

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

Mishnah

The Mishnah states: If a man was married to four wives, and died, the first precedes the second (*and she may collect the entire amount pledged to her even if nothing will be left for the second woman*), and the second the third, and the third the fourth. The first swears to the second (*that she did not previously collect any portion of her kesuvah*), and the second to the third, and the third to the fourth, and the fourth is paid without taking an oath.

Ben Nanas says: And because she is last she benefits? She also is not paid except with an oath.

If they were all written on one day, whoever precedes the other even by one hour, acquires her portion. And in Yerushalayim, they would write down the hours in their documents.

If they were all written in the same hour, and there is only a *maneh* in his estate, they all share equally. (93b2 – 93b3)

Explaining the Dispute Between the Tanna Kamma and Ben Nanas

The Gemora asks: What is the point of contention between the *Tanna Kamma* and Ben Nanas?

Shmuel said: They argue regarding the following case: It was found that one of the fields (*which were given to the three earlier wives*) did not belong to the husband. (*It may be assumed that the person who owns the field might*

appear at any moment to claim it, and one of the three wives will be deprived of her field. She would then proceed to make her claim against the field that had been reserved for the fourth wife. Ben Nanas maintains that the fourth wife must also swear that she did not previously collect any portion of her kesuvah.) The argument is regarding a later creditor who took before an earlier creditor, if his collection is deemed valid. The *Tanna Kamma* holds that his collection is invalid (*and therefore, in our case, the collection of the fourth woman will be invalid once it becomes known that one of the three earlier wives lost the field that she initially collected with; consequently, she will go to the fourth woman and take that field*). Ben Nanas maintains that the collection of a later creditor who took before an earlier creditor is deemed valid (*and therefore, the fourth woman may not collect her portion without taking an oath first*).

Rav Nachman in the name of Rabbah bar Avuhah offers a different explanation: Everyone agrees that the seizure of a later creditor before an earlier creditor is invalid. Here the question is whether or not we suspect that the field (*collected by the fourth woman*) will be neglected (*and hence deteriorate*). The *Tanna Kamma* says that we do not suspect the field will be neglected, and Ben Nanas says that we do suspect the field will be neglected.

Abaye states: They argue about the law of Abaye Keshisha. Abaye Keshisha taught: The orphans discussed (*that one who collects from them can only collect if he takes a vow*) are adult orphans, and this is certainly true regarding orphans who are minors. The *Tanna Kamma*

does not agree with Abaye Keshisha, while Ben Nanas does agree with Abaye Keshisha. (93b3 – 94a2)

Do Partners or Brothers Represent Each Other in Beis Din?

Rav Huna states: If two brothers or two partners have a case against someone, and only one of them goes to court, the other brother or partner cannot later say to that person “You are not the person who I went to court with.” [He cannot say afterwards that he wants to judge his portion of the case separately.] Once the other brother or partner went, we assume him to be a messenger of the other brother or partner in the case.

When Rav Nachman went to Sura, they asked him: What is the law in the case stated above? He answered: This is a Mishnah. The first wife swears to the second wife, the second wife swears to the third wife, the third wife swears to the fourth wife. The Mishnah does not say that the first wife must also swear to the third wife. Why? This is because the second wife is like the messenger of the third wife.

The Gemora asks: Is this comparable (*to the case of two brothers or partners*)? In the case of our Mishnah, taking a vow against one person is akin to taking a vow against one hundred people (*with the same claim*), but in this case the partner or brother can claim that if he was present he would have made better claims.

The Gemora says: This that we say that the brother or partner can have another trial is only if he wasn't in the city for the first trial. If he was, he cannot have another trial, as he should have come. (94a2 – 94a3)

Selling the Same Field on the Same Day to Two Different Buyers

The law was taught regarding a case of someone who sold the same field to two people on the same day. Rav says they should split the field, and Shmuel says the law is the choice of the judges (*they should decide who to give it to*).

The Gemora asks: It seems that Rav holds like the opinion of Rabbi Meir that the signatures on a document are what effect a transaction, and Shmuel holds like Rabbi Elozar that the witnesses of the delivery of a document effect a transaction.

[Rav must say the field should be split because the documents say the exact same thing, meaning that there is no reason one should be chosen over the other. However, Shmuel who says one can be chosen over the other must reason that the giving over of the document, which may have been done at different times, should qualify the earliest recipient as the owner. One therefore can be chosen over the other.]

The Gemora answers: This is incorrect. Both Shmuel and Rav agree with Rabbi Elozar that the delivery of the documents effects the transaction. They are merely arguing what is a more appropriate ruling in this situation. Rav says it is more appropriate to divide the field, while Shmuel says the choice of the judges is more appropriate.

The Gemora asks: Can we in fact establish that Rav holds like Rabbi Elozar? Didn't Rav Yehudah say in the name of Rav that the law follows Rabbi Elozar only in regards to divorce documents, and Shmuel remarked even in regular documents? This indicates that regarding regular documents Rav generally did not hold like Rabbi Elozar!?

The Gemora therefore concludes that it is clear that the original answer, which is that Rav holds like Rabbi Meir and Shmuel holds like Rabbi Elozar, is correct.

The Gemora asks a question from a Baraisa: If two identical documents (of sale to two different people) are

dated on the same day, the two parties split what was sold. This is a refutation of Shmuel's opinion!?

Shmuel answers: This (*Baraisa*) is the opinion of Rabbi Meir (who holds that the witnesses on the delivery of the document are not those who effect the transaction), and I hold like Rabbi Elozar.

The Gemora asks: If this is Rabbi Meir, how can this be reconciled with the second part of the Baraisa which states: If someone (the owner of a property) wrote a document for one person (selling him the property), then (before presenting the first document) wrote a second (conflicting) document (selling that same piece of property) and gave it to someone else, the person to whom the document was presented acquires it? If this is the opinion of Rabbi Meir, why should he (the second person) acquire it? Rabbi Meir holds the acquisition is validated by the document being written and signed by witnesses!?

The Gemora answers: Rav and Shmuel's exact argument is indeed argued by the Tannaim, for it was taught in a Baraisa: (*in a case where a messenger is sent to give money to someone who he finds to be dead, and then he hears that the person who sent him died*) the Chachamim say the money should be divided. [*This means it should be divided among the inheritors of the intended recipient and the inheritors of the person who sent the messenger.*] However, here (in Bavel) they say that the trustee should give it to whom he feels should get it. (94a3 – 94b32)

The Gemora relates the following incident: One morning, the mother of Rami bar Chama wrote that her property should go to Rami bar Chama. Later that afternoon, she wrote that she is giving that property to Mar Ukva bar Chama (her other son). Rami bar Chama came before Rav Sheishes, who said that he should keep the property. Mar Ukva bar Chama came before Rav Nachman, who said that he should keep the property.

Rav Sheishes came before Rav Nachman and said to him: Why did you rule this way? Rav Nachman retorted to Rav Sheishes: Why did you rule this way? Rav Sheishes replied: He (Rami) was first (for he ruled like R' Meir, that the signing of the document is what effects acquisition). Rav Nachman replied: Are we in Yerushalayim where the hour is written on the document (and therefore, one reserves the right to reverse his decision and give the property to another on that very day)? Rav Sheishes said: Even so, why did you rule the way you did (for it should be divided between them)? Rav Nachman replied: It was the choice of the judge (and it seemed to him that the mother cherished Mar Ukva more than his brother, and therefore he acquires it, since it was presented to him first). Rav Sheishes said: I also ruled by choice of the judge (and therefore you have no right to overturn my judgment)! Rav Nachman replied: Firstly, I am an appointed judge, and the master is not. Secondly, you did not originally issue your ruling because of "the choice of the judge" (*but rather because of your mistaken assumption that because the document was chronologically first, it should have more validity*). (94b3 - 94b4)

INSIGHTS TO THE DAF

Choice of the Judges

The law was taught regarding a case of someone who sold the same field to two people on the same day. Rav says they should split the field, and Shmuel says the law is the choice of the judges (*they should decide who to give it to*).

The Rishonim disagree as to the method that the judges should use to give one of the claimants the entire field. Rashi explains that "the choice of the judges" means that the judges choose to whom the property in question should be given by attempting to determine, based on



logical considerations, to whom the seller would have preferred to give the field.

Tosfos argues with Rashi and maintains that “the choice of the judges” means that the judges give the field to whomever they please. They need not base their decision on whom they think the seller preferred, but rather, they base their decision on whatever considerations they deem appropriate, such as which of the two claimants needs the property more, or which one is a Torah scholar.

The *Gemora* maintains, at this point, that in general, it is preferable to resolve the case with “the choice of the judges” rather than to split the property, because by using this method, there is at least a possibility that the correct person will receive the entire field. Therefore, according to Shmuel, the judges give the entire field to one of the two claimants.

Kollel Iyun HaDaf discusses why Rav would disagree and hold that the property is divided because of the witnesses’ signatures.

DAILY MASHAL

Know the Time?

The *Gemora* had noted that in Yerushalayim it was the custom to write the precise hour on documents (and not merely the date).

The Gaon, Reb Zelig Reuven Bengis speculates that perhaps the reason for this custom was in order to accustom those dwelling there to remember and to be cognizant of the precise hour, for knowing the exact time is required for many halachos. The *Gemora* in Zevachim (25b) states: This proves that hours (*past its year*) can disqualify (*the animal*) in the case of sacrifices. [In Tiferes Shlomo, Rav Shlomo HaKohen of Radomsk, writes (Parashas Vayera) that when the *Gemora* states that

hours (*past its year*) can disqualify (*the animal*) in the case of sacrifices, is also a *remez* (*a hint*) to the levels of the righteous people, who do not rest from their holy work for even a moment during the day; they use the entire twenty-four hour period of the day solely for the sake of Heaven. It is they who sustain the world, and without them, the world could not exist even for a moment.] The *Gemora* in Pesachim (58a) states: If Erev Pesach falls out on Erev shabbos, the sacrifice is slaughtered after six and a half hours into the day, but on other days, it is slaughtered at eight and a half hours into the day. Additionally, regarding testimony by capital cases, the court checks the witnesses as to the exact hour of the event.