



Volume 10. Issue 19

The Gift of the Gravely Ill

Most of the learning this week dealt with the laws of inheritance. The law of a gift of a gravely ill person – *matnat schiv me'ra* – was also raised. There are a number of unique laws that apply to such a gift that do not apply in the laws of acquisitions or gifts in general.

The *Mishnah* (9:6) taught that if the *schiv me'ra* gave away all his property then miraculously recovered, the gift is reverted. If however he left some property for himself, and gave the rest away by way of a contract, then if he recovers the gift stands.

The *Tifferet Yisrael* outlines the laws that apply to a *schiv me'ra*. A partial gift (meaning that the *schiv me'ra* kept something for himself) requires a form of *kinyan*. If performed and the *schiv me'ra* recovers, the gift is not returned. Without a *kinyan* even if he dies, it is meaningless. This is if the gift was given *stam* – like an ordinary gift. If however it was articulated that it was given as a *matnat schiv me'ra* – meaning to be given after death – then a formal acquisition is not required even for a partial gift.¹ Verbal instructions are enough. If the person recovers however, it is returned.

If the *schiv me'ra* gave away his entire wealth (even to multiple people) a formal acquisition is not required². If the person recovered the gifts are returned. This is even if they were given on the condition that if he recovers it would not be returned.

Only if an acquisition was performed and a stipulation was made would the gift not be returned as it is then considered like a gift from a healthy person.

Finally if one gives instructions and states it is because he is going to die – *metzave machmat mittah* – then it does not require a *kinyan* even for a partial gift and is returned if the person survives.

There is a discussion in the *Gemara* whether *matnat schiv me'ra* is biblical (147a) or rabbinic out of a concern for the stress that it may cause on the person in this precarious situation (147b). There is a case in the later *Gemara* involving *issur* the *ger* who was a *schiv me'ra* and wanted to give a large sum of coins to *Rav Mari*³. No formal acquisition could be made. The *Gemara* explains that a *matnat schiv me'ra* could not be employed since *Rav Mari* was not a *bar yerusha* and a *matnat schiv me'ra* is like *yerusha*.⁴

We find from that *Gemara* that the *matnat schiv mera* was instituted by the *rabannan* and structured like *yerusha* (and indeed shares some similarities). The *Yad Rama* (149a) explains that a rabbinic law generally takes a similar construct of the biblical equivalent. Acquisitions require a formal act and are not performed with words alone. Similarly they cannot take effect after the death of one of the parties. The only construct that could be used was that of *yerusha*, which was the basis for the *takana*.

Yisrael Yitzchak Bankier

¹ The *Tifferet Yisrael* notes that if someone made an acquisition in such a case it would be detrimental unless it was stipulated that it was being performed to strengthen the recipient's position.

² Even a *matnat me'chaim* (*Bartenura*)

³ See the *Gemara* and *mefarshim* for the explanation of their relationship.

⁴ The *Shulchan Aruch* rules that this exclusion is only for this particular case. Anyone else however could be the recipient of a gift from a *schiv me'ra* even if they were not related.

Revision Questions

בבא בתרא ח' ג' ט' ח'

- How many portions did the daughters of *Tzlofchad* receive? (ח' ג')
- From what inheritance does the *bechor* not take a double portion? (ח' ד')
- Regarding the previous question, what other special law applies to that inheritance? (ח' ז')
- Can someone exclude a son from his inheritance? (ח' ה')
- In what manner can one give more of his inheritance to one child over another? (ח' ה')
- What is the discussion regarding a person who gave away all his possessions to another, even though he had children that would have inherited it? (ח' ה')
- Is a person believed if he says "this is my son"? "This is my brother"? (ח' ו')
- Regarding the second case in the previous question, provide two practical ramifications of this law? (ח' ו')
- Explain the debate regarding how one can ensure that his possessions are transferred to his son after he dies. (ח' ז')
- Regarding the previous question, what are the practical ramifications of such an approach? (ח' ז')
- Why is it harsher if a young girl is an heir amongst only sisters as apposed to being amongst brothers? (ח' ח')
- How is the inheritance managed if the deceased leaves sons and daughters and the inheritance is: (ט' א')
 - Large?
 - Small?
- Regarding the previous question what if one of the children was a *tumtum*? (ט' ב')
- What other case is raised in the *Mishnah* where a child being a *tumtum* has similar implications? (ט' ב')
- What is the law regarding a case where there are both adult and minor heirs, and the adult brothers develop and increase the value of the inheritance? (ט' ג')
- When is the law in the previous case different? (ט' ג')
- Regarding the previous two questions, what other case is similar? (ט' ג')
- What is the law regarding brothers that are supported by the inheritance where one brother: (ט' ד')
 - Receives a significant promotion?
 - Become ill and used significant finance to heal?
- What are *shushvinot* and why is it important to the case in the previous question? (ט' ד')
- If a wedding is broken off, when are the *sivlonot* returned and when are they not? (ט' ה')
- What is a *matanat shchiv mera*? (ט' ו')
- If the *shchiv mera* recovers, when can he renege on the *matana*? (ט' ו')
- What are the three opinions regarding the formulation of a *matanat shchiv mera*? (ט' ז')
- What case is discussed where there would be a dispute and how is it resolved if a house collapsed on:
 - A man and his father? (ט' ח')

Local Shiurim

Melbourne, Australia

Sunday -Thursday
10 minutes before *Mincha*
Mizrachi Shul
Melbourne, Australia

Friday & Shabbat
10 minutes before *Mincha*
Beit Ha'Roeh
Melbourne, Australia

Efrat, Israel *Shiur in English*

Sunday -Thursday
Rabbi Mordechai Scharf
9:00am
Kollel Magen Avraham
Reemon Neighbourhood

ONLINE SHIURIM

Rabbi Chaim Brown
www.shemayisrael.com/mishna/

Rav Meir Pogrow
613.org/mishnah.html

Rabbi E. Kornfeld
Rabbi C. Brown
<http://www.dafyomi.co.il/calendar/myomi/myomi-thisweek.htm>

SHIUR ON KOL HALOSHON

Rabbi Moshe Meir Weiss
In US dial: 718 906 6400
Then select: 1 – 2 – 4

Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
30 th June ט"ו תמוז	1 st July ט"ז תמוז	2 nd July י"ז תמוז	3 rd July י"ח תמוז	4 th July י"ט תמוז	5 th July כ' תמוז	6 th July כ"א תמוז
Bava Batra 9:9-10	Bava Batra 10:1-2	Bava Batra 10:3-4	Bava Batra 10:5-6	Bava Batra 10:7-8	Sandhedrin 1:1-2	Sanhedrin 1:3-4

