

This month's Daf Digest is dedicated
L'ilui Nishmas Yosef ben Chaim haKohen Weiss (8 Elul) & Mrs. Yenta Weiss, Rivke Yenta bas Asher Anshel (13 Elul)
Family Weiss, London

OVERVIEW of the Daf

1) Clarifying R' Shimon's position (cont.)

The Gemara concludes the discussion of the incident involving R' Nachman.

In the discussion of this incident Shmuel was cited as ruling that a document that is intended to shelter a woman's property from her husband is invalid.

This ruling is unsuccessfully challenged.

Abaye explains why the husband does not acquire his wife's property if her attempt to shelter the property was ineffective.

2) **MISHNAH:** The Mishnah discusses what is done with different types of property that a wife inherits. R' Shimon presents guidelines pertaining to the strength of a husband's rights.

3) Property

The Gemara presents a number of guidelines to follow when a husband and wife disagree about what type of property to purchase and a couple of cases where there is a disagreement.

4) A stolen מלוג animal

R' Yannai is quoted as ruling that one who steals the offspring of a מלוג animal pays double to the wife.

The ruling is challenged because it seems inconsistent with the Tannaim, Rabanan and Chananyah, who discuss this issue.

The Gemara reconciles this ruling with both opinions.

The point of the dispute between Rabanan and Chananyah is explained.

R' Huna bar Chiya in the name of Shmuel rules like Chananyah.

Chananyah's position is qualified.

5) מלוג property

Rava in the name of R' Nachman issued one ruling related

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Distinctive INSIGHT

Older slaves and whether they should be sold

נפלו לה עבדים ושפחות זקנים ימכרו

The Mishnah brings the case of a woman who inherited servants and maidservants. If they are "older," Tanna Kamma rules that they should be sold, and the money should be used to buy property which will generate a profit, which will go to the husband. Rabban Shimon ben Gamliel disagrees and says that the woman can resist the sale, as they are part of her part of the family estate.

The Yerushalmi explains that the difference of opinion in the Mishnah is only in the case where the servants are older, whereby they do not earn their support. They do not produce enough income to justify the expense necessary to support them. If they can earn at least enough to pay for their support, even Tanna Kamma agrees that they should not be sold. Ritva asks that this being the case, and Tanna Kamma holds they can be sold, who would ever want to buy a servant who is only a liability? He explains, however, that the servant can no longer perform the normal and routine tasks which are expected from a servant. However, he is still able to serve as a waiter or attendant for an important person. Although the husband himself has no benefit from this servant, he can still realize a profit by selling him to others who are seeking a personal attendant.

Shitta Mikubetzes asks how can the wife resist the husband's plan to sell this servant? The servant is costing the husband money for support, and he is not producing enough income to justify his maintenance. Should the husband lose just for a perceived sentimental benefit to the woman?

Shitta Mikubetzes answers that the argument in the Mishnah is dealing in a case where the woman is willing to pay the difference in cost between what the servant costs to support and what he is able to produce. Now that the husband is not losing, Rabban Shimon ben Gamliel holds that the woman has a claim the servants should not be sold. Nevertheless, Tanna Kamma holds that even if the woman is willing to pay, the husband can insist that he is not willing to hold on to an unproductive servant. ■

REVIEW and Remember

1. What is a שטר מברחת?
2. Which is a more preferable purchase—land or a house—and why?
3. What is the reason the wife collects the double payment if the offspring of a מלוג animal belongs to the husband?
4. When does a husband get reimbursed for investing in his wife's property?

Today's Daf Digest is dedicated

In memory of

ר' יהוסף בן הרב פנחס שלום הלוי, ע"ה
ומרת טובא בת ר' דוב, ע"ה

HALACHAH Highlight

Converting a wife's movable מלוג property

נפלו לה כספים ילקח בהן קרקע והוא אוכל פירות

If the wife inherits cash, land should be purchased and the husband eats the produce

The Gemara and Tur¹ give examples where the husband suggests using his wife's מלוג money to purchase one item and his wife suggests purchasing a different item with that money and the relevant ruling for each one of those cases. Rashi, in his commentary to the Gemara explains the rationale behind these rulings. Rambam deduced the following rules to determine which item should be purchased. The priority is to purchase the item that will generate the greatest amount of produce (פירות) with the fewest expenses. Additionally, only those items that replenish their produce (גזעו מחליף) may be purchased with the מלוג money but the מלוג money may not be used to purchase something that does not replenish its produce. The rationale behind this ruling is that taking the produce from items that do not replenish themselves is considered the same as taking the principal since once the produce is finished there is nothing left for the wife to keep for herself. Chelkas M'chokeik² adds that the reason Rambam formulated principles, rather than repeat the cases in the Gemara, was to allow Beis Din to determine what is more valuable. For example, the Gemara states that if there is a question whether to purchase a house or land, they should buy the land since it lasts longer than a house and is more profitable. If, however, Beis Din was to determine that a house is more valuable because it can generate rental income that would be more profitable than purchasing a lot of land, they have the flexibility to make the decision.

Tur³ records a dispute between Rif and Rosh concerning a husband's rights in a case where his wife only has the right to

(Overview. Continued from page 1)

to animal מלוג property.

R' Nachman categorizes the status of a coat brought in as מלוג property.

The Gemara aligns this ruling with a source in the Tannaim.

6) The dispute between R' Shimon and Tanna Kamma

Rava explains the difference between R' Shimon's and Tanna Kamma's position.

7) **MISHNAH:** The Mishnah continues the discussion of what should be done with different property that a woman inherits.

8) Clarifying the dispute in the Mishnah

R' Kahana in the name of Rav qualifies the dispute concerning what should be done with inherited trees and grapevines.

R' Yosef challenges this explanation and a revised explanation is offered.

9) **MISHNAH:** The laws pertaining to a husband's right to collect the money he invested in his wife's מלוג property is presented.

10) Defining "a little"

R' Assi suggests one explanation of the Mishnah's reference to "a little." ■

produce from an object. For example, if a woman owns the milk of a goat but does not own the goat, is the husband permitted to use all the milk since the milk is the produce of the goat, or perhaps the husband may not use the milk since that is all his wife owns and it is considered as if he is taking the principal? Rif maintains that the milk is categorized as produce, since it is the place on the goat where the milk comes that is the principal and the milk remains produce but Rosh disagrees and maintains that since the milk can be used up entirely leaving nothing behind, it is considered principal and the husband has no rights to it. ■

1. טור אהייע סי' פ"ה סעי' י"ג.

2. חלקת מחוקק שם סי' ק"ל.

3. טור שם. ■

STORIES Off the Daf

Trying to Dodge the Document

"אם יבא שטר מברחת לידי אקרענו..."

A certain widower once married a widow. Money was tight and the man wished to ensure that his only child, a daughter from his first marriage, would be amply provided for. Before the marriage he wrote a document for her that stated, "I assume upon myself the obligation to pay the sum of five hundred rubles to my daughter one hour before my death."

Unfortunately, the man did not live

much longer after making this codicil. After he died, his daughter wished to collect on the note. When they tallied up the remaining assets, there was hardly half the poor widow's kesubah left out of all her deceased husband's property.

The widow refused to allow the daughter to remove money without consulting the local beis din. When they got there, a lively dispute ensued. Some of the judges wished to award the daughter the entire sum since the gift was clearly a premeditated gift. They reasoned that although the Gemara says in Kesuvos 79 that a husband who makes a document to smuggle funds away from his wife to cause her to

lose her kesubah, that was an unenforceable document, but our case is different. Here, the gift is sincere and is more comparable to the case of one who gives a friend a שטר that will designate the transfer of some of his property in ten years' time.

The Chevas Da'as, zt"l, ruled that the wife must receive her full kesubah first. His reasoning is that the case of the gift שטר is not an effort to avoid paying off one's debts, since he may live longer than ten years and his debts will be paid. Our case is different. Clearly the whole purpose of the document is to get around his obligation to his wife. This is a classic שטר מברחת and is invalid. ■