

## OVERVIEW of the Daf

1) **MISHNAH:** The Mishnah discusses the halachos of a field that turned out to be smaller than expected.

### 2) A deviation of a sixth

R' Huna and R' Yehudah disagree whether a discrepancy of a sixth is similar to a discrepancy of more than a sixth or less than a sixth.

Each Amora explains the Mishnah according to his respective position.

R' Huna's position that a sixth is the same as less than a sixth is unsuccessfully challenged.

A related incident and subsequent discussion between R' Pappa and Abaye is recorded.

### 3) Dividing an inheritance by lots

R' Yosi in a Baraisa teaches that once one brother's land was determined by lots everyone acquires his inheritance.

R' Elazar asserts that the basis of this ruling is derived from the division of Eretz Yisroel in the time of Yehoshua.

R' Elazar's statement is unsuccessfully challenged.

### 4) The appearance of a third brother

Rav and Shmuel disagree how to divide an inheritance if a third, heretofore unknown, brother appears seeking a portion of their father's land.

Rav's position that a new division must take place is unsuccessfully challenged by Rava.

Shmuel's position that each brother gives some of his land to the third brother is challenged. ■

## REVIEW and Remember

1. What is the point of dispute between R' Huna and R' Yehuda?

2. What is כשום הדיינין?

3. Explain R' Yosi's ruling concerning brothers who divide their inheritance by lottery.

4. What is the point of dispute between Rav and Shmuel concerning the appearance of a long-lost brother?

## Distinctive INSIGHT

*Using a lottery to divide a family's estate*

אי מה להלן בקלפי ואורים ותומים

The Gemara brings a Baraisa regarding the dividing of an estate among brothers. The case is where brothers identify how the estate will be divided, and all that has to be done is to designate which brother will receive which portion. R' Yossi states that if they use a lottery to assign a section to one brother at a time, the drawing of the lot is halachically binding. If there are two brothers, the lot which assigns the first portion to one of the brothers automatically locks in the remaining portion for the other brother. If there are several brothers, the one brother who received his portion with the lot is set, and the other brothers are joint owners of the remaining part of the estate until they divide it by lottery, or by any method they agree upon.

The Gemara explains that the reason the lottery is halachically binding is that we recognize this system as being valid due to its efficacy when the Jewish nation divided Eretz Yisroel by lottery at the time of Yehoshua. The Gemara notes that the division of Eretz Yisroel at the time of Yehoshua was not done simply by a lottery. That event involved a lottery as well as the Urim v'Tumim. This prompts the Gemara to wonder why brothers who divide their family's estate should not also require the Urim v'Tumim? The Gemara answers that brothers are agreeable and willing to accept the results of the lottery with a full heart.

The Rishonim offer varying explanations of the question of the Gemara that the lottery alone should not be adequate for brothers who divide their family's estate.

ר"י מיגש explains that although the lottery used by brothers duplicates the lottery used when dividing Eretz Yisroel, yet, in the days of Yehoshua the Urim v'Tumim was also used. Perhaps now, when we do not have the Urim v'Tumim, the lottery alone would not be effective.

Alternatively, ר"י מיגש explains that perhaps the lottery used by Yehoshua utilized lots and boxes, and the process used by brothers will not match that process, especially because the lottery and boxes used by Yehoshua were consecrated. The Gemara may therefore be questioning the lack

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In memory of

Rabbi Sholom Sklar ז"ל

A founding member of our Beis Medrash on the west side

# HALACHAH Highlight

## Dividing property by means of a lottery

האחין שחלקו כיון שעלה גורל לאחד מהן קנו כולם

Brothers who divided their property, once a lot was drawn for one of them they all acquire their portion

The Gemara teaches that a lottery is a valid means of dividing property between brothers or partners. There is a dispute whether the lottery itself affects the kinyan or whether a separate kinyan is required by the one who won the lottery. Rambam<sup>1</sup> holds that the winner of the lottery does not have to make a separate kinyan and this is the position cited in Shulchan Aruch<sup>2</sup>. Rosh<sup>3</sup> disagrees and maintains that the winner of the lottery must make a separate kinyan on the object that he won the right to possess, and this is the position cited by Rema<sup>4</sup>.

Teshuvos Beis Shlomo<sup>5</sup> was presented with the following related question. Two brothers inherited a Sefer Torah and they decided to hold a lottery to determine ownership of the Sefer Torah. The winner would take possession of the Sefer Torah but would have to pay half of its value to the brother who lost the lottery. Shimon won the lottery and Reuven gave the Sefer Torah to Shimon. A short time later Reuven raised a question regarding the validity of the lottery. Teshuvos Beis Shlomo ruled in favor of Shimon and offered the following explanation. It is clear according to Rema that Reuven cannot take the Sefer Torah from Shimon since he made an independent kinyan on the Sefer Torah which is not being challenged by Reuven. Addition-

(Insight...continued from page 1)

of both the Urim v'Tumim as well as deficiencies of the lottery which brothers use.

יד רמה adds that at the time of Yehoshua the process had a lottery, the Urim v'Tumim, and the entire Jewish nation. Here, regarding brothers, we are lacking the Urim v'Tumim and the entire Jewish nation.

Ritva explains that the Gemara is rejecting the entire concept of using a lottery to divide land. The event at the time of Yehoshua was a demonstration of using the Shechina to allocate land to the tribes. The lottery was just a means to voice the approval of the Shechina, but in general the use of a lottery is not valid. ■

ally, one could argue that even Shulchan Aruch would agree that Shimon may keep the Sefer Torah once a kinyan was performed. Shulchan Aruch's position that a lottery is itself a kinyan is limited to cases wherein the two parties owned a particular item and the lottery was used to decide who will get which half of the object. In our case, however, this was not the nature of the lottery. In our case the lottery was used to determine who had the right to buy out the other brother's portion of the Sefer Torah. Ultimately, it was the purchase by Shimon that gave him ownership of the Sefer Torah rather than the lottery and since that kinyan is not in question the Sefer Torah will remain with Shimon. ■

1. רמב"ם פ"ב מהלי שכנים הי"א.

2. שו"ע חו"מ סי' קע"ג סעי' ב'.

3. שו"ת הרא"ש כלל צ"ח סי' ב'.

4. רמ"א שם.

5. שו"ת בית שלמה (דרימר) חו"מ סי' מ"ט. ■

# STORIES Off the Daf

## Losing the lottery

The owners of the apartment in a certain building decided to build storage rooms beneath their building, one room per apartment. Some spaces were more conveniently placed than others, and everyone wished to receive the best place. How could they determine who would get which space?

The neighbors decided to cast lots which would determine each person's placement. But after they did so, the

person who received the worst place for his storage room changed his mind. "Why should we rely on lots anyway?" he philosophized.

The others insisted that they had agreed ahead of drawing the lots, and the halachah in Shulchan Aruch is that such agreements are binding. After a little thought the Jewish man declared that he did not believe that was true since one of the neighbors was a non-Jew. "After all, the gemara in Bava Basra 106 learns that lots are binding from the division of land by the shevatim. But who is to say that casting lots with a non-Jew is binding?"

When this question was brought

before the Imrei Yosher, zt"l, he ruled that the lots were definitely binding. "The main kinyan we use to bind a non-Jew when we sell chametz is kinyan agav, which is also learned from the verse regarding Yehoshafat Hamelech. But if we take your claim seriously, then we cannot learn from a Jew to a non-Jew in this matter either!

"Although there is a dispute as to whether lots make a complete kinyan or not, this is not relevant in our times, since the custom is that casting lots acquires absolutely. You must accept your lot!"<sup>1</sup> ■

1. שו"ת אמרי יוסף, ח"א, סי' נ"ו. ■

