

OVERVIEW of the Daf

1) **MISHNAH:** The Mishnah presents two opinions regarding the type of stipulations that a deathly ill person could make to divide his estate differently than the Torah's manner of distributing one's estate.

2) Clarifying the Mishnah

The Gemara infers from Tanna Kamma that if a benefactor wants to give his estate to someone who would anyway inherit, his instructions are valid. This is difficult since that is the position of R' Yochanan ben Berokah.

Two resolutions for the Mishnah are presented.

R' Yehudah in the name of Shmuel rules that halacha is in accordance with R' Yochanan ben Berokah's position as does Rava.

Rava presents a source for R' Yochanan ben Berokah's position.

Abaye suggests an alternative source but it is rejected and the Gemara proceeds to explain the necessity for the two similar pesukim.

R' Zeraika reports in the name of others that the halacha is like R' Yochanan ben Berokah.

R' Abba reports that they ruled like R' Yochanan ben Berokah.

The practical difference between these two versions is presented.

A related Baraisa is cited.

R' Ashi clarifies a part of the Baraisa.

The instructions sages gave regarding their rulings are recorded. ■

REVIEW and Remember

1. What is the point of dispute between Rabanan and R' Yochanan ben Berokah?

2. What is the rationale behind R' Yochanan ben Berokah's position?

3. What does the term הורה convey?

4. Why do we not derive halachic rulings from incidents (מעשה)?

Distinctive INSIGHT

Designating one's possessions to one heir among many
 התורה נתנה רשות לאב להנחיל לכל מי שירצה

R' Yochanan ben Beroka ruled in the Mishnah that a father may designate one person among those who are eligible to inherit him and declare that his entire inheritance should be given to that one person. In the Gemara, Rava identifies the verse which is the source for the opinion of R' Yochanan ben Beroka. When the verse (Devarim 21:16) describes a father giving his property to his sons as an inheritance it states, "And it shall be on the day he bequeaths to his sons..." The implication from the verse is that the father has control to earmark his possessions among his heirs.

ר"י מוגאש explains that the control which the Torah provides to a person to give his property to one heir among the rest is only when a person uses a positive expression, saying, "So-and-so will inherit all my property." However, if a person excludes one or more heirs, saying, "So-and-so will not inherit among my heirs," this statement has no legal bearing. As the Mishnah taught earlier (126b), this would be tantamount to making a condition contrary to that which is written in the Torah, and it is not valid.

What is the difference between a positive designation of one's property to one of the heirs which does work, and an exclusionary clause which does not work even if it is one person who is being barred? The Torah gives the power to reassign the inheritance of one's property only when a person declares who among his heirs will inherit him. However, when a person says that someone will not inherit, he is doing the reverse—he is saying who will not receive inheritance. As a result, he has not outlined his plan for who will receive his belongings, so the system of the Torah is still in effect, and the recipients are all eligible for their portions, including the person who was said to be excluded.

יד רמה adds that it is not only a negative expression which is ineffective, but even using the term "העברה" is also not binding. The Torah simply gives a right to a father to give his inheritance to one son out of many. As a result, it may happen that there would not remain any possessions for the other sons. However, the Torah does not allow a father, technically, to transfer inheritance

HALACHAH Highlight

תוך כדי דיבור Changing or qualifying kiddushin within

וקידושין...
...וקידושין.

[The principle of תוך כדי דיבור applies in all cases except for idolatry] and kiddushin

The Gemara mentions that the principle of תוך כדי דיבור does not apply to kiddushin. There is a dispute amongst commentators regarding the meaning of this statement. Rashbam¹ writes that the Gemara refers to a case where a man gave a woman money for kiddushin and within תוך כדי דיבור he told her that the money should be considered a gift. Others² explain that the Gemara refers to where the man adds a condition to the kiddushin within תוך כדי דיבור of betrothing the woman.

Bach³ suggests in explanation of Rambam that the principle that תוך כדי דיבור does not apply to kiddushin is limited to where one wants to retract the kiddushin entirely. If, however, the husband's statement within תוך כדי דיבור is merely to explain and qualify an earlier statement he may do so. This is similar to the explanation of Rashbam who also explained that the man may not consider the money to be a gift but he may explain or qualify his earlier words.

Yeshuos Yaakov⁴ follows the approach of Bach and suggests that proof to this position can be found in the Gemara Kiddushin (59a). The Gemara there is uncertain whether

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from one heir to the next, so using the expression of transferring would be invalid.

Rashbam explains that the rule of R' Yochanan ben Beroka allows a person to shift either all or any portion of his possessions to one heir. Ritva, however, explains that when the Torah allows a father to designate his possessions to one heir, it is only if he gives it all at once. If a father would merely give a little extra to one heir more than to another, it would not be valid. If it would be valid when given partially, it would be an example of a partial gift being granted without a special קנין, which is not valid. ■

a man who betrothed a woman "from today and for thirty days" intended with the phrase "and for thirty days" to retract his statement of "today" or did he intend to delay the effect of the kiddushin for thirty days. Yeshuos Yaakov asks how the Gemara could think that he is retracting his original statement when our Gemara states that the principle of תוך כדי דיבור does not apply to kiddushin? It is thus evident that the man can add conditions to the kiddushin within תוך כדי דיבור as long as the husband does not retract the kiddushin entirely. ■

1. רשב"ם ד"ה וקידושין.

2. ר"י בן חכמון ד"ה ואמרין ומובא דבריו במתיבתא ילקוט ביאורים ק"ל. ד"ה מה היא.

3. בי"ח אה"ע סי' ל"ח סעי' ב'.

4. ישועות יעקב אה"ע סי' מ' סק"ב. ■

STORIES Off the Daf

Practical Application

"אין למדין הלכה לא מפי למוד ולא מפי מעשה..."

As is well known, a kohen is required to redeem the infant at a pidyon ha'ben. Once, when the Chasam Sofer, zt"l, was in attendance at such an affair, a person who was definitely not a kohen took the money and made the blessing without even getting permission from the kohen present. Everyone at the simchah laughed. how could he have been so ignorant?

When the Chasam Sofer saw how humiliated the man who had erred was

he spoke up. "The truth is that according to Tosafos it is theoretically possible for a Yisrael to redeem a firstborn son if the man in question is married to the daughter of a kohen.

"As a matter of fact, I used to give the leg, jaw, and stomach of matanos kehunah to my brother-in-law, of blessed memory, since he was married to a bas kohen. Even today, when I slaughter an animal in honor of Yom Tov, I give the reishis hagaz and the matanos kehunah to a Yisrael married to a bas kohein. Rav Yonasan Eibeschitz, zt"l, once also gave his matanos kehunah to a man married to a bas kohen."¹

But when the Chasam Sofer began to hear that he was quoted that one

may redeem a firstborn son by giving the money to a man married to a bas kohen, he clarified his position. "I only spoke up to save someone embarrassment. It was never my intention to rule that we may redeem a firstborn son in this manner, since the Rosh argues.

"It is clear in Bava Basra 130 that one may not learn practical halachah from a posek's words unless he says clearly that he means it to be followed in practice. It is a mitzvah to publicize this letter, and to rebuke those who wish to rely on Tosafos and have a Yisrael who is merely married to a bas kohen redeem a firstborn son!"² ■

1. פלתי, סי' ס"א, ס"ק ו'

2. שו"ת חתם סופר, יו"ד, סי' ש"א