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Bava Basra Daf 154

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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

Was He a Shechiv Mei’ra?

The *Mishna* had stated: [If there was no wording in the gift 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 wishes to exact money from his friend must bring proof.

The *Gemora* asks: How will they bring a proof?

Rav Huna said: Proof is produced by witnesses. Rav Chisda and Rabbah bar Rav Huna said: Proof is produced by the validation of the document.

The *Gemora* explains: Rav Huna said: Proof is produced by witnesses, for he holds that the *Chachamim* and Rabbi Meir differ on the same principles as that of Rabbi Yaakov and Rabbi Nassan (*Mnemonic: MeNIACH*). Rabbi Meir holds like Rabbi Nassan (that we presume that the donor was healthy just as he is right now, and therefore he carries the burden of producing proof that he was a *shechiv mei’ra* at that time; barring such proof, the gift is valid) and the *Chachamim* hold like Rabbi Yaakov (that since he once owned the property, he is still regarded as the owner unless the recipient can produce proof that he was healthy at that time).

Rav Chisda and Rabbah bar Rav Huna said: Proof is produced by the validation of the document, because they differ on the question whether, in the case where a debtor admitted that he wrote a contract, must the creditor have the signatures validated. Rabbi Meir is of the opinion that where a debtor admitted that he wrote a contract, the creditor is not required

to have the signatures validated. [So here, where the donor admitted that he wrote the deed, the recipient is not required to validate it; he therefore acquires the gift, for we assume (like Rabbi Nassan) that the donor was always healthy.] The *Chachamim*, however, hold where the debtor admitted that he wrote a document, the lender must still validate the signatures (and therefore, here, the recipient would be required to validate the document even though the donor admitted that the deed is valid).

The *Gemora* asks: But do they (the *Chachamim* and Rabbi Meir) argue about this very point elsewhere (so why is it necessary to have the same dispute here)? For it was taught in a *braisa*: [If witnesses say, “These are our signatures, but we were coerced,” “we were minors,” “we were disqualified for testimony,”] they are not believed to invalidate the document (for since the debtor has already admitted that he wrote the document, the creditor is not required to validate the signatures); these are the words of Rabbi Meir. The *Chachamim*, however, say: They are believed (since we need their testimony that these are their signatures to validate the document, they are also believed regarding the continuation of their testimony, that they were coerced, or they were minors, or they were disqualified for testimony, for “the mouth that forbade is the mouth that permitted”).

The *Gemora* answers: They both are necessary, for if their dispute had been stated only there (in the case where the witnesses testified that they were disqualified for testimony), it might have been assumed that only there did the *Chachamim* say that the debtor’s admission does not help because of the strength of the witnesses that they are impairing the validity of the document, but here (where the donor is admitting that he wrote the document), it might have been assumed that he

is not believed (to say that he was a *shechiv mei'ra* and consequently disqualify the document, for there are no witnesses testifying to its disqualification). And if their dispute had been stated only here, it might have been assumed that only in this case did Rabbi Meir say the recipient is not required to validate the document, for the donor is not believed to disqualify it, but in that case, perhaps Rabbi Meir would have agreed with the *Chachamim* (that the debtor's admission does not help). Therefore, both disputes are necessary.

Rabbah also said that the proof is produced by witnesses. Abaye said to him: What is the *Chachamim's* reason? If you will suggest that it is because in all documents given by a healthy person, it is stated: "This was written by a person in good health and one who was walking on his feet in the marketplace," and this document did not state that; it may therefore be concluded that the document was made when he was a *shechiv mei'ra*; it may be retorted: On the contrary! Since in all documents given by a *shechiv mei'ra*, it is stated: "This was written by a person who was sick and lying in his bed," and this document did not state that; it may therefore be concluded that the document was made when he was in good health!? Rabbah replied: As one possibility is just as reasonable as the other, the money is to remain in the possession of its original owner.

The *Gemora* notes: And the following (earlier *Amoraim*) are in the same dispute (as *Rav Huna* with *Rav Chisda* and *Rabbah bar Rav Huna*). For Rabbi Yochanan said: Proof must be produced by witnesses, and Rabbi Shimon ben Lakish said: Proof is produced by the validation of the document.

Rabbi Yochanan asked Rabbi Shimon ben Lakish from the following incident that occurred in Bnei Brak: A person sold some of his father's estate, and died. The members of the family protested that he was a minor at the time of his death (and therefore the sale was not valid). The purchasers came to Rabbi Akiva and asked him whether the body might be examined (to determine if he was a minor or not). He replied to them: You are not permitted to defile him (in such a manner); and furthermore, the signs of maturity tend to a

change after death (and follicles may appear on his pubic hairs – indicating that he is an adult, when in fact, he was a minor when he died). Rabbi Yochanan advanced his challenge: Now, according to my explanation of our *Mishna* that proof must be produced by witnesses, one can well understand why, when the family asked the buyers to bring witnesses (that the seller was an adult) and they could not find them, they then came to ask Rabbi Akiva whether the body can be examined. But according to your explanation that proof is produced by the validation of the document, why would they want to examine the body? Let them procure the validation of the documents and consequently, they will gain possession of the property!?

Rabbi Shimon ben Lakish replied: Do you think that the property was in the possession of the family members and that the buyers came to protest? This was not the case. The property was in the possession of the buyers, and the family members came and protested.

The *Gemora* proves this: Logical reasoning supports this view, for when Rabbi Akiva said to them, "You are not permitted to defile him," they remained silent. If it was the family members who protested, it is understandable why they remained silent (for they did not want to defile their relative). If, however, it was the buyers who protested, it may be asked: Why did they remain silent? They should have replied to him, "We gave him money; let him be defiled!"

The *Gemora* rejects this proof: If it would only be because of this, there would be no proof, for Rabbi Akiva may have said to them the following: Firstly, he will not be examined because you are not permitted to defile him. And furthermore, even if you will say, "We gave him money; let him be defiled!" I will say to you that the signs of maturity tend to a change after death (and the examination will serve no purpose).

Rabbi Shimon ben Lakish asked Rabbi Yochanan: Whose opinion is being followed in the following *Mishna* of Bar Kapara (a *braisa*) that states: If a person was eating the produce of a field on the assumption (of everyone) that it belonged to him, and someone came and protested against him, claiming that it

was his. The first one produced a document which stated, "You sold it to me," or, "You gave it to me as a gift." If the protestor said, "I do not recognize this document (*I never wrote it*)," the document should be validated by those who signed it (*and the current possessor can keep the field*). If, however, the protestor said that it was a *shtar passim*, a sham promissory note (*in order to appear wealthy*) or a *shtar amanah*, a trust document – that means to say, "I sold it to you, but you did not give me money yet," then the *halachah* is that if the protestor can produce witnesses (*that will testify like him*), we must follow the witnesses (*and the field will be taken from the possessor and given to the protestor*), but if there are no witnesses, we follow the document (*and he would be believed that the land belongs to him*). Let us say that this *braisa* is following the opinion of Rabbi Meir, who stated that where a debtor admitted that he wrote a contract, the creditor is not required to have the signatures validated (*and therefore, here, once the protestor admitted that he wrote the document, the possessor would not be required to bring any further proof*), but not the opinion of the *Chachamim* (*for they hold that the document is nevertheless required to be validated*)!?

Rabbi Yochanan replied to him: It does not have to be following Rabbi Meir, because I maintain that everyone agrees that where one admitted that he wrote a contract, no validation is required.

The *Gemora* asks: But, surely, they explicitly argue on this point, as it was taught: [*If witnesses say, "These are our signatures, but we were coerced," "we were minors," "we were disqualified for testimony,"*] they are not believed to invalidate the document (*for since the debtor has already admitted that he wrote the document, the creditor is not required to validate the signatures*); these are the words of Rabbi Meir. The *Chachamim*, however, say: They are believed.

Rabbi Yochanan replied to him: If the witnesses are believed that they were coerced, that is because of the strength of the witnesses, and therefore they have the ability to impair the validity of the document, but is the debtor himself believed to impair the document?! [*Once he said that he wrote it, he will*

not be believed to impair it; that is why the Chachamim, in the case of witnesses, believe them.]

But, Rabbi Shimon ben Lakish asked him again: In your name it was reported that it was the family members who protested (*and although the relatives admitted that he wrote the document, they are nevertheless believed that he was a minor at the time*)!?

Rabbi Yochanan replied to him: This was said by Elozar, my student; I, however, have never said such a thing. (153b – 154b)

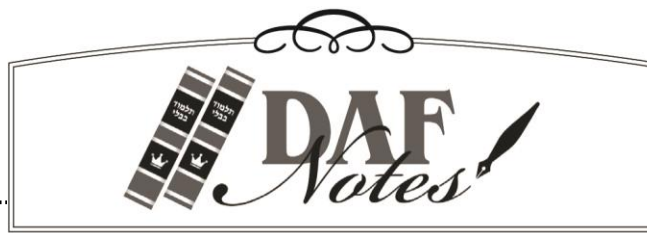
INSIGHTS TO THE DAF

Defiling the Dead

Rabbi Akiva had said that we cannot examine the corpse to determine if he was a minor or an adult at the time of his death, for it will be defiling the dead.

Reb Yosef Engel in *Gilyonei HaShas* writes that he did not find a source to the prohibition against defiling a corpse. Perhaps, he says, it is from the verse which teaches us that we are not permitted to let a dead man hang on a tree overnight. From there we see that a corpse is supposed to be treated with honor. Any disrespect to the dead will be a violation of this verse.

He also suggests that since there is a positive commandment to bury the dead – if one will be examining the corpse, even while buried, nevertheless, during the defilement it is regarded as if he isn't buried, and one would be transgressing the positive *mitzvah* of burial.



HALACHOS FROM THE DAF

Autopsies: How and When?

Physicians have always wanted to gain medical and anatomical knowledge from examining the bodies of those who expired from various diseases. We are forbidden to desecrate the departed, but, on the other hand, we want to use any potential medical information to save the lives of the similarly afflicted. All the *halachic* authorities treating the subject agreed on the clear principle that the Torah forbids preserving any organ from a Jewish body and thus delaying its burial or desecrating a Jewish body in any manner, even by the otherwise usual means of an autopsy to advance medical knowledge or to investigate cause of death. Autopsies are included in learning the medical profession, but the Torah strictly forbids such operations on Jewish bodies. Alternatively, medical information may be gained from autopsies on the cadavers of non-Jews who agreed to such while alive.

A Jew died in a hospital from a certain disease. Another Jew in same ward was diagnosed as terminally ill with the same malaise and the medical staff want to autopsy the body to discover the best way to operate on the lingering patient and, hopefully, save his life. As an introduction to this topic, we cite the *Noda BiYehudah* who warned that "even gentile doctors perform experiments only by operating on those executed for crimes or on those who agreed to such while alive" (Responsa, 2nd edition, Y.D. 210). In that era, then, every doctor was exceedingly careful about autopsies but, nonetheless, *halachic* authorities expressed their suspicion that granting permission in some case would invite a wave of desecration and dishonor of the departed. As usual, we do not intend to present the practical *halachah*, but merely to address current topics. The following discussion therefore does not include all the opinions and their rationale, but is limited to the two major approaches of the leading *poskim*, and we start with our *sugya*, which forms a basis for a fundamental difference of opinions.

The great *Tanna* Rabbi Akiva lived in Bnei Brak and already then the *halachah* was a guiding beacon for residents of the town.

The *Gemora* recounts that some people asked him to allow them to disinter their relative to ascertain if he was halachically an adult at the time of his death. Some merchants, on the other hand, claimed that he was grown up when he sold them land he had inherited from his father. The *halachah* is that only a mature adult is considered sufficiently experienced to sell inherited land and the heirs wanted to exhume the deceased to prove that he was not *halachically* mature at his death. They would then be able to invalidate the sale of the land and claim it for themselves. Rabbi Akiva forbade them to do so, as one must not desecrate the deceased and, moreover, anatomical features are liable to change after death, making it impossible to pinpoint the person's age. What, though, is Rabbi Akiva's source for the prohibition on desecrating the deceased? According to Responsa *Binyan Tziyon* (171), Rabbi Akiva meant that we must **never** desecrate the dead, as such acts are regarded as **robbing** them and, if so, we are not allowed to do so even to save a life. Although we must ignore almost all prohibitions to save a life, which is a *mitzvah* in itself, the dead are exempt from *mitzvos* and we must not desecrate them, causing them great pain. Moreover, even a person in danger may not save his life by stealing, if he will never be able to return the theft (see Bava Kamma 60b and Rashi and Tosfos ibid) In our case, then, the doctors would be forbidden to autopsy the deceased in an attempt to save the terminally ill patient. Still, the *Noda BiYehudah* (2nd edition, Y.D. 210) and the Chasam Sofer (Responsa, Y.D. 336) hold that Rabbi Akiva did not forbid making use of the deceased's remains to save a life. The relatives who came to him, after all, wanted to clarify a matter of property. As for saving lives, though, the prohibition on desecrating the dead is like any other prohibition and must be ignored and "it is almost certain" that there is no transgression involved.

DAILY MASHAL

The Rema in Orach Chaim 288:2 writes, "One who feels pleasure (i.e., finds relief) when he cries, in order to soothe his heart's pain, may do so on Shabbos." Nonetheless, many great and simple Jews would not give into emotion and have not expressed their grief on Shabbos, so as not to disrupt the joy

and sanctity of the holy day. Horav Rephael David Auerbach, Shlita, was one such person. A terrible terrorist explosion rocked Yerushalayim. His son, Aharon Meir, and another young man, Arye Yosef Sheinfeld, were two of its victims. They were rushed to Hadassah hospital on Erev Shabbos - both mortally wounded.

As night fell and the Shabbos Queen was ushered in, Ahraon Meir Auerbach lay in his bed suffering indescribable pain. Hundreds of splinters of glass riddled his body, terrible burns tortured his skin, as the blood so vital to life was continually ebbing from his wounded body. In a nearby room, his father welcomed Shabbos with what seemed to be his usual serene and enraptured self. Earlier that day, his whole life had been shaken at its very core when he heard the news of the explosion. Knowing that his son would be on his way home exactly at that time, he could barely control himself through the hours of worry and uncertainty. His fears were confirmed: his son lay mortally wounded in Hadassah. He rushed to the hospital, only to be told by the doctors that there was no hope for his son's life. Many yeshivah students came to give blood for their friend, but it was to be of no avail.

Shabbos arrived, and Reb Raphael David donned his Shabbos clothes to welcome the Shabbos with joy. "Shabbos is not a time for tears," he said, his voice filled with faith and reassurance. He ate his Shabbos meal, sang zemiros, the traditional Shabbos songs, his face radiating an inner glow, a joy endemic to one who serves Hashem with love.

The hospital staff would peer into the room, shocked in disbelief. Here was a man singing Shabbos songs, while his son's life slowly ebbed away. Just minutes before he had been filled with worry and anguish over his son's condition. How could he have transformed so radically? They did not understand what Shabbos meant to Reb Rephael David.

He sat by his son's bed all through the night, praying silently - never weeping. In a nearby room, Aryeh Yosef Sheinfeld, the other victim, breathed his last breath. Everyone was in shock - except Reb Rephael David, who told them how to move the

body and care for it on Shabbos. In the morning, Reb Rephael David and his wife stood by their son's bed, reciting Shema Yisrael as their son's holy neshamah, soul, rose and soared Heavenward. He did not cry - and he instructed all those present that it was Shabbos. One should not cry.

Suddenly, he began to sing Ein K'Elokeinu, There is no one like our G-d. As he sang, memories rose up before him. His son was only fifteen years old, but he had accomplished so much. An exceptional student, he was the apple of his father's eye. A budding Torah scholar, he had mastered hundreds of pages of Talmud. He had had a bright future, but now his brief life had come to a tragic end.

Yet, Reb Rephael David's faith in Hashem was not shaken. He was resolute in his belief. His voice continued firmly: Mi K'Elokeinu, Who is like our G-d? Reb Rephael's older son arrived after a long walk. But it was too late. He could not see his brother alive. His father greeted him with the bitter news, immediately adding, "Remember, you cannot cry. It is Shabbos Kodesh."

The hours went by and Reb Rephael constrained himself. He did not allow his emotions to overwhelm him. He ate Seudah Shlishis, as he always did. After all, it was Shabbos. He waited a little longer. The Shabbos Queen withdrew: Shabbos was over. Only now did a fountain of tears stream forth, as fifteen years of love - pent up throughout the Shabbos - poured from him. This was Aharon's student.