The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
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סימן קנ"ג סעיף י"ח-כ'

Overview

Siman 153 Seif 18:

There is an opinion that maintains that sacred silver ornaments that are brought to the Bais HaKnesses for the chagim may not be removed and sold as unconsecrated utensils and the tzibbur may retain them so that they should remain in the possession of hekdesh after the donor passes away.

- Since it was not specified that the item was only being lent to the Bais HaKnesses, once it was used it becomes sacred. Magen Avrohom writes that nowadays the custom is that these items remain the possession of the owner and it is unnecessary to stipulate as such, however, it is best to stipulate that the item is only on loan. (M.B. 95)

Siman 153 Seif 19:

There is an opinion that maintains that if a note saying that someone who passed away consecrated a utensil it is considered sacred even though there are no witnesses to this declaration and it was never given to the tzibbur.

- It is clear that he sanctified it since he recorded the donation. (M.B. 97)

Siman 153 Seif 20:

There is an opinion that maintains that if a sefer Torah was assumed to belong to Reuven's ancestors the tzibbur may not take ownership of it.

- We do not assume that he intended to give the sefer Torah to the tzibbur. The reason this is different from seif 18 is that it is common for people to retain ownership of their sefer Torah. The fact that the tzibbur used their own sefer Torah cover does not indicate that he intended to give it to them. Some authorities, however, maintain that a sefer Torah is no different from other utensils loaned to the Bais HaKnesses. Magen Avrohom asserts that the custom is that the owner retains the right to sell the sefer Torah but it is still preferable for the owner to stipulate that it is only being loaned to the Bais HaKnesses. (M.B. 99)

Stories to Share

A Disputed Bequest

מ"ב, ס' קנ"ג, ס"ק צ"ז: "דודאי הקדישו..."

Today's amud discusses the donation of vessels to a shul.

A certain very wealthy man asked that his seforim and shelves be donated to a local shul even before he was buried. "In return, they will learn mishnayos for my soul and someone will say kaddish for my neshamah for the entire first year."

When this man died, his children followed his instructions to the letter. But since their late father would leave money in a sefer at times, the children warned the recipients to be on the lookout for any money. The very next day, a certain person opened up the Machatzis HaShekel and found an envelope containing a hundred rubles. When the heirs heard about this they demanded the money but the administration of the shul refused to hand it over. "Why should we give the money to you? He gave us the seforim, and it seems most likely that he meant to donate any money found as well."

The heirs disagreed, but the administrators of the shul were adamant so the case came before the Sheilas Shalom. He ruled that the money was the heirs' property. "If I understood correctly, the main trouble here is that he requested that the seforim be given as a gift to the shul after his death. If this is truly the case, the shul does not acquire this gift, since the shul itself is not halachicaly capable of acquiring such a gift.

"The only reason why the heirs should give the books to the shul is to fulfill the will of the deceased, which is their mitzvah. But if they sold the seforim and did not fulfill the will of the deceased, the sale would have been valid, since the moment he died they acquired the rights to them. Since when the heirs gave over the seforim they stipulated that any money found must be returned, the money in the seforim remains theirs and the finder must return it immediately."

שו"ת שאילת שלום, חלק תנינא, ס' רכ"ט

Halacha Highlight

Ownership of donated items

Shulchan Aruch Siman 153 Seif 20

אין הצבור יכולים להחזיק בו

The tzibbur may not appropriate it

Shulchan Aruch (סעי' כ') writes that if a Bais HaKnesses has possession of a sefer Torah that was presumed to belong to Reuven's ancestors, the tzibbur may not claim ownership of that sefer Torah. The reason is that there is no reason to think that the original owner did not intend to retain possession of the sefer Torah. Mishnah Berurah (ס"ק צ"ט) notes that this halacha is different from the halacha in seif 18 where we were taught that a donor may not take back property donated to a Bais HaKnesses and the tzibbur may take possession of it after the donor passes away. The reason for the distinction is that it is common for people to give a sefer Torah to a Bais HaKnesses to use until the time that the owner would like to take it back. Therefore, the fact that the tzibbur has had possession of the sefer Torah and even used their own wrapping all these years, does not prove his intent to donate the sefer Torah to them.

Sefer Tzedaka U'Mishpat (פ"ט הע' פ"ג ד"ה ונראה) asserts that the halacha regarding a sefer Torah is limited to where the donor gave an actual sefer Torah to a Bais HaKnesses but when the donor gave money and the Bais HaKnesses used that money towards the purchase of a sefer Torah, all opinions would agree that the donor may not take the sefer Torah that was purchased with his money. Teshuvas Keren L'Dovid (או"ח סי' ע"ג) was asked whether someone who donated sefarim to a Bais HaKnesses may take them when he moves to another city. After discussing a number of related points he concludes that the donor may not take them with him once the Bais HaKnesses acquired them and certainly members of the Bais HaKnesses may not take these donated sefarim and move them to another Bais HaKnesses.