

OVERVIEW of the Daf

1) If the son sells the father's property (cont.)

R' Yochanan responds to the challenge to his position, namely that 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, by suggesting that there is a dispute between Tannaim about the issue.

A Baraisa that records a related dispute between Rebbi and R' Shimon ben Gamliel is cited.

A Baraisa is cited that poses contradictions for both Rebbi and R' Shimon ben Gamliel.

The contradictions are resolved.

Abaye gives an example of a cunning evildoer that is based on the position of R' Shimon ben Gamliel.

R' Yochanan rules in favor of the position of R' Shimon ben Gamliel and notes an exception to this ruling.

Abaye explains that the rationale behind the exception is that the gift of a deathly-ill person does not take effect until after he dies.

It is noted that Abaye states that the gift of a deathly-ill person takes effect at the moment of death.

The Gemara answers that he retracted the second statement, and the Gemara explains how we know it was the second statement which he retracted.

R' Zeira in the name of R' Yochanan states that R' Shimon ben Gamliel's ruling applies even if the property includes slaves.

The novelty of this ruling is explained.

R' Yosef in the name of R' Yochanan states that R' Shimon ben Gamliel's ruling applies even if the first recipient made shrouds for the deceased.

The novelty of this ruling is explained.

2) Esrog

R' Nachman bar R' Chisda applies the dispute between Rebbi and R' Shimon ben Gamliel to transferring ownership of an esrog.

R' Nachman bar Yitzchok challenges this ruling and applies the dispute to a slightly different case involving an esrog.

Rabbah bar R' Huna discusses the use of an esrog that is part of an undivided estate.

Rava issues a ruling that teaches that a gift given on condition that it should be returned is a valid gift.

A related incident is recorded.

Tangentially, the Gemara discusses the halacha of one who borrows a bull on the condition that it is returned, and he consecrated the bull before it was returned.

3) Refusing a gift

R' Yehudah in the name of Shmuel and R' Yochanan seem to disagree whether one could refuse a gift of property. ■

Distinctive INSIGHT

A divorce at the time of death or after death

לא סלקא דעתך דתנן זה גיטך זה גיטך מחולי זה גיטך לאחר מיתה לא אמר כלום

Abaye first taught that a gift from a *שכיב מרע*, a deathly ill person, only takes effect upon the death of the giver. The Gemara then notes that Abaye apparently issued a contradictory statement, that a gift of a *שכיב מרע* takes effect "עם גמר מיתה"—at the final moment of death," which is technically just before the person expires. The Gemara resolves these statements by telling us that Abaye retracted the second one. We know that it was the second statement which was reversed, and not the first one, because we have a Mishnah from Gittin (72a) which teaches that if a person gives a *גט* to his wife to be effective after he dies, the *גט* is void, because a dead man cannot divorce his wife. The Mishnah lists various examples of expressions which a person might use regarding giving a *גט* to his wife after he dies. The halacha in each case is that the *גט* is not valid. So, too, the Gemara shows that when a *שכיב מרע* gives a gift, he does so effective after his death, and not with his death (which is technically a moment before his actual departure from this world).

Rashbam explains that it is clear from these statements that the mind set of the husband is that the divorce take effect only after his death. This is why the divorce is not valid in any of these cases, because a dead man cannot divorce his wife. If the husband's intent would have been to divorce his wife "עם גמר מיתה - with the end of the death process," the divorce would have been effected, because this is technically a moment before the person is considered to have departed from this world.

The inference from our Gemara is that although a *שכיב מרע* intends to divorce his wife after his death, and this does not work, it is possible however for a person to issue a *גט* to be effective *with* one's death, which is while one is still alive, and not after one's death, which would be too late.

Chasam Sofer (שו"ת אהע"ז סי' נ"ו) writes that even if we would say regarding other transactions that the death of the giver and the transfer of the gift may occur simultaneously, we cannot say this regarding a *גט*. By definition, a *גט* is a document which results in the relationship between the husband and wife becoming severed—*כריתות*. If the death of the husband occurs precisely at the moment the *גט* is scheduled to take effect, the marriage is already terminating due to the death, and the *גט* would be accomplishing nothing in the realm of ending the marriage, thus lacking the fundamental aspect of *כריתות*. For this reason, the husband's instructions for the *גט* to be valid would have to mean that he intends for the divorce to occur just before he dies, *עם גמר מיתה*. It is just that it is understood that a *שכיב מרע* intends for his conditional *גט* to take place after he dies, which is not valid. ■

HALACHAH Highlight

An esrog that was taken on condition that it be returned and became disqualified before it was returned

החזירו יצא לא החזירו לא יצא

If he returned it he has fulfilled his obligation; if he does not return it he does not fulfill his obligation

In communities where it was difficult for everyone to obtain an esrog of his own it was common for those who were fortunate enough to obtain an esrog to give it to others on the first day of Yom Tov as a gift on condition that it is returned – מתנה על מנת להחזיר – so that they could each fulfill the mitzvah. When there were many people who wanted to fulfill the mitzvah it would be given from the owner to one person to another and another until everyone fulfilled the mitzvah and then returned to the owner. Numerous times as the esrog was being passed from one person to the next it would fall and become damaged so that it could no longer be used for the mitzvah. Since the esrog is not considered returned unless it is returned intact to the owner it would seem that none of the “borrowers” fulfilled the mitzvah since ultimately the esrog was not returned intact and the condition of their ownership, על מנת להחזיר, was not fulfilled. This is, in fact, the ruling found in Kaf Hachaim¹.

An incident like this once happened in the vicinity of Chazon Ish. The parties involved consulted with Chazon Ish and

REVIEW and Remember

1. What is the point of dispute between Rebbi and R' Shimon ben Gamliel?
2. When does the gift of a deathly-ill person take effect?
3. What is the תפוסת הבית?
4. Is it possible to sanctify an animal that one received as a gift that one is obligated to return?

he ruled that all the “borrowers” should be strict to take another esrog but according to the letter of the law they had fulfilled the mitzvah even though the esrog was not returned intact. His reasoning was that since the owner authorizes each “borrower” to hand it to the next “borrower,” the condition of their agreement is considered fulfilled. The phrase על מנת להחזיר addresses the most common scenario, namely, the owner expects the borrower to return the object to him, but the real intent is that the borrower should do what the owner wants him to do with the object after he has used it. Consequently, if the owner allows the borrower to hand it to another borrower he has fulfilled his responsibility and is credited with fulfillment of the mitzvah. ■

1. כף החיים סי' תרנ"ח אות נ'.

2. מתיבתא פניני הלכה קל"ז : ד"ה אתרוג שניתן. ■

STORIES Off the Daf

Aiding and abetting

”למיעבד איסורא לא יהיבין לך”

On today's daf we find the supposition that even a gift might have been retroactively annulled if the recipient violated halachah with it.

A certain successful London caterer was concerned that at times he was violating halachah through his business. As a caterer, he really couldn't refuse service to anyone who requested it. But he had all sorts of clients. Some of the less religious were unaware of the serious nature of mixed dancing or the like. He wondered if he was an accessory to these serious violations of halachah. And what about days when it was prohibited for

Jews to marry? He had the opportunity to rent out his wedding hall to Jewish groups for mixed dancing events during those times. Could this possibly be permitted? But if he refused to rent his hall out to them he stood to lose fifty pounds sterling a day, a staggering loss for him.

When Rav Moshe Feinstein, zt"l, was consulted regarding these questions he ruled that both are permitted. “First of all, in a large city like London, the potential clients can certainly find another caterer. In such a case, the Torah prohibition of lifnei iver does not apply. The Shach and Nodah B'Yehudah held that in such a case one does not even violate a rabbinic prohibition, but the Magen Avraham argued that one would be violating the prohibition against abetting those who transgress Hashem's will.”

He continued, “In your case, however, even the Magen Avraham would say you should cater for these people. Clearly, if religious caterers are forbidden to provide for them this will not deter them at all. On the contrary, they will most likely find a hall with lesser standards of kashrus, if any! As far as the question of renting it to a Jewish group for affairs with mixed dancing on days when it is prohibited for a Jewish couple to get married, as I mentioned, this is permitted. Nevertheless, you should still be stringent like the Magen Avraham. But if you chose to rely on the more lenient authorities we will not protest since the halachah follows their view. If you will not be able to find another party to use the hall for these days, you may rely on the more lenient authorities, even l'chatchilah.”¹ ■

1. אג"מ, יו"ד, ח"א, סי' ע"ב ■