

OVERVIEW of the Daf

1) Defining a Beis Kur

A Mishnah related to hekdesh teaches that ditches ten tefachim deep and rocks ten tefachim high are not measured with the rest of a field.

The halacha of that Mishnah is clarified.

Another Mishnah related to the sale of property is cited that indicates that ditches more than ten tefachim deep and rocks more than ten tefachim high are measured with the rest of the field.

The Gemara then asks about the halacha of our Mishnah where the man stipulated that he has a Beis-kur size piece of land. Are the ditches and rocks measured as part of the field or not?

The Gemara answers that it is more logical to compare our case to the case of hekdesh.

2) **MISHNAH:** R' Meir and R' Chanina ben Gamliel disagree whether a double stipulation (תנאי כפול) is required for a stipulation to be valid.

3) Clarifying the dispute

The Gemara further elaborates on the exchange between R' Meir and R' Chanina ben Gamliel concerning the correct way to extrapolate from the relevant pesukim.

A Baraisa records an analogy, composed by R' Chanina ben Gamliel, to explain his position.

The analogy is unsuccessfully challenged.

Four unsuccessful challenges to R' Chanina ben Gamliel's position are presented. ■

REVIEW and Remember

1. What size ditch is not measured together with the rest of the field?

2. What are the components, according to R' Meir, of a binding condition?

3. Why did the Gemara reject the analogy presented by R' Chanina ben Gamliel?

4. Why is it necessary for the Torah to describe the consequences of despising the Torah?

Distinctive INSIGHT

When the condition is not doubled

רבי מאיר אומר כל תנאי שאינו כתנאי בני גד ובני ראובן אינו תנאי

The rule of Rabbi Meir is that if one makes kiddushin conditionally, the condition is only a factor if it fits within specific guidelines which are set by the Torah in discussing the episode of the tribes of Reuven and Gad in Bamidbar 32. These are that the condition must be stated in a positive and negative manner (if/then, if not/then), the condition must be stated before the action, and the positive fulfillment and its consequences must be mentioned before the lack of fulfillment. The Rishonim deal with the issue of a condition that was not presented properly.

Tosafos (Kesuvos 56a, ד"ה הרי) explains that if there would be no specific guidelines set forth in the Torah regarding making conditions, whenever a person would offer a conditional kiddushin and delineate the circumstances he sets for it to be valid, we would have said that the kiddushin would immediately be valid and final, and the man has no power to interfere or cancel its efficacy with the contingency that he sets. Now, however, that the Torah recognizes that a condition may be introduced upon which the validity of the kiddushin depends, the failure of the condition undermines the very kiddushin itself. If the person sets a condition which is not according to the guidelines of the Torah's standards, we revert back to a situation where the act of kiddushin will be valid even if the condition is not fulfilled.

Ramban and Rashba (to Bava Basra 126b) write that in a situation where it is evident that the person's intent was that the kiddushin not take effect unless certain circumstances occur, even if the man did not specifically verbalize his intent, the kiddushin will not be valid until those understood circumstances actually occur. However, if the man states a condition, but he does so lacking the rules which the Torah sets forth, we say that this indicates that he does not really expect that the condition be a factor, and the kiddushin will be valid even without the fulfillment of the inadequately spoken condition.

Many Rishonim explain that the only time we need a doubled condition (as well as the other details) is in regard to kiddushin and gittin. However, in cases of monetary matters, a condition is binding even if it is not doubled. Tosafos

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

HALACHAH Highlight

Stipulations

ר' מאיר אומר כל תנאי שאינו כתנאי בני גד ובני ראובן אינו תנאי
R' Meir states that any condition that does not follow the pattern of the conditions made with the descendants of Gad and Reuven is not a valid condition

Rambam¹ writes that someone who agrees to divorce his wife after the rainfall is not required to utilize the parameters of conditions (משפטי תנאים) that normally dictate conditional agreements. This ruling is supported by the Yerushalmi² that states that if the husband does not say "if" it rains - "אם ירדו גשמים" but says "after it rains - לאחר לאר" he is not required to use a double stipulation (תנאי כפול). The reason is that the phrase, "after it rains" is not a stipulation; rather it establishes the time when the divorce is to take effect, i.e. after it rains.

Ramban³ disagrees and asserts that the rationale behind the Yerushalmi's ruling is not that the term, "after it rains" is not a condition; rather the distinction between "if" it rains and "after" it rains relates to the action that is to be performed. An action that is to be completed some time

later is not subject to the parameters that normally guide conditional agreements. The purpose of a condition is to undo a completed action. Consider, for example, the case of a man who gave a woman a perutah for kiddushin and stipulated that it is conditional on her giving him one-hundred dollars. The act of kiddushin is completed but when the man added a stipulation he allows for the possibility that the kiddushin will be rendered null and void. If, however, the action was only partially completed and the condition is that the action will not be completed until some additional event will take place, it is not necessary to use a double stipulation since if the additional event does not occur the total picture was never completed and the kiddushin is invalid because the kiddushin was never completed. Since the parameters of conditions are necessary only when an action is completed and the condition allows for a reversal of the effect of that action it would seem that the parameters of conditions are not needed for a death-bed gift (מתנת שכיב מרע). Since the property of someone who is deathly ill is transferred by his declaration alone, without the formal act of transferring the property (מעשה קנין), there is no action that requires reversal. ■

1. רמב"ם פ"ט מהל' גירושין ה"ד.
2. ירושלמי קידושין פ"ג ה"ג.
3. רמב"ן במלחמות ביצה כ. ■

STORIES Off the Daf

"Like the condition of the tribes of Gad and Reuven"

"כתנאי בני גד ובני ראובן..."

Acertain elderly man was on his deathbed. He had lived a very full life and had enjoyed every good fortune with one exception: he wished that his youngest daughter would marry a certain deserving scholar that he knew and loved, but would not live to see the match arranged. He was well aware that his thrifty son would not pay out much for her dowry after his death and would do everything in his power to find a suitor who would settle with next to nothing. Of course, such a suitor was unsuitable. The dying man summoned witnesses and declared, "Give two hundred gold coins to so-and-so if he marries my

youngest daughter. If he doesn't marry her, don't give him anything."

Shortly thereafter, he died.

After the thirty days of mourning were over, the couple married and the scholar requested the fortune that had been bequeathed to him by his late father-in-law. His thrifty brother-in-law refused to part with a penny.

The son claimed, "As you may know, the Mishnah in Kiddushin 61 states that any condition that differs from the conditions placed upon the members of the tribes of Gad and Reuven does not take effect. One of the stipulations is that the condition must be stated before the action.¹ My late father started with the action, so his condition is sadly disqualified and I owe you nothing at all..."

The Ramban, zt"l, ruled against him, however. "First of all, we hold that the words of a man on his deathbed take effect even if they do not obey the rules

of תנאי. Second of all, the only time one is required to say the condition before the action is when the action happens immediately. But if the action will not occur immediately, he can mention the action first."² ■

1. מובא ברש"י ד"ה: כתנאי בני גד ובני ראובן אינו תנאי
2. מובא בש"ך, סימן רנ"ג, ס"ק ט"ו

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(earlier, 49b, ד"ה דברים) points out that the very source for these guidelines is the episode of the tribes of Reuven and Gad, which was a monetary question of their inheritance in the land. Ramban explains that Rabbi Meir, who learns this halacha from the inheritance of the land, indeed requires a doubled condition even regarding money matters. We, who do not rule according to Rabbi Meir, still require a doubled condition in cases of kiddushin and gittin. ■