

Daf Notes

Insights into the Daily Daf

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Bava Basra Daf 129

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Daily Daf

“Present” Versus “Inheritance”

The *Mishna* says: If someone divides his estate based on his instruction, and he gave more to one and less to another etc. [*If he wrote that it was a present, whether in the beginning, middle, or end, it is valid.*]

The *Gemora* asks: What is a case of beginning, middle, and end?

When Rav Dimi arrived in Bavel (*from Eretz Yisroel*), he said in the name of Rabbi Yochanan: If a person said, “This field should be given to this person, and he should inherit it,” it is a case of mentioning “present” first. If he said, “he should inherit it and it should be given to him,” this is a case of mentioning “present” at the end. If he said, “he should inherit it, and it should be given to him as a present, and he should inherit it,” this is a case of mentioning “present” in the middle.

He continued: This law is only regarding giving one field to one person. However, in a case where he is giving two fields to one person or one field to two people, it is not applicable. [*The Rashbam explains that this means that if the term “present” was only said regarding one person or one field, it only applies to that person or field, not the rest of what was stated by the person about to die.*]

Rabbi Elozar says: This is even true regarding one person and two fields, or one field and two people. However, it is not true regarding two different fields and two different people (*if he wrote an expression of “present” to one person and he wrote “inheritance” to the other, the gift is only valid to the first one, not the second one*).

When Ravin arrived he said: In a case where a person says, “This field should be given to a certain person, and a different field should be inherited by a (*different*) person,” there is an argument. Rabbi Yochanan says: He (*the one about whom was used a term of inheritance*) acquires the field. Rabbi Elozar says: He does not.

Abaye said to Ravin: One of the things you said is easy for us to understand, and one is difficult. Rabbi Elozar’s position is not contradictory (*from the statement quoted before Ravin’s quote*), as he before was dealing with a case with one person and two fields (*or two people and one field; in that case the gift is valid to the other as well*), while here he is discussing two people and two different fields (*and therefore the gift is valid to the one, but not to the other*). However, Rabbi Yochanan’s position seems contradictory to that quoted previously!?

The *Gemora* answers: It must be that different *Amoraim* argued regarding Rabbi Yochanan’s position.

Rish Lakish says: The only way two people acquire two different fields when mentioning both terms is if he says, “So-and-so and so-and-so should inherit these two fields that I have given them as a present, and they should inherit them.” [In other words, the word “present” must be in the middle, when it is clearly referring to both fields.]

The following is a similar argument (with Rav Sheishes being the only new opinion). Rav Hamnuna says: This law is only regarding giving one field to one person. However, in a case where he is giving two fields to one person or one field to two people, it is not applicable. Rav Nachman says: This is even true regarding one person and two fields, or one field and two people. However, it is not true regarding two different people inheriting two different fields. Rav Sheishes says: It even applies to two fields and two different people.

Rav Sheishes says: How do I know this? The *braisa* states: If someone says, “Give one *shekel* a week to my son” and he really requires a *sela* (two *shekel*), we give him two *shekel*. [The case is where a person leaves funds for his children to be taken care of in the event that he either dies or is going to go overseas.] If he said, “Do not give them more than a *shekel* a week,” we only give them a *shekel*. If he said, “If they die, others should inherit the stipend in their place” whether he merely said “give” or “don’t give more than a *shekel*,” they only receive one *shekel* a week. This case is like two people with two fields, and even so, the inheritors acquire. [The people who inherit if the sons die indeed acquire their *shekel* a week, despite the fact that he said they would inherit him (and only regarding the sons did he state he is “giving” them money, meaning as a present). We see from here that two people should be able to acquire in the case where they inherit two different fields, even when only one is told he is receiving a present.]

Rav Ashi asked this as a question on his colleagues, and he answered it for them as well. The case in this *braisa* is where the people who inherit the money after the sons are fit to inherit him (therefore the term *inherit* is valid in this case). This is according

to Rabbi Yochanan ben Berokah (that anyone who is fit to inherit may do so if specified that he should inherit, even though there are others who stand to inherit as well).

Rav Ashi says: Let us attempt to resolve this argument with a *braisa*. The *braisa* states: If someone says, “My possessions are to you, and after you So-and-so should inherit them, and after him So-and-so should inherit them,” if the first person dies, the second one acquires, and if the second person dies, the third one acquires. If the second one dies in the lifetime of the first person, the possessions go to the inheritors of the first person after his death. We see from the beginning of the *braisa* that all three people acquire, even though it is similar to two fields to two people (for the second one will not receive anything if the first person does). If you will tell me that, here too, the case is where the people who inherit the money after the sons are fit to inherit him, and it is according to Rabbi Yochanan ben Berokah, this cannot be, for if so, why should the third person inherit when the second person dies? Rav Acha the son of Rav Avya sent a message that according to the words of Rabbi Yochanan ben Berokah, if someone says, “My possessions are to you, and after you So-and-so should receive them,” if the first person is fit to inherit the person (the giver), the second receives nothing after the first person dies. This is because the term being employed here is actually inheritance and not a present, and inheritance does not stop. [Therefore, after the first person dies, it goes to his inheritors, not to the second person. In our case as well, the third person should not be empowered to uproot the inheritance from the inheritors of the second person.] This is a refutation on all of the previous opinions (besides for Ravin in the name of Rabbi Yochanan and Rav Sheishes).]

The *Gemora* asks: Let us say that this is also a refutation on Rish Lakish (who says that the term *present* for one does not help for the other regarding whom the term *inherit* was used).

The *Gemora* answers: Do you think this is true? Didn’t Rava say that the law follows Rish Lakish in these three things? [Rava would not have said this if

the braisa contradicted Rish Lakish.] Rather, it must be that the *braisa* which rules that it helps to associate an inheritance with a gift is when the two statements are mentioned within the time it takes to make an utterance (*toch k'dei dibur*). Rish Lakish held it is not effective when the two statements are mentioned after the time it takes to make an utterance.

The *Gemora* rules: The law is that whenever someone says two statements within the time it takes to make an utterance, it is considered that he is still in the middle of the previous statement, besides for *avodah zarah* (if one dedicates something for idol worship, it cannot be retracted) and *kiddushin* (one cannot retract a *kiddushin* by saying that he gave money to the woman as a gift, not with the intention of betrothing her). (129a – 130a)

INSIGHTS TO THE DAF

Within the Period of an Utterance

The *Gemora* issues a *halachic* ruling: The *halachah* is that a statement which follows another statement within the period of an utterance is regarded as if it were made together with the first one except in the case of blasphemy, idolatry, betrothal and divorce (according to the *Gemora* in *Nedarim* 87a). [If one commits blasphemy or practices idolatry, and immediately, within the period of utterance, retracts, his retraction is unavailing, and he will still incur the death penalty. If a man betroths a woman or divorces her, and immediately thereafter changes his mind, such withdrawal is invalid.]

The Ra"n (in *Nedarim*) comments that he doesn't know why these cases are different and from where did the Rabbis derive this. It would seem, he says, that in regards to other things that are not as serious, when a person does them, he doesn't do them with absolute intent. Rather, his intention is that he will be able to retract them within the time it takes for an utterance. But these, since they are so serious, a person will not proceed unless he has made up his mind completely, and for this reason, retraction,

even within the period of time it takes for an utterance, is not effective.

The Ramban quotes Rabbeinu Tam who says that the *halacha* that within the time it takes for an utterance is regarded as a single utterance is a decree that the Rabbis made because of a student who is purchasing something and his teacher comes, so that he will be able to greet him. They issued this ruling for all things except for these.

The Ra"n asks: How could they make a decree in respect to *nedarim* which will permanently uproot something from the Torah in a manner that involves actively doing something?

The Imrei Binah answers according to the Rad"vaz, who says that we are more lenient with respect to *nedarim* because they can be annulled by a sage. Therefore, the Torah gave the power to the *Chachamim* to permit a Biblical prohibition, even when it involves actively uprooting it.

Reb Shimon Shkop asks on the Ra"n: If the logic that enables one to retract within the period of an utterance is because he lacks absolute intent, how can this apply to the *halacha* of rending one's garments over a death? There is no intention required!

They explain as follows: The principle of "within the time required for an utterance" accomplishes that any act performed can be viewed as continuing for a further amount of time ("the period of an utterance"). Therefore, when he rends his garments and then, within the time required for an utterance, discovers who died, it may be regarded as if he tore his clothes at that time.