

OVERVIEW of the Daf

1) Refusing a gift (cont.)

R' Abba bar Mamal suggests that there is no dispute whether one could refuse a gift and the two previously-cited opinions were referring to different cases.

R' Nachman bar Yitzchok asserts that there is a dispute in a case of someone who transferred a gift through a third party and the recipient was first silent and then protested.

The relevant Beraisa is cited and explained.

2) Gifts of the deathly-ill

A Beraisa discusses whether recipients of a gift from a deathly-ill person must share equally in the estate's debt to a creditor.

Another Beraisa discusses which language indicates a gift in addition to that person's inheritance and which gift could be taken instead of their inheritance.

R' Nachman in the name of R' Huna explains that the Beraisa follows R' Akiva who derives meaning from extra language in a contract.

The Mishnah that presents R' Akiva's statements about these matters is recorded.

A Beraisa presents a dispute what witnesses should do if a deathly-ill person asserts that someone owes him money.

R' Nachman in the name of R' Huna offers a different version of the dispute.

R' Meir's opinion, explains the Gemara, is based on the

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REVIEW and Remember

1. According to the Gemara, what is the point of dispute between Tanna Kamma and R' Shimon ben Gamliel?

2. What language indicates that a father is conveying a gift in addition to his double portion?

3. Explain R' Akiva's approach to infer superfluous language?

4. When are we concerned for the possibility that Beis Din is making an error?

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Distinctive INSIGHT

Payment which is distinct from the repayment of the loan

ושכיב מרע שאמר תנו מאתים זוז לפלוני בעל חובי כראוי לו נוטל ונוטל את חובו

The Beraisa brings three illustrations of statements made by a שכיב מרע and how they are to be understood. The examples are where he made a statement about his firstborn son, his wife or about his creditor. If the שכיב מרע says, "Give two hundred zuz to my firstborn son/wife/creditor, which is appropriate for him/her (כראוי לו)," the halacha is that the firstborn son/wife/creditor receives the two hundred zuz, and, in addition, each is able to collect the sum due to him. The firstborn will still receive his double portion, the wife will still receive her full kesubah, and the creditor will still be able to collect his loan. If, however, the statement was, "Give two hundred zuz for the בכורה/for the kesubah/for the loan," the receiver only collects the two hundred zuz as payment for that which was owed, and not as a gift above and beyond that.

Regarding the case where the creditor receives the two hundred zuz and he may still collect his loan, יד רמה explains that this halacha only applies where the instructions were to give the two hundred zuz after the death of the שכיב מרע. In a case where the instructions were to pay the creditor at some specified time unrelated to the death of the giver, we would not say that this was meant as a gift, but rather to pay the loan. And, in this scenario, even if the שכיב מרע were to die before the scheduled payment, we would still say that the intent was for payment of the loan, and not as a separate gift.

A proof to this approach is indicated from the fact the Beraisa parallels the double portion of a firstborn and the kesubah of a wife to the payment of a loan. In the first two cases, it is clear that the collection of the inheritance on the behalf of the son, and the collection of the kesubah on the part of the wife are both scheduled for after the death of the giver. Similarly, we see that the payment of the two hundred zuz about which the שכיב מרע spoke was scheduled to take place with or after the death of the giver, and it is in this case that the payment is interpreted to be a gift, aside from repayment of the loan.

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 In memory of my mother, Mrs. Dorothy Lane
 by her son Jerry Lane, Oak Park, MI

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 In loving memory of
 Faige Raizel bas Menachem Manush A"H,
 Mrs. Fanny Inger O.B.M. by her children
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HALACHAH Highlight

Reviewing the decision of other Batei Din

בית דינא בתר בית דינא לא דייקי

One Beis Din will not investigate [the ruling] of another Beis Din

There was once an incident involving a woman who received permission from Maharal to remarry. There were people who questioned this ruling and sent the relevant information to Shvus Yaakov for his opinion. Shvus Yaakov¹ answered, based on our Gemara, that one Beis Din does not question or investigate the ruling of another Beis Din. Accordingly, he refused to offer an opinion on Maharal's ruling.

He noted, however, that the principle stated in our Gemara seems to be contradicted by a Gemara in Yevamos (121a). The Gemara there relates that a man disappeared in "waters that had no end" and R' Shila permitted the man's wife to remarry even though the halacha is that a woman may not remarry if her husband disappears in "water that does not have an end." When Rav and Shmuel heard about R' Shila's ruling they discussed whether they should excommunicate R' Shila for issuing this erroneous ruling. How could Rav and Shmuel even entertain the possibility of questioning R' Shila's ruling when our Gemara teaches that one Beis Din may not investigate the ruling of another Beis Din. R' Shila's ruling should have been accepted without question.

Shvus Yaakov answers that in the case in Yevamos, Rav and

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The Rishonim contrast our Beraisa with a statement of Abaye in Kesubos (96b), that a **מרע שכיב** who says, "Give two hundred zuz to So-and-so, my creditor," the halacha is that the creditor may accept the money either as a gift or as payment of his loan. This suggests that if he were to take it as a gift, he would still be able to collect the loan, in addition to the gift. In our Beraisa, the creditor may only collect the gift and the loan if the **מרע שכיב** uses an expression which states "**כראוי לו**," indicating an added intent to give. The Rishonim explain that the Gemara in Kesubos is also dealing where the **מרע שכיב** said, "**כראוי לו**," but the Gemara did not care to elaborate in this detail. ■

Shmuel were concerned that R' Shila had erred in a well known halacha, namely, he permitted a woman to remarry even though her husband was lost in "waters that do not have a visible end." Since this was a gross error in halacha (**טעה בדבר משנה**) Rav and Shmuel thought it was appropriate to investigate the ruling of another Beis Din as a precautionary measure (**גדר**) to prevent others from issuing similar erroneous rulings. This is evident by virtue of the fact that they discussed the possibility of excommunicating R' Shila without even consulting with him. The principle of our Gemara that one Beis Din does not second guess another Beis Din refers to cases where there was not a gross error and when there is no necessity to take precautionary measures. ■

1. שו"ת שבות יעקב ח"ב סי' קי"ג. ■

STORIES Off the Daf

Counterfeit capital

"שתק..."

A certain man was heavily in debt when he struck upon a plan to avoid payment. He wrote two documents stating he owed the recipients a large sum of money. One he gave to a friend and the second he left with a close relative.

When the friend realized that his own creditors might collect on the fake document he hastened to "transfer" his fake debt to the relative's name as well. When the original "debtor" heard about this change he was silent.

When the relative eventually died, the government collected all back taxes from his estate including a large sum for the presumed capital for the supposed loans. Understandably, the orphans demanded reimbursement for the loss they had sustained

because of their father's mistaken kindness.

When this case was presented to the Divrei Malkiel, ז"ל, he ruled that there is a difference between the earlier and later debt. "The taxes on the document which your father agreed to fake for his relative must be repaid, but not the taxes on the debt he agreed to take on later.

"Your father never had an arrangement with the debtor regarding this debt. To the contrary, he was unwilling to place the entire sum in your father's name since he only trusted him so far.

"Although the debtor was silent when he heard about the debt transference and we find in Bava Basra 139 that silence is tantamount to agreeing, this is not relevant here. The Gemara in Bava Basra is only discussing silence when giving a gift, not a fake loan document which he naturally figures is of no significance."

The Rav concluded with a strong warning. "While we are on this subject I must state unequivocally, that fake loan docu-

ments such as the ones issued in this situation are abhorrent and absolutely prohibited. Sadly, the one who agrees to such a farce mistakenly believes that he is doing a favor for the poor debtor. He may be surprised to learn that there is no greater sin than this, for which even Yom Kippur cannot atone. Instead of doing a mitzvah, the person who agrees to go along with such trickery is nothing less than an accessory to theft."¹ ■

1. שו"ת דברי מלכיאל, ח"ג, סי' קס"ג. ■

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concern for a Beis Din making an error.

R' Dimi of Nehardea rules that we are not concerned for Beis Din making an error.

This ruling is unsuccessfully challenged.

3)MISHNAH: The Mishnah discusses the laws that apply when a father gives his son title to a parcel of land but retains for himself use of the land during his lifetime. ■