

# Daf Notes

Insights into the Daily Daf

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Bava Basra Daf 149

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## Daily Daf

### *Shechiv Mei'ra*

The Gemora inquired: What is the *halachah* in a case where a person on his deathbed has sold all his possessions? [If he then recovered, can he cancel the sale in the same manner as he can cancel a gift?]

Rav Yehudah said in the name of Rav: If he recovered, he may not retract. Sometimes, however, Rav Yehudah said in the name of Rav: If he recovered, he may retract.

The Gemora notes: But there is no conflict between the two statements, for one refers to a case where the money (from the sale) is still in existence (by the sick person; this indicates that he wishes to retract if in fact he recovers), whereas the other statement is dealing with a case where he used the money to pay his debt with.

The Gemora inquires: What is the *halachah* in a case where a person on his deathbed admitted that his possessions are not his own? [Do we assume he is saying the truth, or perhaps he is only saying this, for he doesn't want his children to appear wealthy?]

The Gemora attempts to bring proof to this from the following: The convert Issur (who now was on his deathbed) had twelve thousand *zuz* deposited with Rava. The conception of his son Rav Mari was not with the sanctity of Judaism (for Rochel, the daughter of Shmuel was taken captive, and Issur, her captor, while still an idolater, cohabited with her), but his birth was in the sanctity of Judaism (for Rav Mari was born after Issur converted), and he was then studying in a *Beis Medrash*.

Rava said: How could Mari gain possession of this money (for the possessions of a convert that dies are ownerless; Rava, who currently was holding onto this money would automatically acquire it)?

The following are Rava's suggestions and the reasons why they were rejected:

1. An inheritance – Rav Mari is not a true heir (for he was conceived when his father was an idolater).
2. As a *shechiv mei'ra* gift - the gift of a *shechiv mei'ra* has been given by the Rabbis the same strength as that of an inheritance, and consequently, whoever is entitled to an inheritance is also entitled to a gift and whoever is not entitled to an inheritance is not entitled to a gift (and Issur cannot bequeath to anyone).
3. Through pulling (*meshichah*) - the money is not with Rav Mari for him to acquire it.
4. By *chalifin* (exchange) - a coin cannot be acquired by *chalifin*.
5. Through *agav* (acquiring movables through a valid acquisition in land) - he has no land.
6. If in the presence of the three of us (*ma'amad shlashtan*) - if he were to send for me, I would not go (for I am not compelled to lose the rights to the money; according to the Meiri, Rava wanted to acquire the money and then himself give it to Rav Mari).

Rav Ikka the son of Rav Ami asked: What is the problem? Let Issur acknowledge that that money belongs to Rav Mari and he would acquire it through this admission! Meanwhile, there issued such an admission

from the house of Issur. This annoyed Rava and he said: They teach people what to say and cause a loss to me. [This incident proves that a *shechiv mei'ra* may in fact admit that his possessions belong to someone else.] (149a – 149b)

## ***Retaining Land***

The *Mishna* had stated: If the *shechiv mei'ra* left for himself land of any size, his gift is effective (even if he later recovers).

The *Gemora* asks: How much is “any size”?

Rav Yehudah answers in the name of Rav: Land which will be sufficient for his sustenance. Rabbi Yirmiyah bar Abba said: Even if left for himself only movables that will be sufficient for his sustenance.

Rabbi Zeira said: How accurate are the reported teachings of the elders! What is the reason in the case of land? It is because he will rely on it for his sustenance if he should recover. In the case of movables also, it may be assumed that he will rely on it for his sustenance if he were to recover.

Rav Yosef asked: Where is the accuracy? How can one say “movables” when the *Mishna* specifically stated “land”? And how can one say that “any size” means “sufficient for his sustenance” when the *Mishna* states “any size”?

Abaye said to him: Do you think that wherever “land” is stated, it means only land? Did we not learn the following: If one writes in a document: “All of my possessions are hereby given to my slave,” the *halachah* is that the slave goes free (because the slave is also one of his possessions; and certainly, the slave now owns all of his possessions). However, if he left over for himself any amount of land, the slave does not go free. [This is because the master retained some property for himself. We can therefore assume that he intends to keep the rights to the slave as well. It follows that the slave does not acquire any of the property, for while he is a slave, he is not able to acquire anything for himself. It emerges that he acquires nothing; the document was written just to display favor towards the slave.] Rabbi Shimon says: He always goes free unless the master says, “All of my possessions are hereby given to my slave except for one portion in ten thousand.” [In such a case, we assume that the master intends to retain the rights to the slave. However, if he only said, “except for land,” we may

assume that he intends to free the slave.] And Rav Dimi bar Yosef said in the name of Rabbi Elozar: They considered leaving over some movable objects regarding a slave significant, but not regarding a *kesuvah*. [The *Rashbam* explains that just as someone who leaves over some land has not really released his slave when he writes, “All of my possessions are given to my slave besides a small amount of land,” the law would be the same if he substituted movable objects for land. However, if he gave his wife a small amount of movable objects while giving his sons the rest of his possessions including all of the land, she does not give up her rights to the land when it comes to collecting her *kesuvah*. This is as opposed to him giving her a small amount of land. If she does not protest, it shows she waives her rights to the rest of the land. This proves Abaye’s point that land does not always mean only land, and is therefore a question on Rav Yosef.]

Rav Yosef answers: [Land always means only land.] The reason that the *Mishna* you quoted says “land” is because of the first part of the *Mishna*. Rabbi Akiva says: Rabbi Akiva says that even a small amount of land obligates one in *pe’ah* (leaving a corner of the land that bears produce for the poor) and *bikkurim*. One can also write a *pruzbul* on such land. [A *pruzbul* is a document instituted by Hillel whereas one can avoid having loans owed to him being made null and void after the *Shemittah* year, as stated by the Torah, by giving his loans over to *Beis Din* in this document. The borrower must own a small amount of land for this to take effect.] One can also acquire movable possessions along with a small amount of land with money, documents, and a *chazakah*. This is why the second part of the *Mishna* also stated “land.” (149b – 150a)

## **INSIGHTS TO THE DAF**

### ***Kinyan through Admission***

The *Gemora* in Bava Metzia (46a) struggles to figure out a way how Reuven can transfer his money that he has at home to Shimon, who will then use that money to redeem the *ma’aser sheini* of Reuven and avoid the additional fifth surcharge.

The *Gemora* suggests that if Reuven would have land to transfer to Shimon, he could transfer the money “*agav*” the property. Although *Tosfos* in Bava Kamma (12a) writes that *kinyan agav* is only Rabbinical, apparently *Tosfos* understands that even a Rabbinical *kinyan* would

be sufficient to establish Shimon as an owner of the money to redeem the *ma'aser sheini* and biblically avoid the additional fifth surcharge.

Tosfos raises a question: Even without a *kinyan agav* or *kinyan chalifin*, can't Reuven very directly transfer to Shimon the money by "admitting" that it actually belongs to Shimon? This is what Rav Ikka asked Rava in our *Gemora*.

In this question, Tosfos evidently assumes that an admission doesn't merely allow *Beis Din* to act as if witnesses testified, but it actually transforms the ownership of the item to belong to Shimon and would be considered Shimon's money for *ma'aser sheini* redemption purposes.

The Ketzos HaChoshen (40) answers Tosfos question by establishing a clause in this type of *kinyan* that it must be done in the presence of witnesses. Therefore, we can easily state that we are dealing with a case where there are no witnesses available to allow the *kinyan hoda'ah* (*admission*) to go into effect.

The Ketzos (194:4) has an elaborate discussion where he explains that this type of admitting would serve as a *kinyan* even for the purpose of transferring *chametz* that is another place to belong to a gentile. We see from the fact that it works for *ma'aser sheini* that it not only works for monetary purposes, but even for prohibition purposes, therefore it should work for *chametz* as well.

However, Tosfos in Bava Kamma (104b) implies that it would not work on a Biblical level and wouldn't work for *ma'aser sheini* purposes. Nevertheless, the Ketzos argues that it should still work for *chametz* since one has nullified the *chametz* and the requirement to rid himself of the *chametz* is only Rabbinical. But in truth, the Ketzos points out that even if *kinyan hoda'ah* is only Rabbinic in origin, it shouldn't be any worse than *kinyan agav* which works for *ma'aser sheini*.

Reb Avi Lebowitz suggests that Tosfos in Bava Kamma doesn't necessarily contradict the other Tosfos because Tosfos in Bava Kamma is speaking about a case where he is admitting that he owns property by which he will transfer the money through a *kinyan agav* - to which Tosfos says that it doesn't work on a Biblical level. But this Tosfos speaks of directly transferring the money through an admission, which would work on a Biblical level.

The rationale for the distinction is that admitting to owning property would require two Rabbinical allowances - one for the *kinyan hoda'ah* and a second for *kinyan agav*. A *kinyan* which is based on a combination of two Rabbinical allowances is weaker and perhaps would not work on a Biblical level.

## HALACHOS FROM THE DAF

### *A Ger Does Not Inherit*

The *Gemora* relates that Issur cohabited with Shmuel's daughter and only converted once she was pregnant. The child would one day become the great Amora, Rav Mari. Years later, Issur died and his estate was worth a large amount of money. The *Gemora* deals with how Issur would be able to transfer the money to his son, Rav Mari. The very first of many different ways that the *Gemora* tried to transfer the money, was via inheritance. But that couldn't work, since Rav Mari cannot inherit his father.

The Shulchan Aruch (Choshen Mishpat 283:1) rules that although the Torah says that a non-Jew can inherit his father, a convert cannot, since he has the status of a infant that was just born into *Klal Yisrael* without any Jewish parents. However the *Chachamim* did allow for him to inherit, for they feared that he would revert to being a non-Jew in order to claim the inheritance.

However in a case where the father is a convert and his child is a non-Jew (*i.e. the father converted after the child was born*), or even when both the father and son converted, the son does not inherit the father, since the above reason obviously doesn't apply. Furthermore, even if the father converted before the child was born (*but after conception*), that son cannot inherit his father, nor can the father inherit him. The reason is that a convert has a newborn status in regard to relation, and only a child that was born and conceived after he converted can be said to be his Jewish son. If, however, the conception was prior to the conversion, then this child cannot be considered his son.