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Giving Away

Rava asked: What is the law regarding a healthy person (who writes that all of his possessions should go to his wife or others as a present from today onwards)? Is it only regarding a *shechiv mei’ra* (person on his deathbed) that we say that he wants that her words should be respected (which is why he is giving her control, only as a guardian, over his possessions now)? This logic does not apply if he is healthy (and it would therefore be a present). Or do we say that he wants her word to be heard even when he is healthy (and she is only a guardian)?

The *Gemora* attempts to answer this question from a *braisa*. If someone writes that the produce of his property should go to his wife, she still can collect the property as part of her *kesuvah*. If he gave her half, a third, or a quarter of the property, she collects her *kesuvah* from other properties of his estate. If he wrote that all of his possessions should go to his wife and then a creditor arrived (whose *lien* was prior to the gift), Rabbi Eliezer says that her present document is torn up, but she can still receive the money she is owed due to the *kesuvah*. The *Chachamim* say: Her *kesuvah* is torn up and she can insist on receiving her present. This means that she is possibly left with nothing from either. [The *Rashbam* explains that when she received

the present, she waived any lien on these possessions from her kesuvah, as they were given to her as a gift. Therefore, while she could technically still use her kesuvah to collect from properties that he acquires after he gave her the gift, she cannot collect from the supposed gift. This means that if creditors come and collect from the properties that she received as a gift, she will be left with nothing.] The *Gemora* deduces that the reason that she cannot collect is because a creditor has a loan document. This implies that if no creditors were present, she indeed receives all of his possessions.

What is the *braisa* discussing? It cannot be discussing a case of a *shechiv mei’ra*, as we said that he only makes his wife a guardian in this case. It therefore must be that he is healthy, and she acquires all of his possessions.

The *Gemora* answers: The *braisa* in fact is discussing a *shechiv mei’ra*. Rav Avira and Ravina would say that it is referring to all of the cases mentioned previously (131b, regarding a wife from *eirusin* or his divorcee). [The *Rashbam* explains why the *Gemara* uses different terminology regarding Rav Avira and Ravina when they in essence say the same thing.]

Rav Yosef bar Minyumi says in the name of Rav Nachman that the law is that her *kesuvah* is torn up

and she can insist on receiving her present. This means that she is possibly left with nothing from either.

The *Gemora* asks: Does this mean that Rav Nachman does not follow an “*umdana*” -- “an understood premise”? The *braisa* says: A person’s son went overseas, and he heard that his son had died. He got up and wrote that all of his possessions should be distributed to others. Afterwards, his son came back (*alive*). His presents are still valid. Rabbi Shimon ben Menasya says: His presents are no longer valid, as if he would have known that his son was alive, he clearly would not have given these gifts. Rav Nachman says: The law follows Rabbi Shimon ben Menasya. [*This shows he does follow an understood premise!*]

The *Gemora* answers: Our case is different, as he wants that it should be known that he gave her his possessions as a gift. [*The Rashbam explains that being that she becomes known as a significantly trusted person, she waives any claim to these lands in case a creditor arrives.*]

The *Mishna* states: If someone writes that his sons should receive his possessions, and he leaves even a small amount of property to his wife, she loses her *kesuvah*.

The *Gemora* asks: Is it understandable that she should lose her *kesuvah* because she received a small amount of land?

Rav says: The case is where she gives her kerchief in order for the sons to acquire most of the land. [*Being that she facilitated the acquisition and received a little*

bit of land, she is showing that she waives any claim to the rest of the land.]

Shmuel says: The case is where he divides the land amongst his sons and she is quiet.

Rabbi Yosi the son of Rabbi Chanina says: The case is where he says to her that she should take this land in lieu of her *kesuvah*. All of these opinions are teaching the leniency of *kesuvah* (*i.e. how easy it is for us to consider that a woman has waived her right to collect a kesuvah, as opposed to a regular loan that is only waived if the creditor explicitly states so.*)

The *Gemora* asks from the *Mishna*: Rabbi Yosi says that if she accepted this upon her (*she explicitly waived the lien of her kesuvah*), even if he did not write this for her, she loses her *kesuvah*. This implies that the *Tanna Kamma* holds that he must write this and she must accept it! If you will say that the entire *Mishna* is actually Rabbi Yosi, this is not true. This is evident from a *braisa*. The *braisa* states: Rabbi Yehudah says (*explaining the Tanna Kamma’s position*), when is this? It is when she was there and accepted it. If she was there and did not accept it, or, if she accepted it and was not there, she does not lose her *kesuvah*. This is a strong question on all of the previous opinions that explained the *Tanna Kamma*.

Rava asked Rav Nachman: Rav, Shmuel, and Rabbi Yosi the son of Rabbi Chanina stated their understanding of the *Tanna Kamma*. What do you hold?

Rav Nachman replied: I understand that once he makes her into a partner amongst the sons (*she also receives a little land*), she loses her *kesuvah*.

DAILY MASHAL

A Din Torah

It was also taught that Rav Yosef bar Minyumi says in the name of Rav Nachman: Once he made her into a partner amongst the sons, she loses her *kesuvah*.

Rava asked: Is this true (*Rav Nachman's law*) regarding a healthy person? Do we say that regarding a *shechiv mei'ra*, whom she knows does not have much else, she waives her rights to the *kesuvah*, but if he is healthy, she thinks he might acquire further? Or do we say that because now he has no more assets, she waives her right in general? The *Gemora* leaves this question unresolved.

There was a *shechiv mei'ra* who said that half of his property should go to one daughter and half to another, and his wife should receive one third of the produce. Rav Nachman went to Sura, and Rav Chisda went to visit him. Rav Chisda asked him: What is the law in this case?

Rav Nachman replied: This is what Shmuel said. Even if he only gave her the rights to the fruit of one tree, she loses her *kesuvah*.

Rav Chisda said: Shmuel only said this when he gave her an actual piece of property. However, here, she only has the rights to the fruit (*she does not own any actual property*)!

Rav Nachman answered: Are you saying the fruit is not attached to the tree? This I did not say. [*He only said that she waives her rights if he gives her one third of the fruits that are currently attached to the tree.*] (132a - 132b)

In his *Lekach Tov*, HaGaon Rav Y.Y. Beifus recounts that the Chazon Ish zt"l once told a story about a person who summoned another to a *din Torah* concerning a financial dispute. The claimant wanted to know his chances of winning and came to the *rav* with an accomplice who acted the role of the defendant, describing the same circumstances of the real case and the *rav* promptly ruled that the claimant was right. After a while, the **real** *din Torah* was referred to the *rav* and, to the claimant's shock, his arguments were rejected and he lost the case! The claimant was beside himself and told the *rav* about the deception he had enacted with his friend, expressing his astonishment at what had occurred.

"It's now quite obvious", replied the *rav*, "that the first time you came you didn't ask for any true ruling and I therefore didn't earn Hashem's help, given to those who must decide halachah. Without His help, our human understanding may err. Today, though, you came with a real case and I therefore earned Hashem's help."