

## OVERVIEW of the Daf

1) **MISHNAH:** The Mishnah discusses the right of a woman to sell מלוג property in all sorts of different circumstances.

2) **Clarifying the dispute between בית שמאי and בית הלל**

The Gemara inquires why Beis Shammai and Beis Hillel disagree regarding when a woman inherits property after her betrothal but not before her betrothal.

The reason they disagree only in the second case is explained.

3) **Clarifying R' Yehudah's comment**

The Gemara inquires whether R' Yehudah referred to Beis Shammai's לכתחלה ruling or to Beis Hillel's בדיעבד ruling.

It is demonstrated from a Baraisa that he was referring to Beis Hillel's בדיעבד ruling.

Tangentially, the Gemara cites the remainder of the previously quoted Baraisa.

An inconsistency is noted between the Baraisa and the Mishnah's understanding of R' Gamliel.

R' Zevid and R' Pappa offer alternative resolutions.

R' Pappa's resolution is unsuccessfully challenged.

Rav and Shmuel rule that regardless of whether the property fell to her before or after she became an ארוסה the husband will be authorized to take them from the buyers.

The Gemara notes that this position is consistent with Rabosseinu rather than with the Tannaim of the previous Baraisa.

4) **A נשואה who inherits property**

It is noted that the Mishnah's statement seems to be a repetition of the enactment of Usha when it states that all opinions agree that if a woman sold property she inherited as a נשואה the husband can take them from the buyers.

The Gemara explains the difference between the two rulings.

5) **Clarifying R' Shimon's position**

The Gemara seeks a definition of those properties that are known and those properties that are not known.

R' Yosi the son of R' Chanina and R' Yochanan offer alternative explanations.

A Baraisa is cited that supports R' Yochanan's explanation.

The Gemara begins to retell a related incident. ■

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Rabbi Donald Starr on his Yahrzeit

## Distinctive INSIGHT

*When is the sale valid?*

על החדשים אנו בושים

The Mishnah discusses the validity of a sale of property owned by a woman. The woman can inherit property either before she is an ארוסה, during the period she is an ארוסה before she is married, or while she is married. At one point in the Mishnah, Rabban Gamliel ruled that if a woman inherited property after she became an ארוסה, and she is still an ארוסה, Beis Shammai says she may sell them, and Beis Hillel maintain that she should not sell them. All agree that after the fact, if she did sell the property, the sale is valid after the fact. Rabbi Yehuda reported that the rabbis questioned Rabban Gamliel. If the husband acquires the woman, should he not also acquire her property? The Gemara elaborates and discusses whether the rabbis disputed the opinion of Beis Shammai who allow the sale to occur outright, or whether they even find it difficult that the sale is valid even after the fact.

To this inquiry of the rabbis, Rabban Gamliel responded, "We are ashamed of the newer properties, and you wish to impress upon us the old ones?" This statement is a bit enigmatic. Rashi explains that the "new" property refers to property she inherits after the marriage. Rabban Gamliel was saying that he felt it difficult to understand why the husband can remove property from the buyers even if the woman acquired it after the marriage took place.

Why does Rashi understand that Rabban Gamliel was talking about fields that woman acquired after getting married? Why didn't he simply explain that "new" property refers to fields she received after becoming engaged, and that we are ashamed that she should not sell them according to Beis Hillel, notwithstanding that the sale is indeed valid after the fact. Shita Mikubetzes explains that Rashi felt that the expression "we are ashamed" does not refer only to the restrictions of the woman, but it rather suggests that we are ashamed that the husband can collect the land from the buyer after it was sold. This right of the husband might have been a bit out of line, as the husband's right is only for the produce of the field, and yet this is surprisingly strong enough of a connection to enable his nullifying the sale. We would have expected that his right to the produce is only in effect while the land is in his wife's possession, but after it is sold perhaps we would take the cash the woman receives and invest it for the husband's benefit. The fact the purchase of the land is cancelled is something Rabban Gamliel was reluctant to recognize, let alone the case where the husband controls the woman's possessions after marriage. ■

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Rabbi and Mrs. Makhlof Suissa  
In loving memory of their mother  
מרת זהור בת ר' מכלוף, ע"ה

## HALACHAH Highlight

### *The husband's right to his wife's מלוג field*

מתניתין בחייה ולפירות

*The Mishnah refers to the field during her lifetime and specifically to the produce*

**T**ur<sup>1</sup> presents a dispute concerning what happens when a wife sells her מלוג property. According to the first opinion the sale of the land is immediately nullified and the husband repossesses the land and the produce. However, in the event that the wife becomes widowed or divorced the property reverts back to the buyer's possession. Rambam disagrees and rules that the husband collects the fruit but not the land itself since he does not have rights to his wife's מלוג property until she dies.

Perisha<sup>2</sup> asks, since according to both opinions the husband only takes the produce, what is the practical difference between these two opinions? It seems to be a merely academic question of who is in legal possession of the land but there is no practical difference between the two opinions. Two resolutions to this inquiry are suggested by Perisha. The first resolution is that the question of who is in possession of the land is relevant for writing a pruzbul. In order for a pruzbul to be valid there is a requirement that the borrower or the lender should be a landowner. Concerning that matter it is important to know who is considered the legal owner of the property. A second matter that is dependant upon the question of who is the legal owner of the property is what will be done with the property in the event the husband and wife die in a collapsed building and it is not known who died first. If the

## REVIEW and Remember

1. What halacha did R' Gamliel have difficulty understanding?  
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2. How does the Gemara explain the difference between the first to cases of the Mishnah?  
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3. According to the Baraisa, how did R' Gamliel respond to the Chachamim?  
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4. What is the definition of "unknown" property?  
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property is considered in the possession of the buyer, the heirs of the husband would have the burden of proof that the wife died first but if the property is considered in the possession of the husband, the buyer would bear the burden of proof that the husband died first.

Bach<sup>3</sup> wonders what forced Perisha to find such seemingly obscure differences between these two opinions when there are a number of more practical differences between the two opinions. The matter of who is the legal owner has relevance for taking possession of a lost object found on the property, who will be able to perform משיכה onto the property and who will have the rights of the בר מצרא, to name just a few. ■

1. טור אה"ע סי' צ"ט סעי' ט"ו.
2. פרישה שם סי"ק ל"ד.
3. בי"ח קונטרס אחרון שם ד"ה כיון. ■

## STORIES Off the Daf

### *The Cost of Ignorance*

"ר"ש חולק בין נכסים לנכסים..."

**A**n elderly woman passed away in Patterson, New Jersey. After the shivah, her family went through her personal effects and discovered her will. In it, she left a portion of her savings to a worthy charity. Since her husband had recently made a smaller pledge to the same charity, he wondered if he was halachically permitted to somehow change his mind and pay only the sum detailed in the will.

When the ignorant man consulted with his Rabbi, Rav Betzalel Hakohen, ז"ל, about this issue, the Rabbi said, "This is a difficult question. As soon as I have a definitive answer, I will let you know."

The Rav knew something that the unlearned husband did not. Although the permissibility of annulling the pledge was a complicated question, there was another important consideration in this instance. Why must the husband comply with the will at all? The Chachamim decreed that a husband inherits his wife's possessions, so presumably, her civil will was null and void.

The Rabbi contacted Rav Moshe

Feinstein, ז"ל, and asked if his analysis was correct.

The Gadol replied, "Where the husband is unaware that the halacha allows him to inherit his wife's property, his rights vanish. This is clear from Kesuvos 78a. Rav Shimon says that if a married woman sells assets that are unknown to her husband, the sale is valid. This is how Tosafos, the Rosh, and all the Poskim hold. What is the difference between a case of assets of which the husband is unaware of their physical existence, or assets over which he is unaware that he has halachic rights? In both cases they are unknown and do not become the husband's property!" ■

