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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

***Mishna***

There are some who inherit and bequeath, some who inherit and do not bequeath, some bequeath and do not inherit, and some do neither.

The *Mishna* explains: There are some who inherit and bequeath. A father to his sons and sons to a father inherit and bequeath to each other. Brothers who share a common father inherit and bequeath to each other. A man inherits from his mother or his wife, but does not bequeath to them. Sons of a sister (*text of the Rashbam*) inherit their uncle (*their mother's brother*), but do not bequeath to him. A woman bequeaths to her sons and husband, but does not inherit from them. The brothers of a mother bequeath, but do not inherit. Brothers who share a common mother do not inherit or bequeath to each other. (108a)

***Inheritance***

The *Gemora* asks: Why would the *Mishna* start off by stating an abnormal (*and bad*) case that a father inherits his sons? It should first state that sons inherit their father, as we do not start off with punishments (*sons dying in the lifetime of the father*)! Additionally, the verse regarding inheritance starts, "When a man will die and he has no son etc." [*This is the order presented in the verse as well! Why don't we match this order in the Mishna?*]

The *Gemora* answers: The *Tanna* started with this case of the father inheriting from his sons because it was only derived from the verse, and therefore the teaching is dearer to him than an obvious explicit verse.

The *Gemora* asks: What is this derivation?

The *Gemora* answers with a *braisa*. The *braisa* states: "*His relative*" refers to the father. This teaches that a father is before brothers when it comes to inheritance. One would think that he is even before the deceased's son. This is why the verse states, "*The close*." This teaches us that the closest one inherits. Why do you say that this refers to a son and not a brother? This is because a son is in place of his father when it comes to *yi'ud* (*mitzva to marry a jewish maidservant purchased by the father*) and a field of inheritance. [*If a son purchases his father's field of inheritance dedicated to hekdesh, it goes back to his father at Yovel. However, if the father's brother or anyone else purchases the field, it goes to the Kohanim at Yovel.*]

The *Gemora* counters: Perhaps we should include a brother and not a father, as a brother stands in place of his deceased brother regarding *yibum*!?

The *Gemora* answers: There is only a possibility of *yibum* when there is no son. When there is a son, *yibum* is not done. [*In other words, this shows that a son is closer than a brother in Torah law.*]

The *Gemora* asks: It is only because of this refutation; otherwise, we would have thought that a brother takes precedence over a son. But why should this be? Let us prove that a son takes precedence, for he takes his father's place

in two areas (*yi'ud and an ancestral field*), whereas a brother only takes precedence in one area (*e.g. by yibum*)!?

The *Gemora* answers: Regarding an ancestral field, a son takes the place of his father (*and not a brother*) is only learned from *halachos* of *yibum*, where we say: There is only a possibility of *yibum* when there is no son. When there is a son, *yibum* is not done. [*Therefore, without the logic of yibum there would only be one place where we find that a son takes precedence, not two.*] (108a – 109a)

**WE SHALL RETURN TO YOU, BEIS KOR**

# INSIGHTS TO THE DAF

### *A Niece Is a Granddaughter?*

The Rashbam frequently refers to a niece as a granddaughter (*nechedֿ* - s.v. *Velo manchilin*), as also evidenced later (114b, s.v. *HaIshah*). HaGaon Rav Shemuel Shtrashun and other commentators tried to find a solution with no success while Mahari Ya'avetz attempts to correct the text. A certain rabbinical scholar told us that we have no need for any correction: The Rishonim in France sometimes called nephews grandchildren, such as in the Rosh's responsa addressed to "my grandson" but signed "your uncle" (see, for instance, *Kelal* 12:3, 98:1, etc.). Apparently, the same word was used for *nephew* and *grandson* or *niece* and *granddaughter* in the Romance languages of that era.

### *How do Heirs Assume Ownership of their Inheritance?*

The process of an heir's acquisition of an estate from the deceased has no parallel in the realm of *halachos* relevant to the acquisition of property. The Acharonim explain that an inheritance involves no usual property-related *kinyan* as customary in other transfers of assets. When a father passes away, rather, his son takes his place and therefore assumes ownership of all the deceased's assets. In other words, property usually moves or is taken into another's ownership whereas in the instance of inheritance, the former owner departs and another takes his place while the property stays put (see *Chidushei HaGaon Rav Naftali Trop,* Bava Basra 126b; *Nesivos HaMishpat* 276, *S.K.* 4; Responsa *Machaneh Chayim, II, C.M. 41*). The method of this transfer of ownership has far-reaching implications as to the types of assets included in an inheritance. A person, for example, cannot acquire an item stolen from its owner and not on his, or the original owner's, premises. A son, though, inherits all his father's property, even if stolen, as he simply assumes his father's place: just as his father would still own assets stolen from him, the same applies to the son.

### *Distributing Funds Earmarked for Charity Included in an Estate*

One of the more frequent implications of the above *halachah* is expressed if the deceased set aside funds for the poor. An heir finds, for instance, that, aside from not having been distributed, the money had never been designated for any particular person or group. While the father was alive, only **he**, of course, had the right to choose to whom to give the funds (*Remo, Y.D.* 257:10). Do his heirs, however, inherit that right as well or should the money be distributed in some other fashion? Indeed, the topic is far from simple: After all, even the father could not sell or grant the right, known as *tovas hanaah*, to another as it "lacks substance" and cannot be transferred. Rav Hai Gaon defines the matter by comparing an article acquired or transferred to the owner's body: just as our bodies have material substance, we can acquire property or transfer its ownership only if that property has physical dimensions (*Sefer HaMikach, Sha'ar 2). The right, then, to choose to whom to distribute charitable funds cannot be transferred or sold. In the light of the above, though, that a son takes his father's place, does he also inherit this apparently untransferrable right?*

*The Shach (C.M. 276, S.K. 5) and Nesivos HaMishpat (ibid, S.K. 4) hold that, based on this principal, a son also inherits*

*the right of tovas hanaah. As far Rav Hai Gaon's rule, they contend that the maxim refers to all property matters except inheritance since, as explained above, inheritance is an automatic change of ownership, not bound by the rules of other methods of acquisition. Still, Ketzos HaChoshen (ibid) maintains that tovas hanaah can't be inherited as it is not, in itself, a property-related right in the usual sense. In his opinion, then, the son must give the funds to the first poor person he meets or who approaches him, or leave them where the poor can divide them among themselves (see ibid; Taba'as HaChoshen, ibid; and Beiur HaGera, S.K. 23, who holds that tovas hanaah is a weak property-related right that cannot be inherited).*

***A Wife Inherits from her Husband***

***Are Bank Accounts always Divided among all the Heirs?***

A fascinating question was referred to HaGaon Rav Chayim Ozer Grodzhinski zt"l, the chief rabbi of Vilna. A local Jew passed away, leaving a huge sum in a bank account. According to *halachah*, his widow is entitled to the amount stipulated in her *kesubah* while the other heirs divide the rest of the estate. The bank, in conformity with local laws, regarded the widow as the sole heir and bestowed her with the entire sum in the account whereas the other heirs were denied access thereto. Being conscientious in her observance of *mitzvos*, she turned to Rav Shlomo Heiman, later famous as *Rosh Yeshivah* of Torah VaDaas in Brooklyn, and asked if the *halachah* obligated her to transfer the huge sum to the other heirs. This is apparently the *halachic* decision we would have reached.

Now, most people are accustomed to consider their bank accounts as "deposits." They, and the bankers, say they "deposit" money in the bank and we are all familiar with "linked deposits," CDs (certificates of deposit) and the like. Still, these so frequently used terms are basically wrong. A deposit – *pikadon* – as used in the Talmudic and *halachic* literature, is anything given to another to be kept or watched or used without exchanging it for an identical item or harming it. The money you give a bank clerk, then, is not a deposit as it, itself, will not be returned, but rather a **loan**. Funds put in a bank are not watched there but their **value** is accredited to your account. In our case, then, the deceased lent the bank money and, according to *halachah*, the latter must repay it to his heirs. The bank, however, accredited the widow with the whole amount. Has she received the deceased's money? No! It belongs to the bank and was mistakenly accredited to her, such that she has no obligation towards the other heirs. (She is not even considered as having caused them a loss [*gerama*], as the laws of the country forbade their access to the funds). Rav Heiman sent this wonderfully simple decision to Rav Grodzhinski, who remarked that the issue had long been obvious to him (*Chidushei Rabbi Shlomo, Kesavim Uteshuvos, 8*).

# DAILY MASHAL

***We do not Start with a Punishment***
***A Lesson in Composition***

The *Gemora* had asked that the *Mishna* should first state that sons inherit their father, as we do not start off with punishments (*sons dying in the lifetime of the father*)!

It is noteworthy that the Rambam begins his *Laws of Divorce* with the statement: "A wife is never divorced except with a written document called a *get*". Radvaz comments that Rambam chose that mode of expression, as opposed to saying "A wife is divorced with a written document…" since our *sugya* explains that we should never open a topic with punitive connotation. We should not want a wife to get divorced and Rambam therefore wrote that she "never" gets divorced except in certain conditions" (Responsa Radbaz [manuscript], 1).



L'zecher Nishmas HaRav Raphael Dov ben HaRav Yosef Yechezkel Marcus O"H