

OVERVIEW of the Daf

1) Retaining a small parcel of land (cont.)

R' Yosef defends his position against the challenge from Abaye.

Abaye unsuccessfully challenges R' Yosef's assumption that the words **כל שהוא** mean that there is no specified amount.

2) Defining the intent of different phrases

The Gemara defines the meaning of different phrases.

The Gemara inquires whether slaves are treated like land or like movable property for these halachos.

R' Acha the son of R' Avya attempts to resolve this matter.

R' Ashi rejects this proof.

Ravina attempts to resolve this matter but R' Ashi rejects this proof as well.

3) Giving away all of one's possessions

Rava in the name of R' Nachman enumerates five gifts whose effectiveness depends upon whether the person gave away all of his possessions.

The sources for each of the five cases are presented.

4) Defining the intent of different phrases (cont.)

The Gemara enumerates different items that are included in the phrase **נכסים**. ■

REVIEW and Remember

1. What is included when one adds the term **כל** to the phrase **מטלטלי**?
2. Is a slave considered a movable object when a person gives away all his movable objects?
3. Who are the five people who must give away all their possessions for the transfer to be effective?
4. What items are included in the term **נכסים**?

Distinctive INSIGHT

Defining the term "**כל שהוא**—Anything"

וכל היכא גתני כל שהוא לית ליה שיעורא

The Mishnah (146b) taught the halacha that if a **שכיב מרע** writes a gift of all his possessions to someone, if he retains some land, even the size of "**כל שהוא**—anything," the gift is binding, even if the giver recovers from his illness. We assume that his retaining something for himself indicates that somewhere in his mind he considered the possibility that he might survive, and he gave the gift nonetheless.

The Gemara (149b) inquired regarding the amount of land necessary to be retained in order for this stipulation to be fulfilled. Rav Yehuda said in the name of Rav that the land must be large enough for the owner to be able to earn a living from its produce. Rav Yirmiya bar Abba said that even a bit of movable objects are enough for the giver to retain in order to satisfy this halacha. Rav Yosef retorted that the words "**כל שהוא**" indicate "anything," and that *any* amount of land retained is enough.

In our Gemara, Abaye revisits Rav Yosef's statement. Is it true that "**כל שהוא**" has no lower limit? We have a Mishnah in Chullin (135a) where Chachamim rule that **כל שהוא** of wool from five sheep is obligated in **ראשית הגז** to be given to the kohen. And in the Gemara, Rav provides a clear lower limit on the wool necessary for this halacha. Why, then, does R' Yosef insist that **כל שהוא** has no lower limit?

Tosafos (תד"ה וכל) notes that the question of Abaye from the Mishnah in Chullin is just one source, but a Mishnah cited earlier (27a) teaches that an amount of land "**כל שהוא**" is obligated in the law of **פאה**, and there is no lower limit in that halacha. So, we see that R' Yosef is correct, and the question of Abaye has to be understood. It seems, explains Tosafos, that the context of the Mishnah regarding **פאה** allows the term "**כל שהוא**" to be without a lower limit, but without the context indicating that, it is more reasonable that there be a defined amount to the term "**כל שהוא**".

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HALACHAH Highlight

Transferring all the contents of the store

אמר נכסי לפלניא

If one said, "My possessions should go to Ploni."

Lechem Mishnah¹ was asked whether the following transfer was valid. Reuven was on his deathbed and instructed that he is giving as a gift his store and all of the merchandise and money in the store to a young man. The basis to question its validity is a ruling of Rambam² in which he writes that if one transfers ownership of property to a friend as long as it is known what property is being transferred the transaction is valid even though the size, weight or quantity is not known. When it is not known what property is being transferred the transaction is invalid. Accordingly, if one contracts to sell the contents of his house, chest or sack the transfer of ownership does not take effect even if the buyer performed a proprietary act of taking possession of the property. The rationale is that the buyer does not have the necessary frame of mind — סמיכת דעת — for the transaction to be valid since he is unaware whether he is purchasing gold or straw. Consequently, in our case the recipient should not receive the store and its contents since he is unaware of what he is receiving in this trans-

(Insight...continued from page 1)

Rabbi Akiva Eiger (תד"ה וכל to גליון הש"ס) points out that it is clear that our sages were very precise in their words, and the term "כל שהוא" often means "anything" with no lower limit. What does Abaye expect to prove by showing that there is a Mishnah where the words "כל שהוא" have a limit? Rather, the question against R' Yosef is that he should not have proven from the expression "כל שהוא" that there cannot be a lower limit. ■

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Lechem Mishnah responded that the deathbed gift is valid and offered the following explanation. The reason the transaction described by Rambam is invalid is the lack of סמיכת דעת on the part of the buyer since he does not know what he is receiving for his money. That concern applies when discussing a buyer who is giving money towards the purchase of property. Our case, however, involves a gift where the recipient is not required to put out money for the transfer to take effect. Accordingly, the prerequisite for סמיכת דעת is not the same and as long as the recipient is willing to accept the gift, whatever it may be, the transfer is effective. ■

1. שו"ת לחם רב סי' ק"א

2. רמב"ם פכ"א מהל' מכירה ה"א-ג. ■

STORIES Off the Daf

The Intent of the Deceased

"שכיב מרע..."

Today's daf discusses a person who made a deathbed bequest.

A certain man with many assets declared that his store and his storage-cellar would become the property of his brother-in-law. But he made an unusual stipulation. "These gifts are given on condition that my brother-in-law never sells them. In this manner my soul will continue to accrue the merit of his diligent learning."

The brother-in-law enjoyed this

arrangement for many years but eventually he wished to marry off his daughter who was already quite old by local custom. The only way for him to afford a fitting dowry was to sell the assets that his brother-in-law had given him on condition that they not be sold.

Because this was such a serious matter he went to the Toras Chessed, zt"l, to find out if there was any way this was permitted. "You can sell the assets to marry off your daughter since the Mordechai rules that marrying one's daughter to a suitable person is a mitzvah that is incumbent on the father and brings

a powerful proof to this.¹ The Rabbeinu Yerucham holds the same.²

"It is clear that the deceased never meant to bar his beneficiary from doing such a great mitzvah. Therefore selling is not a violation of the will of the deceased. This is especially in view of the fact that the second mitzvah of marrying off the helpless girl to a fitting chosson who will learn Torah is a greater mitzvah than continuing to support his brother-in-law alone!"³ ■

1. מרדכי, קידושין ס' תקכ"ו

2. רבינו ירוחם נתיב כ"ב

3. שו"ת תורת חסד ס' רמ"ד