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Bava Basra Daf 137

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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Kinyan Peiros; Kinyan Haguf

The *Gemora* cited 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.

The *Gemora* asks a contradiction from the following *braisa*: If one man said to another, “My property shall be yours and after you it shall be given to So-and-so,” the first recipient may go down and sell it, and he may eat from the produce; these are the words of Rebbe. Rabbi Shimon ben Gamliel ruled: The first one receives only the rights to consume the produce.

It is a contradiction regarding Rebbe’s opinion (*for in the first braisa he said that the rights to the produce is not regarded as an acquisition of the land and the first person cannot sell it, whereas in the second braisa he says that he may go down and sell the property*)!? It is also a contradiction regarding the opinion of Rabbi Shimon ben Gamliel (*for in the first braisa he said that the rights to the produce is regarded as an acquisition of the land and the first person is allowed to sell it, whereas in the second braisa he says that he cannot sell the property*)!?

The *Gemora* answers: The question on Rebbe is not difficult, for the first *braisa* is referring to the land itself (*and that is where Rebbe ruled that the second one may take the property from those who bought it*), whereas the second *braisa* is referring to the produce (*and that is where he ruled that he may sell the produce or eat them*).

The question on Rabbi Shimon ben Gamliel is not difficult as well, for the second *braisa* is ruling that he initially should not sell it (*in order to fulfill the intent of the giver*), whereas the first *braisa* is ruling “after the fact” (*that if he sold the property, the sale is valid, for the rights to the produce is regarded as if he owns the land*).

Abaye asks: What is an example of a cunning evildoer? This is referring to one who advises his fellow to sell properties (*that he accepted on the condition that afterwards, it should belong to So-and-so*) in accordance with Rabban Shimon ben Gamliel (*for initially, it should not be sold; he is evil for he is acting contrary to the intent of the giver, and he is cunning for he knows that the sale will be valid*).

Rabbi Yochanan said: The *halachah* follows Rabbi Shimon ben Gamliel (*that the sale of the first person is indeed valid*). However, he admits that if he (*the first recipient*) gave the property as the gift of a dying person, the transaction is invalid. What is the reason for this? Abaye said: It is because the gift of a dying person is acquired only after death, and by that time, the “after you” had

preceded him. [*Rashbam explains that when he says, "after you," he means, "after you have no use for it," which is the moment that he dies; this preceded the gift of a dying person, which is only effective after his death.*]

The *Gemora* asks: And did Abaye actually say like so? Surely it was stated: When is possession of the gift of a dying man acquired? Abaye said: at the moment of death, and Rava said: after death!?

The *Gemora* answers: Abaye retracted from that opinion (*that it is acquired at the moment of death*).

The *Gemora* asks: How do we know that he retracted from this view; perhaps he retracted from the other one (*that it is acquired after death*)?

The *Gemora* answers: This cannot be, for we have learned in a *Mishna*: If a (*dying*) man says to his wife, "This is your *get* if I die," or he says, "This is your *get* from this illness," or he says, "This is your *get* after death," he has said nothing. [*In all these cases, he has stipulated that the *get* should be effective after his death, which is impossible. We see that a dying man's intention is for after his death.*]

Rabbi Zeira said in the name of Rabbi Yochanan: The *halachah* follows Rabban Shimon ben Gamliel (*that the sale of the first person is indeed valid*), and even if the estate contained slaves whom the first one set free.

The *Gemora* asks: Is this not obvious? [*What would be the distinction between slaves and other property?*]

The *Gemora* answers: We might have thought that the giver could have told him that it was not given to him for the purpose of doing what was prohibited (*it is forbidden to liberate a Canaanite slave*); therefore, he taught us

that we do not say like that (*and the sale is nevertheless valid*).

Rav Yosef said in the name of Rabbi Yochanan: The *halachah* follows Rabban Shimon ben Gamliel (*that the sale of the first person is indeed valid*), and even in the case where the shrouds for a dead man were made from it (*and now one would be prohibited from deriving any benefit from them*).

The *Gemora* asks: Is this not obvious?

The *Gemora* answers: We might have thought that the giver could have told him that it was not given to him for the purpose of turning it into something that will be forbidden to have any benefit from; therefore, he taught us that we do not say like that.

Rav Nachman bar Rav Chisda expounded: If one said to another, "This *esrog* is given to you as a gift, and after you (*his death*) it shall be given to So-and-so," and the first recipient took it and fulfilled his obligation with it, this will be a point of dispute between Rebbe and Rabban Shimon ben Gamliel (*for according to Rebbe, who maintains that the one who has the rights to the produce is not regarded as the owner of the object, he will not have discharged his obligation, for the *esrog* is not his; according to Rabban Shimon ben Gamliel, it is regarded as his, and he will have fulfilled his obligation*).

Rav Nachman bar Yitzchak asked him: The dispute between Rebbe and Rabban Shimon ben Gamliel is only if the acquisition of the produce is like the acquisition of the capital or not, but here, if the first recipient cannot discharge his obligation with it, for what other purpose was the *esrog* given to him! Rather, it is clear that everyone holds that the first recipient may properly



discharge his obligation with it; the argument would be regarding a case where he sold it or ate it.

Rabbah the son of Rav Huna said: When brothers acquired an *esrog* out of an inherited estate (*before it was divided amongst them*), and one of them used it for the *mitzvah* (*without permission from the others*); if he would have been able to eat it (*without their permission*), he has also properly discharged his obligation, but if he was not entitled to eat it, he has not discharged his obligation. This, however, is only in the case where an *esrog* is available for each of the brothers, but if all that is available is the ability to purchase a quince or a pomegranate, he has not discharged his obligation.

Rava says: If someone says, "Take this *esrog* on condition that you return it to me," if he takes it and indeed gives it back, he has fulfilled the *mitzvah*. If he does not give it back, he does not fulfill the *mitzvah*.

A certain woman owned a palm tree on land that belonged to Rav Bibi bar Abaye. Whenever she went to cut the dates, he showed his displeasure that she was trampling on his plants (*without permission*), so she gave it over to him for his lifetime (*and afterwards, it will be returned to her and her inheritors*). He then went and gave it over to his minor son (*so that it wouldn't go back to her*). Rav Huna the son of Rav Yehoshua said: You are descendants of short-lived people (*Abaye, being a descendant of Eli had a curse placed upon his family*), therefore, you speak frail words. Even Rabban Shimon ben Gamliel said that the sale is valid only in the case where the original owner had said that the estate should afterwards go to another person, but when he said that it should be returned to himself, he never said that (*for he is only giving away the rights to the produce; therefore, the man's giving of the palm to his son will not be a valid acquisition*).

Rava said in the name of Rav Nachman: If one said to another, "This ox is given to you as a gift on the condition that you return it to me," and the recipient consecrated it and returned it, it is consecrated and returned (*for once it was returned, it is retroactively regarded as his; he therefore had a right to consecrate it*).

Rava asked Rav Nachman: But what has he returned to him (*if it is consecrated, it is not worth anything to the owner*)?

Rav Nachman replied: What has he taken away from him (*for he can give it to him and say, "Take what is yours!"*).

Rather, Rav Ashi said: We consider the following: If he said to him, "on condition that you return it" (*without saying "to me"*), he has surely returned it (*and there is no claim against him*). If, however, he said to him, "on condition that you return it to me," he has implied that the return must be something that is fit to be used (*and if it is hekdes, it cannot be used*).

Rav Yehudah said in the name of Shmuel: If a person, in writing, gave away his estate to another, and the other person said, "I do not want it," he acquires possession of it even if he stands and protests. Rabbi Yochanan, however, said: He does not acquire possession.

Rabbi Abba bar Mamal said: There is actually no disagreement between them. Rabbi Yochanan is referring to a case where he initially protested (*as soon as the gift document was given to him*), whereas Shmuel was dealing with a case where he initially was quiet, and only afterwards did he protest. (137a – 138a)

INSIGHTS TO THE DAF

Kinyan Peiros on the Esrog

Rav Nachman bar Rav Chisda expounded: If one said to another, “This *esrog* is given to you as a gift, and after you (*his death*) it shall be given to So-and-so,” and the first recipient took it and fulfilled his obligation with it, this will be a point of dispute between Rebbe and Rabban Shimon ben Gamliel (*for according to Rebbe, who maintains that the one who has the rights to the produce is not regarded as the owner of the object, he will not have discharged his obligation, for the esrog is not his; according to Rabban Shimon ben Gamliel, it is regarded as his, and he will have fulfilled his obligation*).

Rav Nachman bar Yitzchak asked him: The dispute between Rebbe and Rabban Shimon ben Gamliel is only if the acquisition of the produce is like the acquisition of the capital or not, but here, if the first recipient cannot discharge his obligation with it, for what other purpose was the *esrog* given to him! Rather, it is clear that everyone holds that the first recipient may properly discharge his obligation with it; the argument would be regarding a case where he sold it or ate it.

The *Mefarshim* ask: According to Rebbe, who holds that the one who has the rights to the produce is not regarded as the owner of the object, how can the first recipient discharge his obligation with this *esrog*? It is not regarded as “*lachem*” – completely his, so what difference does it make that the donor intended for him to fulfill his *mitzvah*?

The Ritva explains that since the donor’s intention is that the first recipient should discharge his obligation with it, it must be that he gave him the *guf* (*capital*) and the *peiros* (*the produce*) completely; however, he stipulated

that he, after he has discharged his obligation with it, must give it over completely to the second person. This would be similar to a gift that was given on condition that it is returned to him.

Reb Shmuel Rozovsky explains as follows: It is evident from the *Gemora* above (136b) that even according to Rebbe, it is possible to give someone rights to the produce that will be regarded as an acquisition of the *guf*. For the *Gemora* said that a father, who retains the rights to the produce in a case when he gave away the land to his son, since it affects him personally, he made sure to keep certain rights to the land along with the produce. So too in this case, it is evident that the donor intends to give the *guf* of the *esrog* along with the *peiros*; accordingly, the recipient can discharge his obligation with it.