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Kesuvos Daf 83

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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

Mishnah

The *Mishnah* states: If one writes to his wife, “I have no claim or rights to your property,” he may nevertheless eat the produce during her lifetime, and if she died, he inherits her property. If so (*the Mishnah asks*), why did he write to her, “I have no claim or rights to your property?” It accomplishes that if she sold the property or gave them away, it is valid.

If he wrote to her, “I have no claim or rights to your property and its produce,” he does not eat the produce during her lifetime, but if she died, he inherits her property.

Rabbi Yehudah says: He always has the right of eating the produce of the produce unless he writes to her, “I have no claim or rights to your property and its produce and the produce of the produce forever.”

If he wrote to her, “I have no claim or rights to your property and its produce and the produce of the produce, during your lifetime and after your death,” he does not eat the produce during her lifetime, and if she died, he does not inherit her property.

Rabban Shimon ben Gamliel says: If she died, he does inherit her property because he stipulated contrary to that which is written in the Torah; and if one stipulates contrary to that which is written in the Torah, his condition is void. (83a1)

Husband can Relinquish his Rights Prior to the Nisuin

Rabbi Chiya taught a Baraisa: If one says to his wife, etc. [This teaches us that the husband may relinquish his rights even through an oral declaration (and not only by means of a written document).]

The *Gemora* asks: Why is there any validity to what he writes? Did we not learn in a *Baraisa* that if one says to his fellow (*a partner in the field*): “I have no claim or rights regarding this field,” or he says: “I have no business with it,” or he says: “My hand is removed from it,” it is considered as if he said nothing (*since he is not stating that he is giving his share to his partner*)?

The *Gemora* answers: In the academy of Rabbi Yannai, they said: The *Mishnah* is referring to a case where he wrote it to her while she was still an *arusah* (*and therefore, it has validity since the husband does not own the property yet*), and it would be in accordance with that which Rav Kahana said. For Rav Kahana said: A man may stipulate in advance that he does not wish to inherit an inheritance that will come to him through marriage.

This can be proven from Rava’s statement, for Rava said: If a person says, “I do not want to avail myself of a Rabbinic enactment (*which was made for his benefit*), such as this one, we listen to him.

The *Gemora* asks: What did Rava mean when he said, “such as this one”? He is referring to that which Rav Huna



said in the name of Rav. For Rav Huna said in the name of Rav: A woman is permitted to say to her husband, "I do not want to be supported by you, and I will not give you my earnings." (*She works and keeps the earnings to herself.*)

The Gemora asks: If so, the husband should be able to waive his rights to her property even if she is a *nesuah* (*since her property belongs to him based on a Rabbinic enactment; he should be entitled to refuse this right that was intended for his benefit*)?

Abaye answers: His hand is equal to her hand (*since she is a nesuah, they are equal partners, and therefore, he cannot waive his rights any longer; he must actually give it away*).

Rava said: His hand is even stronger than her hand.

The Gemora notes: The practical difference between them would be in a case of the woman awaiting yibum. [If such a woman died and left property which came into her possession either while her husband was still alive or after his death while she was awaiting the yavam's decision, the respective rights of her heirs and her husband's heirs to such property depend on, and vary according to, the respective views of Abaye and Rava, as fully discussed in Yevamos 39a.] (83a2 – 83a3)

If he Makes a Kinyan

(*The Gemora had stated: if one says to his fellow (a partner in the field): "I have no claim or rights regarding this field," or he says: "I have no business with it," or he says: "My hand is removed from it," it is considered as if he said nothing since he is not stating that he is giving his share to his partner.*) The Gemora inquires: If his partner made a *kinyan* (*chalipin; he took a kerchief from his fellow in order to formalize the transfer*), does this *kinyan* give more validity to his statement or not?

Rav Yosef said: He has acquired the waiver of the claim and rights regarding the field (*and since the waiver was meaningless, so is the acquisition*).

Rav Nachman said: He acquires the land itself.

Abaye said: It is logical that Rav Yosef is correct regarding a case where the initial owner of the field protested immediately (*as the other fellow was attempting to take possession of the field; the owner said that his statement and kinyan was only for the purpose of not arguing with him regarding his portion*), but if he would have stood quiet for a few days before objecting, we can assume that he (*the recipient*) has indeed acquired the land.

Ameimar said: The *halachah* is that he acquires the land itself.

Rav Ashi asked Ameimar: Is the *halachah* this way even if he objects immediately or only if he stands quiet for a few days?

The Gemora asks: What difference does it make?

Rav Ashi answers: For that which Rav Yosef said (*and as Abaye explained*).

Ameimar said to Rav Ashi: I do not agree that there is any such distinction (*he acquires the land regardless of if the owner stood quiet or even if he objected immediately*). (83a3 – 83b1)

Interpreting his Statement

The Mishnah had stated (*regarding the case when one writes to his wife, "I have no claim or rights to your property," he may nevertheless eat the produce during her lifetime, and if she died, he inherits her property*): If so, why did he write to her, "I have no claim or rights to your



property?" It accomplishes that if she sold the property or gave them away, it is valid.

The *Gemora* asks: Why can't the wife tell the husband that he removed himself completely from retaining any rights in the property?

Abaye answers: The holder of the document is always at a disadvantage (*since the language of the document is vague, we say that he has removed himself from the least valuable right that he had in the property; the husband possesses the rights of (1) produce, (2) inheritance after her death and (3) the seizure of any property she has sold or given away; the least valuable right is the ability to nullify her sale and that is what we assume he renounced*).

The *Gemora* asks: But perhaps he was referring to the right of consuming the produce?

Abaye answers: A small gourd now is more preferable than a large one later (*and we assume that the ability to eat the produce now is more advantageous to him*).

The *Gemora* asks: But perhaps he was referring to his right of inheritance after her death?

Abaye answers: Death is common, whereas her selling her *melog* property is not. A person will generally renounce the rights of an uncommon occurrence rather than renouncing his rights to a common one.

Rav Ashi answers (*the original question*) differently: The husband had stated that he is withdrawing from any claims to her property. We can infer that he was referring to her property (*the ability to nullify her sale*), and not to its produce. We can also infer that he was referring to her property during her lifetime, and not to a claim which is only relevant after her death. (83b1- 83b2)

Expressions

The Mishnah had stated: Rabbi Yehudah says: He always has the right of eating the produce of the produce unless he writes to her, "I have no claim or rights to your property and its produce and the produce of the produce forever."

The *Gemora* cites a *Baraisa*: If she brought in land into the marriage, the crops from that land are regarded as produce. If she sold the produce from that land and purchased land with the proceeds, the crops that grow from that land is regarded as produce of the produce.

The *Gemora* inquires as to the exact expression necessary according to Rabbi Yehudah. When the husband withdraws from the produce of the produce, this includes all future produce which comes from her *melog* property; does he need to say "produce of the produce," or perhaps he needs to say "forever," or, perhaps, both expressions are necessary.

The *Gemora* explains (the first option): Should you find some ground for deciding that the expression "the produce of the produce" is the essential element, what need was there for the mention of "forever"? It is this that we were taught: So long as he renounced in writing "the produce of the produce," it is as if he had expressly written for her "forever."

The *Gemora* explains (the second option): Should you find some ground for deciding that the expression "forever" is the essential element, what need was there for the mention of "the produce of the produce"? It is this that we were taught: Although he renounced in writing "the produce of the produce," the renunciation is valid only if he also wrote "forever," but is invalid if he did not write it.

The Gemora explains (the third option): And should you find some ground for deciding that both expressions are essential, what need is there for the specification of both? Both are necessary. For if only the “produce of the produce” had been written for her and “forever” had been omitted, I might have said that he loses thereby his right to the enjoyment of the produce of the produce, but that he is still entitled to enjoy the produce of the produce of that produce, therefore it is necessary for the expression “forever” (to be included in the renunciation). And if only “forever” had been written for her and the “produce of the produce” had not been specified, I might have said that “forever” referred only to the ordinary produce; therefore it is necessary to specify also the “produce of the produce.” (83b2 – 83b3)

They inquired further: If a husband wrote for his wife, “I have no claim nor argument upon your estates and upon the produce of their produce,” what is the law regarding the produce itself? Has he renounced the rights to the produce of their produce, but not the produce itself, or is it possible that he renounced his entire claim?

The Gemora asks: But is it not quite obvious that he has renounced all his claims? For should you say that he only renounced his claim upon the produce of the produce but not upon the produce itself, if the man had consumed the produce itself, from where would the produce of the produce be generated from?

The Gemora counters: And according to your view, how will you explain that which was taught in our Mishnah: Rabbi Yehudah says: He always has the right of eating the produce of the produce, etc. [unless he writes to her, “I have no claim or rights to your property and its produce and the produce of the produce forever]? From where would there be a produce of the produce if she has consumed the produce itself? Rather, your explanation would be that the reference is to a case where the woman left over some of the produce (and a produce-yielding

land had been purchased with the proceeds); here also, it may be a case where the husband has left over some of the produce. (83b3)

DAILY MASHAL

Torah is our “Betrothed”

Our Mishnah and Gemora discuss the laws of a husband relinquishing his right to his wife’s property. The stipulation can be valid – depending upon the precise expression he used. In some cases, he retains the right, and if she dies, he inherits her.

The Gemora in Pesachim (49b) refers to the Torah as Israel's "betrothed." (This is based upon the similarity between "morashah" (inheritance) and "me'orasa" (betrothed). Israel is bound to the Torah. It is not only our possession; it is our spouse -- in a bond truly symbolic of our relationship with Hashem. And as many of us know all too well, one cannot "stay the same" in a marriage. If the relationship is being developed and enhanced, it is growing. If not, it is deteriorating -- and the couple will slowly drift apart. And this too is the manner in which we relate to the Torah. It is not a free gift, to be used at our discretion -- if we personally find it inspiring. It is an obligation every bit as much as marriage. We either grow together and become one, or we fall apart.