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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

One who says, “So-and-so shall inherit me,” in a situation where there is a daughter (*who would have inherited him*), or, if one says, “My daughter shall inherit me,” in a situation where there is a son, he has said nothing, for he has made a condition against what is written in the Torah. Rabbi Yochanan ben Berokah says: If he said this regarding a person who is fit to inherit him, his words are valid, and if he says it about someone who is not fit to inherit him, his words are invalid. (130a)

Son amongst other Sons

The *Gemora* asks: The reason why the benefactor’s instructions are invalid is because he has instructed someone else to inherit where there was a daughter, or he has instructed the daughter to inherit where there was a son (*where in both cases, the appointed recipient was not entitled, according to Torah law, to inherit anything*). However, if he would have designated a son (*to be the sole inheritor*) among the other sons, or, if he designated a daughter among the other daughters (*where the designated son or daughter would have inherited a portion of the estate*), his instructions would have been valid. Let us consider then the latter clause of the *Mishna*: Rabbi Yochanan ben Berokah says: If he said this regarding a person who is fit to inherit him, his words are valid. Does this not represent the same opinion as that of the *Tanna Kamma*? And if you will suggest that Rabbi Yochanan ben Berokah maintains that even another person (*who is not presently a heir, but will be next in line if the present heir will die*) may be appointed where there is a daughter, and that

a daughter may be appointed as a recipient where there is a son (*and she is next in line; accordingly, Rabbi Yochanan ben Berokah, who is maintaining that such a gift would be effective, is disagreeing with the Tanna Kamma*); it may be retorted that this cannot be the case, for it was taught in a *braisa*: Rabbi Yishmael the son of Rabbi Yochanan ben Berokah said: My father and the *Chachamim* did not argue concerning the case where another person (*who is not presently a heir, but will be next in line if the present heir will die*) was appointed where there is a daughter, or if a daughter was appointed as a recipient where there is a son, that it is not effective. Their argument is only in a case where a son was designated (*to be the sole inheritor*) among the other sons, or, a daughter was designated among the other daughters, in which case, my father said that the designated one inherits, and the *Chachamim* say that he does not inherit!

The *Gemora* answers: If you wish, it may be said that since Rabbi Yishmael the son of Rabbi Yochanan ben Berokah said that they do not argue in that case, it may be inferred that the *Tanna Kamma* is of the opinion that they do in fact argue.

Alternatively, it may be replied that the entire *Mishna* represents the opinion of Rabbi Yochanan ben Berokah, and it is as if some words are missing from the *Mishna*, and it should read as follows: One who says, “So-and-so shall inherit me,” in a situation where there is a daughter (*who would have inherited him*), or, if one says, “My daughter shall inherit me,” in a situation where there is a son, he has said nothing, if he would have designated a daughter among

the other daughters, or, if he designated a son (*to be the sole inheritor*) among the other sons (*where the designated son or daughter would have inherited a portion of the estate*), his instructions would have been valid, for Rabbi Yochanan said: If he said this regarding a person who is fit to inherit him, his words are valid.

Rav Yehudah said in the name of Shmuel: The *halachah* follows Rabbi Yochanan ben Berokah. And Rava also says: The *halachah* follows Rabbi Yochanan ben Berokah.

Rava said: Rabbi Yochanan ben Berokah's reason is based upon the following verse: *It shall be on the day that he bequeaths to his sons*. This indicates that the Torah gave authority to a father to bequeath to whom he desires to inherit his estate.

Abaye asks: Is this not derived from the verse, *He cannot give away the right of the firstborn* (for it may be inferred from here that he may give away the rights of an ordinary son)?

The *Gemora* answers: That verse is needed for that which was taught in the following *braisa*: Abba Chanan said in the name of Rabbi Eliezer: What was the necessity for the Torah to say, *He cannot give away the right of the firstborn*? Since it was said: *It shall be on the day that he bequeaths to his sons*, one might argue as follows: If in the case of an ordinary son, who is in a strong position, in as much that he receives a share in any potential property of his father just as he receives in that which is actually in his possession, the Torah, nevertheless, gave authority to the father to bequeath his estate to whomsoever he pleases; so regarding a firstborn, whose rights are weak, in that he does not receive the double portion in potential property of his father just as he receives in that which is actually in his possession, should the *halachah* not certainly be that the father can give away the double portion of the firstborn! Therefore it was expressly stated: *He cannot give away the right of the firstborn*. The *braisa* asks: Then let the Torah

say, *He cannot give away the right of the firstborn*; why should it also state, *It shall be on the day that he bequeaths to his sons*? It is because one might argue the following: If in the case of a firstborn, whose rights are weak, in that he does not receive the double portion in potential property of his father just as he receives in that which is actually in his possession, the Torah, nevertheless, said: *He cannot give away the right of the firstborn*; so regarding an ordinary son, who is in a strong position, in as much that he receives a share in any potential property of his father just as he receives in that which is actually in his possession, should the *halachah* not certainly be that the father is not empowered to give away his portion of the estate! Therefore it was expressly stated: *It shall be on the day that he bequeaths to his sons*. This indicates that the Torah gave authority to a father to bequeath to whom he desires to inherit his estate. (130a – 130b)

Issuing a Ruling

Rabbi Zerika said in the name of Rabbi Ami in the name of Rabbi Chanina in the name of Rebbe: The *halachah* follows Rabbi Yochanan ben Berokah. Rabbi Abba said to him: Rebbe's statement was that he ruled according to Rabbi Yochanan ben Berokah.

The *Gemora* asks: What is the difference between the two statements?

The *Gemora* answers: Rabbi Zerika holds that a *halachah* is stronger indicator that this is the *halachah* (for "*the halachah is*" clearly states that this is the law, whereas a practical decision which happens to agree with Rabbi Yochanan ben Berokah's opinion would not show that the law is always to be administered in accordance with these views, for other factors and circumstances may have led to the decision in that particular case), and Rabbi Abba holds that a practical decision is of greater significance (for then, it was carefully analyzed; however, if he merely stated that the *halachah* is like this, it might have been what it appeared to him through the course of studying).



The *Gemora* cites a *braisa*: The *halachah* may not be derived either from the course of studying (*that which he heard from his teacher*) or from a practical decision (*that he observes from his teacher*) unless he has been told that this *halachah* is to be relied upon in practice. If a person has asked and was told that this *halachah* is to be relied upon in practice, he may continue to rule like this (*and he is not required to ask each time the situation arrives*) provided that he draws no comparisons to other cases.

The *Gemora* asks: What is meant by “provided that he draws no comparisons”? Surely, comparisons are used in the entire torah!?

Rav Ashi answers: It means that one should not draw any comparisons in the laws relating to *tereifos* (*an animal which has certain physical defects that will cause it to die cannot be ritually slaughtered*). For it was taught in a *braisa*: We cannot compare one to the other regarding *tereifos* (*the terifah of the liver from the tereifah of the lung*). And do not wonder why this is so, for one can cut an animal one place and it will die, yet when he cuts it at a different place (*close to the first one*), it will still live.

Rav Assi asked Rabbi Yochanan: When the master tells us that the *halachah* is like So-and-so, may we rely on that for a practical decision?

Rabbi Yochanan replied: Do not rely on that unless I tell you that this *halachah* is to be relied upon in practice.

Rava said to Rav Pappa and to Rav Huna the son of Rabbi Yehoshua: When a ruling of mine comes before you in writing, and you see reason to object to it, do not tear it up before you have seen me. If I have a good reason for my ruling, I will tell it to you; and if not, I will retract from the ruling. After my death, you shall neither tear it up, nor shall you rely upon it (*rather, use your own judgment*). “You shall neither tear it up” since it is possible that had I been there,

I might have told you the reason; “nor shall you rely upon it” because a judge must be guided only by that which his eyes see. (130b – 131a)

INSIGHTS TO THE DAF

Bequeathing to One Son

Rava said: Rabbi Yochanan ben Berokah’s reason is based upon the following verse: *It shall be on the day that he bequeaths to his sons*. This indicates that the Torah gave authority to a father to bequeath to whom he desires to inherit his estate.

It is brought in the Sifri that the father has such a right even on prospective property, i.e. those that he does not currently own, but they will become his. He can say that he wants property that is not actually in existence yet to be inherited by whomever he desires. Reb Akiva Eiger, however, cites the R”if, who holds that the father cannot give away property that is not yet in existence.

There is another dispute regarding this *halachah*: The Nesivos quotes a Rit”va, who holds that the father may retract from this stipulation up to the moment he dies. The Ketzos Hachoshen disagrees.

The Mikdash David explains these two arguments with the following *chakirah*: When the father bequeaths his property to one of the sons, is he establishing that this particular son is his sole inheritor, or are all the children inheritors; the father is merely designating this property that it should belong to this particular son?

If the father is establishing that this particular son is his sole inheritor, this stipulation will be effective even on property that is not yet in existence, for once this son has been established as the inheritor, he will inherit whatever potentially should have belonged to the father. If, however, he is merely designating this property to belong to one of his sons, he can only do that on property which currently

belongs to him. The same can be said regarding retraction: If the father is establishing that this particular son is his sole inheritor, he cannot retract from that (*he may, however, in the future, add other inheritors, for he is not taking away the inheritor status from this son*). If, however, he is merely designating this property to belong to one of his sons, he may retract up until the moment that they actually take possession of the property.

DAILY MASHAL

A Quarter of an Hour

[A crowd of people squeezed their way through the narrow corridor into the apartment of the mourning family, filing past two worn and frayed white shirts draped over hangers suspended from an ornate chandelier. The roomy elevator delivered a stream of visitors. Many came to comfort the relatives of the deceased, who had succeeded in business and also wisely invested in his portion in the World to Come. Each visitor knew him from one event or another but no one could decipher the mystery of the shirts hanging in the parlor. The signs pinned to the shirts were a further dilemma, only adding to their wonder but we save this detail for later.

The deceased's identity was not revealed to us and we respect the family's desire to remain anonymous, but the tale is true, as attested by HaGaon Rav David Hilel, one of the *roshei yeshivah* at Birkas Efrayim Yeshivah in Bnei Berak, who troubled to check the particulars.

A small ship packed with Jewish refugees who succeeded to escape from Europe a short while before their relatives turned to ashes, finally reached an American port. A frail boy with lifeless eyes sat below deck. He had escaped alone from his homeland to the uncertainty of the broad ocean and now faced a strange new country. Everything was so big, making him feel quite small and lost. Rising weakly, he made his way down the gangplank, tightly

holding a frayed bag with all his possessions – or, to be exact, half of them. The bag held one white shirt while he wore an identical one.

To be Cont.....]

“If Your Torah were not my cherished preoccupation, I would have perished in my destitution.” A magnanimous Jewish organization helped to arrange the boy in a yeshivah with other fugitive youths and he began to apply himself to his studies. From morning till night he plunged the depths of the Talmud and became a thorough *ben Torah*. As he progressed in knowledge and piety, amassing a vast spiritual treasure, his material wherewithal that had been provided by his parents dwindled to almost nothing. At first he took care to wear one shirt during the week and the other, better one on Shabos. After a few months he realized that his weekday shirt had simply lost all semblance of a piece of clothing, so he started to wear his Shabos shirt the whole time. His Shabos shirt, though, soon resembled the other, so he went back to using the “weekday” one for weekdays and the other for Shabos. He continued to learn, ignoring the condition of his shirts, which were becoming thinner and more frayed from day to day. The Torah was till an intoxicating elixir of life, never to be resisted.

The shirts, however, began to show holes in their backs and the boy simply became helpless. He finally realized that he was left without clothes and no longer had a choice: Till then he had learnt day and night but now he had to seek some livelihood just to eat and dress normally. But no! He couldn't even think of it. He donned his jacket, which completely covered his shirt, and continued to learn in the *beis midrash*. How good it was to pursue the Torah in Hashem's abode! There is no people like ours. No other nation begets children so faithful to their heritage.

To be Cont.