

OVERVIEW of the Daf

1) A minor selling his father's property (cont.)

Ameimar refutes R' Ashi's challenge to his ruling that an orphan may give a gift, and he further elaborates on the rationale behind his ruling.

2) Confirming maturity

R' Nachman in the name of Shmuel enumerates cases where we examine children to determine whether they have matured.

The Gemara analyzes and elaborates on a number of these rulings.

The Gemara issues a final ruling on a number of the previously-discussed issues.

3) MISHNAH: The Mishnah presents a dispute between R' Elazar and Chachomim whether a deathbed gift is valid without a kinyan.

4) R' Elazar's position

A Baraisa cites an incident that supports R' Elazar's position.

R' Yehudah in the name of Shmuel explains why R' Elazar cursed the sons of Rochel.

R' Chanina elaborates on the position of R' Elazar as quoted in the Mishnah in Kilayim.

R' Levi rules that one may perform a kinyan to effect a deathbed gift on Shabbos.

5) MISHNAH: R' Eliezer and R' Yehoshua disagree whether a deathbed gift may be given orally on Shabbos. R' Eliezer and R' Yehoshua disagree whether one may acquire property

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REVIEW and Remember

1. Why is it necessary to check if someone matured before divorcing?

2. What is the point of dispute between R' Elazar and Chachamim?

3. Why did R' Elazar curse the children of Rochel?

4. What is the point of dispute between R' Eliezer and R' Yehoshua concerning acquiring assets for an adult?

Distinctive INSIGHT

The gift of the mother of the sons of Rochel

אמרו לו מעשה באימן של בני רחל שהייתה חולה ואמרה תנו כבינתי לביתי וכו' ומתה וקיימו את דבריה

The Mishnah discusses the halacha of a שכיב מרע who gives a gift of his possessions. R' Elazar is of the opinion that the sages offered no special dispensation for a person on his deathbed, and the gift is only valid if it is transferred with a proper קנין. Chachamim disagree and hold that a gift of a שכיב מרע is legally valid even if offered orally. Chachamim cite the story of "the mother of the children of a man named Rochel" who gave oral instructions to give an item of jewelry to her daughters, and the gift was honored. R' Elazar responded that no proof can be brought from that incident, because the sons of Rochel were evil. Although the gift should not have been valid, the sages were willing to award the jewelry to the daughters as a form of penalty against the sons.

Rashbam explains that it is possible that the case was where the gift represented all of her possessions. This was a gift with nothing being held back (בלא שיעור), and no קנין is necessary where the giver ended up dying from the illness. Alternatively, it could be that this piece of jewelry was only one item out of the mother's estate, but that the mother specifically indicated that she was giving this gift because she believed she was about to die, which is exactly what happened (see 151b, Rashbam).

In חכמת שלמה, Maharshal points out that it is puzzling that Rashbam explains that the case is where the jewelry was only part of the mother's holdings. She specifically instructed to give this one item, which suggests that she definitely owned other things. Furthermore, Rav Misharshia brought this incident as a proof that a gift of part of one's estate (מתנה במקצת) is valid even without a קנין. We see that this case is understood to be where the jewelry was not the mother's entire possessions.

Toras Chaim and Rashash address the concerns of Maharsha. They note that in that same discussion (ibid.), Rav Huna b. R' Yehoshua disagrees with R' Misharshia and explains that the case was, in fact, dealing with a distribution of the mother's full assets. In addition, the case could certainly be where the mother was listing all of her possessions, and she was saying who should get what. This item of jewelry was not the only item she was distributing, but it was among the list of her entire wealth.

Pnei Shlomo defends Maharsha. The simply reading of the story does suggest that the mother was distributing only

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HALACHAH Highlight

How long does one remain an orphan?

ולמכור בנכסי אביו עד שיהא בן עשרים

And with regards to selling his father's property [he must wait] until he is twenty

Rambam¹ emphasizes the importance of treating orphans with extra care. After elaborating on different aspects of the sensitivity that one must have for an orphan he asks the question how long a person who was orphaned remains in this halachic category. He answers that a person remains in the category of an orphan as long as he needs an adult to support and guide him in the correct performance of adult activities. Once he can take care of himself as other adults take care of themselves he no longer qualifies for the special treatment of an orphan.

Teshuvos Shevet Binyamin² comments that despite the logic of Rambam's definition he does not know a specific source that supports these guidelines. He also notes that the logic of this definition seems to match the ruling of Rav Galiko who wrote that the age at which a person no longer qualifies as an orphan is twenty, and he arrived at that conclusion based on our Gemara. Our Gemara relates that a child until the age of twenty may not sell the land he inherited from his father. This indicates that until the age of twenty a child's mind and/or experience are not yet fully developed to be able

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for an adult the same as one may acquire property on behalf of a child.

6) Identifying the author of the Mishnah

The Gemara declares that the dispute presented in the Mishnah follows R' Yehudah's version of the dispute.

The Baraisa that presents the two versions of the dispute is recorded. ■

to engage in a major transaction such as selling land. Once he reaches the age of twenty and is capable of engaging in all types of transactions he also loses the privileges of being an orphan.

The author of the work Pesach Had'vir³, the son of Teshuvos Shevet Binyamin, noted that R' Hai Gaon was of the opinion that a child who is known to be sharp and understands the implications of selling land is able to sell his father's land even before he reaches the age of twenty. This is not, he emphasized, a refutation of his father's opinion. What his father meant is that at the age of twenty we assume that a person is capable of selling land. However, in the event that a child demonstrates sufficient comprehension of these concepts earlier than that age, his sale of land is valid. The reason Rambam did not give a specific age, he explains, is that there is this flexibility within this halacha. ■

1. רמב"ם פ"ו מהל' דעות ה"י.

2. שו"ת שבט בנימין סי' רכ"ט.

3. פתח הדביר או"ח סי' קנ"ו סק"ה. ■

STORIES Off the Daf

A double gift

"קוניו קניו משכיב מרע..."

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

A certain very wealthy man requested that his seforim and shelves be donated to a local shul even before he was buried. "In return, they will learn mishnayos for my soul and someone will say kaddish for my neshamah for the entire first year."

When this man died shortly thereafter, his children followed his instructions to the letter. But since their late father would leave money in a sefer at times, the children warned the recipients to be on the lookout for any money, which obviously would need to be returned. The

very next day, a certain person opened up a sefer and found an envelope containing a hundred-rubles. When the heirs heard about this they demanded the money but the administration of the shul refused to hand it over. "Why should we give the money to you? He gave us the seforim, and it seems most likely that he meant to donate any money found as well."

The heirs disagreed, but the administrators of the shul were adamant so the case came before the Sheilas Shalom, zt"l, who ruled that the money was the heirs' property. "If I understood correctly, the main trouble here is that he requested that the seforim be given as a gift to the shul after his death. If this is truly the case, the shul does not acquire this gift, since the shul itself is not halachically capable of acquiring such a gift.

"The only reason why the heirs should give the books to the shul is to

fulfill the will of the deceased, which is their mitzvah. But if they sold the seforim and did not fulfill the will of the deceased, the sale would have been valid, since the moment he died, they acquired them. Since when the heirs gave over the seforim they stipulated that any money found must be returned, the money in the seforim remains theirs and the finder must return it immediately."¹ ■

1. שו"ת שאילת שלום, חלק תנינא, סי' רכ"ט

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one item. Rava does add that the case needs to be explained with the instructions being due to the mother's death (מצוה מחמת מיתה), and not where she had given all she owned. Finally, the response of R' Huna was a forced answer because his opinion is that a קניו is necessary even in a case of מצוה מחמת מיתה. ■