) qualifies as a *kinyan ha’guf* (*an acquisition of the land*). The *Gemora* has two applications of this argument. One is that if a father gifts the body of property to his son, retaining for himself the fruits for the duration of his lifetime, and the son would sell what he owns, if the father would outlive the son, then the question becomes whether the father’s retention of *peiros* would entitle him to take the property back from the buyer. The second application is in the context of *bikkurim*, whether one is able to read the *parshah* when they only have a *kinyan peiros*.

The Rashbam explains that according to Rish Lakish that *kinyan peiros* wouldn’t entitle someone to read the *parshah* is because they couldn’t say “the land which was given to me,” but they would be obligated to bring the fruits even biblically, because they are included in “that which is brought from the land.”

Tosfos rejects the Rashbam’s explanation because if they aren’t included in the verse of “the land which was given to me,” they shouldn’t be included in “that which is brought from the land” either? Tosfos concludes that the entire obligation to bring the fruits according to this opinion is only rabbinic.

The Ketzos HaChoshen (257:3) answers a major question and with it explains the Rashbam.

The Gemora in Yevamos says that unless we accept Rabbi Yochanan that *kinyan peiros* is like *kinyan ha'guf*, no one would ever be able to read the *parshah* of *bikkurim* unless they come from a chain of only sons (because if there are multiple sons, we view their inheritance as purchasing from one another so they only own *kinyan peiros*). How then can we hold like Rish Lakish?

Tosfos in Yevamos raises this question and says that we only hold like Rish Lakish in the context of the father gifting property to the son because a father will be *mochel* to the son and leave over a very weak share of *kinyan peiros*, but in general we follow Rabbi Yochanan that a standard *kinyan peiros* would be like a *kinyan ha'guf*.

The Ketzos offers another approach. *Kinyan peiros* can sometimes refer to a weak ownership, but sometimes can refer to a standard ownership which expires with time. A *kinyan l'zman* (for a limited time) is a very powerful *kinyan peiros* because the "owner" can do whatever he wants, even ruin the field; just that his ownership will expire, whereas a true *kinyan peiros* cannot ruin the field. One who owns a field until Yovel is considered to have a "*kinyan peiros*," but it is a very strong *kinyan peiros* which would enable him to even read the *bikkurim* because it is like a *kinyan ha'guf* until it expires. But, when one only has a *kinyan peiros*, they cannot read the *parshah* of *bikkurim*.

The Rosh in a *teshuvah* quotes Rabbeinu Avigdor who says that one, who has a *lulav* for *kinyan peiros*, namely only to fulfill the *mitzvah*, cannot fulfill the *mitzvah* since it doesn't qualify as "*l'chem*" (being his). But if they have a gift which was given on the condition that it should be returned, it is like a *kinyan ha'guf* that expires and they can fulfill their obligation with it. Therefore, one who has a *kinyan ha'guf* on a field that will expire, such as a purchased field that will return with Yovel, qualifies as "*that which is brought from the land*" because for the time being, when he brings the *bikkurim*, he "owns" the land (similar to the requirement of

"*lechem*," which is fulfilled by a *kinyan ha'guf* that will expire). But, the requirement for reading the *parshah* is "*the land which was given to me*," which means it is his forever, which is not the case, so he cannot read the *parshah*.

It seems based on the Ketzos that the distinction between the two verses is that one can consider a land which he is now an owner but his ownership will expire, to be "your land" since it is not his. But, from the perspective of the giver, it is not a "land that Hashem gave me," because it was only given temporarily.

#### DAILY MASHAL

**The rule instituted by the rabbis of Fez:** About 400 years ago, on 10 Kislev 5371, the rabbinate of Fez, Morocco, instituted a rule that a deathbed will should be written only in the presence of a Torah scholar to warn the person about transgressing the prohibition of denying the rightful heirs. The ruling was signed by the leading authorities of Fez, including HaGaon Rav Eliyahu Ibn Chayim (see a discussion in *Kesef HaKodoshim* on C.M. 282 as to if the scribe recording the will transgresses the prohibition of "Before a blind person put no obstacle").

**How could Avraham bequeath his entire estate to Yitzchak?** Many commentators have consequently toiled to explain how Avraham could deny Yishmael his inheritance and give it all to Yitzchak (Bereishis 25:5). *Ba'alei HaTosfos* explain (ibid) that when Avraham and Yishmael became circumcised, they also became converts and the halachah is that "a convert is like a child without relatives". Yitzchak, though, was born after Avraham circumcised himself and was therefore considered his son. Moreover, the commentator *Be'er Sheva* (on Sanhedrin 91a) stresses that we must not deny a disobedient son his inheritance because he may beget worthy offspring: Sarah had already prophesied that Yishmael would never beget any worthy offspring.