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בס"ד

OVERVIEW of the Daf

1) A deathbed will (cont.)

R' Yehudah in the name of Shmuel rules that a deathbed gift could be given after the person dies.

Rava in the name of R' Nachman issues the same ruling.

2) MISHNAH: R' Yehudah and R' Yosi disagree about the correct way to give away one's property as a gift to take effect after he died. The halachos that apply to the land a father gifted to his son to take effect after his death are discussed.

3) "From today and after death"

The Gemara questions why the Mishnah rules that giving a gift "from today and after death" is valid when in Gittin that language creates a circumstance of doubt.

The difference between the two cases is explained.

4) R' Yosi's position

An incident is presented from which we are taught the rationale behind R' Yosi's position in the Mishnah.

A Baraisa also records the rationale behind R' Yosi's position.

5) R' Yehudah's position

R' Nachman, in response to Rava's inquiry, and R' Pappi disagree whether R' Yehudah would agree that a document that records the kinyan also requires the clause "from today."

R' Chanina from Sura unsuccessfully challenged R' Pappi's explanation.

R' Huna the son of R' Yehoshua issues definitive rulings on this matter.

A second version of the original discussion between Rava and R' Nachman is presented.

6) If the son sells the father's property

R' Yochanan and Reish Lakish disagree whether a buyer acquires property if he bought it from a son who sold it during his father's lifetime and then died before his father.

Each Amora explains his respective position.

The Gemara questions the necessity of presenting this dispute when the issue was previously debated by R' Yochanan and Reish Lakish.

The reason it is necessary to present this dispute in two contexts is explained.

R' Yochanan unsuccessfully challenges Reish Lakish's position.

Another Baraisa is cited to challenge R' Yochanan's position. ■

Distinctive INSIGHT

The son sells the land and then he dies

מכר הבן בחיי האב ומת הבן בחיי האב אמר רב יוחנן לא קנה לוקח וריש לקיש אמר קנה לוקח

The Mishnah taught the halacha where a father writes a document to give his property to his son after the father's death. Rashbam explains the background of the case. A man who has sons from a previous marriage wishes to marry a second wife. He does not want his property to be subject to the kesubah of the new wife which would cause his sons from the first wife to possibly lose. Nevertheless, he wants to keep the property for himself as long as he is alive. He therefore writes a document granting them the land itself immediately, but he retains the rights to all profits from the land until his own death, at which time the gift will be completed.

The Gemara brings a discussion between R' Yochanan and Reish Lakish regarding where the son in this case sells the property to someone else before the father dies, but then the son himself dies before the father. What is the status of the land after the death of the father? R' Yochanan rules that the buyer does not receive the land. The rights to receive the produce of the land which the father retained is tantamount to ownership of the principal, so the land was never owned by the son. Reish Lakish holds that the buyer does receive the land when the father dies. He holds that the rights to the produce which the father retained is not the same as owning the land itself. The son's selling of the land is valid.

There are several approaches among the Rishonim in explaining the opinion of R' Yochanan. Rashbam explains that not only is the sale to the buyer not binding, but the heirs of the son also do not have any rights to the land. Because the son predeceased his father, the property remains that of the father and his heirs, and the gift to the son was not effective. Had the son not sold the property, his heirs would have received his inheritance even in his absence. Now, however, that the son sold his rights to the land, his heirs have no claim to it.

Tosafos and most of the Rishonim hold that once we say that the sale is not valid, the land is inherited by the son himself, and in his absence, it is divided among the heirs of the son.

קובץ שיעורים (#470) notes that Rashbam and Tosafos here are consistent with their explanations to the Gemara later (138a) regarding how to understand the status of one who gives a gift, even though it turns out to not be valid. Rashbam says that the giver removes any claims he might have for the gift, while Tosafos holds that if the gift is not valid, the item returns to the giver.

Rabeinu Yona and Rashba explain that the sale here is only invalid if the son did not leave any descendents. If he did leave a descendent, the buyer does receive the land, as his own son represents his father (the son who died). ■

HALACHAH Highlight

Bring bikkurim if one only has the right to the produce

המוכר שדה לפירות וכו'

One who sells the produce of his field etc.

The Gemara presents a dispute between R' Yochanan and Reish Lakish related to someone who sells the right to the fruit of his field. According to R' Yochanan the buyer brings bikkurim and recites the associated verses whereas according to Reish Lakish he brings the bikkurim to the Beis HaMikdash but does not recite the associated pesukim. The point of dispute is whether קנין פירות כקנין הגוף דמי – the acquisition of the produce is equivalent to the acquisition of the land – or not. According to R' Yochanan acquiring the produce is synonymous with acquiring the field whereas according to Reish Lakish they are not synonymous. Rashbam[1] explains that according to Reish Lakish the buyer does not recite the associated pesukim since the Torah states: האדמה אשר נתת לי –"the land that You gave me" and the buyer of the produce does not own the land. He is nevertheless obligated to bring the bikkurim to the Beis Hamikdash since the Torah also states: אשר תביא מארצך –"that you bring from your land" and since the buyer has purchased the right to the nutrients of the ground it is for this purpose considered his land. Tosafos[2] notes an inconsistency in Rashbam's approach. If the right to the nutrients is sufficient to obligate the buyer to bring the bikkurim to the Beis HaMikdash why is that not sufficient to obligate him to recite the pesukim as well?

Minchas Baruch[3] explains that a person's ownership of something is a combination of different components. The owner of a field, for example, has the right to the fruit that grows from the field, to sell the field, to sanctify the field, etc. These components of ownership could be separated from one another and the owner could sell only one of those rights. Accordingly, Reish Lakish maintains that one who buys the produce of a field has bought that particular right but does not yet have full ownership of the field. Since primary ownership still rests with the seller the buyer cannot recite the associated verses since the verse האדמה אשר נתת לי focuses on the primary owner of the field. He is, nonetheless, obligated to bring bikkurim since the verse אשר תביא מארצך does not focus on general ownership as we see from the phrase מפרי אדמתך – from the fruit of your land which indicates that as long as one owns the fruit of the land there is an obligation to bring bikkurim. ■

1. רשב"ם ד"ה מביא.
2. תוס' ד"ה מביא.
3. מנחת ברוך סי' צ"ב ד"ה דהנה. ■

REVIEW and Remember

1. What is the point of dispute in the Mishnah between R' Yehudah and R' Yosi?

   _____

2. What halacha was known to the scribes but not to the scholars?

   _____

3. Why was it necessary for R' Yochanan and Reish Lakish to dispute the same issue of land ownership in two contexts?

   _____

4. What is the meaning of the term "אחריך"?

   _____

STORIES Off the Daf

The contested jewelry

"הכותב נכסיו לבניו..."

The halachos of inheritance are very complex and hard to get around. If one wishes to circumvent them he must consult with a qualified halachic authority, since even the most obvious-seeming stratagems often fail abysmally.

A certain woman owned a valuable piece of jewelry which she wished to give as a gift to her son. Since she knew that halachically her husband would inherit it, she would have preferred to give it to her son outright. But she could not do so, since she was afraid that she might need the jewelry herself for one reason or another, so she came up with a simple plan. She gave the jewelry to her close relative instructing him to give it to her son after her death. That way if she needed it she could take it, but if she did not require it, the jewelry would go to her son.

After several years, this woman died and the relative wondered what the halachic status of the jewelry was. On the one hand, it was clearly her intention to give it to her son and perhaps he had already acquired it for the son. But then again there had never been a formal kinyan and she had retained the right to take it back at any time. Could we say the son had acquired in this case?

When this question was brought to Rabeinu Meir of Rottenberg, zt"l, he told the relative to give the jewelry to the husband, not the son . "Since the woman was healthy when she gave it to you for him, she needed to make a kinyan to transfer ownership to her son after her death."

Rabeinu Meir explained, "Although we find in Bava Basra 136 that if one wrote a document to bequeath his property to his children this does not require a kinyan, that is only if there is a document with the proper nusach. But when there is no document, there is clearly no acquisition without a kinyan."[1] ■

1. מרדכי, פרק יש נוחלין■

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