

OVERVIEW of the Daf

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

The Gemara concludes its list of items included in the definition of the word נכסים.

The Gemara questions whether a Sefer Torah is included in the definition of the term נכסים and the matter is left unresolved.

2) Sheltering money

An incident involving a woman who attempted to shelter her possessions from her husband is recorded.

A second incident involving a woman sheltering her property is presented with the subsequent debate between R' Nachman and R' Sheishes.

3) A sickbed gift

Three incidents involving sickbed gifts are recounted.

R' Nachman is cited as ruling that a deathly ill person's gift of only some of his assets is in some regards treated like a gift of a healthy person and in other regards it is treated like a sickbed gift.

Rava rejected the assertion that this is R' Nachman's position and maintains that it is treated like a healthy person's gift and it requires a kinyan.

Rava unsuccessfully challenges R' Nachman's position.

R' Mesharshiya unsuccessfully challenges the assertion that a sickbed gift of only some of the person's assets requires a kinyan.

Ravina unsuccessfully challenges R' Nachman's position.

R' Huna the son of R' Yehoshua offers alternative resolutions to the previous two challenges.

The Gemara concludes these discussions by issuing final rulings on a number of the cases that were discussed. ■

REVIEW and Remember

1. Is a Sefer Torah considered a possession or not?

2. What is the point of dispute between R' Nachman and R' Sheishes?

3. What is the halacha when a deathly ill person gives away only some of his possessions?

4. How does a person who is fearful of death transfer property to an intended recipient?

Distinctive INSIGHT

The mother of Rami and Rav Ukva and her famous gifts
 אימיה דרמי בר חמא באורתא כתבתינהו לנכסה לרמי בר חמא בצפרא כתבתינהו לרב עוקבא בר חמא

In our Gemara, we find a story of the mother of Rami and Rav Ukva, the sons of Chamma. One evening, their mother wrote a gift of her property to Rami, and the next morning she wrote a different document presenting the same property to Rav Ukva. When each approached a judge to allow him to take possession of the land, Rav Sheishes awarded the land to Rami, while Rav Nachman awarded the property to Rav Ukva.

The Gemara in Kesubos (94b) relates a similar story about this family. There, one morning the mother wrote a document giving her possessions to Rami bar Chamma, and in the evening she wrote a document giving the property to Mar Ukva. There, again, Rav Sheishes and Rav Nachman disagree regarding who should get the property. Rav Sheishes awarded it to Rami, because he felt that his document was dated before that of Mar Ukva. Rav Nachman ruled that it should be owned by Mar Ukva. The conclusion of the Gemara there is that we rule שודא דדייני, which means that the judge should use his discretion to determine the outcome.

The Rishonim (Rashbam, Tosafos, Ritva, et al.) explain that these two stories, although similar, are accounts of different events. In our Gemara, the mother of these two Amoraim was deathly ill (שכיב מרע) when she presented her possessions to her sons. In the Gemara in Kesubos, the gifts were given when the mother was healthy. The proof for this is that Rav Sheishes contended that Rami should own the property because his document was dated earlier. If the case was where the mother was a שכיב מרע, an earlier-dated document does not have any legal advantage, because as long as the ill person giving his property away decides to change his mind, he may do so.

An additional indication that the mother was not a שכיב מרע in the story in Kesubos is that Rav Nachman should have argued against Rav Sheishes and cited the opinion of Shmuel who says that any gift of an ill person which can be reversed if the person recovers can also be reversed even while the person is still ill. The ruling of שודא דדייני would have been uncalled for. Still, another proof is that in our Gemara, the mother gave her possessions to Rami bar Chamma at night, and to Rav Ukva the next morning. The Gemara in Kesubos has the reverse, where the mother gave

HALACHAH Highlight

Protecting one's interest at the expense of another

השתא אמרי מר צורבא מרבנן ומר לאו צורבא מרבנן

Now people will say that the master (R' Tovi) is a rabbinic scholar and the other master (R' Achdavo) is not a rabbinic scholar

The Gemara relates the incident of the sister of R' Tovi bar R' Masna who gave away her property in her will to her brother in the morning. That night her other brother, Rav Achdavo, came and complained that people would now assume that R' Tovi is a rabbinic scholar and he is not. His sister accepted the argument and wrote another will giving away her property to R' Achdavo. Rav Elchonon Wasserman¹ questioned R' Achdavo's behavior. His concern was that people would mistakenly think that R' Tovi was a scholar rather than R' Achdavo but following his complaint people could mistakenly think that R' Achdavo is a Torah scholar and not R' Tovi. Since one is not permitted to do something to another that they would not want others to do to him – מה דעלך סני לחברך לא תעביד – how was R' Achdavo permitted to convince his sister to change her mind?

One possible explanation is that in a circumstance where one of them will inevitably be thought to not be a Torah scholar it is permitted for either one of them to take the necessary steps to assure that he is not that one. This is

(Insight...continued from page 1)

her possessions to Rami bar Chamma in the morning, and to Mar Ukva in the evening. If the Gemara knew that these were the same case, it should have noted the discrepancy regarding the timing of the gifts. Our Gemara also mentions that the mother died, and this detail is not part of the story in Kesubos. See מרומי שדה (148b) who explains how to resolve that these might be one and the same case. ■

based on the principle that authorizes one to express concern for himself ahead of his concern for others – חייך קודמים. The difficulty with this approach is that Ramban² writes that although one is permitted to take steps to assure that one's property is not damaged even if those steps will cause the damage to occur on a friend's property, it is not permitted to remove the damaging entity that is already on one's property and place it onto a neighbor's property. In view of that, it should not have been permitted for R' Achdavo to remove the damage of people erroneously thinking that he is not a Torah scholar and move that damage to his brother R' Tovi. One possible explanation is that since people did not yet know that the sister had given her assets to R' Tovi it is considered as though the damage had not yet occurred and thus it was permitted for R' Achdavo to take steps to prevent himself from that damage even though it ended up damaging R' Tovi. ■

1. קובץ שיעורים אות תקמ"ט.

2. חידושי הרמב"ן ח. ד"ה ערקנן. ■

STORIES Off the Daf

"The Dayanim decide"

"אימיה דרמי בר חמא..."

A certain man wished to move to a different city, so he searched for a renter for his spacious home. After a short time he found a tenant and wrote up a binding contract. But as he was getting ready to leave the city, his mother and sister approached him and pleaded with him to allow them to continue to use his home. Although they had a different place to which they could move, it was not nearly as nice as his house. Eventually, the son agreed to their request and even wrote up a second rent document allowing them a few rooms for their own

use.

When the man who rented the premises arrived he was surprised to find that part of the house was already in use by the mother and sister of the owner of the house. They went to beis din but the rav ruled that they could stay for two reasons. Firstly, on account of shudah d'dayni. It seems clear that he would not have wished to turn his mother and sister out. Secondly, they had a chazakah on the premises since they had lived there for a long time.

But when a second scholar heard this ruling he was uneasy about it, and he consulted with the Ridbaz, zt"l, telling him the entire matter. The Ridbaz replied, "I have serious misgivings about what you have told me. Perhaps you have misunderstood what happened

here, since no scholar could possibly err to such a great degree. If that is really what happened this man has made many errors. Their chazakah and their document are irrelevant since the owner issued a binding document to the new tenant, who prepaid on the rent. And as far as shudah d'dayni goes, it is clear that this case has nothing to do with shudah d'dayni, which is only regarding a questionable case as we find in the mefarshim on the gemara in Bava Basra 151 and Kesuvos 94. For instance, it would apply if two documents had been issued but we were unsure who got his first. Or if there had been a document but no kinyan. But in our case the halachah is clear and this principle is completely irrelevant!"¹ ■

1. שו"ת רדב"ן, ח"ג, ס' תנ"ז ■