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Bava Basra Daf 148

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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Power of a Shechiv Meira

Rava quoted Rav Nachman as saying that a *shechiv meira* (one on his deathbed) who commanded that someone should live in this house or he should get the fruits of a palm tree, he has accomplished nothing, since he has not given anything tangible that currently exists to the person. Just as a healthy person cannot give such items to someone, even with a formal acquisition, so too, a *shechiv meira* cannot give it by command.

The *Gemora* challenges the premise that a *shechiv meira* can only accomplish what a healthy person can (*albeit, without a formal acquisition*) from another statement of Rav Nachman. Rav Nachman said that if a *shechiv meira* was a creditor and commanded to give his loan to someone, that person acquires the loan. A healthy person cannot give a loan due to him to someone else, even with a formal acquisition, but a *shechiv meira* can, by his command.

The *Gemora* offers two answers:

1. Since an heir inherits a debt owed his inheritor, a *shechiva meira* can give a loan, since his gifts are akin to inheritance, taking affect after death. [Rav Pappa]
2. Since a healthy person can transfer a loan, by virtue of an enactment of the Sages, when he commands so in the presence of his debtor and the one to receive the loan. Therefore, a *shechiva meira* can also do so by his command. [Rav Acha berai d’Rav Ika] (147b – 148a)

The Fruits, or More?

The *Gemora* discusses a *shechiv meira* who gives a palm tree to one person, and its fruits to another. The *Gemora* asks

whether the one given the fruits also receives the branches of the tree, or whether the *shechiv meira* retained the branches.

Rava said in the name of Rav Nachman that even if we assume that he has not retained anything, in a case where he only gave someone the fruits, he has retained the branches for himself, since one is always generous with what he leaves for himself.

Rabbi Abba told Rav Ashi that they learned a similar concept, but in connection with a statement of Rish Lakish. Rish Lakish said that if someone sold a house, on condition that he retain the roof, then the roof remains his, including the right to build extensions from it into the courtyard.

The *Gemora* asks whether one, who sold a house to one person, and the roof to someone else, has retained for himself the right to build extensions from the roof into the courtyard.

The *Gemora* continues to ask that if we assume that in that case he has not retained the right to build extensions, does he retain the right to build extensions if he sold someone a house, and explicitly excluded the roof.

Rava said in the name of Rav Nachman that one is generous with what he leaves for himself. Therefore, even if we assume that one who sold a house to one and a roof to another does not retain the right to extensions, one who only sold a house, and explicitly excluded the roof, does retain the right to extensions.

The *Gemora* explains that this discussion is based on Rav Zevid, who said that if one explicitly excluded a roof from a sale, he retains the right to extensions. The roof itself was not included in the sale of the house, so the explicit exclusion is meant to



retain more than just the roof, i.e., the right to extensions. (148a – 148b)

Giving it All Away, or Reconsidering?

Rav Yosef bar Minyomi quoted Rav Nachman saying that if a *shechiv meira* wrote all of his property to some people, they acquire it. If he did it in the form of splitting up the estate, they all are considered a *shechiv meira's* full gift, making all of them void if he recovers. However, if he paused in between each gift, he was reconsidering at each point, making all but the last one a partial gift of a *shechiv meira*, which is valid even if he recovers. The last one is a full gift of a *shechiv meira*, and is void if he recovers. We may have thought that even in this case, he meant for all of the gifts to be part of a full gift, and the pauses were his considerations of who gets what. Rav Nachman is teaching us that we assume that a *shechiv meira* decides all the distributions before commanding, and pauses are therefore separate gifts.

Rav Acha bar Minyomi quoted Rav Nachman saying that if a *shechiv meira* wrote all of this property to people, he may not retract, even if he recovers. Although he distributed all of his known property, we are concerned that he may have other property elsewhere, making his gift a partial gift.

The *Gemora* explains that the *Mishna*, which said that a *shechiv meira* who gave all his property away, may retract if he recovers, is either a case where he explicitly said that this is all he has (Rav Chama), or a case where we know he has no other property (Mar bar Rav Ashi).

The *Gemora* asks whether a *shechiv meira*, who retracts part of his gift, is retracting the whole gift or not. If his partial retraction is considered a retraction of the whole gift, he is retaining the remainder, making the new gift a partial gift, which he cannot retain if he recovers. If his retraction is not considered a retraction of the whole gift, the first recipient keeps the remainder, making both his gifts full gifts, and allowing him to retain them if he recovers.

The *Gemora* attempts to resolve this question from a *braisa*, which says that if one gives all his property to one, and then part of it to a second person, the second one acquires, but not the first. The *Gemora* assumes the *braisa* is ruling in the case where the *shechiv meira* died, indicating that the retraction was a full retraction.

The *Gemora* deflects by saying that the *braisa* is ruling in the case where the *shechiv meira* recovered, allowing him to retain his first gift.

The *Gemora* supports this from the continuation of the *braisa*, which states that if he gave some of his property to one, and then all of it to a second person, the first one acquires, but not the second. This section must be a case where the *shechiv meira* recovers, allowing him to recoup the full gift given to the second, but not the partial gift given to the first.

Rav Yeimar told Rav Ashi that even if the *braisa* is ruling on a *shechiv meira* who recovered, we can prove that a partial retraction is a full retraction. In the first case, in which he retracted part of the first gift, and gave it to the second person, the second retains his gift. This is only because the second gift is considered a partial gift, since the remainder is retained by the *shechiv meira*. If a partial retraction leaves the remainder for the initial recipient, this case should be one of splitting all of the property among different people, and the *shechiv meira* should recover all of the property if he recovers.

The *Gemora* rules that a partial retraction is considered a full retraction. The *braisa's* first case is ruling in both a case where the *shechiv meira* dies, and when he recovers. The first person receives nothing no matter what happens, since his retraction retracted the whole gift. If he dies, the second person acquires his gift, since the *shechiv meira* gave it to him. If he recovers, the second person still acquires his gift, since his was a partial gift, with the remainder returning to the *shechiv meira*.

Below is a summary of the rulings from the *braisa*.

First case (both parts prove that a partial retraction is a full

retraction):

| Shechiv meira | Gift 1 (full) | | Gift 2 (partial) | |
|---------------|---------------|--------------------------|------------------|--------------------|
| | Ruling | Reason | Ruling | Reason |
| Recovers | Void | Retracted by second gift | Valid | Partial gift |
| Dies | Void | Retracted by second gift | Valid | Shechiv meira died |

Second case: (Note that the last case is not discussed explicitly in the braisa):

| Shechiv meira | Gift 1 (partial) | | Gift 2 (full) | |
|---------------|------------------|--------------------------|---------------|-----------|
| | Ruling | Reason | Ruling | Reason |
| Recovers | Valid | Partial gift | Void | Full gift |
| Dies | Void | Retracted by second gift | Valid | Full gift |

(148b)

Special Gifts

The Gemora asks whether three types of full transfers by a shechiva meira are equivalent to a gift, and are void if he recovers:

1. Consecration: Do we say that one consecrates without hesitation, and will not void it if he recovers?
2. Hefker: Do we say that since he is relinquishing it to all – poor and rich – alike, he did not plan to void it if he recovers?
3. Tzedakah: Do we say that he will not void a mitzva of tzedakah? Alternatively, do we say that one always will want to retain his right to void a full transfer, to keep something for himself?

The Gemora leaves these questions unresolved. (148b)

Language of Gift

Rav Sheishes lists the terms that connote giving a gift are effective for a shechiv meira:

- yitol – he shall take
- yizke – he will gain
- yachzik – he will take possession
- yikne – he will acquire

The braisa says that terms connoting inheritance (yachsin, yeras) are also effective. The Gemora explains that this is true for a recipient who is a potential heir, and follows Rabbi Yochanan ben Berokah, who allows one to stipulate how his heirs will distribute the estate, using inheritance terms.

The Gemora asks whether the following terms are effective, and leaves the questions unresolved:

1. Yehene bahen – he will benefit from them. Does it mean that it should be a full gift, or just that he should enjoy their use?
2. Yir'eh bahen – he will see them
3. Ya'amod bahen – he will stand on them
4. Yisha'en bahen – he will lean on them (148b – 149a)

INSIGHTS TO THE DAF

Gift Paradigm for Shechiv Meira

Rav Nachman says that although a shechiv meira need not perform a formal acquisition to transfer his property to others, he may not accomplish a transfer that has no parallel in normative transfers. Therefore, a shechiv meira may not transfer future usage or fruits of property, since there is no way for a healthy person to accomplish such a transfer.

The Gemora explains that a shechiv meira can transfer a loan due him, either because this can be transferred through inheritance, or because a loan can be transferred in the presence of the three parties – the debtor, creditor, and third party taking over the loan.

Tosfos (148a *Shechiv Meira*) explains that although one may transfer a debt or use of property via an *agav* acquisition (*as an ancillary to a real estate transfer*), that is not considered a normative paradigm on which a *shechiv meira's* command can be patterned. A transfer with *agav* is based on an acquisition of another item, and is not an acquisition of the debt or use per se, and therefore is not a valid paradigm for a *shechiv meira*, who wishes to transfer the debt or use itself. When the *Gemora* cites inheritance as a precedent, it is not considering that an acquisition from a healthy person, but rather a paradigm of transfer, analogous to a *shechiv meira*, who transfers upon death.

Tree vs. Fruits

The *Gemora* discusses one who gets branches of a tree, when one splits a palm tree and its fruits between two people, or when he gives someone only the palm tree, but retains the fruits. It is unclear what the parameters of the question are, nor the ramifications of the answer.

The Rashbam quotes those who say that the *Gemora* is discussing a regular sale, and is asking whether the recipient of the fruits receives the branches or not. The Rashbam rejects this explanation, since this chapter does not deal with sales. Such a question should have appeared in the chapter that deals with sales of fruits.

Rather, the Rashbam and Tosfos say the case is a *shechiv meira* who commanded to distribute a palm tree. The Rashbam says that the palm tree is all the *shechiv meira* owns, and the ramification of the branch ownership is whether the *shechiv meira* has retained any property, or given it all away. If he has given the branches to the recipient of the fruits, he has not retained any land, and therefore his gift is a full gift, which he can void if he recovers. If he has kept the branches, he has retained land, and his gift is a partial gift, and is valid even if he recovers.

Tosfos (148a *Iba'ya l'hu*) disputes this explanation. Tosfos

objects that if the ramification is in classifying this as a partial or full gift, the *Gemora* should have raised this question later, when discussing the topic of what a *shechiv meira* leaves over. Furthermore, this ramification may not be relevant for classifying a partial or full gift. The *Gemora* cites an opinion that the property left over may be movable. In that case, when the *shechiv meira* retained the fruit, it is a partial gift whether he retained the branches or not. The *Gemora* also cites an opinion that the property left over must be enough to support the *shechiv meira*. In that case, even the branches will not make the gift partial.

Rather, Tosfos says the question is based on the statement of Rav Nachman (147b) that a *shechiv meira* cannot give someone fruits from a tree, since there is nothing tangible and existent to transfer. The *Gemora* therefore asks whether giving the fruits includes the branches, which will make the gift effective, or does not include the branches, and therefore is not effective. Similarly, the *Gemora* asks whether a *shechiv meira's* retention of the fruits includes the branches, and therefore is effective, or does not include the branches, and therefore is not effective.

HALACHOS FROM THE DAF

Shechiv Meira

A *shechiv meira* is a person that is deathly ill and might not recover. If he would give away any of his possessions, they are automatically acquired by the receiver of his gift as soon as he dies, even without making any formal *kinyan* (Choshen Mishpat 250:1). The reason being, since the health of the *shechiv meira* is precarious, we don't want to cause him unease (*that he might die before the person formally made a kinyan to receive his gift, and his inheritors might not honor his wishes to give away this gift*) which would adversely affect his health.

The gift does take effect until the *shechiv meira* dies, for if he gets better, then he probably would want back his money.

How sick does one have to be in order to be considered a *shechiv meira*? The Shulchan Aruch (Choshen Mishpat 250:5)



quotes Rambam that the litmus test is if his entire body is so devoid of strength that he can't get out of bed.

We learned in the *Mishna* (146b) that a *shechiv meira* that gave away all his possessions and did not exclude anything, his gift is not valid if he recovers. Our *Gemora* has a question regarding a *shechiv meira* that did not exclude anything and gave everything to *hekdesh*, and then recovered. The *Gemora* similarly asks in cases of *hefker* and *tzedakah*. The *Gemora* does not resolve these questions.

There is a dispute amongst the Rishonim whether the *shechiv meira* that recovered may keep his money or not. Rambam and Rimah hold that he can, and does not have to give it to *hekdesh*, *hefker* or *tzedakah*, while the Rosh, Tur and Mordechai argue that his gift was valid.

The *halachah* is that the gift is not valid if the *shechiv meira* recovered (Choshen Mishpat 250:3).

DAILY MASHAL

Moving is not so simple

Many Acharonim cite the Ari z"l that if you move from your permanent home, you should not return there for seven years (*Sefer HaGilgulim*, Vilna edition, p. 64; Chida in his Responsa *Yosef Ometz*, 37, S.K. 6; Rav Chayim Falaji in his *Ruach Chayim*, 116, S.K. 9; etc.). We have no idea as to the reason but the Acharonim assure us that the Ari z"l based his statement on the Kabbalah with no support or explanation from the Talmud. The warning also appears in *Azharos Nosafos LeRabbi Yehudah HeChasid*, # 9. Discussing the Ari's statement, the Chida asserts that our *sugya* teaches us that sometimes we may ignore the warning.

The Gemara (Daf 144) explains that if a parent marries off his or her big son at home and clears the house of all the furnishings for that purpose, the son thus acquires the house. Rambam rules accordingly, saying that "these things are like a halachah with no reason but the *Chachamim* decided so,

relying on their estimation that the parent, out of his great joy and love, granted him the house as, after all, he removed all his personal effects" (*Hilchos Zechiyah Umatanah*, 6:15). Still, if the owner of the house left some belongings behind, the son does not acquire the residence as the owner's leaving his property at home reveals that he never meant to give his son the house. If so, asserts the Chida, a person who moves but leaves belongings at his former home is not regarded as having left it and may return before the seven years referred to by the Ari z"l.

He should ask for every day to be considered a year: Hagaon Rav Meir Eisenstat, pupil of the Chasam Sofer and the author of Responsa *Imrei Eish* (Y.D. 59), advised someone forced to move away for a while that he need not wait seven years to return as he had not left willingly. Still, he counseled him to wait seven days and pray that each day be considered a year "and He who hears prayer should hearken to his prayer and save him from anything untoward."

Nonetheless, those who may hesitate to return to their former homes should be aware of a statement by Rebbe Yechezkel Halberstam of Sanz, son of Rebbe Chayim (the *Divrei Chayim*) and known as the author of *Divrei Yechezkel* (*Likutim* at the end of *Divrei Yechezkel*, p. 126). The warning, attests Rebbe Yechezkel, does not originate from the Ari z"l as the original *Sefer HaGilgulim* had only 35 chapters. The warning appears in an additional chapter added later with a compendium of advice and we don't know from whom the statements originate. Although we may assume they were advised by leading scholars, the *Divrei Yechezkel* stresses that "perhaps they only counseled such behavior for exalted people and those who have attained rare spiritual levels as some things don't harm ordinary people and are not mentioned in *Shulchan Aruch* as intended for all" (see *Shemiras HaGuf VehoNefesh*, 213, who cites the opinions of the Acharonim).