

OVERVIEW of the Daf

1) Returning legal documents (cont.)

An incident related to returning a lost גט is presented.

2) Returning a lost גט

The Gemara challenges the inference of the earlier Baraisa that when a husband admits that he divorced his wife, her גט should be returned to her since it is possible for the husband to fraudulently collect land that was purchased between the date the גט was written and the date the גט was delivered.

The scope of the challenge is limited to one opinion.

A resolution to the challenge is suggested.

This resolution is unsuccessfully challenged.

3) Returning a bill of emancipation

A Baraisa is cited that elaborates on the halachos of returning a lost bill of emancipation.

The statement that if the master admits that he freed the slave the document could be returned to the slave is challenged.

The scope of the challenge is limited to one opinion.

The challenge is resolved.

4) Returning wills and gift documents

A Baraisa is cited that explains the meaning of the terms דייתיקא and the essential component of a gift document.

The Baraisa's definition of a gift document is challenged.

Abaye resolves the challenge.

A Baraisa is cited that contradicts the Mishnah's implication that if the giver said the document should be returned to the beneficiary his instructions should be followed.

R' Abba bar Mamal resolves the contradiction by distinguishing between a benefactor who is healthy and a benefactor who is deathly ill.

The Gemara elaborates on this explanation detailing how we know the Mishnah refers to a case of someone who is deathly ill and how we know the Baraisa refers to one who is healthy.

R' Zevid challenges this explanation and suggests that the distinction relates to whether it is the benefactor who instructs us to return the document or whether it is the son of the benefactor who gives these instructions.

5) Returning a receipt for a kesubah

A Baraisa discusses the parameters of returning a receipt of a kesubah to the husband.

The Gemara challenges the permissibility of returning a receipt to the husband since there is the possibility to commit a fraud. ■

Distinctive INSIGHT

The case in the Mishnah – a healthy person's gift

איזוהי מתנת בריא שהיא כמתנת שכיב מרע דלא קני אלא לאחר מיתה— כל שכתוב בה מהיום ולאחר מיתה

A Baraisa cited in the Gemara elaborates and explains the nature of different types of documents. The Baraisa reports that a מתנה, a gift document, is one where an item is given "from today and after I die." The Gemara notes that it does not make sense for a gift to be valid as of that moment, but only on the condition that the receiver derive no benefit from it until after the death of the giver. Rather, Abaye explains a regular gift is certainly one that is given from that moment and forever. However, the Baraisa is demonstrating that a healthy person can also give a gift which has the guidelines of a gift of a deathly-ill person (שכיב מרע). In other words, the Baraisa is asking, "How can a healthy person give a gift of a מרע? It is when he writes 'From today, but only after I die.'"

Rashi explains that the wording of the gift document is to be interpreted to mean that the body of the land is given as of that day, and the owner has declared that he will not give it or bequeath it to anyone else. The receiver, however, will not benefit from the land until after the death of the giver.

Tosafos raises two challenges against the comments of Rashi. The Mishnah rules that if one finds such a document he must not return it. The Gemara infers that if the one who ostensibly lost it says to give the document to its recipient, we can do so. According to Rashi's understanding of this gift document, we would still have a risk that the giver had given the land to someone else, and now he is changing his mind and wishes to renege by presenting the land to another person starting today until after his death. We must therefore say that it is only regarding a gift of an actual מרע שכיב that we may give the document if the giver authorizes it, but the gift document of a healthy person may not be given at all. Tosafos notes that it is awkward to explain the law

in the Mishnah in two different ways regarding the two cases. Rashba and Ran also question the explanation of Rashi, as the case of a delayed gift by a healthy person is no חידוש, as this is already mentioned in the Mishnah (Bava Basra 136a). Also, the case of a healthy person which begins immediately to a certain extent is not really similar to that of a מרע שכיב, which takes effect only after the person's death. ■

Today's Daf Digest is dedicated
 לע"נ ר' מרדכי ב"ר ר' שמעון, ע"ה
 By his children
 Dr. and Mrs. Shimi Krauss

Today's Daf Digest is dedicated
 לע"נ מרת מלכה בת ר' הערש ע"ה
 By the Schwabacher Family

HALACHAH Highlight

Mourning for a wife the husband intended to divorce

כיון שנתן עיניו לגרשה שוב אין לבעל פירות

Once he decides to divorce her he no longer has the right to her produce

Based on the opinion of R' Shimon, Rashbam¹ asserts that if a man decides to divorce his wife, but she dies before he has a chance to deliver the גט to her, the husband will not inherit her property. Yam Shel Shlomo² derives from this position an interesting ruling related to aveilus. A couple was fighting and the husband decided that he was going to divorce his wife, but if, before he had the opportunity to divorce her she died, he is not obligated to mourn, i.e. sit shiva, for her since she is not considered his wife. Although Rabanan disagree with R' Shimon's position and maintain that a husband does not lose the rights to his wife's property until they divorce, nonetheless, regarding aveilus there is a principle that halacha follows the lenient opinion in matters of aveilus. This position is recorded by Rav Akiva Eiger³ and Teshuvos Machaneh Chaim⁴ adds that he would not even be obligated to mourn the first day, even though the first day is the primary day to mourn a deceased relative.

Beis Meir⁵ expresses astonishment regarding this ruling. The source of this ruling is R' Shimon's opinion and R' Shimon was referring to a case where a גט was written but not yet delivered. Yam Shel Shlomo refers to a case where the husband did not even write a גט for his wife and there is no source to apply R' Shimon's principle to this case. Furthermore, Maharashdam⁶ asserts that Yam Shel Shlomo's ruling does not apply in those circumstances when a man may not divorce his

REVIEW and Remember

1. What is the Gemara's concern about return a גט to a woman even though the husband agrees that he divorced his wife?
2. What is the origin of the term דייתיקי?
3. What is the difference between the gift document of a healthy person and the gift document of a deathly person?
4. What fraud does the son of a deathly ill person hope to pull off?

wife against her will since his decision to divorce her will not inevitably lead to a divorce and thus they are not considered divorced until he delivers to her a גט.

The conclusion of Teshuvos Shoel U'meishiv⁷ is that a husband who did not yet divorce his wife is obligated to mourn her death unless the couple had a mutual agreement that they would divorce and that fact was well known in the community.

1. רשב"ם ב"ב קמ"ו ד"ה נפלה
2. ים של שלמה גיטין פ"ב סי' ד'
3. הגהות רעק"א ליו"ד סי' שע"ד סע' ד'
4. שו"ת מתנה חיים ח"ג נו"ד סי' ל"ט
5. בית מאיר אה"ע סי' צ' סע' ה'
6. שו"ת מהרשד"ם אה"ע סי' ע"ה
7. שו"ת שואל ומשיב מהדור"ג ח"א סי' פ"ח

STORIES Off the Daf

Fear of his majesty

הרי זה יחזיר

Today's daf discusses returning lost objects.

The Yerushalmi recounts that shortly after Rav Shmuel bar Sosretai traveled to Rome, he found a coffer containing jewels and other precious items belonging to the queen.

When the queen realized her enormous loss she sent out a proclamation in the entire land: "Whoever finds the queen's valuables and returns them within thirty days will be rewarded with a re-

spectable sum of money. One who finds the queen's jewels and valuables but withholds them past the thirty days will be beheaded." The queen understood that it would take a finder who intended to keep the objects for himself some time to find a buyer or to smuggle the jewels out of the country, since initially everyone would be on the alert and no one would be willing to risk his life to be an accessory to a crime. In order to prevent the finder from waiting for when the time would be ripe to dump his unlawful property, she declared that withholding the jewels after thirty days would be punishable by death.

Rav Shmuel found it shortly after the proclamation but decided to withhold the

jewels until after the thirty days. Shortly after thirty days, Rav Shmuel requested an audience with the queen and presented her with all of the lost property.

"But why did you wait until now? You must surely have heard the proclamation throughout the land. Perhaps you just found it now?"

"I found it shortly after the proclamation but did not return it until after the thirty days. I wanted people to understand that I am returning your majesty's property, not out of fear for my life, but only because I fear Hashem!"

The queen was so astounded at Rav Shmuel's absolute integrity that she blurted out, "Blessed is the Jewish G-d!" ■

1. ירושלמי ב"ב פרק אילו מציות הלכה ה' (נד) ז' בירושלמי שמתחת יד)

