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Bava Basra Daf 131

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Daf Notes is currently being dedicated to the neshamot of

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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

### **Right to Give Away**

Rava inquired: Did Rabbi Yochanan ben Berokah state his *halachah* (that the Torah gave authority to a father to bequeath his estate to a particular son) by a healthy person as well? The *Gemora* explains: Is it only regarding a deathly ill person, who is fit to bequeath immediately (for it is written: *It shall be on the day that he bequeaths to his sons*), that a father has that right, but not by a healthy person, or perhaps, it was stated even with regards to a healthy person?

Rav Mesharsheya said to Rava: Let us bring a proof from the following: Rabbi Nassan said to Rebbe: You (in *Eretz Yisroel*) have taught your *Mishna* in accordance with the opinion of Rabbi Yochanan ben Berokah (and you should have taught it according to all opinions), for we learned in a *Mishna*: If a husband didn't write (in the *kesuvah*), "The male sons that I will have from you - they will **inherit** the money of your *kesuvah* in addition to their portion with their brothers," he is still obligated (to fulfill this) as this is a condition stipulated by *Beis Din* (for reasons discussed in the *Gemora* in *Kesuvos*). [Now, this seemingly must be following Rabbi Yochanan ben Berokah, for he is the only one who allows the father to bequeath as inheritance to some sons over the others.] Rebbe replied to him: We learned that the *Mishna* said, "they shall **take**" (meaning that it was given as a gift; all agree that a father has the right to do that).

Later, however, Rebbe said: It was childishness (foolishness) on my part to be so brazen in the presence of Nassan the Babylonian (for in truth, it said, "they will **inherit**"). The law has been established that the male children may not seize any encumbered property of their father in payment for their

mother's *kesuvah*. Now, if you think that the *Mishna* said, "they shall **take**," why can't they seize sold property (which was really mortgaged to them prior to the sale, for the right to the gift was acquired at once)? This proves that we learned, "they will **inherit**" (and that is why the mortgaged property cannot be seized). Now, who is the *Tanna* that holds this view (that a father can give away his estate)? Surely, it is Rabbi Yochanan ben Berokah! This proves that his *halachah* applies even to the case of a healthy person.

Rav Pappa asked Abaye: Whether according to the version of "they shall **take**," or according to the version of "they will **inherit**," how can it be effective? A person cannot something that is not yet in existence!?! And even according to Rabbi Meir who maintains that one may transfer something that is not yet in existence, that is only if he is conveying it to someone that is in this world, but to someone that is not yet in the world (like these children who in the future will be born), it will not be effective!?

Rather, it must be a special enactment established by *Beis Din* that it will be effective (even though the children are not yet in existence); so too, it may be said regarding this (the expression of inheritance) that it was a special enactment established by *Beis Din* that it will be effective (even according to those who disagree with Rabbi Yochanan ben Berokah).

Abaye said to Rav Pappa: Rebbe did not answer like this to Rabbi Nassan, for he could have responded that there is still a proof that the *Mishna* follows Rabbi Yochanan ben Berokah, for the expression "they shall **inherit**" is clearly used.

Abaye then retracted and said that it is not correct that Rabbi Nassan could have proven that the *Mishna* is in accordance

with Rabbi Yochanan ben Berokah, for it was taught in a *Mishna*: If a husband didn't write (*in the kesuvah*), "The daughters that I will have from you, they will sit in my house and be supported by my estate until they are taken as wives by men," he is still obligated (*to fulfill this*) as this is a condition stipulated by *Beis Din* (*for reasons discussed in the Gemora in Kesuvos*). If so, it is as if he wrote, "I am giving this one as a gift" (*for the daughters are not inheritors*), and "I am giving this one as an inheritance," and in such a case, even the *Chachamim* agree (*to Rabbi Yochanan ben Berokah*) that it will be effective (*even if the inheritor is not a son; this is because he also used the "gift" expression; and since these two enactments were established at the same time, it is as if they were said within the period of an utterance, and regarding that we learned above that even the Chachamim would agree that the transfer is effective*).

Rav Nachumi, or, according to others, Rav Chananyah bar Minyumi, asked Abaye: How do we know that these two enactments were established by the same *Beis Din*? Perhaps it was enacted by two different *Beis Dins*!?

The *Gemora* answers: It cannot be like that, for it is stated in the first part of that *Mishna*: This teaching Rabbi Elozar ben Azaryah taught in front of the sages in Kerem Be'Yavneh: The sons should inherit and the daughters should be supported. Just as sons only inherit after their father dies, so too, the daughters should only be supported after their father dies. Now, if the two enactments were established by two different *Beis Dins*, how can one be compared to the other?

The *Gemora* answers: even if they were done by two different *Beis Dins*, one can still be derived from the other, for they would not wish to enact one decree which contradicts the other one. (131a – 131b)

### ***Giving away the Estate***

Rav Yehudah said in the name of Shmuel: If a deathly ill man gave away all of his property to his wife in writing, we assume

that he only appointed her to be a guardian (*for he would not want to take away his children's inheritance*).

It is obvious that if he designated all of his property to his adult son, we assume that he only appointed him to be a guardian (*for he would not want to take away his other children's inheritance*).

What is the law, however, if he designated it to his minor son?

The *Gemora* answers: It was stated that Rav Chanilai bar Idi said in the name of Shmuel: Even if it was designated to his youngest son who still lies in his crib.

It is obvious that if a father designated all of his property to one son (*and he has other sons*), or to a stranger (*and he has sons*), the stranger receives it as a gift, while the son is merely appointed the guardian on it.

If he designated it to his betrothed or to his divorced wife, they receive it as a gift.

The *Gemora* inquires: What is the *halachah* if the designation was made to a daughter where there are sons, or to a wife where there are brothers, or to a wife where there are sons of the husband?

Ravina said in the name of Rava: In all of the above cases, they do not acquire possession, except for his betrothed, or divorced wife (*where they receive it as a gift*).

Rav Avira said in the name of Rava: In all of the above cases, they acquire possession, except for a wife where there are brothers, and a wife where there are sons of the husband (*where there, they are merely being appointed as guardians*). (131b)

### **INSIGHTS TO THE DAF**

#### ***Guardian or Inheritor?***



The *Gemora* rules: It is obvious that if he designated all of his property to his adult son, we assume that he only appointed him to be a guardian (*for he would not want to take away his other children's inheritance*).

The Rishonim ask: How can our *Gemora* say that the father's stipulation is not effective when the *Gemora* above (130a) explicitly rules that the *halachah* follows Rabbi Yochanan Ben Berokah?

The Rash"bam (ibid) says that the *halachah* follows Rabbi Yochanan Ben Berokah only when the father uses the expression "as an inheritance"; however, our *Gemora* is referring to a case where he used "as a gift" expression, and in such a case, the *Gemora* here rules that his real intention is to make him a guardian.

The Ram"ban answers that the *halachah* follows Rabbi Yochanan Ben Berokah only when the father stated his stipulation, however, our *Gemora* is referring to a case where he wrote it down.

The Ro"sh quotes Rabbeinu Chananel who says that before, the *Gemora* was referring to a case where he wanted to increase the portion to one son and decrease the portion of another; he did not give his entire estate to one person. Here, we are dealing with a case where he gave one of them his entire estate. In such a case, we may assume that he meant for that person to be a guardian on the estate on behalf of the others.

The Rash"ba explains that the *Gemora* before was discussing a specific case where he clearly said that he wants that particular person to inherit him and he does not want him to be a guardian.

The Baal Hameor understands our *Gemora* to be referring to a case where the sons are minors, or they are overseas. In such a case, we assume that the designated son will be appointed as a guardian.

## 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.

**"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.]

Conclusion:

A boy, though, is still a boy. He wore his jacket comfortably in the *beis midrash* like many others but in the dining-room such dress was considered unusual and despite his indefatigable will to scale the heights of learning and piety, he was too ashamed to wear his jacket while eating. He therefore decided that just after prayers, while everyone else was taking their time in the *beis midrash*, he would run to eat in the dining-room and return to his place of learning. No one could then see that he ate in a jacket!

And so he prayed, ran to eat and ran back to learn. If, at this point, we were giving some public address, we would raise our voice in excitement: This sweet boy **profited a quarter of an hour** after each meal as a result of his running back and forth from the dining-room. In that quarter-hour his

colleagues ate leisurely while he would sit waiting for his study partner in the *beis midrash*.

Well, he indeed had a quarter of an hour and he decided that it was too long a time to waste so he chose to start learning tractate Zevachim. Each day he learnt a little – first the Gemara and Rashi, then Tosfos, very slowly. Weeks and months passed by, each day with a quarter of an hour after each meal and he stayed with threadbare two shirts, his jacket and the quarter of an hour which became worth its weight in gold. He finished Zevachim and continued to Menachos, finished Menachos and reviewed Zevachim and so on till he became expert in knowing both tractates and their commentaries by heart!

Our hero departed this world after a long and fruitful life and his children, returning from his burial, opened his will:

“My dear children, all sorts of people will probably come to comfort you during my *shiv'ah*. In the locked drawer in my office I keep a cloth bag with two frayed shirts with holes in their backs. Please put each shirt on a hanger and attach to each a sign, one saying *Zevachim* and the other *Menachos*, for the merit of my soul and to impress on the visitors the incomparable value of a quarter of an hour and how much it can be used.”

Out of all his successful activities, buildings he constructed for Torah and companies he founded, the deceased chose to display the two faded shirts to demonstrate the real and glorious truth: **Time is the dearest commodity.**