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בס"ד

OVERVIEW of the Daf

1) The kinyan of a deathly ill person

Rav maintains that a deathly ill person who makes a kinyan gives the recipient the strengths of a deathbed gift as well as a healthy person's gift.

Shmuel relates that he does not know how to judge this case.

Each Amora elaborates on his position.

The Gemara cites another dispute between Rav and Shmuel and it emerges that both opinions contradict one another.

The two contradictions are resolved.

Another ruling from Shmuel is cited that seemingly contradicts his position.

R' Nachman resolved the contradiction with a hand signal.

2) Giving one's assets to a second person

In the name of R' Dimi the Gemara rules that if a deathly ill person changed his mind and gave his assets to a second person the second person is the recipient of the property.

Rav and Shmuel disagree about the halacha when the deathly ill person gave a will to each person.

Each Amora explains the rationale behind his position.

It is noted that Rav and Shmuel disagreed about this point in another context.

The necessity of both disputes is explained.

According to a second version Shmuel was asked by the yeshiva of Rav whether a deathbed gift that was accompanied by a kinyan can be retracted.

Shmuel responded that once a kinyan was performed the transfer can not be reversed. ■

REVIEW and Remember

1. What is the disagreement between Rav and Shmuel concerning a deathbed gift that was transferred with a kinyan?

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2. What is the point of dispute between Rav and Shmuel concerning the delivery of a document after a person died?

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3. What is the halacha when a dying person makes a deathbed gift with a kinyan to two people?

_____

4. Why was it necessary for Rav and Shmuel to disagree about a deathbed gift with a kinyan in two contexts?

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Distinctive INSIGHT

Presenting gifts to two people, one after the other

פשיטא כתב לזה וכתב לזה היינו דכי אתא רב דיני אמר דייתיקי מבטלת דייתיקי

The Gemara discusses the halacha where a שכיב מרע gives his possessions to two different people, one after the other. The first case is where he gives a written document regarding the gift to each. Here, the second gift is valid, and the first one is cancelled. This is a classic example of "דייתיקי מבטלת דייתיקי" - a subsequent will cancels a previous will. The deathly-ill person retains the right to reverse his gift, as it only takes effect after his death. Until he dies, the property remains his to do with it as he wishes, including the ability to give it to a different person. The מרדכי writes that this is only true where the שכיב מרע gives his property to a different person. If, however, he gives his property to Reuven in Tishrei, and he again gives his property to Reuven a second time in Cheshvan, we do not say that the first gift is no longer valid and that it is only the second gift which is valid. Rather, we would say that the second act of giving is a reinforcement of the first gift itself. If there was any question regarding the timing of the gift, the halacha would recognize the gift as being dated back in Tishrei.

The Gemara then brings a disagreement regarding a case where the שכיב מרע presents his possessions to two people, where he was כתב וזיכה to one after the other. Rashbam understands that the case is where the ill person gave his property to someone, and he gave a document to him as proof of this acquisition. He then did the same for another person. Rav rules that the first person is the legitimate owner. The handing over of the document strengthens and reinforces the gift, and it cannot be reversed even if the giver recovers. Shmuel holds that the second person is the true owner, consistent with his view that the gift to the first person which may be reversed if the giver recovers is not a valid gift in the meantime (151a), even during his illness.

Rosh explains that the case of כתב וזיכה is where the שכיב מרע gave a document to the receiver, and he also assigned a third party to accept the gift on behalf of the receiver. If the gift was movable objects, he gave the objects to the third party on the behalf of the receiver, and if the gift was land, he told the third party to acquire the land for the receiver.

Ramban and Rashba explain that the case is where the ill person gave a document to the receiver, and he also told two witnesses that he was transferring the property to the receiver with the document. This is why Rav holds that the

(Continued on page 2)

HALACHAH Highlight

Changing the nusach of a shul against the intent of the donor

בידוע שלא היה קנין אלא מחמת המיתה

There was once a wealthy man who donated the necessary funds to start a shul and stipulated that the shul should daven nusach Ashkenaz. Many years later and after the donor died there remained only a few members in the shul. Nearby, there was a chassidishe shul that for a number of reasons closed down and wanted to daven in the nusach ashkenaz shul. The Chassidim far outnumbered the members of the shul but had two concerns. The Chassidim wanted to change the nusach of the davening from ashkenaz to sefard but were unsure whether it is permitted for a shul to change their nusach for davening. Secondly, even if it is permitted for a shul to change their nusach would it be permitted in this case since the donor had stipulated that the shul should daven nusach ashkenaz. The community turned to the author of Teshuvas Chelkas Yaakov[1] for guidance concerning these issues.

After discussing the issue of changing the nusach of the shul and ruling that the Chassidim may not change their nusach and it would be necessary for the shul to change to nusach sefard he begins to address the issue of whether it is permitted to deviate from the explicit intent of the donor. He cited Shulchan Aruch[2] that states that we interpret a person's vow or oath according to his intent and presents a number of examples. Taz[3] adds that when the vow affects someone else the normal standard of determining intent is not sufficient; rather it must be patently obvious what the person was thinking (אומדנא דמוכח) in order to deviate from the words of his vow. An example is our Gemara that discusses the deathly ill patient who gave away his assets and had the recipients make a kinyan. Nevertheless, if he recovers he may take back those assets since it is evident to all that he gave them away only because he was concerned that he would die. As such, if he recovers he may take them back. Tosafos[4] writes, however, that when the vow is not dependent upon others the standard assumption regarding intent is sufficient. Therefore, in this case since the donor's stipulation is not dependent upon others it is safe to make assumptions regarding his intent and it may be assumed that the donor would be happy with the change since the result is more people davening and learning in the shul that he donated. ■

1. שו"ת חלקת יעקב או"ח סי' ל"ו.
2. שו"ע יו"ד סי' ר"ח סע' א'.
3. ט"ז שם סק"ב.
4. תוס' כתובות מ"ז : ד"ה שלא. ■

(Insight...continued from page 1)

first receiver is awarded the property, as this is more than a case of דייתיקי of a שכיב מרע, which could have been reversed and given to a second person. ■

STORIES Off the Daf

An interfamilial dispute

"מתנת שכיב מרע..."

Today's daf continues to discuss the halachos of a person who bequeathed property on his deathbed.

A certain man declared on his deathbed that he wished to earmark the astronomical sum of five hundred gold coins to his poor relatives. After he died, there was a big dispute. There were only two or three very close relatives and they immediately claimed the entire sum for themselves. The more distant relatives argued that it was inconceivable that he had meant to give them such a fortune. Clearly he had meant to include his more distant relatives in this huge windfall as well. Then the wife's relatives also claimed that they were entitled to a portion of their late relative's beneficence. The husband's side declared that they certainly had no rights here since he had not mentioned them explicitly and they were not actually blood relatives. The very few close relatives, for their part, brought a proof that they are the only true relatives from the Ritva and Hagahos Maimonios brought in the Beis Yosef in Choshen Mishpat.[1] "The law regarding the term relatives is clearly only those who are prohibited to bear witness for or against their relative. From this it seems clear that the more distant relatives do not receive a penny since they are valid to bear witness."

This question was brought before the Chasam Sofer, zt"l, who ruled that the more distant relatives of the deceased were correct. "Despite the usual definition of relatives which is indeed a relative who is forbidden to bear testimony, in our case the more distant relatives are also entitled. How can we possibly reconcile that he wished to give gifts to his poor relatives by making a few wealthy instead of taking care of the many more who are destitute and leaving them all comfortable?"

The Chasam Sofer concluded, "But as far as the wife's relatives are concerned, they are definitely not included since the deceased did not explicitly mention them and they are not actual blood relatives."[2] ■

1. ב"י, חו"מ, סי' רמ"ז
2. שו"ת חת"ס, חו"מ, סי' רמ"ז ■

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