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Kesuvos Daf 84

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Rav and Rabban Shimon ben Gamliel

The Mishnah had stated: Rabban Shimon ben Gamliel said (regarding a case where a husband wrote to his wife, “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”): [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.]

Rav said: The halachah is in accordance with Rabban Shimon ben Gamliel, but not because of his reason.

The Gemora asks: What did he mean when he said that the halachah is in accordance with Rabban Shimon ben Gamliel, but not because of his reason? If you say that he meant that the halachah is in accordance with Rabban Shimon ben Gamliel regarding the halachah that if she died, he does inherit her, but it is not because of his reasoning, for Rabban Shimon ben Gamliel’s reasoning is based upon the fact that he holds that one who stipulates contrary to that which is written in the Torah, his condition is void, but Rav maintains that the condition (regarding monetary matters) is valid, and the reason why the condition is void is because Rav maintains that a husband inheriting his wife is a Rabbinic decree, and the Rabbis strengthened their words even more than that of the Torah. But the Gemora asks: Does Rav hold that such a condition is valid? It was stated: if someone says to his fellow, “On the condition that you have no claim of *ona’ah* (overcharging) on me” (when they are conducting

a sale), Rav says: The laws still apply. Shmuel says: They do not apply. [Evidently, Rav holds that a condition (regarding monetary matters) *against the Torah is nevertheless valid!*?]

The Gemora answers: [This is what Rav meant:] The halachah is in accordance with Rabban Shimon ben Gamliel who says that if one stipulates contrary to that which is written in the Torah, his condition is void, but it is not because of his reasoning, for Rabban Shimon ben Gamliel’s holds that if she died, he does inherit her, and Rav maintains that if she died, he does not (for the law that a husband inherits his wife is Rabbinic in nature, and the Rabbis did not strengthen their words, and the husband’s stipulation is therefore valid); this cannot be the correct explanation either, for that would be (that Rav is in accordance with Rabban Shimon ben Gamliel) with regard to his reasoning, but not with regard to his ruling!?

The Gemora suggests a different explanation: It must be that Rav holds like Rabban Shimon Ben Gamliel’s law that if she dies he inherits, but not based on his reasoning. Rabban Shimon Ben Gamliel’s reasoning was that in matters of Biblical law (such as a husband inheriting from his wife), a condition (when made contrary to the laws of the Torah) is void, but with regard to Rabbinic matters, the condition is valid. Rav, however, holds that even with regard to Rabbinic matters (such as the consumption of produce), the condition is void. This, however, cannot be the correct explanation, for Rav is then saying in accordance with his (Rabban Shimon ben Gamliel) reasoning and in accordance with his law, and Rav is



merely adding (that the condition is also void when it is contrary to Rabbinic law)!

The Gemora explains as follows: Rather, the halachah is in accordance with Rabban Shimon ben Gamliel regarding the halachah that if she died, he does inherit her, but it is not because of his reasoning, for Rabban Shimon ben Gamliel holds that the law that a husband inherits the wife is a Biblical one, and one who stipulates contrary to that which is written in the Torah, his condition is void, while Rav maintains that the law that a husband inherits the wife is a Rabbinical one, and the Rabbis strengthened their words even more than that of the Torah. (83b3 – 84a1)

A Husband's Inheritance: Torah or Rabinnic Law

The Gemora asks: Does Rav truly hold that a husband inherits from his wife merely because of a Rabbinic enactment? But we learned in a Mishnah: Rabbi Yochanan ben Berokah says: if one inherits his wife's estate, he returns it to the members of the family and makes a deduction from the purchase money. And the *Gemora* there asked: What is Rabbi Yochanan's reasoning? If he holds that a husband inherits based on Torah law, why should he give it back at all (for the law is that inherited property does not go back by Yovel)? If he holds that this inheritance is Rabbinic in nature, why does he take money (i.e., he should be required to return it without any compensation at all? And Rav explained: Rabbi Yochanan ben Berokah holds that a husband's inheritance is established in Torah law. However, the case here is where his wife owned her family's burial plots. Being that their inability to bury their dead there and the burial of others (the husband's family) there instead would denigrate the family, he should return the plot to them for a (*small*) amount of money. The *Gemora* asked: What was meant that he should subtract some money? The *Gemora* answered: This is the amount of money that his wife's grave is worth. This is in accordance with that which was taught in a *Baraisa*: Someone who sells his

burial plot, the path to it, the place where one stands to deliver a eulogy and the place for the eulogy, his family can come bury him there anyway, as otherwise, it is denigrating to the family. [*The above demonstrates that Rav says that a husband's inheritance is a Torah law, not Rabbinic, as we stated above!?*]

The Gemora answers: Rav was merely explaining the position of Rabbi Yochanan ben Berokah. He himself, however, did not hold like him. (84a1 – 84a2)

Mishnah

If someone dies and left a widow, creditor, and inheritors, and he had a deposit or a loan in the hands of others, Rabbi Tarfon says: They should be given to the weakest amongst them (*which the Gemora will explain to mean either the widow or the creditor*). Rabbi Akiva says: We do not have mercy in judgment, rather, we give the money to the inheritors, for while the others must take an oath in order to collect, the inheritors do not.

If he (the deceased) left produce that was not connected to the ground, whoever takes it first (*among those listed above*) acquires it. If the wife grabbed more than her kesuvah was worth, or the creditor grabbed more than the amount of his debt, regarding the extra, Rabbi Tarfon says: They should be given to the weakest amongst them (*i.e., in the case where the wife grabbed more, the extra is given to the creditor and not the orphan; in the case where the creditor grabbed more, the extra is given to the wife and not the orphan*). Rabbi Akiva says: We do not have mercy in judgment, rather, we give the money to the inheritors, for while the others must take an oath in order to collect, the inheritors do not. (84a2 – 84a3)

Both a Deposit and a Loan

The Gemora asks: Why did the Mishnah state both a case where the deceased had either a loan or a deposit?



The Gemora answers: This was necessary. If the Mishnah would have only stated a case of a loan, it is possible that specifically regarding a loan is where Rabbi Tarfon ruled (that the heirs do not receive it), because a loan is made to be spent (by the borrower). *[The money is not considered to be extant, and therefore not in the domain of the inheritors.]* However, in a case of a deposit that is extant, I might have said that he agrees with Rabbi Akiva (that the heirs receive it). If the Mishnah would have only stated a case of a deposit, I might have thought that it is there where Rabbi Akiva ruled (that the inheritors receive the money because it is extant), but in a case of a loan he would agree to Rabbi Tarfon. Both cases are therefore necessary. (84a3)

Who is “The Weakest”?

The Gemora asks: What does Rabbi Tarfon mean by “the weakest?”

Rabbi Yosi the son of Rabbi Chanina said: He is referring to the one with the weakest proof (*the document dated the latest*). [The holder of the most recently dated document may only seize land which has been sold after that date; and since with regard to real property, this person is at a disadvantage, the Rabbis gave him precedence with regard to movables.]

Rabbi Yochanan said: He is referring to the kesuvah of the widow (even if she possesses the document which is more recently dated), due to ‘favor’ (i.e., the Sages wished that the widow should have some money that will help her find favor in the eyes of another husband).

The Gemora notes: This (argument) is similar to the following Tannaic dispute (as taught in the following Baraisa): Rabbi Binyamin says: The property goes to the one with the weakest proof (*the document dated the latest*), and it is appropriate to rule in this fashion. Rabbi Elazar says: It goes for the woman’s kesuvah, due to favor. (84a3 – 84a4)

The Mishnah had stated: If he (the deceased) left produce that was not connected to the ground [whoever takes it first (*among those listed above*) acquires it. If the wife grabbed more than her kesuvah was worth, or the creditor grabbed more than the amount of his debt, regarding the extra, Rabbi Tarfon says: They should be given to the weakest amongst them. Rabbi Akiva says: We do not have mercy in judgment, rather, we give the money to the inheritors, for while the others must take an oath in order to collect, the inheritors do not].

The Gemora asks: According to Rabbi Akiva, why are we mentioning the “extra”? All of the produce belongs to the inheritors! [The seizure on the part of the widow or a creditor of any movable portion of such property – even in the amount of the claim would consequently be invalid, for they have no claim until they take an oath!]

The Gemora answers: This is true. However, because Rabbi Tarfon discussed “extra,” Rabbi Akiva also discussed the “extra” (*which, according to him, is the same law as the entire produce*).

The Gemora asks: Does Rabbi Akiva hold that seizing accomplishes anything at all?

Rava says in the name of Rav Nachman: It would be effective if he seized the property while the father was still alive.

The Gemora asks: According to Rabbi Tarfon, where was the produce situated? [If it was lying on the father’s field, it should automatically belong to the inheritors!]

Rav and Shmuel say: Rabbi Tarfon is referring to a case where the produce had been piled up and resting in a public domain, but if it was in a *simta* (a side street close to the public thoroughfare), it would not apply (for then, it would belong automatically to the inheritors).

Rabbi Yochanan and Rish Lakish say: It could even be referring to a *simta*. [The argument being whether or not the inheritors automatically acquire the produce if it is in a *simta*.]

The Gemora relates an incident: Certain judges ruled like Rabbi Tarfon (that the creditor can keep the movable property he seized after the debtor died), and Rish Lakish made them retract their ruling (for R' Akiva maintained that such a seizure is ineffective). Rabbi Yochanan said to Rish Lakish: You treated this like a Biblical law (i.e., a law that was received as a tradition from Moshe at Sinai, for then, the decision could be reversed; since, however, it is merely a Rabbinic law, the ruling should be like R' Akiva, but once the ruling was issued, it should not be reversed).

The Gemora asks: Let us say that they argue regarding the following concept: One master (Rish Lakish) holds that in a case where a judge erred regarding a law (*explicitly*) cited in a *Mishnah* (such as this case, for the law follows R' Akiva when he argues with one of his contemporaries) he may reverse his ruling. The other master (R' Yochanan) argues that he cannot reverse it.

The Gemora answers: No, this cannot be, as everyone agrees that in a case where a judge erred regarding a law (*explicitly*) cited in a *Mishnah* he may reverse his ruling. Here, they are arguing in the following concept. One master (R' Yochanan) holds that the law follows R' Akiva when he argues with one of his contemporaries, but not when he is arguing with his teacher (Rabbi Tarfon). The other master (Rish Lakish) maintains that the law follows R' Akiva even when he argues with his teacher.

Alternatively, the Gemora gives the following explanation: Everyone agrees that the law follows R' Akiva when he argues with one of his contemporaries, but not when he is arguing with his teacher. Here, they are arguing regarding the following: One master (R'

Yochanan) holds that Rabbi Tarfon was his teacher, and the other master (Rish Lakish) is of the opinion that Rabbi Tarfon was his colleague.

Alternatively, the Gemora gives the following explanation: Everyone agrees that Rabbi Tarfon was merely his colleague. Here, they are arguing regarding the following: One master (Rish Lakish) holds that "the law" (follows R' Akiva) is what was stated (and therefore the ruling must be reversed). The other master (R' Yochanan) holds "we lean" (towards R' Akiva) is what was stated (i.e., that it is the optimal ruling that should be ruled, but if the ruling was made against his opinion it should not be retracted).

The Gemora relates an incident: The relatives of Rabbi Yochanan seized the cow of orphans (*whose father owed them money*) when it was in a *simta*. They came before Rabbi Yochanan. He said to them: You have seized it appropriately. When they came before Rish Lakish, he said to them: Go return the cow (for the halachah is in accordance with R' Akiva). When they returned to consult with Rabbi Yochanan, he said to them: What shall I do, as my peer disputes me?!

The Gemora relates an incident: There was a herdsman who used to watch the animals of orphans, when a creditor (of their father) seized an ox. The creditor said, "I seized it when the father was alive," while the herdsman said, "He seized it after the father had already died." They came before Rav Nachman. Rav Nachman asked the herdsman: Do you have witnesses that he (the creditor) seized the ox? The herdsman replied: No. Rav Nachman said to him: Being that the creditor could claim, "I purchased it (from the orphan's father)," he is also believed to say, "I grabbed it while the father was still alive."

The Gemora asks: Didn't Rish Lakish say that live animals do not have a *chazakah* (*they are not assumed to be in the*

ownership of whoever currently possesses them, since they can move on their own, and may have gone to their current location without a sale, where whoever presently has them is believed to say that he bought them, as they frequently wander)?

The Gemora answers: An ox is different, as it is given over to a herdsman (*who makes sure it doesn't wander too much*).

The Gemora relates an incident: Certain members of the house of the Nasi (*whose creditor had died*) seized a maidservant (who was inherited by the debtor) of orphans in a *simta*. Rabbi Avahu, Rabbi Chanina bar Pappi, and Rabbi Yitzchak bar Nafcha were sitting, and alongside them was Rabbi Abba. The first three said to them: You have seized it appropriately. Rabbi Abba said to them: Just because they are from the house of the Nasi you are flattering them? Weren't there judges who ruled like Rabbi Tarfon, and Rish Lakish reversed their ruling? (*Therefore, the maidservant must be returned.*) (84a4 – 84b3)

DAILY MASHAL

Ruling Leniently

Rabbi Akiva says: We do not have mercy in judgment. Reb Shlomo Zalman Auerbach zt"l – in virtually every discipline and facet of halachah was a machmir, but said R' Henoch teller, when necessary he was also a meikel – wherever and whenever possible, interpreted halachah for someone else from a lenient perspective. In his own personal practice, however, he followed numerous stringencies, going beyond the letter of the law.

He relates: The Israel electric Company, which is staffed primarily by Jews, controls and provides electricity throughout the country. Thus the question arose as to the permissibility of deriving benefit on Shabbos from what

may involve Jewish labor. Reb Shlomo Zalman was the most prominent halachic authority who ruled that it was indeed permissible to benefit from the Israel electric Company, and whenever people asked him about his personal practice, he would reply, "I certainly use electricity on Shabbos." In essence, this statement was true: the Rav did in fact benefit from streetlights and other public facilities that used electricity, but within the walls of his own home a more stringent policy was observed. The Auerbach house was illuminated by gas lanterns and powered by batteries on Shabbos.