

29 Sivan 5777
June 23, 2017



Bava Basra Daf 152

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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

Shechiv Mei’ra and a Kinyan

It was stated: If a dying man (*whose verbal assignment is valid and requires no deed or formal acquisition, for the Rabbis were concerned that otherwise, his anxiety would speed up his death*) distributed his estate and it was written in the document that a *kinyan* was performed; in the Beis Medrash of Rav, they said in Rav’s name that the dying man has given his gift a double force; that of the gift of a dying man and that of legal acquisition. Shmuel said: I don’t know how to judge this case.

The *Gemora* explains their respective opinions: Rav maintains that this gift has the advantage of being regarded as a legal acquisition, and even if he recovers from his illness, he will not be able to retract from the transfer. It is also regarded as a gift of a dying man and he would be able to transfer a loan over to another person (*which cannot be accomplished through an ordinary kinyan*).

Shmuel said that he does not know how to judge this case, for perhaps, he wished to effect this transfer only through the document, and a document will not be effective as a transfer of property after his death.

The *Gemora* asks that Rav and Shmuel contradict themselves elsewhere, for Ravin sent in the name of Rabbi Avahu: You should know that Rabbi Elozar sent the following message to the Diaspora in the name of our teacher, Rav: If one who is deathly ill said, “Write in a document and give a *maneh* to So-and-so,” and he died, we

do not write or give the *maneh* to him, for perhaps he intended that the transaction should take effect only with a document (*for otherwise, why would he have instructed that a document should be drawn up? The halachah is that a deathly ill person can transfer ownership even by just speaking*), and a document cannot be given after one’s death. And Rav Yehudah said in the name of Shmuel that the *halachah* is that we do write and give the document. It emerges that Rav contradicts himself (*for above, he ruled that a kinyan enhances the strength of a shechiv mei’ra’s gift*) and so does Shmuel (*for above, he ruled that the kinyan was an indicator that he did not want to transfer his estate as a shechiv mei’ra’s gift, but rather, as an ordinary kinyan*)!?

The *Gemora* answers: The challenge to Rav is not difficult, for Rav’s first statement was referring to a case where the witness made a *kinyan* (*sudar - with the sick person*) for the recipient (*and it is regarded as an enhancement to the shechiv mei’ra’s transfer, for it is common practice to use a sudar as a means of demonstrating commitment or strengthening a kinyan*), whereas this last statement of Rav was referring to a case where there was no other *kinyan* (*and the giving over of the document was intended as a legal kinyan, and he was obviously rejecting the mechanism of the shechiv mei’ra gift*).

The challenge to Shmuel is not difficult either, because in the latter case, we are referring to one who specifically wanted (*by adding certain language into the document*) to strengthen the recipient’s claim.

Rav Nachman bar Yitzchak sat behind Rava and Rava sat before Rav Nachman and enquired of him: How could Shmuel say that perhaps he wished to effect this transfer only through the document, and a document will not be effective as a transfer of property after his death? Did not Rav Yehudah say in the name of Shmuel that a *shechiv mei'ra*, who writes all of his property to another, even though the recipient made an act of acquisition, he may renege on the gift, for it is known that the instruction was only given because he thought that he would die (*and we can infer from here that if he would have died, the recipient would have acquired the property and we are not concerned that perhaps he wished to effect this transfer only through the document, and a document will not be effective as a transfer of property after his death*)!?

Rav Nachman motioned to Rava with his hand and Rava became quiet.

Rav Nachman bar Yitzchak asked Rava: What did he motion to you?

Rava answered: He was telling me that when Shmuel ruled that he acquires the property, he was referring to a case where he specifically wanted (*by adding certain language into the document*) to strengthen the recipient's claim.

The *Gemora* asks: How does he strengthen the recipient's power?

Rav Chisda answers: He includes in the document the following language: And we (*the witnesses*) acquired (*with a legal kinyan*) from him (*the shechiv mei'ra*) in addition to his presentation of the gift.

The *Gemora* notes: It is obvious that where the dying man gave away all his property in writing to one man (*but he did not hand over the document*) and then he wrote the same property to another, the *halachah* is the same as that which Rav Dimi ruled when he came (*from Eretz Yisroel to Bavel*),

that one *shechiv mei'ra* will annuls another one. If, however, he wrote a gift document and handed it to one person, and then he wrote a second gift document and handed it to another person, Rav said: The first one acquires it; while Shmuel said: The second person acquires it.

The *Gemora* explains the dispute: Rav said that the first one acquires it, for it is like the gift of a healthy person (like he said above that that the *kinyan* in the document accomplishes that it is also a legal acquisition and the *shechiv mei'ra* cannot retract from it), while Shmuel said that the second person acquires it, for it is like the gift of a dying man.

The *Gemora* explains why it was necessary for their argument to be stated twice.

The *Gemora* notes that in Sura, they had the above version of the dispute between Rav and Shmuel; however, in Pumbedisa, they taught as follows: Rav Yirmiyah bar Abba said: they sent from the Academy of Rav to Shmuel: Can the master teach us what the *halachah* would be regarding a case where a *shechiv mei'ra* wrote all of his property to others, and the witnesses performed a *kinyan* with him? Shmuel sent back: Once a legal acquisition has been made (*on a shechiv mei'ra gift*), it cannot be overturned. The students thought that this would only be if he would want to transfer the property to someone else, but if he recovered, he would be entitled to retract and keep the property to himself. Rav Chisda, however, told them: When Rav Huna came from Kufri, he explained to us that Shmuel's ruling applies even for the *shechiv mei'ra* himself. (152a – 153a)

INSIGHTS TO THE DAF

A “MATNAS SHECHIV MERA” COMBINED WITH A “KINYAN”

The *Gemora* discusses the case of a *shechiv mei'ra* who gives instructions to give a gift and also makes a *kinyan*. The *Gemora* asks: Does the fact that a *kinyan* was made indicate that the *shechiv mei'ra* wanted the gift to have the status of a healthy person's gift (a “*matnas bari*,” which requires a *kinyan*), or despite the *kinyan*, his gift still has the status of a *matnas shechiv mei'ra*, as it is apparent that the *shechiv mei'ra* is giving the gift due to his impending death? Rav maintains that the *shechiv mei'ra* incorporates in his gift both aspects; it is like a *matnas shechiv mei'ra* in some ways and like a *matnas bari* in others. It is like a *matnas bari* in that the gift cannot be retracted if the giver recovers, but it is like a *matnas shechiv mei'ra* in that the giver can transfer the ownership of a loan owed to him, which only a *shechiv mei'ra* has the ability to do. Shmuel does not accept Rav's position. He remains in doubt about whether the transaction is valid at all, because the *shechiv mei'ra* may have intended for the gift to take effect after his death through the mechanism of a normal *kinyan*, but a normal *kinyan* cannot take effect after the death of the benefactor.

What exactly is the case of the *Gemora*? Is the *Gemora* referring to a case in which a *shechiv mei'ra* gives away *all* of his property or only part of it? Also, the *Gemora* implies that the gift is recorded in a *shtar*. Does the dispute between Rav and Shmuel apply only in a case in which the *shechiv mei'ra* gives a gift with a *shtar*, or does it apply to any transfer of property executed by a *shechiv mei'ra* through a *kinyan*?

The Rashbam and Rabbeinu Chananel explain that the *Gemora's* question applies only in a case in which the *shechiv mei'ra* gives away *all* of his property. They prove this from the previous *Gemora* which states that a *matnas*

shechiv mei'ra b'miktzas, a *shechiv mei'ra's* gift of *part* of his property, is valid only if a *kinyan* is performed. Since the degree of efficacy of a *matnas shechiv mei'ra b'miktzas* is already known, and the only possible case of such a gift is a case in which the *shechiv mei'ra* makes a *kinyan*, there is no basis for the *Gemora* to question what the *kinyan* accomplishes. In contrast, when a *shechiv mei'ra* gives a gift of *all* of his property, no *kinyan* is necessary. Accordingly, in such a case the *Gemora* can debate the status of the gift when it is given *with* a *kinyan*. Since a *kinyan* is not needed for a gift to take effect as a *matnas shechiv mei'ra*, the *Gemora* inquires how the added *kinyan* affects the gift.

They explain further that this question applies not only in a case in which the *kinyan* is recorded in a *shtar*, but even when a *shechiv mei'ra* gives a gift without a *shtar* (*that is, he declares verbally that his property should be given to a certain person -- and his word is binding according to the law of matnas shechiv mei'ra -- and then he performs a kinyan on that same transaction*).

The Rashbam cites proof for this explanation from the fact that the *Gemora* compares this case to a different ruling of Shmuel, which states that a *shechiv mei'ra* who writes a *shtar* to give away his possessions may retract the gift if he recovers, even if a *kinyan* was made. That ruling of Shmuel clearly refers to a case in which the *shtar* was written without a *kinyan*, since the *kinyan* was made afterwards. Since the *Gemora* equates the case of that ruling to the case it discusses here, it is clear that the *kinyan* in this case does not necessarily need to be written in the *shtar*.

The Rivam and the Ri (cited by Tosfos) reject the Rashbam's explanation based on a number of questions. They maintain that the *Gemora* asks its question *only* about a case in which the *kinyan* was recorded in the *shtar*. They admit that the other statement of Shmuel -- to which the *Gemora* compares this case -- deals with a *kinyan* that is not recorded in the *shtar*. However, they reject the Rashbam's proof for his explanation and argue that the *Gemora's* case

here does not necessarily have to be the same. The *Gemora* cites Shmuel's ruling -- in the case of a *kinyan* that is not written in a *shtar* -- in order to challenge the ruling of Shmuel here. The *Gemora* reasons that if Shmuel maintains, in a case in which a *kinyan* is written in a *shtar*, that the written *kinyan* diminishes the efficacy of the *matnas shechiv mei'ra* (since the *shechiv mei'ra* may have intended to give the gift after his death through a normal *kinyan*), then certainly when the *shechiv mei'ra* makes a *kinyan* outside of the *shtar* the gift should not be valid (even if the *shechiv mei'ra* dies). It would follow logically from Shmuel's opinion in the case of the *Gemora* here that the gift of a *shechiv mei'ra* should be invalid in the case of Shmuel's other ruling as well. The *Gemora* therefore challenges Shmuel's ruling here from the fact that he rules in the other case that the *shechiv mei'ra's* gift remains valid. (The *Gemora* answers that the gift is valid only when the *shechiv mei'ra* specifies that the purpose of the *kinyan* is to be "Meyapeh Kocho" for the recipient.) Since the *Gemora* does not state explicitly that the two cases are identical, Tosfos rejects the Rashbam's proof.

According to this approach, since the *Gemora's* question deals specifically with the issue of whether the *kinyan* and the *matnas shechiv mei'ra* cancel each other out when they are recorded in the same *shtar*, the *Gemora's* question is applicable whether the *shechiv mei'ra* gives away all or part of his property.

HALACHOS FROM THE DAF

One Gift to Two People

The *Gemora* discusses a case where a *shechiv mei'ra* gave the same gift to two people and both these people were *zocheh* (a legal acquisition). Rav says that the first person is *zocheh*, while Shmuel argues that the second one is *zocheh*. The *halachah* follows Shmuel (Choshen Mishpat 250:13).

The Rashba (Shu"t Chelek 2 Shaila 293) was asked what to do in a peculiar case. The story was that a father, Yaakov, gave his son Reuven a field as a gift while in complete health (*matnas bari*), stating that it is Reuven's "from today and after I die," which means that the field itself would immediately belong to Reuven, but the "fruits" (*the profits*) would belong to the father until he died, and only then would it be transferred to Reuven.

Years passed and Yaakov realized he was nearing his end, so he drew up a will dividing his inheritance among his children. Interestingly enough, the very field that was previously given to Reuven, Yaakov stated in his will that it would belong to Shimon. At the end of the will, Yaakov added a clause that if any of the children would contest any part of the will, than he would forfeit his part to the inheritance that he had received. So the question is: who does this field belong to?

The Rashba answered that logic would dictate that Yaakov simply forgot about the gift he gave Reuven years ago, and Shimon should never have received this field, and more importantly we should disregard the clause. However, since there is a possibility that he did remember and Yaakov decided to give this field to Shimon, this causes a serious problem for Reuven, for although the field is rightfully his, if he opens his mouth, he loses the rest of the inheritance. On the other hand, says the Rashba, Shimon cannot keep the field either, for it clearly belongs to Reuven, since Yaakov cannot take away a *matnas bari* through any means. Therefore we have reached an impasse; Shimon cannot claim the field because it's not his, and neither can Reuven, because of the clause. The only way out, concludes the Rashba, is that Reuven's inheritors can claim the field (*once Reuven dies*), if in fact Reuven never contested the will. This is because the only thing stopping Reuven was that Yaakov added a clause in the will, which effectively muzzles Reuven's mouth, but not his inheritors.