

OVERVIEW of the Daf

1) **MISHNAH:** The Mishnah discusses cases where the husband relinquishes his rights to his wife's מלוג property and the different consequences based on his exact wording.

2) Relinquishing rights to one's wife's מלוג property

R' Chiya cited a Baraisa that states that the husband can merely declare that he is relinquishing his rights in his wife's property.

The validity of the husband relinquishing his rights is questioned.

D'vei R' Yannai suggests that the declaration is valid only when it is made while she is an ארוסה.

Abaye explains why, according to this explanation, this declaration does not work if she is a נשואה.

Rava offers an alternative explanation.

The difference between these two explanations is noted.

3) Relinquishing rights to a field

A Baraisa earlier ruled that if a partner orally relinquishes his rights to a field the declaration is meaningless. The Gemara now inquires whether making a קנין will make the transaction valid.

R' Yosef says the קנין will not help whereas R' Nachman maintains that it is effective.

Abaye explains the ruling of R' Yosef.

Ameimar rules that the קנין makes an effective transfer of property.

R' Ashi inquired whether this ruling applies even when the original owner protests after the transfer and Ameimar responded that it doesn't make a difference.

4) Relinquishing rights to one's wife's מלוג property

The Gemara inquires why the statement of the husband in the Mishnah causes the husband to lose the right to protest the sale of the מלוג property rather than relinquish his rights entirely.

Abaye explains that since the statement in the contract was vague it is effective only to the smallest degree possible.

Alternative suggestions are made and rejected concerning what is the smallest right that the husband relinquishes.

R' Ashi suggests a different explanation for the Mishnah's ruling that the husband only relinquishes his right to protest her sale of the property.

5) Produce of produce

The Gemara inquires about the meaning of R' Yehudah's seemingly redundant statement in the Mishnah. The matter is left unresolved.

An inquiry is made concerning a husband who relinquishes his rights to the field and the produce of the produce: did he also relinquish his rights to the produce?

An unsuccessful attempt is made to resolve the inquiry and the issue remains unresolved.

6) R' Shimon ben Gamliel's position

Rav rules in accordance with R' Shimon ben Gamliel's position but not based on his reasoning.

The Gemara begins to clarify the exact intent of Rav's statement. ■

Distinctive INSIGHT

A written or verbal statement of intent to relinquish rights

תני רבי חייא האומר לאשתו. וכי כתב לה הכי מאי הוי והתניא האומר לחבירו

Rashi explains that the novelty of Rabbi Chiya is that it is not necessary for the husband to actually record his intentions in written form to deny rights to his wife's מלוג property, and it is not necessary for him to perform a formal transaction (קנין). It is enough for him to state his intentions in order to avoid or deny these rights.

The Gemara proceeds to cite a Baraisa where we find that a mere statement on the part of a partner to relinquish his rights is not sufficient. The Gemara finds the ruling in the Baraisa to be in conflict with Rabbi Chiya, and it continues to answer the question. However, according to Rashi, we have to wonder why the Gemara finds the Baraisa to be conflicting with the Mishnah. There seems to be an obvious difference, and that is that a written statement does work to remove one's rights (as we find in the Mishnah), whereas an oral statement is inadequate (as we find in the Baraisa). We also cannot say that the Gemara is coming to ask against Rabbi Chiya who explains that the case of the Mishnah itself is dealing with oral statements, because if this was the case, the Gemara would not have introduced its question by saying "Is writing such a statement valid?" Rather, the Gemara would have asked, "Is an oral statement adequate?"

Ritva explains the question of the Gemara in two ways. We see in the Baraisa that the expression which denies an established legal association—"...דין ודברים אין לי..."— is not a binding expression. In other words, this expression is not valid, and it does not seem that it is only because it is said verbally, but even if it were to be written it is simply an inadequate statement.

Alternatively, Ritva explains that the Gemara detected that once Rabbi Chiya explains that the Mishnah is dealing in a case of an oral statement, and not necessarily where the intent of the husband was written, we now see that the document mentioned is only for proof (סטר), and no קנין was made. The Gemara's question is that if the husband cannot relinquish his rights, as we see in the Baraisa, what, then, is the case of the Mishnah? ■

HALACHAH Highlight

Can a Shadchan refuse payment and then change his/her mind?

אמרי דבי ר' ינאי בכותב לה ועודה ארוסה

D'vei R' Yannai explain [that the husband's statement to relinquish his rights to his wife's property is effective] when he writes it while she is still an ארוסה.

Rabbeinu Nissim¹ writes that just as it is not possible to acquire an object that does not yet exist, so too it is not possible for a person to waive a right (מוחל) that does not yet exist. Therefore, if Reuven waives the right to a gift and subsequently accepts that gift, the gift cannot be taken back with the claim that Reuven waived his right to the gift. This principle would seemingly apply to the case of a broker or shadchan who waived the right to his fee before the deal is finalized. Since the broker/shadchan fee is not paid until the transaction is completed waiving the rights to that money before the transaction is completed is ineffective since the right to the money does not yet exist.

Taz² challenges this conclusion from the ruling of Rema³ that although it is not possible to acquire something that does not yet exist one can relinquish his rights (מסלק עצמו) from something that does not yet exist. Accordingly, one should also have the ability to waive one's rights to something that does not yet exist. Taz answers that relinquishing one's rights indicates that one is in possession of a certain right over his friend's property. Therefore, he can release that right even though his friend does not yet possess the object that is being released. In contrast, waiving one's rights does not involve any rights that one has over his friend's property, thus it is something that does not yet exist in any form and that right cannot be waived.

There was once an incident where Reuven agreed to help ar-

REVIEW and Remember

1. What language must a husband use to relinquish all his rights in his wife's property?

2. Is a person bound by Rabbinic enactments made for a person's benefit?

3. How did Chazal express the idea "One in the hand is worth two in the bush"?

4. What is "produce of produce"?

range a business deal for Shimon and asked that Shimon cover his expenses but he will waive his broker's fee. When the deal was about to be completed Reuven told Shimon that he changed his mind and wouldn't assist finishing the deal unless he was paid his broker's fee. Shimon had no choice but to pay the broker's fee. Some time later Shimon found himself in possession of property that belonged to Reuven and inquired whether he was permitted to keep that property since he felt that Reuven had improperly charged him. Maharik⁴ ruled that Shimon was not permitted to keep the money. The reason is that Reuven had not done anything in violation of halacha, since he merely waived a right that did not yet exist, consequently, there is no recourse Shimon has against Reuven. ■

1. שו"ת הר"ן סי' כ"ג.
2. ט"ז חו"מ סי' ר"ט ס"ק כ"א.
3. רמ"א שם סעי' ח'.
4. שו"ת המהרי"ק סי' קל"ג. ■

STORIES Off the Daf

The Inverse Kesubah

"יכולה אשה שתאמר לבעלה איני ניוזנת ואיני עושה..."

As we see from today's daf, a woman has the right to say to her husband, "Don't provide for me and my salary will be exclusively mine." Strangely enough, some men feel as though they have the right to say the inverse: "You work. I don't want the responsibility to provide for you."

Once, there was a Rav who traveled to Eretz Yisrael and left his wife and children in Chutz La'aretz, with no livelihood to speak of. A certain man collected money for this Rav's upkeep, who had left instructions that only twenty percent of the money be given to

his abandoned wife.

The poor woman complained to her local Rav, "This was far too little to cover even our most basic needs!"

The local Rav didn't know what to do. He wanted to allocate the entire sum for the poor woman. Although he could technically do so, the general rule is that one may not change the beneficiary of charity money without explicit permission from the donors. So how could he just allocate money given for the upkeep of the Rav in Eretz Yisrael for use by his abandoned wife and family in Chutz La'aretz?

He decided to consult with the Chasam Sofer, zt"l. "This man should be fined in every way possible to bring him to his senses and force him to support his wife and children! The people who gave the money to support him in Eretz Yisrael wish to enable

him to stay in Eretz Yisrael. Supporting his family is also important to enable him to live in Eretz Yisrael. This is why he has the right to allocate the twenty percent to his family. If he doesn't completely provide for his family we will have to make waves by publicizing his despicable act until he has no choice but to return and make sure his family is amply provided for. So allocating the entire sum to his family is actually saving him embarrassment and enabling him to stay in Eretz Yisrael. However, it is better to warn him first and get his permission. In the meantime she should use only twenty percent and the rest should be held in escrow."

This brings to mind what the Rav of Tzfas said many years ago, "The way people take advantage of their wives, you would think she signed a kesubah to support him instead of the other way around!" ■

