

## OVERVIEW of the Daf

### 1) Torah expertise (cont.)

R' Yehoshua ben Levi continues to elaborate on the earlier-cited verses in Mishlei.

A related teaching of Ben Sira is recorded.

2) **MISHNAH:** The Mishnah discusses when bridal gifts are collected because the marriage was not completed and when the bridal gifts cannot be collected.

### 3) Eating a dinar's worth of food

Rava emphasizes that one must receive a dinar's worth of food before he gives up the right to reclaim the bridal gifts.

The necessity for this emphasis is explained.

Three questions related to the ruling of the Mishnah are presented.

A Baraisa is cited that answers one of the inquiries.

The Gemara unsuccessfully attempts to resolve two other inquiries from this Baraisa.

Two additional inquiries are presented and left unresolved.

Rava makes another related inquiry.

Two unsuccessful attempts are made to resolve the inquiry.

R' Yehudah in the name of Rav tells of an incident of a man who sent numerous gifts to his father-in-law's house for Shavuot.

Two lessons from this account are noted.

R' Yehudah in the name of Rav retells an account of a man who was told his wife had no sense of smell.

Guidelines for determining what gifts are returned and what gifts are not returned are presented.

4) **MISHNAH:** The Mishnah presents guidelines for determining whether a dying person (שכיב מרע) can recover the property he gave away if he recovers.

### 5) Following circumstantial evidence

The Gemara seeks the identity of the Tanna who utilizes circumstantial evidence in determining halacha.

R' Nachman suggests that the Tanna is R' Shimon ben Menasya and cites a related Baraisa.

R' Sheishes proposes that the Tanna is R' Shimon Shezuri.

Each Amora explains why he did not think it was the Tanna cited by the other Amora.

The Gemara begins to cite a Baraisa to determine its author. ■

## Distinctive INSIGHT

*A gift of a deathly-ill person where he kept something for himself*

ושייר קרקע כל שהוא מתנתו קיימת

The Mishnah teaches the law that if a deathly-ill person writes a gift document giving all his possessions to others who are not his heirs, if he retains for himself even a minimal amount (כל שהוא) of land, the gift is valid, even if the giver subsequently recovers from his illness. If the giver later recovers he might claim that he only gave the gift because he was under the mistaken assumption that he was going to die, but had he known or realized that he would survive he never would have given such a large gift to anyone. If this claim is presented, the court would dismiss it, and the gift is validated. The Rishonim (Rashbam, Rabeinu Gershom, Rabeinu Yona, R"l Migash) explain that the reason for this halacha is that since he retained some of his possessions for himself and he did not give away everything he owned, his intent was certainly that he might survive, and in that case he was keeping something for himself to have and to own for his own subsistence. Whatever he gave, therefore, was given as a full gift, as is done by a regular, healthy person.

רמב"ם points out that even if he leaves something for himself, this does not prove that he was assuming that he was considering the possibility that he might survive. Perhaps he was under the assumption that he was going to die, and he retained some land for his heirs to inherit. רמב"ם answers that the receiver of the gift has a document in his possession that he has received this person's property as a gift. We really have to honor this gift document unless we have a compelling argument to show that the gift was given with restrictions. Only when the deathly-ill person gives everything he owns that it is clear and obvious that the gift was certainly given under the assumption that he would die. If he retains some land for him-

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## REVIEW and Remember

1. When is one able to recover the bridal gifts he sent to his bride?  
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2. Why was it important to know what one particular individual sent as bridal gifts?  
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3. How did the man test to see if his wife had no sense of smell?  
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4. What are examples of following an אומדנא?  
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# HALACHAH Highlight

## Inheriting property from one's murder victim

מעשה באדם אחד שאמר לו אשה תותרנית היא וכי

*There was once an incident of a person who was told that his wife had no sense of smell etc.*

In the Gemara, we find a story of a man who heard that his wife had no sense of smell. He decided to test her, and if it was true, he planned to divorce her. As she stood in a ruined building, before the husband could determine his answer, a wall fell and killed the woman. The sages ruled that the man does not inherit from his wife. Rashbam<sup>1</sup> suggests a reading of the Gemara which states: אמרו חכמים הואיל ונכנס אחריה לבודקה – "Chachamim said: Since he followed after her to test her," he does not inherit from her. According to this text, the couple had already completed nissuin, therefore, the husband should have inherited his wife's property. However, since there was the possibility that he would divorce her if he discovered that she had no sense of smell he does not inherit since a husband who intends on divorcing his wife does not inherit her property. This explanation formed the foundation of a fascinating question posed to the author of Teshuvos Dvar Yehoshua<sup>2</sup>.

There was once a man who killed his wife, and in a display of ultimate chutzpa he sought to inherit her estate now that she was dead. The judge involved in the case claimed to have researched the matter and could not find a halachic source that addresses this matter so he turned to secular sources for guidance. Teshuvos Dvar Yehoshua felt a need to defend the honor of Torah and found a source for this issue. Rambam<sup>3</sup> wrote that a בן סורר ומורה is treated the same as any other person who is executed by Beis Din and his property will be inherited by his father, even though his father was indirectly responsible for his

*(Insight...continued from page 1)*

self, it could be that he was saving it for his heirs, but it could be that he was considering that he might survive, and that the gift was given outright and unconditionally. Therefore, when he keeps anything for himself, the gift is to be honored.

Regarding the amount of land which must be kept, Rashbam explains that it must be enough for the person to be able to earn a living (כדי פרנסתו). This is according to R' Yehuda, later in the Gemara (149b). R' Yirmiya bar Abba says it is enough even if he keeps a small amount of movable items. Rambam (Hilchos Z'chiya u'Matana 8:15) says whether it is land or movable objects, all that is necessary is a כל שהוא.

S"ma (250:#16) explains that although a person does not want to give away all he owns in order for himself to have to beg door to door, sometimes a person can start even with a small amount, and buy and trade until he earns a large enough sum in order to survive very nicely. ■

death. The reason Rambam needed to emphasize his last point, explains Radvaz<sup>4</sup>, is that one may have thought that since the father stood to inherit his son's property perhaps that desire was the father's motivation in having his son prosecuted as a בן סורר ומורה. If that concern was real we would expect Chazal to enact that the father should not inherit so that no one would suspect that that was the father's motivation. Dvar Yehoshua proceeds to demonstrate from numerous sources that the case of בן סורר ומורה is the exception to the rule and generally when a person is the cause of another person's death, even indirectly, he will not inherit the deceased's property. ■

1. רשב"ם ד"ה נפלה עליה חורבה ומתה
2. שו"ת דבר יהושע ח"א סי' ק'
3. רמב"ם פ"ז מהל' ממרים הי"ד.
4. פירוש הרדב"ז שם. ■

# STORIES Off the Daf

## The questionable inheritance

"הואיל ולא נכנס אחריה אלא לבודקה..."

A certain Reb Mordechai had a difficult time living peacefully with his wife. Their quarrels escalated to the point where he felt that the only way to settle their differences was with a divorce. When his wife refused to consider this option the husband was so disappointed that he left their hometown of Pozna, eventually finding himself in Cracow, where he spent his days learning.

While he was in Cracow for an ex-

tended time he sent his wife several letters and messengers in a massive effort to convince her to agree to divorce, but to no avail. The woman was adamant in her refusal and the husband felt absolutely stymied by her stubbornness, when she suddenly passed away.

Since she came from a wealthy family and had large holdings of her own, the husband was afraid that her relatives would claim that he has no right to inherit her belongings, since his most avid desire had been to get a divorce. To avoid such unpleasantness, he asked the Rema, zt"l, if he had a right to inherit in this case. "You definitely inherit from her. Although the Rashbam in Bava Basra 146 learns from

the Gemara that a husband whose wife dies while they are in a fight does not inherit from her, the halacha does not follow this opinion. Tosefos, the Rosh, the Mordechai and the Tur all rule that a husband inherits from his wife unless they actually divorced, and this is the halacha.

The Rema concluded with a surprising point. "It seems clear that even the Rashbam is only discussing a place where one can force his wife to divorce. But in our country where this is prohibited and the husband tried to divorce his wife and was unable to do so, why shouldn't he inherit his wife's belongings?"<sup>1</sup> ■

1. שו"ת הרמ"א, סי' קי"ב ■