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DAF Notes
Insights into the Daily Daf
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Bava Basra Daf 138

Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o"h

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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

Silent First and then a Protest

Rav Nachman bar Yitzchak said: If a donor conveyed ownership to one through another person and the recipient initially kept silent and later protested, we have arrived at an argument between Rabban Shimon ben Gamliel and the Rabbis. For it was taught in a *braisa*: If a person wrote over his estate to another, and part of it consisted of slaves, and the recipient said, "I do not want them" (*for he does not want to sustain them*), they may eat *terumah*, if their second master was a *Kohen*. Rabban Shimon ben Gamliel said: As soon as the recipient had said, "I do not want them," the heirs of the donor become their legal owners. And the *Gemora* had asked: Would the *Tanna Kamma* hold that the recipient is the legal owner even if he stands and protests? Rava, and some say Rabbi Yochanan, said: In the case where he protested from the outset, all agree that he does not acquire ownership. If initially he kept silent and ultimately he protested, all agree that he does acquire ownership. They argue only in the case where the donor conveyed ownership to one through another person and the recipient initially kept silent and later protested. In such a case, the *Tanna Kamma* holds that since he initially kept silent he acquired ownership, and the reason that he later protested was because he has simply changed his mind. Rabban Shimon ben Gamliel, however, maintains that his final action proves what he was thinking at the beginning, and that the reason why he did not initially protest is because he thought, "Why should I protest before they come into my possession!" (138a)

A Dying Person's Will

The *Gemora* cites a *braisa*: If a deathly ill person says, "Give two hundred *zuz* to So-and-so, three hundred to So-and-so, and four hundred to So-and-so (*three different people*), we do not say that whoever was first receives the money first. Therefore, if a different loan document is produced, all of them can have their money owed collected from them. However, if the deathly ill person said, "Give two hundred to So-and-so, and afterwards to So-and-so, and afterwards to So-and-so," we say that the first person mentioned is first. [*This is because of the term "afterwards," which implies that the second person should only get his money after it is ascertained that the first person was able to collect*.] Therefore, if a loan document is presented, it first is collected at the expense of the last person mentioned, and so on.

The *Gemora* cites another *braisa*: If a deathly ill person says, "Give two hundred *zuz* to So-and-so who is my firstborn son, in accordance with what befits him," he takes the two hundred and his firstborn double portion. If, however, he said, "Give two hundred … for his firstborn portion," he has the upper hand. He may take the two hundred, or, if he wishes, he may take the firstborn double portion. [*He may take whichever portion is larger*.] If a deathly ill person says, "Give two hundred *zuz* to So-and-so who is my wife, in accordance with what befits her," she takes the two hundred and her *kesuvah*. If, however, he said, "Give two hundred … for her *kesuvah*," she has the upper hand. She may take the two hundred, or, if she wishes, she may take the money for her *kesuvah*. If a deathly ill person says, "Give two hundred *zuz* to So-and-so, my creditor, in accordance

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with what befits him," the creditor takes the two hundred and the settlement of his debt. If, however, he said, "Give two hundred …for the settlement of the debt," he takes them as settlement of his debt.

The *Gemora* asks: Just because he said, "in accordance with what befits him," he should be entitled to receive these and receive also his debt; perhaps he merely meant, "in accordance with what is befitting for the debt"?

Rav Nachman replied: Huna has told me that this *halachah* represents the opinion of Rabbi Akiva who draws inferences from what appears to be superfluous expressions. For we learned in a *Mishna*: that when one sells a house, he does not include any pits, even if he explicitly included depth and airspace. Rabbi Akiva says that the seller must purchase a pathway from the buyer, since he did not exclude a pathway to the pit for himself. The Sages say that when he retained the pit, he also retained a pathway to the pit. Rabbi Akiva agrees that if the seller explicitly excluded a pit, he also retained a pathway, and need not purchase it from the buyer.

Evidently, Rabbi Akiva holds that whenever a person mentions something which is not necessary, his intention was to add something; so here also, since he mentioned that which was not necessary (*"in accordance with what befits him"*), his intention was to add something.

The *Gemora* cites a *braisa*: If a deathly ill person said, "So-and-so owes me a *maneh*," the witnesses may write it down in a document (*that the dying man said so*) even though they do not know the borrower (*and they do not know whether there is any truth in the statement*). Therefore, when the debt is collected, he must bring proof (*for the document does not attest to anything; it merely accomplishes that the "alleged" borrower will be compelled to take an oath that he did not borrow, if he so chooses*); these are the words of Rabbi Meir. But the *Chachamim* say: The witnesses should not write anything down unless they recognize the borrower (*and know the statement to be true*). Therefore, when the debt is collected, there is no need for (*any further*) proof to be produced.

Rav Nachman said: Huna told me that a *Tanna* reported the above discussion in the following manner: Rabbi Meir said: The witnesses should not write anything down, and the *Chachamim* say: They may write it down. And even Rabbi Meir said this only because he was concerned that a court might err (*for they will see a signed document and think that it is legitimate without any further investigations*).

Rav Dimi of Nehardea said: The *halachah* is that we are not concerned that a *Beis Din* will err.

The *Gemora* asks: Why is this different than what Rava said? For Rava said: *Chalitzah* must not be arranged unless *Beis Din* knows the widow and her brother-in-law, nor may a *mi'un* (*A girl whose father had died could be given in marriage while still a minor (under the age of twelve) by her mother or older brother. This marriage is only valid Rabbinically. As long as she has not attained the age of twelve, she may nullify the marriage by refusing to live with her husband. This act of refusal, referred to as mi'un nullifies the marriage retroactively.*) be accepted unless the *Beis Din* knows the parties. Therefore, it is permissible for witnesses to write out a document of *chalitzah* as well as a document of refusal even though they do not know the parties. Is this not because we were concerned for an erring *Beis Din*!?

The *Gemora* answers: No! One *Beis Din* does not closely examine the decision of another *Beis Din* (*and that is why we take precautionary measures by chalitzah and mi'un*); however, *Beis Din* does closely examine the proceedings of witnesses (*and therefore, no precaution is necessary*). (138a – 138b)

INSIGHTS TO THE DAF

No Path?

The Sages say that if one sells a house, he retains his pit, and a pathway, while if he sells his pit, the buyer must buy access rights. Rabbi Akiva says that if one sells a house, he retains his pit, but not access rights, while if he sells his pit, the buyer gets access rights. The Reshash says that even when one does not get access rights, this simply means that he does not own a path four *amos* wide to his pit. However, he does have a narrow path to his pit.

The Yad Ramah asks what the buyer of a pit bought according to the Sages, if he does not have access rights. The Yad Ramah says that all the buyer bought was the right to be a *bar matzra* – a neighbor, with first rights to purchase adjoining land.

The Reshash is inconsistent with this Yad Ramah, since according to the Reshash, the buyer does have access to his pit, albeit in a less comfortable manner.

Does an only Son have Firstborn Rights?

In his *Devar Avraham (I*,27), the Rabbi of Kovno, Rabbi A.D. Kahana-Shapira zt"l raises the question as to if an only son, without brothers, is regarded as a firstborn. In other words, when he inherits his father's estate, does he do so just as an ordinary son or does he inherit half the estate as an ordinary son and the other half as a firstborn? And if you ask, "What's the difference? He gets it all anyway!," the following case shows that this seemingly theoretic inquiry has practical implications.

There used to be a custom to give a daughter a *shtar chatzi zachar*, a document granting her a portion of her father's estate equal to half that of a son's. If a father had, for instance, three sons and a daughter, all the children together would be considered as 3.5 sons and the daughter would get a seventh of the estate in conformity with her status as a *chatzi zachar* – "half a male." If, though, he had only one son and a daughter, how much should she get? If the son is not defined as a firstborn, he and his sister are together regarded as 1.5 sons and she receives a third of the estate. If, however, he is also considered a firstborn, he inherits two portions, one as an ordinary son and one as a firstborn: the father is then regarded as having 2.5 sons and the daughter gets only a fifth of the estate.

The question occupied the attention of many halachic authorities, as attested by HaGaon Rav Y.S. Natanson, author of *Shoel Umeshiv* (Responsa, 1st edition, 123): "HaGaon Rav D. Oppenheim; HaGaon Rav Yonasan – author of *Urim VeTumim* and then *Darshan* (exponent) of Prague; the author of *Shav Ya'akov* and the inquiring rabbis have all failed to find an answer."

Later *poskim*, though, have tried to solve the quandary by logical deduction: The *Gemora* (Bava Basra 124a), after all, defines a firstborn's rights as a **gift**, learning from the verse "to **give** him twice as much" (Devarim 21:17). But who bestows the gift? His father is already deceased so it could be that the gift is bestowed by his brothers and, if he has no brothers, he has no gift and does not inherit a firstborn's portion (see Responsa *'Ateres Tzevi*, 2).

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