

OVERVIEW of the Daf

1) Clarifying the Mishnah

The Gemara wonders why someone who prohibited another from benefiting from his property is not allowed to borrow from that person.

R' Yosi bar Chanina and Abaye offer alternative explanations for that halacha.

2) **MISHNAH:** A case involving a person who makes a vow in response to someone refusing to lend him an item is presented. The Mishnah describes how it is possible to provide benefit for someone despite the existence of a vow prohibiting benefit.

3) Clarifying R' Yosi's opinion

R' Yochanan explains that the rationale behind R' Yosi's position is that hefker is comparable to a gift and in both cases it is necessary for the item to enter another's possession.

R' Abba challenges this explanation.

R' Abba, himself, answers his challenge.

Rava questions R' Abba's answer from a Baraisa.

An alternative explanation of R' Yosi's position is suggested by Rava.

4) Declaring property ownerless

The Gemara begins to cite a Baraisa that discusses details related to declaring property ownerless. ■

REVIEW and Remember

1. Why is the person who prohibited another from benefiting from his property not permitted to borrow from that person?

2. What is a way to provide benefit for someone who, by virtue of a vow, may not benefit from your property?

3. In what way do we treat ownerless objects like gifts?

4. How long does a person have to retract a declaration that his field is ownerless?

Distinctive INSIGHT

Does the neder include prohibiting one's property or one's person from providing benefit

המודר הנאה מחבירו ואין לו מה יאכל

Shulchan Aruch (Yoreh Deah 221:8) rules according to this Mishnah, and the halacha is expressed in terms of a case where Reuven declared that he would personally not provide any benefit to Shimon. This seems to correspond closely to the wording of the Mishnah as we have it. Nevertheless, when Shimon has no food to eat, Reuven may go to the storekeeper and announce that Shimon has no food to eat. The storekeeper will understand that this means that he should provide Shimon with food, and Reuven may then pay for it. ר"ן explains clearly that Reuven may not appoint the storekeeper as his agent to give food to Shimon, as this would be a violation of the neder that Reuven not personally help Shimon.

The Tur (ibid.), however, learns that this halacha applies in a case where Reuven had expressed his neder in terms of prohibiting his property (נכסיו) from benefiting Shimon. Rabbi Akiva Eiger, in his comments to the Taz (#16) writes that if the Tur is correct, and the case is where the property of Reuven is prohibited from Shimon, then Reuven would be able to directly appoint the storekeeper as his agent to feed Shimon, and the case would not have to be one where Reuven simply hinted that Shimon was in need. According to the understanding of the Tur, Reuven only declared that his property would be restricted from benefiting Shimon, and here it would be the storekeeper who would be providing the goods.

Chazon Ish explains that Tur understands that any time a person declares that his property can not be used to benefit someone else, the intent of the one who pronounced the neder is to limit personal aspects of benefiting the other person, as well. Therefore, even in a case as presented by the Tur, where the neder was to prohibit Reuven's property from benefiting Shimon, this is understood to also include Reuven's personal aid to Shimon, and Reuven's appointing an agent, such as the storekeeper, would be prohibited. ■

This week's Daf Digest is dedicated
לעיני ר' אהרן בן ר' יעקב מאיר ע"ה
By his children
Mr. and Mrs. David Friedman

HALACHAH Highlight

Is a man permitted to send mishloach manos to a woman?
 אב"י אמר גזירה לשאול משום להשאיל

Abaye said that there is a decree that one should not borrow out of concern that this will lead to lending

Rema¹ rules that women are obligated in the mitzvah of mishloach manos just like men. Additionally, women should send mishloach manos to women and men should send to men but a man and woman should not send mishloach manos to each other since it could lead to a man sending mishloach manos to a widow which could raise a concern that kiddushin was done. This issue, however, is only a concern for mishloach manos but not for matanos la'evyonim.

Rav Yaakov Reisher², the Shvus Yaakov asks, if the concern is that the mishloach manos could raise a concern for kiddushin, why is it prohibited for a woman to send mishloach manos to a man? Since it is not possible for a woman to give kiddushin to a man there should be no concern, unless Chazal prohibited a woman from giving mishloach manos to a man because it is similar to the decree against a man giving mishloach manos to a woman (גזירה הא אטו הא) but that seems too farfetched.

Rav Yosef Engel³ takes issue with Shvus Yaakov's asser-

tion that this case seems to be too farfetched to warrant a decree. In our Gemara Abaye explains that the reason one who prohibits his friend from benefiting from his property may not borrow items from him is out of concern that borrowing may lead to lending. This explanation indicates that when Chazal have a concern that necessitates a decree they will structure that decree so that it works in both directions of the relationship rather than limiting it to the specific direction of concern.

Shvus Yaakov suggests as an alternative explanation why men and women may not send mishloach manos to one another is that it is an inappropriate gesture of affection as opposed to when the money is given as tzedaka, i.e. matanos la'evyonim. Rav Betzalel Stern⁴, the B'Tzeil Hachochmah, suggests that one could infer from Rema that in general, it is permitted to send gifts to married women. Since the primary concern of Rema was the case of a man sending mishloach manos to a widow it would seem that sending to a married woman would not be an issue since she cannot receive kiddushin. He hesitates to draw a definitive conclusion on the matter since it is possible that Chazal allowed gifts to be sent only in the context of performing a mitzvah.

1. רמ"א או"ח סי' תרצ"ה סע' ד'
2. שו"ת שבות יעקב ח"א סי' מ"א
3. גליוני הש"ס ד"ה גזירה
4. שו"ת בצל החכמה ח"ה סי' נ"א ■

STORIES Off the Daf

The inheritance

מתנת בית חורון

A certain couple fell upon hard times and had no choice but to borrow a huge sum of money. Eventually conditions improved and they were able to live within their means. Unfortunately, they remained unable to pay their colossal debt. The wife's elderly father was a fairly wealthy man. Understandably, he was uninterested in leaving his property as an inheritance to his only daughter only to have it all taken by her creditors after his demise. He had nothing against the idea of paying the debts. He just didn't want them paid from his assets.

He consulted with the local Rav and begged him to find a halachic way around this. If there was no solution, he would bequeath the money to someone else since, as things stood, his daughter would not enjoy his assets anyway. He was determined that his daughter's creditor should not inherit his estate!

Even after a great deal of consideration, the Rav could see no way to help his wealthy congregant get around the creditor's lien. He decided to consult the Rosh, zt"l. "You are like a malach Elokim and no secret escapes you. Do you have a solution for this man?"

The Rosh replied, "Yes. If the father gives it to his daughter from a moment before he dies on the condition that it not be subject to any liens that either predated or were incurred after his demise. Surely you will ask why this is dif-

ferent from the case of Beis Choron where a man had vowed to give no benefit to his father and couldn't invite his father to the grandson's wedding which was to be held in his own courtyard. To override his own oath, he declared the courtyard and banquet a gift to his friend just so his father could attend the wedding. This person declared the gift hekdesh because he didn't want the sin of having duplicitously tried to override an oath on his own account. The Chachamim declared that any gift which cannot be given to hekdesh is not a gift.

The Rosh continued, "But our case is different: the general rule that a gift must include the right to do anything is only if the giver did not make any stipulations. If there was a rider attached, it will hold!" ■