

OVERVIEW of the Daf

1) Other means of distributing one's estate (cont.)

The Gemara inquires about the meaning of two additional expressions, and the matter is left unresolved.

2) Selling one's possessions

The Gemara inquires whether a dying person who sold all of his property can recover the property if he recovers.

Two conflicting statements of R' Yehudah are recorded and the Gemara explains that the statements are not contradictory.

3) A dying person's admission

The Gemara inquires whether we believe a dying person who admits that some of his property is not actually his own.

An incident and subsequent discussion is recorded that proves that a dying person's admission is taken seriously.

4) Retaining a small parcel of land

R' Yehudah in the name of Rav and R' Yirmiya bar Abba disagree about the minimum size land the dying person retains that causes him to not be able to recover his property if he recovers from his illness.

R' Zeira praises these two opinions.

R' Yosef challenges these opinions.

Abaye begins to respond to the challenge. ■

REVIEW and Remember

1. If a deathly ill person sold his possessions and then recovers is he permitted to take back those possessions?

2. What is a אודיתא?

3. What is the definition of a כל שהוא?

4. Does the word קרקע refer to land exclusively?

Distinctive INSIGHT

A gift of a שכיב מרע to someone who is not an heir
 מתנת שכיב מרע כירושה שווה רבנן כל היכא דאיתיה בירושה
 איתיה במתנה וכל היכא דליתיה בירושה ליתיה במתנה

Issur was a convert, and he had twelve thousand zuz in Rava's possession. Rav Mari was the son of Issur, but he was not his legal heir, as he was conceived before his father had converted. Issur became deathly ill, and he wanted to transfer the money from Rava to his son, Rav Mari. Rav Mari was in the beis medrash of Rav as this was happening, and Rav noted that there was no legal way for Issur to transfer the money to Rav Mari. Among the suggestions posited was that he simply give them as a מתנת שכיב מרע, a gift of a deathly-ill person. Rava dismissed this option, because "a gift of a deathly-ill person only functions along the guidelines of inheritance." This means that if there is a possibility of someone's receiving inheritance, he is eligible to be a recipient of a gift. If someone is not eligible to receive inheritance, he cannot be the recipient of a gift.

Rashbam explains that this does not mean that the recipient of a gift has to be a potential heir of this person, but rather that he must be a Jewish person, who is someone who is eligible to inherit from his own ancestors. Rav Mari was conceived before his father had converted, so, by definition, he had no paternal ancestors.

Ritva explains that a gift of a שכיב מרע is effective after the ill person dies. Technically, this should not be valid, because a dead person cannot designate ownership of his former possessions. Nevertheless, our sages enacted a special dispensation to validate this transfer as if it were an inheritance to the receiver, and the reason was in order that the ill person, approaching his death, not be disturbed or frustrated that he will not be able to choose who will receive his property. Yet, the enactment was arranged according to laws of inheritance, and a son of a male convert conceived before the father's conversion would not be eligible.

Ri"ף seems to hold that the rule in the Gemara should be understood literally. The only one who may receive a מתנת שכיב מרע is someone who is an heir of the giver. Accordingly, Ri"ף asks that Rava is undermining the entire concept of a מתנת שכיב מרע for non-family members. Ri"ף therefore explains that the statement of Rava is to understood strictly in regard to heirs, and he is teaching that one who is eligible to inherit does not receive property from

HALACHAH Highlight

Calling someone for an aliyah whose father was a gentile

תא שמע דאיסור גיורא וכו'

Come and hear: Issur the convert etc.

Rashbam¹ explains that Issur had relations with Rochel while still a gentile and from that union R' Mari was born. Some time later Issur converted to Judaism but nevertheless R' Mari is referred to as the son of Rochel rather than the son of Issur.

There was once an incident of a Jewish man who had a relationship with a gentile woman and they had a son. Shortly after their son was born the woman and child converted and they lived their lives as religious Jews. At some point the son raised the question of whether he can be called to the Torah using his father's name since a son born to a Jewish father and gentile mother is not considered the halachic son of the Jewish father. Teshuvos Minchas Yitzchok² initially mentioned the fact that R' Mari is referred to by his mother's name as proof that one does not refer to a child by his biological father's name if he is not his halachic father as well. He then writes that in the case described where the boy was raised in the home of his biological father it is acceptable to refer to him as his son. The basis of this ruling is found in a ruling of Rema³ where he writes that if one who raises an orphan in his home refers to that child as his son (בני) in a

(Insight...continued from page 1)

his relative as a gift, but only as inheritance. Ramban and Rashba explain that this means that even if the transfer is worded in terms of a gift, it is legally interpreted to be inheritance. However, when the receiver is one who is not in line to inherit, the שכיב מרע may give his possessions to whomever he wishes as a gift. ■

legal document the document is not invalid. The reason is that it is common to refer to a child one has raised as his son. Accordingly, in this incident as well although the biological father is not his halachic father, nevertheless, since he raised him in his home the child can be called up for an aliyah using his biological father's name.

Teshuvos Mishnah Halachos⁴ rejects the use of the halacha regarding legal documents as precedent for the correct name when calling someone for an aliyah. In contracts the primary concern is to have a clear picture of the intent of the party writing the document. Therefore, since an orphan is referred to by the name of the one who raised him that name is the correct way to identify him. In contrast the name one uses for an aliyah must reflect his true name to prevent people from getting the wrong impression about the relationship which can have ramifications in other areas of halacha that relate to yichus. ■

1. רשב"ם ד"ה דאיסור.
2. שו"ת מנחת יצחק ח"א סי' קל"ו.
3. רמ"א חו"מ סי' מ"ב.
4. שו"ת משנה הלכות ח"ד סי' קס"ז. ■

STORIES Off the Daf

Rava's intention

"אי קפד רבא..."

Rav Yehudah Werthheimer, zt"l, once asked a very pressing question on today's daf. "Rava points out that there is seemingly no way for Issur, a convert, to bequeath the large deposit he had made with Rava to his son from before he converted. Strangely, when Rav Ikah finds a way to enable the son to receive the deposit after all, and Issur does it, Rava is angered. This doesn't seem to benefit Rava. What was Rava thinking and why was he upset?"

He then offered a brilliant reply. "Once, one of the roshei kahal in the

Chasam Sofer's community lost a large sum of money. The Rav called this man to him and lent him a sizeable amount of money—to be repaid whenever he wished—and sent him away with many blessings for success in business.

"The blessing was fulfilled and this man soon prospered once again. The moment he was comfortably able, he repaid the money to the Chasam Sofer, even bringing along a valuable gift. The Chasam Sofer took the gift in his hands and praised it very highly. 'What a precious gift! And so expensive!'

"When the students saw this they were astounded. A few even insisted that it was their duty to remind him that accepting such a gift was interest. But as they were deliberating the Chasam Sofer returned the gift, explaining that it was

forbidden for him to accept it. After the community leader left, the Chasam Sofer explained that only in this manner was the mitzvah of refusing interest complete. He said, 'It was only complete after he saw that I would have liked to take it but cannot, due to the halachah.'

"The same is true in our Gemara. Rava wished to show his students the importance of money and that he would have wished to keep the fortune that had been entrusted to him. After showing that there is no way out, he planned to give it to the son nevertheless but Rav Ikah ruined his opportunity to act l'shem shamayim and educate his students by suggesting a way to force him to give it to the son. Is it any wonder that Rav took offense?"¹ ■

■ במדבר יהודה, ח"א, ע' שמי"א