

## OVERVIEW of the Daf

### 1) Bequeathing property by day (cont.)

After Abaye concludes his suggestion of what was meant by the teaching that inheritances are passed on by day but not at night Rabbah bar Chanina confirmed that that was his intent.

### 2) Chalipin

Rabbah and R' Yosef disagree how long parties have to retract a kinyan chalipin.

R' Yosef suggests a proof to his position.

R' Ashi rejects this proof.

The Gemara rules in favor of R' Yosef's position that either party may retract as long as they are still discussing the topic of the kinyan.

### 3) Those who bequeath but do not inherit

The necessity for the Mishnah to present the cases of those who bequeath but do not inherit is explained.

### 4) A woman inheriting from her son

R' Yochanan in the name of R' Yehudah ben R' Shimon begins to formulate a position that Biblically even a woman inherits from her son. ■

## REVIEW and Remember

1. Explain אין עד נעשה דיין.
2. What is the point of dispute between Rabbah and R' Yosef?
3. What are the three cases where we follow the ruling of R' Yosef?
4. Does a woman inherit her son's estate?

## Distinctive INSIGHT

*We rule according to R' Yosef in the case of ענין והלכתא כוותיה דרב יוסף בשדה ענין ומחצה*

Our Gemara cites a disagreement between Rabba and R' Yosef regarding until what point may a person still change his mind when he agrees to give a gift to his friend. Rabba holds that he may change his mind "כל זמן שיושבין," as long as the group which discussed the issue of giving a gift is still sitting together. Even though the topic of discussion might have shifted to a different theme, the decision to give the gift is not final until the group has disbanded. R' Yosef contends that the giving of the gift is final once that particular topic of discussion was finalized (כל זמן שעוסקין באותו ענין), even though the group is still sitting and talking about other topics.

The Gemara concludes that the halacha follows R' Yosef, and it invokes the rule that the halacha follows the opinion of R' Yosef in three cases, which are referred to as שדה ענין ומחצה. The middle case (ענין) is from our Gemara, while שדה is from earlier (12b), and מחצה refers to a case later (143a-b). Tosafos notes that in the last of the cases mentioned, that of מחצה, no one argues with R' Yosef, so it seems superfluous to have to rule according to his view. Nevertheless, Tosafos explains that Abaye questioned R' Yosef in that case, and even though R' Yosef responded to his question, it is still appropriate to reinforce the conclusion that the view of R' Yosef prevails. Furthermore, notes Tosafos, R' Yosef became ill when he was older, and he forgot or became confused regarding many of his teachings, so we might have thought that his answer to Abaye may not be acceptable. It is therefore reasonable that the Gemara issue this ruling.

The הגהות וציונים point out a fascinating observation, and that is that in the text we have in that Gemara, we do not find that R' Yosef responded to Abaye's question, although Tosafos reports that he did. Sefer בארות המים suggest that perhaps Tosafos was referring to the question of R' Zeira, to which an answer is given, and not to the question posed by Abaye.

Ramban explains that with respect to the ruling of the Gemara that we hold according to R' Yosef in these three cases, the intention is not that these are the only three cases in which his opinion is accepted, but rather that we rule according to R' Yosef in these cases even though he is opposed by Rabba.

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 Dedication: In loving memory of our grandfather  
 ר' יוסף חיים בן יהודה לייב ע"ה

# HALACHAH Highlight

## Adjudicating cases at night by the light of a torch

אבל בלילה אפילו שלשה כותבין ואין עושין דין וכו'

*But at night even if there are three people present they may record the instructions but may not adjudicate etc.*

S"ma<sup>1</sup> suggests a qualification to the ruling that judges may not adjudicate at night. He writes that this restriction is limited to circumstances in which the judges will not be able to see the litigants who are standing before them but if there are candles that illuminate the room it is permitted for judges to convene and adjudicate at night. He suggests that precedent for this principle can be found in a ruling recorded in some old writings (קובץ ישן נושן). Although halacha does not permit a kinyan chalipin at night, nevertheless, if there is a lit torch or sufficient light coming from the moon so that the witnesses can clearly see the two parties involved in the transaction it is permitted. So too, concludes S"ma, as long as the judges can see the two litigants standing before them in the courtroom they may convene at night.

Shach<sup>2</sup> disagrees with S"ma on this matter and refutes his position from our Gemara. Our Gemara discusses three people who receive instructions from someone who is deathly ill how to distribute his estate after his death. The

*(Insight...continued from page 1)*

Ramban also mentions that there are opinions that say the general guideline across all of shas is that we always rule according to Rabba as opposed to R' Yosef, except in these three cases. This is also the view of ר"י. Ramban notes that there are others who say that this rule is only valid in Bava Basra, where all three of these cases are found. In other massechtos, however, it could be that we would rule according to R' Yosef in a dispute with Rabba. ■

Gemara states that these people cannot serve as judges for this case since witnesses may not, in the same case, serve as judges – אין עד נעשה דיין. According to a number of opinions witnesses are not authorized to serve as judges for the distribution of someone's estate unless a kinyan chalipin was done to empower them. As mentioned, the only way a valid kinyan chalipin could be performed at night is if there is a light in the room that allows witnesses to see the parties involved in the transaction. In spite of this light the Gemara informs us that the witnesses may not adjudicate the case at night since Beis Din does not convene at night. Clearly this restriction is in force even when there is a light in the room and thus Shach rules that Beis Din may not convene at night even if the room is well lit. ■

1. שמ"ע סי' ה' סק"ז.
2. ש"ך שם סק"ד. ■

# STORIES Off the Daf

## A dual role

"ואין עד נעשה דין..."

After long study, a convert finally satisfied the beis din that he was truly sincere and ready to become a Jew. He was told to arrange an appointment with a mohel and with three dayanim who had to be present at his milah. After many phone calls and delays he finally succeeded in making the necessary arrangements.

While the mohel and ger arrived on time and two of the dayanim arrived shortly afterwards, one of the dayanim was significantly delayed. Unfortunately, the other dayanim were unable to wait very long. After a while, one

of the judges came up with a simple solution to the problem. "Although three dayanim are required, the mohel is a well known talmid chacham. I propose that he takes the place of the missing dayan."

The solution was immediately accepted and the milah was done with great joy.

But when a certain dayan heard about this, he was doubtful as to its halachic validity. "We find on Bava Basra 114 that a witness cannot become a dayan and this is the halacha regarding all d'oraisah testimony. In our case, the mohel is the agent of the ger, so how can he be valid playing a second role as a judge? Is this not worse than a witness who becomes a dayan? In addition, it seems clear from the poskim that the mohel is not ac-

ceptable as one of the dayanim."

When this question reached the author of the Tzitz Eliezer, ז"ל, he ruled that there was no problem at all. "We hold that a witness may not become a dayan in a case where the witness will have to testify before the other two dayanim while he is also a dayan. Such a situation would indeed render him invalid. But if the mohel is merely fulfilling his charge he can definitely be one of the dayanim at the same time. I hold this to be exceedingly obvious.

"As far as your claim that it seems clear from the language of the poskim that this is forbidden, I have not seen any such implication in the poskim. Quite the contrary!"<sup>1</sup> ■

<sup>1</sup>שו"ת ציץ אליעזר, ח"י"ג, סי' פ' ■