



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

### Kesubos Daf Tzaddik Daled

#### GEMARA

- **Q:** Why would **Ben Nanas** say that the 4<sup>th</sup> wife must swear as well? **A: Shmuel** said, the case of the Mishna is where we have determined that one of the fields given to one of the earlier wives for her kesubah is now thought not to have belonged to the husband. Therefore, she is at risk of having it taken away from her. The 4<sup>th</sup> wife must therefore swear before taking the last field, because by her taking that field she leaves nothing for the earlier wife to collect from if her field is ultimately taken away from her. Based on this the machlokes in the Mishna is regarding a later creditor who seizes assets before an earlier creditor. The **T"K** holds that we remove the asset from the later creditor and give it to the earlier one (which is why the 4<sup>th</sup> wife need not swear, because the field will be taken away from her if need be). **Ben Nanas** holds that the later creditor retains the seized assets. Therefore, since the 4<sup>th</sup> wife may later cause a loss to the earlier wife, she must swear before taking the field. **A2: R' Nachman in the name of Rabbah bar Avuha** said that all agree that a later creditor must return the seized asset. The machlokes is that **Ben Nanas** is concerned that 4<sup>th</sup> wife will use up the asset before it is taken away from her, and therefore she has to swear, because she may ultimately cause a loss to the earlier wife. The **T"K** is not concerned that the asset will be used up, and therefore she need not swear before collecting. **A3: Abaye** said, the case is where the orphans are all adults, and they argue in the Halacha of **Abaye Kashisha**, who said that one must swear before collecting from orphans who are minors or adults. **Ben Nanas** holds like **Abaye Kashisha**, and the 4<sup>th</sup> wife must swear, because she is collecting from orphans. The **T"K** disagrees and holds that since they are adults, she need not swear.
- **R' Huna** said, if there are brothers in an inheritance or partners in a property, and a 3<sup>rd</sup> party took one of the partners to court about the partnership property and the 3<sup>rd</sup> party won, the other partner cannot demand a separate court case to deal with his share of the property. Rather, the first partner is considered to have acted as the shaliach for the partnership.
  - **R' Nachman** said this is shown in our Mishna, where the Mishna says that the first wife must swear to the 2<sup>nd</sup>, the 2<sup>nd</sup> must swear to the 3<sup>rd</sup>, and so on. Now, it seems that the 3<sup>rd</sup> can't demand an oath from the first. It must be that the 2<sup>nd</sup> woman accepts the oath from the first on behalf of all of the other women. This is the same concept as the partners.
    - **Q:** The cases are very different!? The oath made is the exact same oath that would be made to each one of the women. In the case of the partners, the other partner claims that he wants his own court case, because he has better arguments to win the case! Therefore, the partner can demand his own court case.
      - The Gemara says, the partner can only demand his own court case if he was not in town during the first court case. If he was, we tell him that he should have shown up to the first court case, and we therefore would not grant his demand for a new court case.
- If there are 2 deeds to a property, written on the same day (and held by 2 different people), **Rav** says they split the property. **Shmuel** says we leave it up to the discretion of Beis Din to decide who to give it to.
  - **Q:** Maybe we can say that **Rav** will follow the view of **R' Meir** who says that the witnesses who *sign* the get (and not the ones who just witness the delivery) effect the divorce (similarly the witnesses who sign a document make it effective, and as such if 2 deeds are written on the same day without stating the time of day, there is no way to

say that one has precedence over the other), and **Shmuel** will follow the view of **R' Elazar** who says that the witnesses of delivery make the document effective (and therefore we leave it up to Beis Din to try and determine who received the deed first)?

**A:** It may be that all agree with **R' Elazar**, and the machlokes is that **Rav** says splitting the field is the more equitable solution, and **Shmuel** says that leaving it to the discretion of Beis Din is more equitable.

- **Q:** How can we say that **Rav** holds like **R' Elazar** when we find that **R' Yehuda in the name of Rav** said that we only pasken like **R' Elazar** regarding a get, but not for other documents!? **A:** We must say as we said earlier that **Rav** follows **R' Meir** and **Shmuel** follows **R' Elazar**.
- **Q:** A Braisa says that two deeds that were produced and were written on the same day, we divide the field for the people. That is not like **Shmuel** said!? **A:** **Shmuel** will say that the Braisa follows **R' Meir**.
  - **Q:** The Braisa continues and says that if the owner of the field wrote one deed and had it signed and then wrote a second deed and had it delivered before the first one, the second person is koneh. If the Braisa is following **R' Meir** they should split the field since they were both written and signed on the same day!? **A:** The Braisa is not problematic to **Shmuel**, because we find a Braisa where the question of whether to divide the field or allow it to be decided by Beis Din is actually subject to a machlokes among Tanna'im.
- The mother of **Rami bar Chama** wrote a document gifting her property to him. That evening she wrote a document gifting her property to her other son, **Mar Ukva bar Chama**. **R' Sheishes** awarded the property to **Rami**, and **R' Nachman** awarded the property to **Mar Ukva**. **R' Sheishes** explained, I did so because his document was written earlier in the day! **R' Nachman** said, we are not in Yerushalayim where the time of day is written, and therefore any documents written on the same day are on equal footing. **R' Nachman** explained, because they are on equal footing, I applied discretion as a judge and awarded it to **Mar Ukva**, because he was the more beloved son. **R' Sheishes** said, I too am a judge and as such my ruling should be considered as if I used discretion to decide who to give it to! **R' Nachman** said, first of all you are not an appointed judge as I am. Second, you awarded it based on an erroneous Halacha, not based on discretion.
- Two people with deeds to the same property came to **R' Yosef** to decide who should keep the property. One deed said it was written on the 5<sup>th</sup> of Nisson, and the other said it was written in Nisson (without specifying a day). **R' Yosef** gave the property to the one who had the deed written on the 5<sup>th</sup> of Nisson, because the other one may have possibly been written even on the last day of Nisson. The losing party asked for a document to be written allowing him to collect from the seller from any date beginning after Nisson (and encumber properties from that date). **R' Yosef** told him, that cannot be done, because any later property holder can say that it is possible the deed was written on the first of Nisson and as such he should have gotten the original property over the other person. The only option would be for the 2 people with the deeds to give each other authorization, thereby allowing collection under either of their rights.