

Daf Notes

Insights into the Daily Daf

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Kesuvos Daf 79

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Daily Daf

Evading the Husband

A certain woman (*a widow who was about to marry*) wishing to deprive her prospective husband of her estate assigned it in writing to her daughter. After she married and was divorced, she came before Rav Nachman to demand the return of her estate (*from her daughter, who claimed that the property was legally hers; she brought the document as proof*). Rav Nachman tore up the document.

Rav Anan, thereupon, went to Mar Ukva and said to him: "See, master, how Nachman the peasant tears up people's deeds." "Tell me now," Mar Ukva said to him, "how exactly the incident occurred." "It occurred," he replied, "in such and such a manner." Mar Ukva exclaimed, "Did you speak of a deed that a woman intended as a means of evasion? Thus said Rav Chanilai bar Idi in the name of Shmuel: 'I am an officially recognized judge, and should a deed which a woman intended as a means of evasion come into my hand I would tear it up.'"

Rava said to Rav Nachman: What in fact is the reason? It is obviously because of the fact that no man would neglect himself completely and give his property away to others. But this would apply to strangers only, but to a daughter, one might well give such a gift!

Rav Nachman responded: Even in the case of a daughter, a woman gives preference to herself (*and therefore, the gift is invalid*).

The *Gemora* raises an objection from the following *braisa*: If a woman desires to keep her property from her husband, how is she to proceed? She writes out a deed of trust to a stranger (*a document of a pretended sale or gift with which one person entrusts another in order to make people believe that a proper sale or presentation had actually taken place*); these are the words of Rabbi Shimon ben Gamliel. But the Chachamim said: If the recipient wishes, he may laugh at her (*and retain the property*) unless she wrote out for him, "You shall acquire possession from today, and whenever I shall approve." (*In this case only is the woman protected against the holder of the deed as well as against her husband. For should her husband claim the property, she can evade him by expressing consent to its acquisition by the stranger; and should the stranger claim possession, she can exercise her right of refusing to give her consent.*) The reason that this plan works is because she wrote out for him in the manner prescribed; but, had she not done so, the recipient would have acquired possession of it? (*Why did Shmuel rule that the document should be ripped up?*)

Rabbi Zeira replied: There is no difficulty. Shmuel is referring to a case where the woman assigned to the stranger all her property (*since no person would give*

away all his property to a stranger; it is pretty obvious that the document related to a fictitious transaction). The *braisa* is discussing a case where a woman assigned to a stranger only part of her property.

The *Gemora* asks: But if the buyer does not acquire her property, shouldn't the husband acquire it!

Abaye answers: This property is treated as property that is unknown to the husband in accordance with the view of Rabbi Shimon. (78b – 79a)

Mishna

The *Mishna* states: If money fell to a married woman as an inheritance, land should be purchased with it, and he enjoys the produce. If she inherited produce which is detached from the ground, land should be purchased with it, and he enjoys the produce. If she inherited produce which is attached to the ground, Rabbi Meir said: They assess the field as to how much it is worth with the produce, and how much it is worth without the produce, and with the difference, land should be purchased with it, and he enjoys the produce. But the Chachamim say: That which is attached to the ground is his, and that which is detached from the ground is hers; land should be purchased with it, and he enjoys the produce.

Rabbi Shimon says: Wherever he has an advantage upon her entry (*into marriage*), he has a disadvantage at her exit (*when he divorces her*); wherever he is at a disadvantage upon her entry, he has an advantage upon her exit. How is this? Produce which is attached to the ground – when he marries her, it is his, and when he divorces her, it is hers. And produce which is detached from the ground – when he marries her, it is hers, and when he divorces her, it is his. (79a)

Different Types of Land

(The Mishna had stated that when the woman inherits money, they should buy land with it. The Gemora discusses cases where a disagreement arises between husband and wife in regards to what type of real estate should be bought.) It is obvious

that if husband and wife differ on the choice of purchase between land and houses, they should buy land (*it is a safer and a better investment than houses*). If they differ on the choice between houses and date palms, they should buy houses. If one insists on date palms and the other wants fruit trees, they should buy date palms. If one insists on fruit trees and the other wants grapevines, they should buy fruit trees. (79a)

Principal and Produce

If she inherited a thicket of sorb trees (*which were primarily used for the cutting of its wood and which is valueless after the wood has been cut*) or a fish pond, some maintain that it is regarded as produce (*since no capital remains for the woman*) and others maintain that it is regarded as principal (*since eventually, it will be permanently depleted, the entire inheritance is regarded as principal*). This is the general rule: If the stump regenerates, it is regarded as produce, but if the stump grows no new shoots, it is regarded as principal. (79a)

Offspring of Melog Property

Rabbi Zeira said in the name of Rabbi Oshaya who said in the name of Rabbi Yannai, and others said that Rabbi Abba said in the name of Rabbi Oshaya who said in the name of Rabbi Yannai: One who steals the offspring of a *melog* animal is required to pay the double payment to the wife (*the Gemora is assuming now that the offspring is regarded as principal with which they would buy produce; this is because we are concerned that the mother might die and the principal will be lost*).

The *Gemora* asks: Who is this going according to? It cannot be in accordance with the Rabbis nor Chanania, for we learned in the following *braisa*: The offspring of a *melog* animal belongs to the husband; the child of a *melog* slavewoman belongs to the wife. Chanania the son of Yoshiyah's brother ruled: The child of a *melog* slavewoman has been given the same legal status as the offspring of a *melog* animal (and they both belong to the husband; according to both opinions, the offspring of the

melog animal belongs to the husband, not to the wife!).

The *Gemora* answers: Rabbi Yannai may be following both opinions, for it is the produce alone that the Rabbis in their enactment have assigned to the husband but not the produce that accrues from this produce.

The *Gemora* asks: Chanania's opinion is understandable (*that both, the offspring of the melog animal and slavewoman belong to the husband*) because we are not concerned that the mother will die (*and therefore, the principal will not be depleted*). However, what is the logic behind the opinion of the Rabbis?

The *Gemora* answers: They are concerned that the mother will die, but an animal is different because (*even if it dies*) the hide of the animal will always remain (*and the principal will not be depleted*). (79a – 79b)

Mishna

The *Mishna* states: If old slaves or slavewomen fell to her as an inheritance, they should be sold, and land should be purchased with them, and he enjoys the produce. Rabban Shimon ben Gamliel says: She does not sell them because they are the pride of her father's house.

If old olive trees or grapevines fell to her as an inheritance, they should be sold for wood, and land should be purchased with them, and he enjoys the produce. Rabbi Yehudah says: She does not sell them because they are the pride of her father's house. (79b)

Qualifying the Argument

Rav Kahana stated in the name of Rav: The argument in the *Mishna* is only where the olive trees or grapevines fell to the woman in her own field (*so that even if the trees die, she will retain the field as principle*); but, if they were in a field that did not belong to her, she must, according to everyone, sell

them, because otherwise, the principal would be depleted.

Rav Yosef asked from our *Mishna*: Aren't slaves and slavewomen the same as trees in a field that does not belong to her (*for if they die, no principal will remain*), and nevertheless, there is a dispute?

Rather, this is what Rav Kahana stated in the name of Rav: The argument in the *Mishna* is only where the olive trees or grapevines fell to the woman in a field that did not belong to her, but if they were in her own field, everyone holds that she is not required to sell them because she is entitled to retain the pride of her father's house. (79b)

INSIGHTS TO THE DAF

Two Points to Ponder

*** The *Gemora* discusses a case where the woman writes a document assigning her property to her daughter for the purpose of depriving her prospective husband from the estate. Would this procedure be effective to evade a creditor as well?

*** The *Gemora* discusses a dispute between Chanania and the Rabbis regarding the offspring of *melog* animals. Are they regarded as the principal because we are concerned that the mother might die and the entire principal will be depleted or are they regarded as produce because we are not concerned for death? Tosfos in *Yoma* says that we are not concerned that the wife of the *Kohen Gadol* will die on *Yom Kippur* because it is only one day; but in general, we are concerned for death over a long period of time. Shouldn't that be the case here? The animal and the slavewoman will eventually die; they will not live forever!