

OVERVIEW of the Daf

1) Proving the giver was not deathly ill (cont.)

R' Huna disagrees with R' Chisda and Rabba the son of R' Huna regarding the nature of the proof that the recipient can bring to prove that the giver was not deathly ill.

R' Huna explains that the dispute in the Mishnah is related to the dispute between R' Yaakov and R' Nosson.

R' Chisda and Rabba the son of R' Huna explain that the dispute in the Mishnah is related to the question of whether a document must be certified if one concedes to its validity.

It is noted that R' Meir and Chachamim debated this issue in a different context.

The necessity to present the dispute in two contexts is explained.

Rabba agrees with R' Huna that proof is achieved through witnesses.

Abaye questions the rationale behind Rabba's ruling.

The Gemara explains the logic behind his ruling.

The Gemara connects the disagreement between R' Huna and R' Chisda with a disagreement between R' Yochanan and Reish Lakish regarding the same question of whether proof is achieved through witnesses or certification of the document.

R' Yochanan unsuccessfully challenges Reish Lakish's position that proof is achieved through certification of the document.

Reish Lakish cites further proof to his interpretation of the Baraisa.

This proof is rejected.

More of the conversation between R' Yochanan and Reish Lakish is recorded.

R' Zeira challenges a position adopted by R' Yochanan and offers an alternative explanation of the Mishnah in the name of R' Yosef.

Two unsuccessful challenges to this approach are presented. Another aspect of R' Yochanan's position is challenged. ■

REVIEW and Remember

1. Explain the principle of מודה בשטר שכתבו אינו צריך לקיימו.

2. Why is it necessary for R' Meir and Rabanan to disagree in two contexts?

3. Why would an autopsy not be performed to determine whether someone was a minor when he died?

4. What is the פסים document?

Distinctive INSIGHT

The sale of land by a minor

מעשה בבני ברק באחד שמכר בנכסי אביו ומת ובאו בני משפחה וערערו לומר קטן היה בשעת מיתה ובאו ושאלו את רבי עקיבא מה לבודקו

Chachamim in the Mishnah rule that the receiver of a gift must prove, in case of dispute, that the giver was healthy when the gift was arranged. If he cannot prove this, we would assume that the giver was a **שכיב מרע**, as he claimed, and the gift would be nullified because he had since recovered.

In the Gemara, Amoraim offer varying opinions regarding the type of proof necessary to be brought to show that the giver was an ill man. Rabbi Yochanan says that the proof must be with witnesses, and Reish Lakish contends that it is enough for the receiver to have the gift document verified with its signatories.

Rabbi Yochanan brings a support for his opinion from a story which took place in Bnei Brak, where a field was sold by a young man, and the seller subsequently died. The seller's family then came and protested the sale, claiming that the sale was not valid because the young man was a minor at the time of the sale. The buyer approached Rabbi Akiva and requested that the body be exhumed to show that the young man was actually the age of majority when he died. Rabbi Akiva ruled that the body should not be exhumed and disgraced for this purpose. He also commented that the body can change after death, and any signs of majority that might be found would be inconclusive, as they could have occurred after death.

Ramban asks what the buyer hoped to prove by exhuming the body, for even if there were signs of the boy's being an adult at the time of death, this would not necessarily prove that he was of age at the time of the sale. He answers that in this case the sale took place immediately before the young man died.

Rambam (Hilchos Mechira 29:17) writes: "If someone under twenty years old sells land, the sale may be invalidated and reversed, even after the seller turns twenty. The land can be taken back from the buyer, together with any produce the land produced. If the buyer incurred any expenses in developing the land, these expenditures should be calculated and returned. This is the ruling which my teachers have taught, but I say that even if a minor sells land, once he reaches age

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Today's Daf Digest is dedicated

In memory of

ר' משולם פייש בן ר' יהוסף, ע"ה

HALACHAH Highlight

The prohibition against disgracing a corpse

אמר להם אי אתם רשאים לנוולו

He said to them, "You are not permitted to disgrace him."

In his discussion of the prohibition against disgracing a corpse (ניוול המת) Beis Yosef¹ writes that the prohibition is Rabbinic in origin. Rav Moshe Feinstein² challenges this position from the Gemara in Chullin (11a). R' Kahana proves that the principle of following the majority (רוב) is Biblical from the fact that we execute someone who commits murder without checking the victim to determine whether he was a treifa at the time of the murder which would exempt the murderer from execution. It is suggested that the corpse should be examined to confirm that the deceased was not a treifa but the suggestion is rejected since examining the corpse would violate the prohibition against disgracing a corpse. This discussion implies that the restriction against disgracing a corpse is Biblical since its weight is strong enough to restrict us from examining the corpse even though an autopsy could possibly save someone from an unwarranted execution.

Teshuvos Ateres Paz³ suggests a resolution to Rav Feinstein's challenge that is based on a teshuva of Rav Ovadia Yosef⁴. The prohibition against disgracing a corpse could be divided into two categories; one is Biblical whereas the second is only Rabbinic. The Gemara Chullin refers to performing an autopsy on a corpse. Severing limbs of a corpse violates the

(Insight...continued from page 1)

twenty and does not protest, the sale becomes final. The seller received money and the buyer used the land after the seller was twenty. This indicates consent on the part of the seller."

Rashba writes that our Gemara may be brought as a proof for the opinion of Rambam. The family claimed that the boy was a minor at the time of death, rather than at the time of the sale. This suggests that even if he was a minor at the time of the sale, the sale might have been validated if the seller later reached age twenty and did not protest. Rashba, however, then questions this proof, and explains the wording of the Beriasa otherwise. ■

Biblical prohibition against disgracing a corpse since it involves active desecration of the body. The Rabbinic prohibition against disgracing a corpse is violated when one merely opens a grave to move the body to another location. Since nothing is being done directly to alter the body of the corpse the prohibition is only Rabbinic. Accordingly, Rav Feinstein's challenge against the Beis Yosef could be resolved. Beis Yosef's comment that disgracing a corpse is a Rabbinic prohibition was stated in the context of moving the corpse from one location to another and is not refuted by the Gemara in Chullin since the Gemara was discussing the more severe form of disgracing a corpse, namely, performing an autopsy. ■

1. בניי יו"ד סי' שס"ד.
2. שו"ת אג"מ יו"ד ח"ב סי' קנ"ט.
3. שו"ת עטרת פז ח"ג יו"ד סי' ח'.
4. שו"ת יביע אומר ח"ז יו"ד סי' ל"ז אות ב'. ■

STORIES Off the Daf

A divided estate

"ראיה במאי..."

On today's daf we find the situation of a person who divided or sold his assets while still alive, but whose wishes were later contested by his heirs.

A certain destitute beggar who would go around collecting money for his meager subsistence passed away. His only son was not surprised to find that his father had not left behind many worldly goods. But shortly after the shivah a wealthy man who was close with his father approached the young man and made a startling statement. "Your father had a deposit with me totaling one hundred and fifty gold coins. When I last visited

him, he took thirty and told me how he wished me to divide the rest. Fifty gold coins were to be given to one local rabbi and the other fifty to another. He told me to divide the remaining twenty as I wished but I was not to give you even a penny since you did not respect him at all. In his opinion, this was your fitting payback."

Of course the son immediately contested this statement. "First of all, although we had our differences, I don't believe my father told you to give away my inheritance to strangers. Secondly, although you did visit him before the end, I do not believe that you actually gave him a penny of the money. Obviously you are biased about the matter since it saves you thirty gold coins, which is a fortune of money."

This dispute was brought before the

Mahari Asad, zt"l, who ruled that the wealthy man was definitely believed in every word he said. "This is obvious since, if he had wished to lie or to steal, why wouldn't he just keep quiet or tell us that there had been one hundred and twenty gold coins to begin with?"

However, the Rav did find a way for the son to at least receive the remaining twenty gold coins. "Regarding the undesignated twenty, although ordinarily we would be obligated to obey the deceased since it is a mitzvah to fulfill his words, in this case, since he wishes to transfer his estate from his son, we need not obey his directive. Quite the contrary, the money should be given to a Rav who should immediately give it over to the only son of the deceased."¹ ■

1. שו"ת מהר"י אסעד, אבה"ע, סי' ר"ח. ■