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Bava Basra Daf 153

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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

Presents of a Shechiv Mei’ra

There was a person who was presumed to be on his deathbed (*known as a shechiv mei’ra*). He gave his possessions over to someone by writing so in a document, giving over the document, and making a *kinyan* to this effect. However, he then healed, and wanted to retract his present. He went before Rav Huna. Rav Huna said: What can I do, as you did not give this present as people normally do (*on their deathbed*). [*People would usually not do all of these three steps of acquisition mentioned above. Doing so is a sign that the present is valid, even if one recovers from his illness.*]

There was a *shechiv mei’ra* who gave some of his possessions over to someone, “in life and in death.” Rav says: This has the status of a present of a *shechiv mei’ra* (*that can be retracted if he recovers*). Shmuel says: It has the status of a present of a healthy person.

Rav says it is like the present of a *shechiv mei’ra* because he said, “in death.” This means it is his after he dies. The only reason he mentioned life was for a good omen that he should continue to live.

Shmuel says it is like the present of a healthy person because he said, “in life.” This means that the present is valid during his lifetime. The only reason he mentioned death was as if to say, “now and forever.”

They said in Nehardea: The law follows Rav. Rava says: If he wrote, “From life etc.” the present is valid. Ameimar says: The law is unlike Rava.

Rav Ashi said to Ameimar: This is obvious, as they said in Nehardea that the law is like Rav!?

The *Gemora* answers: You might think that Rav admits in a case where he says, “From life.” This is why Ameimar says the law does not follow Rava.

A person (*who had a gift document saying “in life and in death”*) came before Rav Nachman in Nehardea. He sent him to Rabbi Yirmiyah bar Abba who lived in Shum Tamy. Rabbi Yirmiyah said: This is Shmuel’s territory. How can I rule like Rav here (*despite the fact that the law generally follows Rav in this case*)? [*The Rashbam explains that he told him to get a ruling somewhere else that would be like Rav.*]

A woman (*in a similar case*) came to Rava. Rava ruled according to his opinion (*being that the document said, “From life” it is the present of a healthy person*). However, this ruling bothered Rava (*as he thought that perhaps he was incorrect*). Rava told Rav Pappa the son of Rav Chanan, his scribe: Write on the bottom of this ruling, “One can hire others (*and charge the workers who backed out of the job for the difference in price*) or trick them (*to keep working*).” [*Quoting this Mishna in Bava Metzia which discusses how to handle workers who back*

out of a deal indicated to the reader that Rava was merely pushing aside the claim, and not really ruling that it should be enforced.]

However, the woman understood this, and cursed Rava. She said: "His (Rava's) ships should sink! You think you are tricking me!" They soaked Rava's clothes in water in order to try to have the curse go on the clothes instead of Rava's ships that were at sea. However, this did not work, and his ships indeed sank. (153a)

Mishna

If there was no wording in the present document to indicate that he was a *shechiv mei'ra*, and he claims he was while the recipients claim he was not, he must bring proof that he was a *shechiv mei'ra*; these are the words of Rabbi Meir. The *Chachamim* say: One who takes away money from his friend must bring proof. [*In this case, this refers to the people who wish to enforce the presents.*] (153a)

Cases of Uncertainty

There was a present document in which it stated, "When he was sick and bedridden," but did not state, "And because of his sickness he will pass away to his (next) world." Rabbah says: He died, and his grave shows it. [*In other words, this was clearly a present of a shechiv mei'ra.*] Abaye says: Now, if people who sail on boats mostly go lost, and we say that we must assume stringently that they are both alive and dead (*depending on which side is the stringency in any given case*), certainly the fact that most people who are sick recover should be taken into consideration. [*We therefore should assume that he did not die from the sickness mentioned in the document.*]

Rav Huna the son of Rav Yehoshua says: Who is Rabbah's position like? It is like Rabbi Nassan. This is as the *braisa*

states: Who is considered to be taking from who (*in the case of our Mishna*)? He can take from them without proof, and they can only take from his with proof. These are the words of Rabbi Yaakov. Rabbi Nassan says: If he is healthy, he must bring proof that he was a *shechiv mei'ra*. If he is currently a *shechiv mei'ra*, they must bring proof that he was healthy.

Rabbi Elozar says: Regarding impurity, it is the same argument. [*If there is a case of doubtful impurity, the law depends on whether or not this doubt occurred in a private or public domain. If it is in a private domain, one is ruled impure. If this occurred in a public domain, one is ruled pure.*] This is as the *Mishna* states: A valley is considered in the summer to be a private domain regarding *Shabbos* and a public domain regarding impurity. In the winter, it is considered to be a private domain both regarding *Shabbos* and impurity.

[*The Rashbam explains that the outcome in this case depends on the opinions in the previous braisa. According to Rabbi Nassan, it depends on the current season. According to Rabbi Yaakov, it depends on his status. If he was pure beforehand, we assume he is pure unless there is evidence to the contrary.*]

Rava says: The fact that a valley is a public domain regarding impurity in the summer is only if no winter passed after the valley was fenced in. If it was fenced in and winter passed, it is considered a private domain in the summer as well. (153a – 153b)

INSIGHTS TO THE DAF

If He's Healthy, He must Produce Evidence that he was Moribund

The famous get delivered at Cleves

Not many divorce cases have earned a special name or deserved to be assiduously detailed in *halachic* literature. One outstanding case, though, was that of Yitzchak Neierburg and Leah Guntzhausen of Germany, who were divorced very soon after their marriage about 200 years ago, on 8 Elul 5526. The couple wed in Mannheim but the bill of divorce was delivered in Cleves and has been since known as “the Cleve *get*.”

A divorce enacted at the Dutch border

Immediately after the wedding, the young husband became very introverted and sometimes murmured incomprehensible statements. One the *Shabbos* of the *sheva berachos* week, he took the dowry of 94 gold *karolen* and absconded to a neighboring village and, when discovered, explained that he had to desecrate the *Shabbos* and flee because “all his limbs trembled and a deathly fear had befallen him.” For some reason, the bride’s family did not yet demand a *get*. After the next *Shabbos*, Neierburg was in Bonn where he summoned his wife’s relative, Rabbi Shimon Copenhagen, and told him he was in great danger and had to leave the country immediately. There was no *beis din* in Bonn, so the wife’s family continued to Cleves, on the Dutch border, as Neierburg intended to flee to England via Holland. HaGaon Rav Yisrael Lifschitz, the rabbi of Cleves and the grandfather of the author of *Tiferes Yisrael* on the *Mishnah*, arranged the divorce once the husband insisted that he would be condemned to death unless he fled to England. The couple’s financial matters were then settled and Leah returned home.

The dispute that engulfed the halachic community

On hearing the news, Neierburg’s father became incensed, especially about the financial settlement which he deemed unfavorable to his son. He appealed to the rabbis of Mannheim and Frankfurt-am-Main to disqualify the *get*, claiming his son was insane and therefore

halachically unable to divorce. The rabbis of Frankfurt and Mannheim soon issued a long and elaborately explained decision disqualifying the *get* and consequently defining Leah as still married. Her family appealed to other leading rabbinical authorities and the stormy discussion echoed throughout the *halachic* community to the point where every prominent expert voiced his opinion. The replies of some *poskim* were even publicized, including those of HaGaon Rav Yechezkel Landa, author of *Noda’ BiYehudah*; HaGaon Rav Aryeh Leib of Metz, the *Shaagas Aryeh*; HaGaon Rav David, *av beis din* of Dessau, known for his *Korban Ha’Eidah*; Rabbi Shlomo Chelma, famous for his *Mirkeves HaMishneh* on Rambam; Rabbi Elchanan Ashkenazi (*Sidrei Tohorah*); Rabbi Yitzchak HaLevi of Hamburg; HaGaon Rav Yaakov Emdin; and Rabbi Shaul of Amsterdam.

Why the Frankfurt community was hard put to hire a rav

So many rabbis expressed their opinions that several years later, when the Frankfurt congregation was seeking to appoint a new chief rabbi, the leaders of the community were only willing to consider one who did not disagree with his predecessors and they only found three candidates. The Frankfurt rabbis were the sole ones to still insist that Neierburg had been insane, whereas all the others allowed Leah to remarry. We shall now devote some study to the thought-provoking reply of the author of *Shaagas Aryeh*, publicized in *Responsa Or HaYashar* and at the end of his major work (*Shaagas Aryeh*, addition to #2).

In our *sugya* Rabbi Nassan states that one who had been moribund but recuperated may renege on the gifts that he distributed on his deathbed, as he was then sure that he was in his last moments and would have no further need for his property. What, though, is the *halachah* if we are unsure of the state of the person’s health when

he distributed the gifts? The *Gemora* says that we must examine his condition **right now**. If he's healthy now, we should assume he was so then but if he's presently infirm, we assume he was the same then unless one of the sides proves otherwise.

DAILY MASHAL

Back to the *get* at Cleves, then, it had to be ascertained if Neierburg was sane or insane when he gave Leah her *get*, and, according to our *sugya*, we should consider his current condition. The *Shaagas Aryeh* wrote that he detained Neierburg at Metz for three days on his way to London and found him sane, and consequently, in his opinion, the *get* was valid. (The *Shaagas Aryeh* included many ideas, profound *pilpul* and *halachic* principles that we cannot fully explain here due both to lack of space and their profundity; we have touched on only one of his ideas, related to our *sugya*, without citing all his supportive proof leading to his final decision). Some record that Neierburg returned to Germany and remarried Leah but others deny the fact.

HALACHOS FROM THE DAF

Is He Alive?

In what type of scenarios do we remain with the assumption that a missing person is still alive? Which circumstance must occur before we assume that a missing person may have died?

The Shulchan Aruch (Even Ha'ezer 141:69) distinguishes between various settings. In cases where the city was;

- a) surrounded by an army from the nearby government;
- b) a ship floundering at sea;
- c) a person that is on his way to be tried in a case where convicted carries the death penalty;

In all these cases, the person in question is considered to have remained alive.

Conversely, in cases where;

- a) the city was captured;
- b) surrounded by an invading army;
- c) a ship that is lost at sea;
- d) a convict that is on his way to be executed by non-Jews;
- e) when a person was dragged away by a wild animal;
- f) a river swept him away;
- g) a house collapsed on him;

In all these instances, we cannot safely assume that he assuredly remained alive; therefore we give him the status of both a living and dead person.

This would have strict implications:

- a) His wife cannot remarry - for he might be alive.
- b) Even if a *get* was given to an agent to give to his wife, he may not do so - for he might be dead (*since one cannot divorce his wife after he is dead*). If the agent did give her the *get*, she would have the status as a *safek migureshes*.
- c) If the missing person is a *Kohen*, his wife cannot eat *terumah* - for he might be dead.
- d) If the missing person is a *Yisroel*, but his wife is a daughter of a *Kohen*, she cannot eat *terumah* - for he might be alive.