

24 Sivan 5777
June 18, 2017



Bava Basra Daf 147

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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

Good Omen

Assessing his Mindset

The *Gemora* asks: Who is the *Tanna* of the following *braisa*? If a person was lying on his deathbed, and was asked, “To whom shall your estate be given?” and he replied, “I thought that I had a son (*overseas*); now that I have no son (*for he already died*), my estate should be given to So-and-so.” Or, if a person was on his deathbed, and was asked, “To whom shall your estate be given?” and he replied, “I thought that my wife was pregnant; now that it became known to me that she is not, my estate should be given to So-and-so.” If subsequently (*after he died*), it emerged that he had a son or that his wife was pregnant, his gift is invalid. Should we assume that this represents the opinion of Rabbi Shimon ben Menasya (*who ruled in the case where his son goes overseas and he heard that his son died, and he then proceeds to give all of his possessions to someone else, and afterwards his son came back, the present is invalid, as if he would have known that his son was coming back, he would not have written his possessions to someone else*) and not the Rabbis (*who rule in that case that the gift is valid*)?

The *Gemora* answers: It may even be following the viewpoint of the Rabbis, for when he said that “he thought...” it is different (*for that is similar to giving a gift with a stipulation*).

The *Gemora* cites four opinions as to the Biblical source that the gift of a person on his deathbed is effective (*although there was no kinyan*). (146b – 147a)

The *Gemora* cites a *braisa*: Achitophel instructed his sons three things (*before he committed suicide after he saw that Avshalom did not heed his advice*): Do not fight amongst yourselves; do not rebel against the House of David; if the sky is clear, or according to Mar Zutra – cloudy, on *Shavuot*, plant wheat that year (*for it is a good omen*).

Rabbi Abba said to Rav Ashi: We (*to determine if the wheat crop will be successful or not*) rely upon that which Rav Yitzchak bar Avdimi taught, for he said that on the night following *Shmini Atzeres* (*the last day of Sukkos*), the people would look to see which way the smoke from the *Mizbe’ach* was blowing. By determining which way the wind was blowing, they could determine if the year’s crops would be successful because some winds are beneficial and some winds are harmful. If it drifted towards the north (*the wind came from the south*), the poor people were happy and the wealthy people were sad, for the rain would be abundant and the fruits in the storehouses would rot. If it drifted towards the south (*the wind came from the north*), the poor people were sad and the wealthy people were happy, for the rain would be few and the fruits in the storehouses would remain fresh. If it drifted towards the east (*the wind came from the west*), everyone would be happy. If it drifted towards the west (*the wind came from the east*), everyone would be sad.

The *Gemora* asks a contradiction from a *braisa* which states: The east wind is always beneficial; the west wind is always harmful; the north wind is beneficial for wheat that have

grown a third (*of their maturity*) and harmful for olives that are blossoming; and the south wind is harmful for wheat that have grown a third (*of their maturity*) and beneficial for olives that are blossoming. And Rav Yosef said, and others say it was Mar Zutra, and others say it was Rav Nachman bar Yitzchak: Your mnemonic is: The *Shulchan* (*the table which held the lechem hapanim made out of wheat*) is in the north (*side of the Mikdash*) and the *Menorah* in the south; this one increases its own and the other one increases its own.

The *Gemora* answers: There is no difficulty: The *braisa* (*which states that the west wind is harmful and the east wind is beneficial*) is for us (*the people residing in Bavel, where the earth is moist and it does not need a lot of rain; an abundance of rain from the west wind will be harmful*) and that which we learned that the east wind is harmful and the west wind is beneficial is referring to *Eretz Yisroel* (*where the ground is high and requires an abundance of rain*).

The *Gemora* cites a *braisa*: Abba Shaul said: If the weather during *Shavuot* is clear, it is a good sign for the rest of the year.

Rav Zevid said: If the first day of *Rosh Hashanah* is warm, the entire year will be warm; if it is cold, the entire year will be cold.

The *Gemora* notes the significance of knowing this information: It will be relevant for the *Kohen Gadol's* prayer on *Yom Kippur* (*for based on what he sees on Rosh Hashanah, his prayer might need to be modified*). (147a – 147b)

Sickbed Gifts

Rava said in the name of Rav Nachman: The gift of a person on his deathbed is effective (*although there was no kinyan*) based upon a Rabbinic decree that they were concerned that the *shechiv meira's* mental condition will deteriorate (*if*

he would think that his children might not follow his instructions after his demise).

The *Gemora* asks: Does Rav Nachman really say like this (*that his gift is not effective on a Biblical level*)? But Rav Nachman said: Although Shmuel said that if a man sold a loan document to another person and then he (*the seller*) released the debtor, the latter is legally released (*and the buyer cannot collect the debt*); and, moreover, even the creditor's heir may release the debtor, nevertheless, Shmuel admits that if he gave it as a *shechiv meira* gift, he cannot release the debtor. Now if you say that the gift is effective on a Biblical level, it is understandable that the *halachah* is that he cannot release the debtor. However, if you hold that it is merely a Rabbinic decree, why can't he release the debtor?

The *Gemora* answers: The Rabbis gave this decree the strength of a Biblical law. (146a)

HALACHOS FROM THE DAF

Being Moichel a Shtar Chov that was Previously Sold

The *Gemora* states that a lender who sold a *shtar chov* (*a document stating that the borrower owes x amount of money to the lender*) to a third party, which would mean that the borrower would have to repay the loan to the third party, and then the lender forgives the payment (*in the Gemora's vernacular - he was moichel the shtar*), it is valid and the borrower does not have to pay back the loan to neither the lender, nor the third party. The rationale for this *halachah* varies, and there are many *halachos* that pertain to this complex concept. We will discuss a few of them.

For starters let's understand the problem. Of all the various types of sales that we have learned about, this is the only one that is seemingly not final. This means that although the sale of this *shtar* was completely valid, and the previous owner should have absolutely no say in the matter at all, he



can easily cause the third party to hold a worthless piece of paper by being *moichel* the *shtar*. Furthermore, the lender's *mechilah* can take effect even if the third party bought the *shtar* on the condition that the lender would not be *moichel* it! Another issue is that even an inheritor can be *moichel*. How does the lender have such broad powers?

Before we answer these questions, it is important to note that the third party is remunerated. Although logically he cannot collect the money from the borrower via this *shtar*, the lender must reimburse the third party because of the concept of *dina di'garmi*, which basically means that a person that inadvertently harmed someone has to pay his damages.

There is a *machlokes* in the *Rishonim* if the ability to sell a *shtar* is of Biblical origin or merely a Rabbinic enactment. The Rif and Rambam hold that it's a Rabbinic enactment, while Rabbeinu Tam maintains that it is Biblical.

The Drishah (Choshen Mishpat 66:23) explains that according to the *Rishonim* that hold it's Rabbinical, the rationale why the lender is able to forgive the payment even though he had already sold the *shtar*, is because the *shtar* is not intrinsically valuable. All other types of sales revolve around an item which has monetary value, as opposed to a *shtar chov*, which is only worth money in theory. Therefore the sale was never Biblically valid, and can be accepted by the Rabbis according to their terms.

Rabbeinu Tam, however, holds that the ability to sell a *shtar chov* is recognized by the Torah. If so, a *shtar* should be no different than any other sale where the previous owner is completely cut off from the item?

The Ran explains that in fact there is a huge difference. When Reuven borrowed from Shimon, two things take place: 1) A *shibud haguf* - the onus is placed on Reuven to repay Shimon. 2) A *shibud nichasim* - an onus is placed on Reuven's money to repay the loan, which means that if

Reuven doesn't repay the loan, then his money serves as a guarantor. A *shibud haguf* cannot be sold, since Reuven's *shibud* is exclusively to Shimon. On the other hand, a *shibud nichasim* can be sold, which would mean that Reuven's money is paid to the third party, since this *shibud* is to repay the loan and not necessarily to the person who lent it.

Now let's work this out logically. Since; a) the *shibud haguf* never left the lender, and b) the *shibud nichasim* is only in place if the borrower defaults on his loan, or in other words - if there would not be a *shibud haguf*, then there wouldn't be a *shibud nichasim*, then we must come to the conclusion that if the lender is *moichel* the *shibud haguf*, then the borrower does not have to repay the loan to either of them.

DAILY MASHAL

Chopping Wood and Cutting Reeds

One who has not attained the level of a Torah scholar is called a reed-cutter in our traditional sources and according to the Vilna Gaon in his commentary on Mishlei (6:8), the expression is related to the description of "woodchoppers" for those who learn Gemara. "He who chops wood will warm himself with them": Those who make an effort to chop wood – to gather and store words of Torah – later benefit from their warmth and will continue to explore deeper insights. Those, however, who make no effort to store up words of Torah are merely like reed-cutters and reeds give hardly any warmth.