

OVERVIEW of the Daf

- 1) **The dispute between R' Meir and Chachamim (cont.)**
 Rava explains how Chachamim respond to R' Meir's argument.
 R' Meir's position is unsuccessfully challenged.

- 2) **MISHNAH:** The Mishnah teaches that a גט and emancipation document may not be delivered after the sender died, but a monetary gift may be delivered even after the sender died.

- 3) **A posthumous gift**
 Rav is cited as suggesting a qualification to the ruling regarding a posthumous gift.
 This qualification is challenged.
 R' Zevid and R' Pappa offer alternative resolutions to the challenge and the Gemara rules that one does not have to be concerned that the giver intended to give money that was buried.
 R' Pappa and R' Zevid explain why they reject each other's explanation.
 R' Ashi challenges R' Zevid's assertion that the Mishnah follows R' Shimon Shezuri's opinion which maintains that if a seriously ill patient instructs someone to write a גט to his wife it is assumed that he also intended for it to be delivered.

- 4) **A "presence of all three" transaction—מעמד שלשתן**
 R' Huna in the name of Rav taught that a declaration to transfer money to a third party made in the presence of the giver, the receiver and an intermediary, effects a transfer of funds.
 Rava elaborates on this ruling.
 Support for this ruling is cited.
 Ameimar suggests an explanation for the ruling that מעמד שלשתן works even for payment of loans.
 R' Ashi challenges this explanation. ■

REVIEW and Remember

1. Can a slave be freed after his owner dies?

2. What is מעמד שלשתן?

3. What halachic leniencies are allowed for a שכיב מרע?

4. What is R' Meir's position regarding transferring ownership of something that has not yet come into being?

Distinctive INSIGHT

In which cases does מעמד שלשתן work?

אמר רבא מסתברא מילתא דרב בפקדון אבל במלוה לא

Rav Huna said in the name of Rav that if Reuven says to Shimon, "You have [an object worth] a hundred dollars of mine, give it to Levi," if this is done in the presence of all three parties (Reuven, Shimon and Levi), Levi automatically acquires the [object worth] a hundred dollars of Reuven.

Rava explains that the validity of the statement of Rav is only in a case where Reuven had a deposited item (פקדון) in the hands of Shimon, but not in the case where he had loaned cash (הלוואה) to Shimon. In other words, the ownership of an object can be transferred in such a manner, but not the ownership of a loan.

Rashi (Kiddushin 48a) explains the legal difference between a deposited item and a loan. An item is intact, and the one receiving it (Levi) can rely upon it and accept it. In the case of a loan, the cash is no longer intact in the hands of the borrower, so when its ownership is directed to Levi, the new receiver, his mind cannot focus upon it to acquire it (אינן דעתו סומכת עליו).

מהרי"ט (Choshen Mishpat 2:#95) questions how this explanation adequately explains the difference between a deposited item and a loan in reference to someone receiving a gift, such as in the case of מעמד שלשתן. Why would his סמיכות דעת be lacking in any case of a gift? מהרי"ט therefore concludes that the comment of Rashi was made only regarding a case of kiddushin, but in our case, there would have to be a different approach to explain Rava's distinction between a פקדון and a loan.

The conclusion of our Gemara is that Rav's rule of מעמד שלשתן works both in a case of a deposit as well as in a case of a loan. Rashba explains that, nevertheless, the case of a loan where מעמד שלשתן works is only where Shimon has received money from Reuven, and he is ready to repay it. However, Levi would not acquire the money if Shimon had said to Reuven, "I want to borrow money from you, and I will obligate myself to repay you, but I want you to give the money to Levi." The proof for this is a Gemara in Bava Metzia (112a), where a homeowner owed money to his worker. The homeowner tells the storekeeper to furnish the worker with goods for the amount he is owed, and the homeowner promises to reimburse the store owner for what is advanced to the workers. The halacha in that case is according to Rabbah who holds that the worker is not bound to go to the store owner, and he can still deal directly with his employer, as the מעמד ששלשתן of קנין is not effective. ■

Today's Daf Digest is dedicated

By Mr. & Mrs. Dennis Ruben in memory of their parents

ר' אברהם וואלף בן ר' בערל ז"ל
 ר' חיים שלום בן ר' בנדיט מאיר ז"ל

HALACHAH Highlight

Paying a fine for not marrying

בהפקירה נוחא ליה זילא ליה שכחא ליה פריצה ליה

He prefers a loose lifestyle that is cheap, available etc.

Rav Eliezer Yehudah Waldenberg¹, the Tzitz Eliezer, was asked to clarify the halacha regarding an unmarried woman who was seduced into having relations with a man promising that he would marry her. Afterwards, the man regretted his decision and refused to marry the woman. Can the man be forced to marry this woman, and if not, does she have the right to collect some sort of fine for the way he mistreated her?

Tzitz Eliezer methodically demonstrates that the man can not be forced, even rabbinically, to marry this woman. The most that could be done is to pressure him to marry this woman and he may even be publically referred to as a sinner (עבריין) since he is in violation of the mandate of the Rabbis to marry her to repair the damage that he caused by his reckless behavior. If, however, he adamantly refuses to marry her he should be forced to pay a fine commensurate to the breach in community standards as the Beis din

sees fit. This is based on a Teshuvah of Chasam Sofer² who writes that this fellow can be released without any payment since she agrees to have relations expecting to marry him. Since he is refusing to honor his commitment he can be forced to make payment for what he did (כשכר פעולה הראוי (לאותו פעולה). Accordingly, the dayanim will have to calculate the amount of the payment based on whether she was generally צנועה in her behavior or promiscuous. If it is determined that she is promiscuous she may not collect anything since we could apply the principle that she prefers a lifestyle that is “cheap, available and promiscuous.”

Tzitz Eliezer then raises the possibility that the man may not even have to pay a fee since it is likely that the woman was a niddah when she had relations with the man and according to Bach once there is a punishment of kares the principle ליה בדרבה מיניה קים applies and he cannot be forced to make a payment. He rejects the suggestion, since the Gemara states numerous times that the principle of קים ליה בדרבה מיניה is invoked only when the punishment comes from Beis din, as opposed to kares that is a punishment that comes from Heaven. ■

1. שו"ת צי"ץ אליעזר ח"ד סי' י"ז.

2. שו"ת חת"ס אה"ע ח"ב סי' ק"ה. ■

STORIES Off the Daf

The Posthumous Divorce

”האומר תנו גט זה לאשתך...”

In the community of אישקופיא the local rabbis agreed to institute a very strange thing: they arranged a divorce to be given after the husband’s death. When a certain woman in the town who had not had children with her husband was slated to require yibum by her deceased husband’s brother, she was given a posthumous divorce.

Someone felt that this was quite possibly prohibited, so he contacted the Mahari ben Lev, zt”l, to inquire if one could give a divorce by proxy after death. The query prompted the Mahari ben Lev to write the following response:

“To those who pursue righteous-

ness and seek Hashem... I wish to enlighten your honorable self regarding the divorces that certain sages gave to women by proxy after the decease of their husbands... I couldn’t believe what I heard. How can this sin be atoned for? ...The Torah girds sackcloth over such actions and the altar sheds tears. I cannot fathom how people who were considered to be upstanding and learned could have made such a great error... For even children know that one may not divorce after death. This is a clear mishnah in the first chapter of Gittin: ‘One who says “give this גט to my wife and this שטר שחרור to my slave” is not obeyed posthumously.’ ...The commentators are explicit that no language allows posthumous divorce without a doubt.”

The Mahari ben Lev continued, “I thought perhaps if her yavam was an apostate, this may be a reason to be

lenient. Since some authorities hold she need not receive חליצה from such a yavam, it may have been possible to combine this leniency with the opinions of those who hold that one may divorce posthumously using certain language and consider her a divorced woman. Although I do not subscribe to this reasoning, at least it would be possible to understand the rabbis who rendered this decision. However, after investigating the matter I have found that her deceased husband’s brother is a far cry from an apostate. I urge you, therefore, to send this woman to us here. We will evaluate this situation and decide what to do.”

He concludes, “From now on I urge you not to rely upon the rabbis of your city for גיטין וקידושין. The sins of those who rule in these areas without true expertise are worse than those of the generation of the flood!” ■