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Bava Basra Daf 140

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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

Estate Changing Value

The *Gemora* notes: It is obvious that if the estate was large (*at the time of the father’s death; it was sufficient to provide for the sons and the daughters until they become mature*) and it became meager (*through depreciation or the price of sustenance went up*), the heirs (*the sons*) have already acquired ownership of the estate (*and the daughters will be supported from them*).

The *Gemora* inquires: What is the law, however, if the estate was meager (*at the time of the father’s death*) and it appreciated? Does it (*the property which would have went to the daughters, but was not allocated yet*) remain in the possession of the heirs (*until it is actually given to the daughters*), and, consequently, it has appreciated in their possession, or, are the heirs completely removed from here (*because when the estate was meager, they do not inherit the property*)?

The *Gemora* resolves this from that which Rav Assi said in the name of Rabbi Yochanan that if the orphans went first (*before the estate was allocated to the daughters*) and sold the estate when it was meager, their sale is valid (*for they do retain rights to it; so too in this case, the estate’s appreciation belongs to them*).

Rabbi Yirmiyah sat before Rabbi Avahu and he asked him the following question: Does one’s widow (*the value of*

the sustenance that he must provide for her) reduce the value of his estate? Do we say that since she receives sustenance, the estate’s value is reduced (*and it would be subject to the halachah of a “meager estate”*), or perhaps, since she would not receive anything if she married, we view it as if she has none even now? If you would say that since she would not receive anything if she married, we view it as if she has none even now, would his wife’s daughter (*from a previous marriage*) reduce the value of the estate? Do we say that since she receives her sustenance even if she married (*for the father accepts to support her for a certain amount of years*), she does reduce the value of the estate, or perhaps, since she would not receive anything if she died, she does not reduce its value? And if you would say that since she would not receive anything if she died, she does not reduce its value, would a creditor (*who is coming to collect from the estate for a debt owed to him by the father*) reduce the value of the estate? Do we say that since even if he dies he (*his inheritors*) would receive his debt, he reduces the value of the estate, or perhaps, since the debt is not collected yet, he does not reduce it?

Others reported these inquiries in the reverse order: Does a creditor reduce the value of the estate? Does his wife’s daughter reduce the value of the estate? Does his widow reduce the value of the estate? And another inquiry: If there is only enough sustenance for his widow or her daughter, which one takes precedence?

Rabbi Avahu said to him: Go today and come back tomorrow. When he came, he said to him: Let us resolve at least one of them, Rabbi Abba said in the name of Rabbi Assi: The relationship between a widow and her daughter, in the case of a small estate (*which does not suffice for the maintenance of the dependents of the deceased man for a period of twelve months*), has been put on the same level as that of the relationship between a daughter and her brothers. Just as in the case of the relationship between a daughter and her brothers, the daughter is supported while the brothers can go begging at people's doors, so also in the case of the relationship between a widow and her daughter, the widow is supported and the daughter can go begging at people's doors (*this proves that there is a preference to the widow over the daughter*). (140a – 140b)

Male Losing Out

The *Mishna* had stated: Admon says: "Because I am male I have lost?!"

The *Gemora* asks: What does he mean?

Abaye said: He means as follows: "Should I lose out because I am male and am capable of studying Torah" (*which should give the sons priority with respect to support*)?

Rava said to him: Now, then, would he who is occupied in the study of Torah be entitled to inherit, and he who is not occupied in the study of Torah not be entitled to inherit?

Rather, Rava said that he means the following: "Because I am a male and am entitled to be the inheritor in the case of a large estate, should I lose my rights in the case of a meager estate?" (140b)

Mishna

If one left sons and daughters and a *tumtum* (*one of doubtful sex; the person's genital area is covered over by flesh, and it cannot be determined if the person is male or female*), the *halachah* is as follows: If the assets are great, the males push him (*the tumtum*) to the females (*and say, "Bring a proof that you are a male"*); if the assets are meager, the females push him to the males (*and say, "Bring a proof that you are a male"*).

If one says (*when his wife is pregnant*), "If my wife gives birth to a male, he shall take a *maneh*," if she bore a male, he takes a *maneh*. If he says, "If my wife gives birth to a female, she shall take two hundred," if she bore a female, she takes two hundred. If he says, "If a male - a *maneh*, if a female - two hundred," if she bore a male and a female, the male takes a *maneh* and the female takes two hundred. If she bore a *tumtum*, he does not take at all (*for he is not a male or a female*). If he said, "Whatever my wife bears shall take," this one (*the tumtum*) takes. And if there is no heir but he, he inherits all. (140b)

Status of a Tumtum

The *Gemora* asks: How can the *Mishna* say that the males push him (*the tumtum*) off to the females, and he receives sustenance as a daughter? But the latter part of the *Mishna* states: If she bore a *tumtum*, he does not take at all (*for he is not a male or a female*)!?

Abaye explains: They push him off to the females and he receives nothing.

Rava, however, explains: They push him off to the females and he does receive sustenance. The latter part of our *Mishna* reflects the opinion of Rabban Shimon ben

Gamliel (who maintains that a *tumtum* is a distinct gender by itself, not a male or a female; this is why the *tumtum* receives nothing), for we learned in a *Mishna* (regarding one who consecrated a fetus and said, “If it gives birth to a male, it should be an *olah*”): If an animal gave birth to a *tumtum* or an *androgynos* (a hermaphrodite; one who has both male and female genitals) Rabban Shimon ben Gamliel said that the sanctity does not devolve upon either of them (for they are neither male, nor female; rather, a distinct gender by themselves). (140b)

INSIGHTS TO THE DAF

Unexpected Birth of Twins

Our *Mishna* concerns a person who wants to distribute his estate before his demise. According to Rashbam (s.v. *Haomer im*), he could be healthy and just wants to grant his future child a certain portion through the offices of a third party or he could be moribund (*shechiv mera*) and not be expecting to witness his child’s birth, in which case we must obey his wish as it is a *mitzvah* to execute such a person’s orders. At any rate, the person in question commanded that if his wife bears a son, he gets a *maneh* (100 *zuz*) from the estate and if she bears a daughter, the daughter should receive 200 *zuz*. The *Mishna* then adds that if she bears “a male and a female,” the son gets a *maneh* and the daughter 200 *zuz*.

The *Rosh* assumes that the *Mishna* means that she bore twins (Responsa of the *Rosh*, *Kelal* 81:2). Rashbam disagrees (s.v. *Hachi garsinan im zachar*; see Maharsha) and explains that the *Mishna* merely means that the father expressed both eventualities, but does not discuss the birth of twins. The *halachah* was ruled according to the *Rosh* (*Shulchan ‘Aruch*, C.M. 253:27) and the *poskim*

discuss more questions arising from the unexpected birth of twins.

A Question of Mathematics

About 700 years ago a person commanded just before his demise that if his wife bore a son, he should get two thirds of his estate while the rest should be given to his brothers – the child’s uncles, whereas if she bore a daughter, the daughter should receive one third with the rest going to his brothers. The widow bore twins, a son and a daughter, and the question arose as to how to apportion the estate. If we succeed in understanding the father’s intention, we must divide the estate into sevenths. The son gets four sevenths, the uncle’s two sevenths altogether and the daughter one seventh. The father, after all, apparently wanted to leave his son twice as much as the uncles – originally giving him two thirds as opposed to one third for the uncles – and the uncles twice as much as his daughter, originally giving her one third and the uncles two thirds. We have no choice, then, but to apportion one seventh to the daughter, two sevenths to the uncles and four sevenths to the son.

This hypothetical solution was suggested to the *Rosh* (*ibid*), who ordered the whole estate to be given to the son as the father made no mention of twins! The *Rosh* assumes that when the father commanded “if my wife bears a son [or daughter],” he meant only a son or only a daughter and the birth of twins therefore invalidates the father’s condition. The son inherits the entire estate as a daughter does not inherit if there is a son and the *halachah* was ruled accordingly (*Shulchan ‘Aruch*, *ibid*, 253:28).

HALACHOS FROM THE DAF

Widow vs. Daughter

The *Gemora* discusses an aspect in the inheritance not mentioned in the *Mishna* - the widow. Where does she fit into all of this? Would it make a difference if there is a small amount of money or a large amount? Does the money that supports the widow detract from the sons' portion?

The Shulchan Aruch (Even Ha'ezer Siman 93 Sief 4) has different opinions in a case where there is a widow and daughters, and there isn't enough to support both the widow and the daughters. The *Mechaber* is of the opinion that the widow gets supported and the daughters go collecting and of course, the sons too (Bais Shmuel quoting Ran). However the *Mechaber* cites another opinion (Tosfos) that differentiates between cases where there is a widow and son *or* daughter, and cases where there is a widow and son *and* daughter. It is important to note that the widow getting supported is a *takanah* (rabbinical enactment), while inheritance is *m'doiraisa* (biblical commandment).

Widow and son *or* daughter: The child inherits the money and the widow and child support themselves with that. Even if the daughter would get married (*and the money belongs to her husband*) and even if the married daughter dies, the widow still gets supported from that money.

Widow and son *and* daughter: In a case of a small inheritance we learned in the previous *Mishna* that the daughters get supported and the sons go begging. That is a *takanah* for the daughters that they get supported and not the sons. Therefore in a case where there is not enough money to support both the sons and the daughters, and there is a widow involved, and her getting

supported is also a *takanah*, the problem arises which *takanah* is stronger? The answer is - the widow's. She alone gets supported until she collects her *kesuvah*.

DAILY MASHAL

Donating 18 rotel for Lag BaOmer

A certain childless person recently vowed that if his wife would bear a child, he would donate 18 *rotel* of wine or liquor to be distributed at the tomb of Rabbi Shimon bar Yochai in Meiron on Lag BaOmer. Such donations have long been customary as a *segula* to merit Heavenly favor and are meant to provide sustenance and merrymaking for the many thousands visiting the tomb on that day. A *rotel*, approximately three liters, was a common measure in the Ottoman era and persists among the descendants of families that settled in *Eretz Yisroel* centuries ago.

Within a year the person's wife bore twins and some insisted that he must donate 36 *rotel* for the double kindness. In fact, however, he had only to give 18, as that was how much he vowed.