

13 Tishrei 5776  
Oct. 15, 2016



Bava Metzia Daf 19

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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

### **Returning Lost Documents**

The *Gemora* discusses a previous statement. If someone finds a woman’s *Get* in the marketplace, he should give it back to the woman if the husband admits that he gave the *Get*. If he does not admit having given the *Get*, he should not return it to the husband or the wife.

The *Gemora* asks: This clearly states that if the husband admits having given the *Get*, it should be returned to the wife. Why don’t we suspect that he wrote the *Get* to be given in Nissan, and only gave it to her in Tishrei? During this time, he sold some of her *nichsei melog* - (*usufruct property - the property which the woman brings in with her from her father's house, and which is not recorded in the kesuvah, as well as property which comes to her by inheritance or as a gift after the marriage; this property is hers, and her husband is not responsible for it, since he may only usufruct (the right to use and enjoy the profits and advantages of something belonging to another as long as the property is not damaged or altered in any way) it; the term nikhsei melog is derived from the Aramaic word meligah, plucking, i.e., the husband plucks the property just as a chicken is plucked*) (which he is allowed to do until they are divorced). However, being that the *Get* is dated from Nissan, she will now go back and take those properties away from the buyers wrongly (*as in fact the sale happened when they were not yet divorced*)! [Why don’t we suspect that this will happen?]

This is understandable, the *Gemora* explains, if it is according to the opinion who holds that he is not allowed to benefit from her *nichsei melog* once he decides to divorce her (*i.e. once he has written a Get*). However, according to the opinion that he only must stop benefiting from these

properties or possessions once he gives the *Get*, why don’t we suspect this will happen?

The *Gemora* answers: When she will try to seize back these properties, we will say to her that she must bring proof regarding when she received the *Get*.

The *Gemora* asks: How is this different than a loan document? The *Mishna* states: If someone finds a loan document that contains a lien on property, he should not return it. The case there is when the borrower admits to owing the money, and even so we do not return the document because we suspect that the loan was written for Nissan but only actually made in Tishrei. Therefore, the lender will end up having a lien from Nissan, and will wrongly seize properties sold by the borrower between Nissan and Tishrei from the buyers. In that case, as well, why don’t we say that the document should be returned, and the lender must merely bring proof when he actually received the loan document (*i.e. when the loan actually occurred*)?

The *Gemora* answers: In the case of the *Get* of a woman, the buyer will take her to *Beis Din*. He will say that the Rabbis let her keep her *Get* so she should not remain unmarried. However, now that she wants to seize his possessions, let her bring proof when she received the *Get*! However, the buyer will not go to *Beis Din* in the case of the loan document. He will think that it must be that the Rabbis only returned the loan document to him in order that he could collect from the property with a lien. It must be that the Rabbis knew that before his purchase the loan was already in effect (*and therefore he has the right to seize my property*). (19a)

### **Slave Documents**



The *Mishna* discusses finding documents freeing a slave. The *braisa* states: If someone found a document freeing a slave in the marketplace, he should give it to the slave if the master admits to having given it to the slave. If he does not admit to having given it to the slave, he should not return it to either of them.

The *Gemora* asks: This clearly states that if the master admits having given the document, it should be returned to the slave. Why don't we suspect that he wrote the document to be given in Nissan, and only gave it to the slave in Tishrei? The slave may have bought property between Nissan and Tishrei, which the master might have sold. The slave will then go to the buyers and seize the property, showing them that his master had no right to sell the property, as it was legally his (*as he was a free man during this time*)!

This is understandable, the *Gemora* explains, according to the opinion that it is a good thing for the slave to go free, in combination with the opinion of Abaye that the witnesses who sign on a document cause it to take effect (*for the person acquiring*). [*Accordingly, the document which was for his own good was set to take effect at the earliest possible time, which is when it was written. When it is given, it is effective retroactively from the time of the writing of the document.*] However, according to the opinion that it is detrimental for the slave to be set free (*as if he is the slave of a Kohen he can no longer eat Terumah, and any slave set free can no longer have relations with a Canaanite maidservant*), what is the law? [*We cannot say the witnesses had the document take effect at the time of their signing without the knowledge of the slave, as we do not say that a person can do something detrimental for someone else without his knowledge.*] Why don't we suspect this?

The *Gemora* answers: When the slave wants to take his possessions back from the buyers, we say that he must prove when he received his freedom document. (19a)

#### ***Daitiki***

The *Mishna* discusses a *daitiki* and a present. The *braisa* states: What is a "*daitiki*?" It stands for "*da tehei l'maikam*

*v'lihiyos*" -- "this (*the contents of this document*) should be upheld." [*It is referring to a document that a person on his deathbed instructs should be written.*] It instructs that if the person dies, his possessions should be given to So-and-so as a gift from now and after he dies (*the giving is from now, as a dead person cannot give a gift*).

The *Gemora* asks: This *braisa* implies that only if the term "from now and after death" is used is the acquisition in the document valid. If it is not used, the implication is the gift is invalid. [*Why should that be? It should certainly be valid if the document simply implies he is presently giving a gift!*]

Abaye answers: The *braisa* means to say the following. What is a gift document given by a healthy person that is like the gift document given by a person on their deathbed, in that the acquisition is only finalized after death? It is a document that states, "from now and after death."

The *Gemora* asks: Our *Mishna* (18a) implies that we suspect that he did not give the document. This implies that if he says to give the document now, we give it back to the person who lost it. However, the *braisa* states: If a person found a *daitiki*, *apotiki* (*document stating that the borrower is giving a specific field as a lien due to the loan*), or gift document, even if both parties agree that the documents were given he should not return it to either of them. [*This is even if the giver says to give it now to the original recipient.*] [*This contradicts our Mishna. How can we reconcile this contradiction?*]

Rabbi Abba bar Mamal answers: This is not difficult. One is referring to the document issued by a healthy person, and the other is referring to a document issued by someone on his deathbed. Our *Mishna* that implies the person can say to give the document now is referring to a person on his deathbed. Such a person is allowed to retract his present. What is a possible scenario in this case? Perhaps he originally wrote it for this person, changed his mind and did not give it, and instead gave it to someone else. He is now retracting his original giving. If he gave it as the gift of a healthy person, there is no loss to the second person who is the first actual

recipient of the document, as he originally retracted his gift to the first person (*and the second person got his document first*). If he gave it as the present of a dying man, there is no unjust loss to the second person (*see Ritva*), as he is allowed to retract and give it to whoever he wants.

The *braisa* that says the document should not be returned is referring to a case of a healthy person who cannot retract his documents. Perhaps he originally wrote a gift document for this person, changed his mind and did not give it, and instead gave it (*or sold it*) to someone else. He now wants to retract giving the field to this second person. He understands that he cannot retract. He will therefore say that he originally gave it to the person he wants to give it to, and they will return the document to him. This is in order that the first person will wrongly take it away from the person that he actually gave it to. We therefore tell him that the document should not be returned for this reason. If you did not give it to anyone else in the interim and you still want to give it to this person (*so the suspicion does not apply*), write him a new gift document. This is in order that if you in fact did give it to someone else, that person will not lose, as his document is first.

Rav Zevid asks: Don't both the *Mishna* and *braisa* mention that this is the law regarding a *daitiki* as well?

Rather, Rav Zevid says: Both are discussing a case of a person on his deathbed. One is talking about him, and one is talking about his son (*after he died*). Our *Mishna* that says we listen to him if he says to give it now is talking about him, as he is allowed to retract. We say that even if he did give it to someone else earlier, there is no resulting injustice, as the second one acquires (*as a dying person can always retract*). The *braisa* that implies not to give the document is referring to his son (*who does not have the power to retract*). Perhaps he originally wrote it for this person, changed his mind and did not give it. After his father died, his son gave it to someone else whom he now regrets having given it to him. He knows he cannot retract. He therefore plans on claiming that his father in fact gave the original document to the first

person he intended to give it to. He will then ask that the document should be given to that person, who will seize the field, and split it with him (*as they are in cahoots*). We therefore tell him that due to this suspicion we will not give the document to its intended recipient. If he is telling the truth that his father indeed had given the field to this first person, he should write this person another document that he gave it to him even if his father did not. If he gave it to someone else there will not be an injustice, as the first person will win. (19a – 19b)

**QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF**  
to refresh your memory

Q: Can a *Kohen* become *tamei* to his *arusah*?

A: No.

Q: If one finds a *get*, when will it not be returned according to Rabbah?

A: If it was found after some time has elapsed; it is a place that caravans frequent; it has been established that there are two Yosef ben Shimon's in the same city.

Q: Is a *get* returned if *simanim* are given?

A: If it is an extremely precise one, it is returned; otherwise, it depends if *simanim* are effective on a Biblical level or only as Rabbinical level.