

OVERVIEW of the Daf

1) Deathbed gift (cont.)

R' Pappa offers a resolution to the contradictory rulings of R' Nachman.

R' Acha the son of R' Ika suggests another resolution.

The Gemara inquires about the effectiveness of a gift of a tree to one person and its fruit to another.

After elaborating on the question a corollary question is presented.

Rava in the name of R' Nachman answers the second question.

According to a second version this discussion began with contradictory rulings of Reish Lakish.

R' Yosef bar Minyomi in the name of R' Nachman presents guidelines for determining whether a dying person who recovers takes back his gifts.

The rationale behind one of these guidelines is explained.

R' Acha bar Minyomi in the name of R' Nachman rules that a dying person who gave away all his possessions cannot recover them if he heals since we are concerned that he has property in another country.

This ruling is challenged from our Mishnah.

Two answers to the challenge are recorded.

2) Retracting a deathbed gift

The Gemara inquires whether one who retracts part of his deathbed gift is considered to have retracted the entire gift.

A Baraisa is cited and following some analysis it is determined that a partial retraction is the same as a retraction of the entire gift.

The Gemara rules that a partial retraction is the same as a retraction of the entire gift and explains the Baraisa in light of this ruling.

3) Other means of distributing one's estate

The Gemara inquires whether consecrating, declaring ownerless or pledging to the poor is the same as gifting one's possessions.

The questions are left unresolved.

R' Sheishes presents different words that are effective at giving away property as a gift.

A Baraisa adds additional phrases that are effective at giving away property as a gift and the Gemara explains follows the position of R' Yochanan ben Berokah. ■

Distinctive INSIGHT

When the שכיב מרע reassigns part of the gift

איבעיא להו חזרה במקצת הוי חזרה בכולה או לא

The Gemara presents an inquiry which was discussed among the sages. A שכיב מרע gave all his possessions as a gift to one person. He then changed his mind regarding a portion of the gift, and he instructed that that portion be given to someone else other than the first receiver. The halacha is that a שכיב מרע may take back his instructions regarding a gift he gave, because the gift was only set to be effective after his death (135b, דייתיקי מבטלת דייתיקי - a subsequent will cancels an earlier will).

The question is whether the partial retraction of the gift to the first person is tantamount to a full retraction, as it indicates that he has changed his mind, or is it precisely as it seems - a partial retraction, and the remaining amount not reassigned to another person remains as a gift to the first person. One practical outcome of this question is regarding the first person, and whether he is still in line to receive the remainder of the estate of this שכיב מרע. Another outcome of this question is regarding the second person. If the gift from the first person is completely reversed, the gift to the second person is a מתנה במקצת, and it cannot be reversed, even if the ill person recovers. If, however, the gift of the remaining amount is still intact, the gift to the second person is still part of a "gift of all his assets," and the ill person would be able to take it all back from both of the receivers if he recovers.

Nimukei Yosef explains that if the שכיב מרע says explicitly that he is assigning only part of the original gift to a second person, it is obvious that the rest of the gift to the first person remains valid. The question in the Gemara is a case where the ill person did not issue clear instructions. שיעורים קובץ שיעורים (#526) refers to a Gemara in Gittin (8b-9a)

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REVIEW and Remember

1. Do people give only partial gifts?

2. What is a person's mindset when he leaves something for himself?

3. What is the order of the dying person's thinking as he contemplates giving away his property?

4. What are different verbs that imply that one is giving property as a gift?

HALACHAH Highlight

Are uncertainties pertaining to tzedaka treated stringently or leniently?

חילק כל נכסיו לעניים מאי

If he pledged his property to the poor, what is the halacha?

There was once a man who received an aliyah and following his aliyah he had the gabbai make a **מי שברך** so that he could pledge tzedaka to one of the local tzedaka organizations. At the time of the **מי שברך** he mentioned a specific organization but afterwards could no longer remember to which organization he had pledged. He inquired of Chasam Sofer whether he is obligated to pay the amount that he pledged to each of the tzedaka organizations in town. His logic was that giving to tzedaka is a Biblical mitzvah and therefore as with all uncertainties related to a Biblical mitzvah one should adopt the stringent approach – **ספק דאורייתא לחומרא**. On the other hand one could argue that pledging money to tzedaka creates a monetary obligation but as with all monetary obligations the one who is owed the money must step forward and claim the money that he feels is halachically his. Accordingly, until an organization steps forward and makes a claim for the money he pledged he is not obligated to pay anything. A third approach would be to take the money he pledged and place it in front of all the local tzedaka organizations for them to sort out what to do with the money.

Chasam Sofer¹ responded that this inquiry could be resolved from the Rishonim on our Gemara. The Gemara inquires whether a dying person, who consecrated, declared ownerless or pledged property to the poor, can recover his property if he recovers from his illness. Haghos Ashri rules that since the inquiry was not resolved the matter is treated like other monetary uncertain-

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where we find an opinion which holds that we do not say **פלגינן דיבורא** regarding a **שכיב מרע** who wrote a document giving his slave his property except for some unspecified portion. According to this opinion, every case of the **שכיב מרע** taking back even part of the gift should automatically result in a full reversal of the gift. Where, then, is there room for the Gemara to ask whether the gift to the first person is still intact or not?

He answers that the Gemara in Gittin is discussing a case of a written document given to the slave. There, when part of a document is compromised, the entire document and the gift written in it is dismissed. Here, the gift to the first and second person is presented verbally, with the **שכיב מרע** using the special dispensation allowed for him to issue instructions verbally. Here, there is room to argue that the reassignment of part of the gift still allows the remaining amount to remain intact. ■

ties and the money remains where it is, in this case the possession of the one who was deathly ill. This indicates that uncertainties regarding a pledge to tzedaka are treated like all other monetary uncertainties. However, Chasam Sofer cites numerous other Rishonim who write that tzedaka should be treated like an uncertainty pertaining to a prohibition and one should adopt a stringent approach. Aruch Hashulchan² rules that all opinions would agree that when there is a doubt regarding a matter of tzedaka as opposed to our case that involves the instruction of one who was on his deathbed, one must adopt a stringent approach. ■

1. שו"ת חת"ס יו"ד סיק ר"מ.

2. ערוה"ש יו"ד סי' רנ"ט סעי' ט"ו. ■

STORIES Off the Daf

A deathbed bequest

"שכיב מרע שאומר תנו הלואתי לפלוני..."

When a certain very wealthy man was on his deathbed, he realized that he had not given enough tzedakah and decided to remedy this fault immediately. He told the gabbai tzedakah at his side that he had deposited one hundred and fifty gold coins with a certain very trustworthy non-Jew who would repay on demand. "I want you to give this money out to the poor. Distribute it to poor bochorim, poor brides, and whoever else will eternally benefit my soul."

The wealthy man gave the gabbai

tzedakah the password he had set up with the non-Jew to enable collection, and then immediately died.

After the shivah the inheritors of the wealthy man declared that the gift of one hundred and fifty gold coins was halachically invalid. They reasoned that since this was a clear case of a deathbed bequest, it only takes effect if the deceased gave out all of his property. Since he had only given the hundred and fifty gold coins, a tiny fraction of his vast estate, it was as if he had not given any gift at all.

When this question was brought before the Mahari Bruno, zt"l, he ruled that the gift was in fact valid. "Although on the surface it would appear that this should not take effect, it does. On Bava Basra 148 we find that if a man on his deathbed said

that the money owed to him should go to a certain party, this takes effect. Yet the Maharam and the Mordechai both rule that this is only regarding a loan to a Jew. But a loan given to a non-Jew cannot be transferred in this manner since he does not feel confident that the non-Jew will repay.

"Nevertheless, I hold that the gift takes effect since this non-Jew is clearly different from others. After all, the Jew left a deposit with him and felt certain that he would repay, as he had on many occasions in the past. It is therefore considered to be money which will certainly be repaid, and the gabbai tzedakah acquired the money in lieu of the poor."¹ ■

1. שו"ת מהר"י ברונו, סי' רי"ב. ■