

OVERVIEW of the Daf

1) Discussions between R' Abba and R' Yosef bar Chama (cont.)

The Gemara identifies which opinion Mar Zutra intended to exclude when ruling like R' Abba.

2) Giving at the beginning, middle and end

A ruling of R' Dimi in the name of R' Yochanan illustrates the cases mentioned in the Mishnah of giving at the beginning, middle and end.

R' Elazar disagrees with R' Yochanan.

Ravin presents an alternative version of the rulings of R' Yochanan and R' Elazar.

Abaye notes a contradiction between the two cited rulings of R' Yochanan.

Ravin acknowledges that there is a dispute regarding R' Yochanan's position.

It is noted that R' Hamnuna, R' Nachman and R' Sheishes also disagree about this matter.

R' Sheishes cites the source for his position.

R' Sheishes rejects his own proof.

R' Ashi presents a proof to R' Sheishes's position which is accepted and constitutes a refutation of the dissenting positions.

The Gemara entertains the possibility that Reish Lakish is also refuted but this is rejected.

The Gemara rules that a second statement made within תוך כדי דיבור of a first statement uproots that first statement except regarding idolatry and kiddushin. ■

REVIEW and Remember

1. What is intended when the Mishnah speaks of a gift "in the middle"?

2. What is the source for R' Sheishes's position?

3. What are the three cases where we follow Reish Lakish?

4. What is an exception to the principle of תוך כדי דיבור?

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Distinctive INSIGHT

An expression of a gift and an inheritance

היכי דמי מתנה בתחלה

The Mishnah (126b) taught that if a person divides his property among his sons, and he apportions amounts for them with increasing for one and decreasing for another, and even if he assigns a portion for the firstborn equal to the rest, his instructions are binding. This, however, is only where he gives the portions as gifts. If he mentions that these uneven portions be an inheritance, his instructions are void, as he has made a condition which is contrary to the guidelines of how the Torah legislates inheritance to be divided. The Mishnah concludes that if he uses the term "inheritance" and he also writes at any point - whether at the beginning, in the middle or at the end - that the estate is being divided "as a gift," his instructions are binding.

Our Gemara elaborates and explains this final ruling of the Mishnah. Rashbam explains that the case is not necessarily where the person wrote that he is giving a gift, but rather where he verbally expressed (אמר) at any point that he was giving a "gift", although the person also mentioned that he was dividing his inheritance to his family.

The Gemara offers several opinions regarding what constitutes an expression of a gift, whereby the instructions regarding uneven redistribution of the inheritance would be valid. The fourth opinion is that of Reish Lakish, who says that the only expression which is valid is where the giver uses two expressions of inheritance and one of a gift. He must say, "Reuven and Shimon will inherit this land which I am presenting to them as a gift, and they shall inherit it." Tosafos (Yevamos 36b, ד"ה ואמר) notes that the Gemara later rules according to Rabbi Yochanan ben Beroka, who says that if one bequeaths his possessions disproportionately, as long as the receiver is someone among his heirs (הראוי לירושו), this designation of assets is valid. Accordingly, it no longer seems to matter exactly how the expression of gift

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HALACHAH Highlight

Retracting a pledge to tzedaka

כל תוך כדי דיבור כדיבור דמי

Any statement that is within **כדי דיבור** is considered part of the original statement

Poskim discuss the strength of a vow to give money to tzedaka. If a person verbalizes a pledge to give money to tzedaka and then immediately retracts that pledge (within **תוך כדי דיבור**) is his retraction effective? One could suggest that tzedaka is the same as hekdesh and once one verbalizes a commitment to donate something to hekdesh he cannot retract that pledge or perhaps tzedaka and hekdesh are not the same and one could immediately retract a pledge made to hekdesh. Pischei Teshuvah¹ cites the opinion of Teshuvav V'shav Hakohen who maintains that one may not retract a pledge to tzedaka since we apply the principle of **אמירתו לגבוה כמסירתו להדיוט** – a verbal pledge to Hashem effects a transfer the same way handing an object to someone effects a transfer. Accordingly, once one verbalizes a commitment to give money to someone who is poor it is as if the poor person has already taken possession of that money.

S"ma² rules that one is permitted to retract a pledge to tzedaka. Aruch Hashulchan³ agrees with S"ma and challenges the position of those who maintain that one may not retract a pledge to tzedaka. One challenge is from Rashba who writes that the principle of **אמירתו לגבוה וכו'** does not

(Insight...continued from page 1)

giving or inheritance is used, as in all cases the gift/inheritance should be valid. Nevertheless, the opinion of Reish Lakish is still relevant in a case where the giver designates a non-heir among the receivers. In this case, the expression used must be done precisely in order to be valid.

Rashba explains that the rule of Reish Lakish is still necessary in a case where someone instructs to give his first born a regular size portion, or if he says to give his daughters among the sons. In this case, R' Yochanan ben Berocha did not say that the giver's instructions must be honored. In this case, it is critical that the statement of a gift be stated properly in order to be valid. ■

apply to a pledge to give tzedaka to the poor. This position is codified in Shulchan Aruch⁴ where he writes that money pledged to the poor or even to a Beis Haknesses is not considered a pledge to a sacred fund (**דינם כהדיוט**). Furthermore, the assumption that one may not retract a pledge for something to be used on the altar is not true since a general principle in halacha is that **תוך כדי דיבור דמי**. Although there are a couple of exceptions to this principle pledges to the Beis Hamikdash are not amongst the exceptions. The principle that a verbal pledge effects a transfer applies only when one does not retract his pledge but it does not preclude one from retracting his pledge as long as it is done within **תוך כדי דיבור**. ■

1. פתחי תשובה יו"ד סי' רנ"ח סק"ז.

2. סמ"ע חו"מ סי' רנ"ח ס"ק י"ד.

3. ערוה"ש ליו"ד שם סעי' י"ט. ■

STORIES Off the Daf

Avoiding conflict

"האומר איש פלוני ירשוני..."

Today's daf discusses situations when we take into consideration a deceased parent's wishes regarding the disbursement of the estate.

A certain woman outlived her husband by several years. Shortly before she died she took ill and began to think about her property. She feared that her children would squabble over their inheritance. Such conflict is common enough, and can even cause a schism in the family where siblings stop speaking

to each other altogether. Surely, in such cases, if the deceased had known what havoc his estate would wreak in his own family he would have rather thrown the money away.

After much consideration, the woman summoned her children to her deathbed and insisted that they all agree that in case of any altercation they would go to a certain relative she trusted. Since he would be the ultimate authority in any dispute, she hoped this would keep the peace. She insisted that they all shake her hand on this and they did.

After she passed away, there was indeed a fight, as the mother had foreseen. Not surprisingly, one of the sons tried to weasel out of his relative's right to medi-

ate. "It is not as if he is even learned. Besides, although I did shake her hand and give my word which is usually a bona fide oath, it's obvious that I only agreed because my mother was sick and I did not want to get her upset."

When this case was brought before the Mahari Asad, zt"l, he ruled that they were obligated to obey their mother. "What about the rule that it is a mitzvah to fulfill the words of the deceased? It is clear from numerous sources that this relates not only to bequeathing the estate and the like, but also to the mother's commands such as in your case."¹

1. שו"ת מהר"י אסעד, אבה"ע, סי' מ"ד. ■

