

OVERVIEW of the Daf

1) Giving one's assets to a second person (cont.)

The Gemara further clarifies Shmuel's position that once a kinyan was performed the deathly ill person cannot retract the gift.

A related incident is recorded.

Another incident leads to a disagreement between Rav and Shmuel.

Each Amora explains the rationale behind his position.

Nehardai rules in accordance with the position of Rav. Rava qualifies this halacha.

Ameimar relates that the halacha does not follow Rava and explains why it was necessary to state this fact.

Two additional incidents are recorded.

2) **MISHNAH:** R' Meir and Chachamim disagree who has the burden of proof when there is a disagreement whether a gift was made by someone who was deathly ill.

3) Deathbed gift

There was a deathbed gift document that was missing the declaration that the person had died and Rabba ruled that it is nevertheless valid.

Abaye challenges this ruling.

R' Huna the son of R' Yehoshua answers that Rabba follows the opinion of R' Nosson in his disagreement with R' Yaakov concerning a document that does not specify whether it was a deathbed gift or not.

R' Elazar applies the same dispute to a case involving tum'ah.

Rava limits the application of the ruling in the Mishnah related to tum'ah. ■

REVIEW and Remember

1. What is the dispute regarding a gift that was given "in life and in death"?

2. What is the halacha when one claims that he gave a gift while deathly ill?

3. What is the point of dispute between R' Yaakov and R' Nosson?

4. How does R' Elazar apply the dispute between R' Yaakov and R' Nosson to the laws of tum'ah?

Distinctive INSIGHT

Did the gift giver die due to the illness?

אמר ליה אביי השתא ומה ספינה שרובן לאבד נותנין עליהו חומרי חיים וחומרי מתים, חולין שרוב חולין לחיים לו כל שכן

The Mishnah presented a disagreement regarding a case where a gift was given, but the giver claimed that he was a **מרע שכב** when it was arranged, and now that he recovered the gift should be cancelled. The receiver claimed that the giver was a healthy man when the gift was arranged, and the gift was final. R' Meir holds that the giver must prove that he was deathly ill when he gave the gift, or else the gift is valid. Chachamim hold that the receiver is, in effect, trying to extract the property from its owner, and the receiver must prove that the giver was healthy when he gave it.

The Gemara tells the story of a gift document which related that the giver was on his deathbed when he made the arrangements for the gift, but the document did not state explicitly that he died from that illness, as was the custom. Rabba ruled that the gift was valid. The man was in his grave, so we could assume that he died after giving the gift. Abaye disagrees and claims that we must assume that he survived. He contends, "If a boat is sinking at sea, the halacha continues to consider the passengers as alive until we know otherwise (while we also apply stringencies assuming they may be dead), even though most people on boats under such conditions do not survive. Certainly, then, we must consider the ill person alive until we know otherwise, as most people recover from illnesses."

We must examine the question of Abaye. Rabba correctly notes that the person is currently in the grave, and he claims that the halacha should reflect current conditions. What, then, is the comment of Abaye from the case of the boat, where the passengers were still alive at last report? Perhaps Rabba only introduced the death factor because the ill man is now dead, but he might agree that re-

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מרת בתי' בת ר' יאור מרדכי, ע"ה

HALACHAH Highlight

A kohen visiting a hospital

חולין שרוב חולין לחיים

When it comes to ill people where most ill people live

Teshuvah Teshuras Shai¹ ruled that it is permitted for a kohen to visit someone who is ill in the hospital and he does not have to be concerned with the possibility that someone may die during the course of his visit. He bases his ruling on our Gemara which is clear that most people who are ill recover from their illness. Certainly, when possible, one should find out whether there are dead bodies in the hospital but once that is ascertained it is permitted for the kohen to enter without concern that someone will die during his visit. Rav Moshe Shterunbuch, in his sefer Teshuvah v'Hanhagos² writes that if the hospital is not populated by people who are dangerously ill it is permitted for a kohen to visit without concern that someone may have died in the hospital since most patients in the hospital do not die. A kohen would not be permitted to visit a hospital that accepts patients that are dangerously ill since the majority that indicates that most patients do not die is weakened by virtue of the fact that many dangerously ill patients do die. Additionally, if it is a teaching hospital and they store limbs for students to study, it is prohibited for kohanim to enter the hospital.

Rav Moshe Feinstein³ was asked whether it is permitted for a kohen to accept a position working in a hospital if he will not be able to leave when someone dies. He responded that it is not permitted for a kohen to accept such a position

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regarding the boat we cannot assume that the passengers are certainly dead.

Rabeinu Yona explains that Abaye wished to show that we cannot refer to the current findings alone. Rabba was willing to extract the property from the ill man's family by relying upon the fact that the gift giver was now in his grave, and this allows us to say that he died immediately after presenting the gift. Abaye showed that the illness and the fact that he is now dead are not related. As we find by the sinking boat, the status of being alive is not dismissed even though the current situation suggests that the people on board have now perished. Certainly, regarding illness, we cannot automatically assume that the illness caused this man's death and thereby transfer money to the receiver named in the document. ■

unless he is able to stipulate with the administration that he may leave the building whenever a Jew dies. Furthermore, it must be a hospital that does not have many Jewish patients so that it is only occasionally that Jews die. In another teshuva⁴ he discussed the permissibility of a kohen visiting a hospital and wrote that the kohen must attempt to learn whether there are any dead bodies in the hospital. If that information cannot be obtained and the majority of patients are gentiles one may assume that there aren't any Jewish patients and one may visit someone in the hospital. ■

1. שו"ת תשורת ש"י סי' תקנ"ט.
2. שו"ת תשובות והנהגות ח"א יו"ד סי' תרע"ז.
3. שו"ת אג"מ יו"ד ח"א סי' רמ"ח.
4. שו"ת אג"מ יו"ד ח"ב סי' קס"ו. ■

STORIES Off the Daf

The disinherited

"שכיב מרע..."

Today's daf discusses making a halachic will.

A certain father was on his deathbed when he heard that his son had acted very improperly. This infuriated him, but what could he do about it? He was old and not long for this world. He decided that the best way to educate his wayward son was to cut him out of his inheritance. This would show how seri-

ous such actions were in the eyes of his father and hopefully it would cause him to change for the better. The sickly father had just such a document written, which clearly explained that he had chosen to distribute his estate solely among the other brothers because of the one's behavior. Shortly after this, the father died.

When the son heard about his loss he was outraged. "But I don't act this way—and I can bring witnesses to testify about my good character. Surely our father did not mean to cut me out if I do not act improperly!"

But the other brothers disagreed

with his analysis. "The will is undeniably in order. What difference does it make why he cut you out?"

This question was brought before the Ridvaz, zt"l, who ruled that both parties made valid points. "It really depends. If the son never did the actions that the father writes caused him to take away his inheritance, it is clear that the document was written in error and the son inherits. But if the son acted in the manner written in the will, even if he subsequently did teshuvah and can prove this, the document is still valid."¹ ■

1. שו"ת רדב"ז, ח"א, סי' תקמ"ו. ■