



Today's Daf In Review is being sent l'zecher nishmas Habachur Yechezkel Shraga A"H ben R' Avrohom Yehuda

### Kesubos Daf Pey Daled

R' SHIMON BEN GAMLIEL OMER...

- **Rav** said, the Halacha follows **R' Shimon ben Gamliel**, but not because of the reason that he gives.
  - **Q:** What does **Rav** mean by this? If he means that we pasken that he will still inherit her, but not for **R' Shimon's** reason, because his reason is that when someone stipulates to something that is contrary to a Halacha in the Torah the stipulation is void, and **Rav** doesn't agree with that because he holds that the stipulation would not be void, and the reason **Rav** would hold that he still inherits her is because he holds that a husband inherits a wife only D'Rabanan, and the **Rabanan** enacted that any stipulation to the contrary should be void – this can't be because we find that **Rav** actually holds that a stipulation contrary to a Halacha will be void!? It can't mean that the Halacha follows **R' Shimon** that such a stipulation would be void, but does not follow his reason which is that he holds the husband will still inherit the wife, whereas **Rav** holds that he would not, because then **Rav** should have said "the reason of **R' Shimon ben Gamliel** is correct, but his Halacha is not"!? It can't mean that the Halacha follows **R' Shimon** that the husband inherits the wife, and his reason is that a stipulation contrary to a D'Oraisa is void, however he would hold that a stipulation contrary to a D'Rabanan would not be void, and **Rav** says that even contrary to a D'Rabanan would be void, because then **Rav** is agreeing with **R' Shimon**, and he is just adding that it is even void when contrary to a D'Rabanan!? **A:** What **Rav** means is, that the Halacha follows **R' Shimon** who says that the husband will still inherit the wife. However, **R' Shimon's** reason is that he inherits based on a D'Oraisa and therefore the stipulation is void, whereas **Rav's** reason is that he only inherits based on a D'Rabanan, and the **Rabanan** enacted that a stipulation against their enactment should be void.
    - **Q:** We find that **Rav** explains a shita of **R' Yochanan ben Broka** in a way to mean that a husband inherits his wife based on a D'Oraisa!? **A:** He is explaining **R' Yochanan** that way, but **Rav** himself holds that it is only based on a D'Rabanan.

MISHNA

- If a person dies and leaves over a wife, a creditor, and heirs, and he left over no real estate but did leave over moveable property that is in the hands of others (he had given it for safekeeping or had given a loan), **R' Tarfon** says the asset should be given to the weakest among them. **R' Akiva** says, we do not show mercy in deciding proper law, rather we give the asset to the heirs, because they are the only one from these 3 who collect without having to swear.
- If the man left over produce that was detached from the ground, whoever grabs it first can keep it. If the wife grabbed more than the value of her kesubah, or if the creditor took more than his debt, regarding this extra amount, **R' Tarfon** says the asset should be given to the weakest among them. **R' Akiva** says, we do not show mercy in deciding proper law, rather we give the asset to the heirs, because they are the only one from these 3 who collect without having to swear.

GEMARA

- **Q:** Why does the Mishna have to give the case where the asset was given for safekeeping and the case of where it was given as a loan? **A:** We would say that when giving something for

safekeeping it is considered to be in the possession of the man (and therefore of the heirs) wherever it is, and therefore in that case we would say that maybe **R' Tarfon** would agree that it should be given to the heirs. If we would only say the case of the loan, since a loan is meant to be spent, maybe **R' Akiva** would agree that it is not in the possession of the estate and should not be given to the heirs.

- **Q:** What is meant when **R' Tarfon** says it should be given to the “weakest”? **A:** **R' Yose the son of R' Chanina** says it should be given to the one with the weakest form of proof (whoever has the later dated document). **R' Yochanan** says it means that it should be given to the woman for her kesubah, so that women will want to get married (by making them feel secure with their kesubah).
  - A Braisa brings this same machlokes between **R' Binyamin** and **R' Elazar**, respectively.

#### HINIACH PEIROS HATELUSHIN

- **Q:** Why does **R' Akiva** say that only the excess should be given to the heirs? Why not the entire amount? **A:** That is actually what he would hold. The reason he speaks in terms of the excess is only because **R' Tarfon** spoke in those terms.
  - **Q:** Why does **R' Akiva** hold that the grabbing accomplishes absolutely nothing? **A:** **Rava in the name of R' Nachman** said, he agrees that grabbing the asset helps during the lifetime of the father, but not after.
  - **Q:** According to **R' Tarfon**, who says that grabbing after his death is effective as well, where does the asset have to be lying for the grabbing to be effective? **A:** **Rav and Shmuel** say it must be lying in the reshus harabim, but can't be lying even in a side street. **R' Yochanan and Reish Lakish** say that it can even be lying in a side street.
  - A judge ruled in accordance with **R' Tarfon**. **Reish Lakish** had the decision reversed to follow the view of **R' Akiva**. **R' Yochanan** said to **Reish Lakish**, by doing so, you have given the view of **R' Akiva** the status of a D'Oraisa! Although I would agree that the Halacha should follow **R' Akiva**, I would not say to reverse a decision to reflect that view!
    - **Q:** Maybe we can say that **Reish Lakish** holds that if one paskened contrary to a clear Mishna we reverse the ruling and **R' Yochanan** says that we do not? **A:** The machlokes may be that **R' Yochanan** holds we pasken like **R' Akiva** when he is arguing on anyone but his rebbi, and when he argues on his rebbi there is no clear rule whether we pasken like him. Therefore, in this case when he argues on his rebbi **R' Tarfon**, it is not considered to be a clear mistake if one paskened like **R' Tarfon**, and the psak would therefore not be reversed. **Reish Lakish** says that we always follow **R' Akiva** and any psak to the contrary is considered to be an error of a clear Mishna. **A2:** All agree that we don't necessarily pasken like **R' Akiva** when he argues with his rebbi. The machlokes is that **R' Yochanan** says **R' Tarfon** was **R' Akiva's** rebbi, and **Reish Lakish** says he was not his rebbi. **A3:** Everyone agrees that he was not his rebbi. **Reish Lakish** holds that the rule is clear that we are to pasken like **R' Akiva** (and any psak to the contrary must therefore be reversed), and **R' Yochanan** says the rule is that we are to lean towards the view of **R' Akiva**, but we are not to reverse a psak based on it.
    - The relatives of **R' Yochanan** grabbed the cow of their debtor who had passed away, that was in a side street. **R' Yochanan** said they had grabbed it properly and could keep it for the debt. They went to **Reish Lakish** who told them that they must return the cow (per the view of **R' Akiva**). They went back to **R' Yochanan** who told them there is nothing I can do because my equal has argued with me.
    - The one who oversaw the animals of orphans had an ox grabbed from him by a creditor of the father. The creditor said he grabbed it when the father was still alive, and the animal caretaker said it was grabbed after his death. **R' Nachman** said, since there are no witnesses as to when the animal was seized, we believe the creditor based on a miguy that he could have said that he purchased it from the father.

