

OVERVIEW of the Daf

1) Claiming that one divorced his wife (cont.)

An incident involving a man who claimed he divorced his wife is presented.

A discussion between Abaye and Rava concerning this incident is recorded.

A second incident is presented that involves a discussion between Abaye and R' Yosef whether it is necessary to be concerned over the alleged report that a man has a brother in a faraway land.

Rava agreed with Abaye that we must be concerned about the rumor concerning the existence of a brother in a faraway land.

2) The alleged brother

The Gemara explains that the case in the Mishnah is of one who claims to have a brother who was previously unknown.

Rava infers from this explanation that if a defendant responds, "I don't know" to a definite claim against him he is exempt from liability.

Abaye rejects this inference.

Rava asks whether the increased value of the fields given to the alleged brother who then dies is shared by all the brothers or it belongs to the brother who alleged that this was a brother.

After further clarifying the inquiry the Gemara leaves the inquiry unresolved.

3) MISHNAH: The Mishnah discusses circumstances when a deathbed will is valid and when it is not.

4) A deathbed will

A Baraisa elaborates on the language of a deathbed will and a gift.

Abaye clarifies the intent of the Baraisa regarding the language of a gift.

R' Yochanan rules that instructions pertaining to a deathbed gift that were not carried out before the person died may not be carried out after his death.

R' Elazar told his students to follow this halacha carefully.

According to R' Shizvi it was R' Elazar who taught this halacha and R' Yochanan who instructed his students to follow this halacha carefully.

R' Nachman bar Yitzchok presented two proofs to R' Shizvi's version.

A related statement of R' Yochanan is explained.

R' Abba bar Mamal unsuccessfully challenges the ruling that we do not write a deathbed gift for someone after his death. ■

Distinctive INSIGHT

A will and testament which was not delivered

מי שמת ונמצאת דייתיקי קשורה על יריכו הרי זו אינה כלום

The Mishnah teaches the halacha that if a deathly ill person dies, and we find a final will and testament on his person, the document has no legal validity. As long as the person has not yet handed the will to the receiver of the gift before he dies, the gift remains incomplete. Various approaches are offered by the Rishonim to explain this halacha.

Rashbam explains that the halacha provides a deathly ill person with certain dispensations in order for him to be able to transfer possession of his property before he dies. However, the rule is *דברי שכ"ב מרע*—the words of a sick person—are as if they are written and given. The only advantage we give him is when he speaks his instructions, albeit without the need to conduct a formal *קנין*. In our Mishnah, the *מרע שכ"ב* attempted to conduct business using a *שטר*, and the halacha is that a document cannot become effective after the death of the giver.

Some Rishonim (Rabeinu Gershom, ר"י מיגש, Rambam) explain that we suspect that the sick person might have changed his mind after writing the document, and decided not to give the property to the one to whom he wrote it. That is why he did not hand it over. At no point did this person verbalize his intent, so we must be suspect of whether he had made a final decision. ר"י מיגש disagrees with Rashbam, and holds that a written statement of a *שכ"ב מרע* is just as valid as his verbal instructions. Yet, in this case we are not convinced that he wrote these instructions to be effective immediately, but perhaps only as a record of what he would say if and when he made his final decision.

Ritva explains that the Mishnah could be dealing with a case where the sick person had a note next to him which was

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REVIEW and Remember

1. What is the point of dispute between Abaye and R' Yosef concerning the man who died without brothers?

2. Does a claim of certainty allow a person to collect a debt?

3. What is a *דייתיקי*?

4. How does one *דייתיקי* negate another *דייתיקי*?

HALACHAH Highlight

Can a guarantor of a loan be liable when the borrower is exempt?

לא צריכא דקא אמרי אין אנו יודעין

No, it is needed for a case where they say that they do not know

Reuven borrows money from Shimon and has Levi guarantee (ערב) the loan. When the due date of the loan arrives Reuven claims that he repaid the loan. Since Shimon does not have any witnesses who could testify differently, Shimon is not able to force Reuven to pay since he claims with certainty (ברי) that the loan is paid in full. Shimon goes to Levi and demands that Levi repay the loan since Reuven refuses to pay. Since Levi does not know for sure that Reuven repaid the loan it would seem that Shimon could force Levi to repay the loan. The basis of this is our Gemara that indicates that if the litigant cannot make a claim of certainty on his own, he is obligated to pay even if there is another person who will make that claim of certainty on his behalf. Accordingly, since Levi cannot claim with certainty that Shimon received payment for the loan that he extended to Reuven he may not use Reuven's claim of certainty to exempt himself from liability and should be obligated to pay.

Nesivos Hamishpat¹ suggests that when it comes to a guarantor we, as Beis Din, will claim on his behalf (טענין ליה) that the loan was repaid the same way that Beis Din will claim on behalf of heirs and purchasers. Ketzos HaShulchan², however, disagrees with Nesivos on this point and maintains that Beis Din will not claim on behalf of the guarantor. Teshuvos

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simply a reminder he wrote for himself to give a gift at a later time when he would use the legal means available to him to do so. However, he did not succeed in following through until he died. Therefore, the document is not a valid legal method to prove the transfer of this gift.

Rambam writes (Hilchos Z'chiya u'Matana 9:24): "If someone dies and we find a last will and testament on his person, even if there are witnesses recorded on the document and a קנין was made regarding transfer of a gift, the document is not valid. We suspect that the person wrote it to have it ready, but he changed his mind and decided not to give it." We see that Rambam learned that the halacha in the Mishnah is true even when a קנין was performed, but the gift is still not valid. Rambam holds that the transaction is only completed when the document arrives in the hands of the receiver. Magid Mishnah explains that this particular halacha applies only where the שכיב מרע gave all that he owns, where the קנין is only valid after the שכיב מרע dies. ■

V'shev Hakohen³ asserts that we cannot differentiate between the borrower (Reuven) and the guarantor (Levi) and issue a ruling that the guarantor is obligated to repay a loan but the borrower is not, since it is one loan. Therefore, if the borrower is in a position that we cannot force him to pay, the guarantor as well may not be forced to pay. When the borrower is obligated to pay, the guarantor may then be held responsible to repay the loan. ■

1. נתיבות המשפט סי' ל"ט סק"י.
2. קצות החושן שם סק"ה.
3. שו"ת ושב הכהן סי' מ"ג. ■

STORIES Off the Daf

The circular signature

"מתנת בריא..."

Today's daf discusses how to circumvent the halachos of inheritance.

A certain man wished to divide his property in a manner which he felt most fitting. Although the sages frown at this practice in most cases, they did not prohibit it outright. Although this man was wealthy, he was unlearned and could not even sign his name.

Although this man was quite healthy he went to the non-Jewish authorities and requested that they write an official document giving away a significant portion of

his estate to his younger son. Since he could not sign, he drew three circles, beneath which the government functionary wrote the man's name in their language. According to non-Jewish law this document was now absolutely valid. The man gave the document to his son and put the matter out of his mind.

But after the father passed away, the older son claimed that this document had no halachic validity at all. He made two strong points. "This signature surely has no validity since it does not say any name and could be forged by anyone. In addition, since it was made in a gentile court, this is enough to invalidate it."

But when this question was brought before Rav Yosef Shaul Natanson, zt"l, he ruled that it was valid. "There is no doubt

that this document is legally binding in a halachic court.

"First of all, the Nesivos, zt"l, rules that if another person signs the document on behalf of the 'signatory,' it is valid. Now although as you point out, in our case, a non-Jew signed the document, perhaps the three circles are a valid signature?

"And even if you are correct and they constitute an illegitimate signature, this is not relevant in our case. In Choshen Mishpat, Siman 68, we find that a non-Jewish court is reliable for documents of sale and debts. And the same is true regarding our case. Since this document was made in an honest non-Jewish court, and they accept it, the gift is valid."¹ ■

1. שו"ת שואל ומשיב, ח"א, סי' פ"ו. ■