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Rabbi Shimon

The *Gemora* inquires: Was the Rabbi Shimon cited in the *braisa* actually a *Nasi*, or did he say over his ruling in the name of the *Nasi*? [There is no other place where R' Shimon is mentioned as being a Nasi.]

Come, and derive a proof from that which Rav Yosef said: The halachah is in accordance with Rabbi Shimon the Nasi.

The Gemora asks: But you may still inquire: Did he mean that he was a Nasi, or that he said it in the name of the Nasi.

The Gemora concludes: Let it stand. [The inquiry remains unresolved.]

The test itself stated: Rav Yosef had said: The *halachah* follows Rabbi Shimon HaNasi (*in a case where a man said to an agent, "Take a maneh to So-and-so," and he went and looked for him and did not find him because he had died, Rabbi Shimon had ruled that the money should be returned to the inheritors of the sender*).

The *Gemora* asks: But is it not an established law that the words of a deathly ill person are regarded as if they were written and given over (so why should the money be returned)?

The *Gemora* answers: Rav Yosef interprets the *braisa* to be referring to a healthy person (*and that is when the halachah follows Rabbi Shimon*).

The *Gemora* asks: But he said that the money should be returned to the inheritors of the sender! But is it not an established law that it is an obligation to carry out the wishes of the deceased?

The *Gemora* answers: The *braisa* should be emended to say: Return the money to the sender (*he did not die*). (15a)

WE SHALL RETURN TO YOU, HAMEIVI GET

Mishna

If someone brings a *get* (to Eretz Yisroel) from abroad and says, "The *get* was written in my presence," but he did not say, "It was signed in my presence," or if he said, "It was signed in my presence," but he did not say, "It was written in my presence," or if he said, "The entire *get* was written in my presence and half of it was signed in my presence" (I saw only one of the witnesses signing), or if he said, "Half of it was written in my presence and all of it was signed in my presence," the *get* is invalid.

If one person said, "It was written in my presence," and another person said, "It was signed in my presence," it is invalid.

If two people say, "It was written in our presence," and another person says, "It was signed in my presence," the *get* is invalid. Rabbi Yehudah says:" It is valid.

If one person says, "It was written in my presence," and two other people say, "It was signed in our presence," it is valid. (15a)

The Lesson of the Mishna

The *Gemora* asks: Why is it necessary to teach this again? We were already taught this one time (*in the beginning of the chapter*): One (*an agent sent by the husband to the wife*) who brings a *get* (to *Eretz Yisroel*) from abroad must say, "In my presence it was written, and in my presence it was signed."

The *Gemora* answers: If it was only from that (the first *Mishna*), I might have thought that the messenger is required (to make that declaration), but if he did not say it, the *get* is still valid (*b'dieved*); our *Mishna* therefore teaches us otherwise (that it is not valid without the declaration). (15a)

Which Half?

The Mishna had stated: If he said, "Half of it was written in my presence and all of it was signed in my presence," the *get* is invalid.

The *Gemora* asks: Which half of the *get* is being discussed in the *Mishna*? If it is the first half, how does this fit with Rabbi Eliezer's statement that as long as the first line of the *get* (*containing their names and the date*) is written (*Lishmah*) for her sake, nothing else is needed?

Rather, Rav Ashi said: The *Mishna* must be referring to the last half of the *get*. (15a)

Authenticating the other Witness

The *Mishna* had stated: If the agent said, "The entire *get* was written in my presence and half of it was signed in my presence," the *get* is invalid.

Rav Chisda said: Even if two people testify regarding the second signature that they recognize the handwriting, the *get* is not valid. Why? This is because the signatures must either be validated in the normal manner of validating documents (two witnesses testifying on both signatures), or in the fashion that was decreed upon by the Sages (*messengers who bring gittin from abroad; and it cannot be done with a combination of both processes*).

Rava asked: Is it possible that there can be a scenario where one person testifying (*that it was written in his presence and he recognizes the signatures the second signature*) would render the document valid, but now that there are two, the get is invalid!?

Rather, Rava said: Even if he (the messenger) and another person would testify on the second signature, the *get* is invalid. Why? This is because people will come to confuse the validation of a *get* with the regular validation of documents. This will lead to the extraction of the whole minus a quarter of money (*based on a regular document*) based on the word of one witness alone (*the testimony of one witness on one signature*). [If a document is brought into court signed by two witnesses, Reuven and Shimon, of whom Shimon is dead, and if Reuven together with a third witness attests the signature of Shimon, then if money were to be awarded on the strength of that document, three-quarters of it would be awarded on the testimony of the one witness Reuven, which is against the rule, as each witness must be responsible for a half.]

Rav Ashi asked Rava: Is it possible that there is a law where one witness testifying (*if the messenger were to have also witnessed the second signature*) makes the

document valid, but when two witnesses testify on part of the document it becomes invalid?

Rather, Rav Ashi said: Even if the messenger says, "I am the second witness (on the get)," it is invalid. Why? This is because the signatures must either be validated in the normal manner of validating documents (two witnesses testifying on both signatures), or in the fashion that was decreed upon by the Sages (*messengers who bring gittin from abroad; and it cannot be done with a combination of both processes*).

The Gemora asks from our *Mishna*: If the agent said, "The entire *get* was written in my presence and half of it was signed in my presence," the *get* is invalid. What is the other half referred to here (that he is not testifying about)? If you will say that there is no one at all who is testifying (regarding the other half), then (the entire ruling is unnecessary), now (that the Mishna has taught) where one person said, "It was written in my presence," and another person said, "It was signed in my presence," where it emerges that one is testifying on the entire writing and the other is testifying on the entire signing, and yet, it is invalid, is it at all necessary to teach this case (where only half of the signing is witnessed)? Rather, it (this last ruling) must be (explained) either like Rava (the messenger and another person would testify on the second signature) or like Rav Ashi (when the messenger said, "I am the second witness on the get), and thus would exclude Rav Chisda's ruling (for the inference should be restricted to a minimum, and therefore the opinions of Rava and Rav Ashi are preferable to that of Rav Chisda, for he invalidates the get even in a case where two witnesses confirmed the authenticity of the second signature)!?.

Rav Chisda can answer: And according to your reasoning, what is the necessity of the Mishna's case: The agent said, "The *get* was written in my presence," but he did not say, "It was signed in my presence."? Rather, the style of the *Tanna* is "not only this, but even this case," so in this case as well, the Tanna used the format of "not only this, but even this." (15a – 15b)

Two Halves of a Wall

Rav Chisda says: If there is an embankment that is five handbreadths (*tefachim*) and a wall of five *tefachim* above it, they do not combine (to form a legal partition). There cannot be a legal partition unless it consists entirely of a wall above ground or entirely of an embankment. [*This is regarding the forming a wall, which halachically must be ten handbreaths in order to be a wall of a private domain regarding the laws of carrying on Shabbos and other such laws.*]

Mereimar taught that an embankment that is five handbreadths (*tefachim*) and a wall of five *tefachim* above it is a valid combination.

The halachah is that they do combine. (15b)

INSIGHTS TO THE DAF

Mechitzos of Shabbos
vs. Mechitzos of Sukkah

Our Gemora discusses whether a wall five *tefachim* tall can combine with a "*gedud*" of five *tefachim*, to form a *mechitza* of ten *tefachim*. Rashi interprets *gedud* to mean the wall of a pit.

According to this interpretation, the Gemora asks whether a wall must be either entirely above ground or entirely below ground, or if the underground wall of the pit can combine with the above ground wall to equal ten *tefachim*. From the perspective of a person standing in the pit, a wall of ten *tefachim* is visible. However, from the perspective of a person standing outside of the pit, there is only a five *tefachim* wall. The *Amoraim* therefore

debated whether this is considered a valid *mechitza*. According to R' Chisda, they do not combine to form a *mechitza*.

In Maseches Gittin (15b s.v. *Ein mitztarfim*), Rashi adds that even relative to the person standing in the pit, who can see the *mechitzos,* it is still not considered a *reshus hayachid*. Tosefos (s.v. *gedud*) rejects this interpretation, and shows that our own sugya shows explicitly to the contrary. When one courtyard is five *tefachim* higher than its neighbor, and there is also a five *tefachim* wall between them, the height difference and the wall combine to form a ten *tefachim mechitza*. In regard to the lower courtyard there is a *mechitza*, but in regard to the higher courtyard there is not. This is because a person standing in the lower courtyard sees the wall as an extension of the cliff upon which the higher courtyard is situated. Together, they form a wall of ten *tefachim*. The person standing in the higher courtyard sees only the five *tefachim* wall. The upshot of this distinction is that the lower courtyard makes its own *eiruv chatzeiros* without including the higher courtyard, since a *mechitza* separates the two, but the higher courtyard cannot make an *eiruv chatzeiros* without including the lower, since from their perspective there is no *mechitza*.

Tosefos asks a similar question in Maseches Sukka (4b s.v. *Pachos*). There we find that if a pit is dug five *tefachim* into the ground, and walls of five *tefachim* are built around it, it may be used as a Sukka. Once again we see that the underground walls of a pit, and the aboveground walls that surround it can combine to form a *mechitza* of ten *tefachim*.

The purpose of mechitzos: R' David Pavorski *zt"l*, the former Rosh Yeshiva of Ponevetzh, offered the following explanation to defend Rashi's position (Shiurei R' David Pavorski, Gittin p. 201).

In regard to *mechitzos* of Sukka, it is sufficient for the *mechitza* to be visible only from the inside of the Sukka. This is because a Sukka must be an area large enough for a person to live there. Our Sages deemed seven *tefachim* width by ten *tefachim* height to be sufficient. It is absolutely irrelevant that a person standing outside the Sukka cannot perceive these dimensions, provided that the person inside the Sukka finds the space sufficient for living arrangements.

When Rashi said that the *mechitza* must be visible from both sides, he referred only to the *mechitzos* necessary to form a *reshus hayachid*. A *reshus hayachid* can only be formed by walls that are objective and absolute, from whatever vantage point they are observed.

This same distinction can be applied to the case of two courtyards. Both courtyards are already considered *reshuyos hayachid*, since they are both surrounded by walls. The issue at hand is whether the *mechitza* serves to separate them, in order that they need not be included in the same *eiruv*. In this case, Rashi rules that a *mechitza* may be subjective to the vantage point from which it is perceived. Since the lower courtyard sees the *mechitza*, it is valid for them and they need not include the higher courtyard in their eiruv. The higher courtyard cannot see the *mechitza*, therefore it is not valid for them.

Combining

Rav Chisda says that if ground is elevated five tefachim and a person puts five tefachim of man-made wall on top of that, the resulting ten tefachim do not have the status of a wall, even though a wall only requires ten tefachim of height. This implies that it is because it must either be comprised of ten tefachim of ground, or ten of man-made wall. The Gemora proves from a braisa that such a wall is clearly a halachic wall for the shorter yard, as it faces a

ten-tefach wall. The question is regarding its status towards the people on the higher yard.

Tosfos advances an interesting query. It would seem that according to Rav Chisda this area is a paradox. For example, if a pile of earth five tefachim tall and four tefachim wide would be in the public domain, and a person would add five tefachim of man-made wall, what would be the law of this area on Shabbos? It seems that Rav Chisda should hold that if a person is in the public domain and throws an object on the surface of this area, he should be liable for carrying from a public domain to a private domain. However, if he was on the surface of the area and he threw from it to the public domain, he should not be liable. This is because he is only facing a wall of five tefachim, and therefore is not in a private domain. This would seem to mean, Tosfos concludes, that one could have the same area be a different domain depending on one's perspective.

However, the Keren Orah says that it is obvious that there is no way this has the status of a private domain, even according to Rav Chisda.

DAILY MASHAL

A Wicked Shift

The Gemora attempts to bring a proof that a deathbed command is not binding from a story with the mother of the sons of Rocheil, who, on her deathbed, bestowed a valuable brooch to her daughter and the Chachamim upheld her wishes. R' Elazar rejects the proof with the exclamation – "Sons of Rocheil – may their mother bury them!"

The Rashbam explains that the Gemora is saying that since they were evildoers, the Chachamim penalized them by ruling against them. Where do we find that the Chachamim have the ability to take money away from someone just because they are wicked?

The Bach in C"M 228:1 answers that since Beis Din have the authority to physically coerce people to comply with Halachah, they can certainly coerce them monetarily.

The Chasam Sofer disagrees based on the Gemora in Bava Kamma 119a that it is forbidden to cause monetary loss to an informer.

R' Ovadiah of Barternura in Bava Basra 9:7 answers that they were relying on the rule of hefker Beis Din hefker.

The Tiferes Yisrael (Bava Basra 9:51) has a different approach to the Gemora, and he explains that there was discord between the mother and her sons, as evidenced by the fact that she wanted to bury them. It is because of this animosity that the Chachamim determined that her intentions were indeed that her sons should not inherit the brooch.

Rash has a third approach that since the sons of Rocheil were wicked, the Chachamim would not mention their names in the Beis Hamedrash so it is not possible that this story was related as a proof. Similarly, the Ran rules in Avodah Zarah 35b that it is forbidden to relay a halachic statement in the Beis Hamedrash from someone who eats idolater's bread.