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Bava Basra Daf 141

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A Son or a Daughter?

The *Mishna* discussed a case where one says that if his wife delivers a son, he should receive a *maneh*, while if she delivers a daughter, she should receive two *manehs*, implying that a man prefers a daughter to a son.

The *Gemora* challenges this from a statement of Rabbi Yochanan in the name of Rabbi Shimon bar Yochai, who said that if one does not leave a son to inherit him, Hashem is angry at him, since the verse states that in such a case *v'haavartem – you shall transfer* the property to the daughter, using the same root (*a'v'ar*) as the word used for anger (*evra*).

The *Gemora* offers the following answers:

For inheritance, a man prefers to have a son than a daughter. However, since a daughter will not work and earn as much as a man, the *Mishna* states that a man will give more money to his daughter.

Shmuel says that the *Mishna* is a case of the man's first child. Although a man wants a son to inherit him, he prefers his first child to be a daughter, since Rav Chisda says that a first child that is a daughter is a good sign for upcoming sons. This is either because this oldest daughter will assist in raising the later sons, or because she will deflect any evil eye people would direct at a man who has so many sons. [*The Gemora quotes Rav Chisda, who says that his daughters were better for him than his sons*].

The *Mishna* is the opinion of Rabbi Yehudah. The *Gemora* first suggests it is Rabbi Yehudah, who says that when the Torah says that Hashem blessed Avraham *bakol – with everything*, this means he had a daughter, while Rabbi Meir says it means that he did not have a daughter.

The *Gemora* rejects this suggestion, since this only shows that Rabbi Yehudah felt that a full blessing includes a daughter, but not that a daughter is preferable to a son.

Rather, the *Gemora* says that the *Mishna* is stating that a man will give more money to his daughter, based on Rabbi Yehudah, who says that one has a greater obligation to support his daughters, who will be less likely to degrade themselves to earn money. Rabbi Meir, however, says that one has a greater obligation to support his sons, who learn Torah. (141a)

Who's First?

The *Gemora* then cites a *braisa* that says that if his wife delivers a son and daughter, the son takes 150 *zuz*, and the daughter takes 50 - indicating that the daughter gets less - and questions what the *braisa's* case is.

Rav Ashi says that he learned this topic from Rav Kahana, who said that this *braisa* was a case of a man whose wife was expecting twins (*one male and one female*), and he was allocating 200 *zuz* to them. He said that if she delivers the son first, he should receive all 200 *zuz*, but if she delivers the daughter first, they should each receive 100 *zuz*, and we

don't know which she delivered first. Therefore, the son receives 100 *zuz*, since he was given at least that amount, regardless of the order. The other 100 *zuz* is in doubt, so they split it, leaving 50 *zuz* for the daughter, and 150 *zuz* for the son. (141a)

Whoever tells me...

The *Gemora* then cites another *braisa* that says that if his wife delivered a son and a daughter, he only receives a *maneh*, implying that we would have thought that he should receive more, and explains that this is a case of one who promised money to the one who would inform him of his child's birth.

To explain further, the *Gemora* cites a *braisa* that details the rules for one who promises money to whoever informs him what his wife delivers:

If he tells me...	...I'll give him	Who was born?	What must he pay?
It's a boy	A <i>maneh</i>	A boy	A <i>maneh</i>
		A girl	Nothing
It's a girl	A <i>maneh</i>	A boy	Nothing
		A girl	A <i>maneh</i>
It's a girl or a boy	A <i>maneh</i>	A girl	A <i>maneh</i>
		A boy	
		Both (twins)	

The *Gemora* explains that the *braisa's* last case teaches that although the man said that he'll pay a *maneh* no matter what his wife delivered, he need not pay anything if she

delivered a stillborn, since he meant a live healthy child. (141a – 141b)

Giving to a Fetus

The *Gemora* tells a story of one who promised a *maneh* to the fetus his wife was carrying. Rav Huna said that he is attempting to give something to a fetus, but a fetus cannot acquire anything before birth.

Rav Nachman challenged Rav Huna from the *Mishna*, which discusses one who gives various amounts of money to his unborn child, indicating that a fetus can acquire before birth.

Rav Huna said that he does not know who authored this *Mishna*.

The *Gemora* offers a number of suggestions for explaining the *Mishna*, but Rav Huna rejects each one:

The *Mishna* is the opinion of Rabbi Meir, who says that one may transfer property that does not yet exist.

Rav Huna rejects this since he says that Rabbi Meir still requires the recipient to exist, even if the property does not yet exist.

The *Mishna* is the opinion of Rabbi Yosi, who says a fetus can acquire property. Rabbi Yosi says that if a woman from a non *Kohen* family marries a *Kohen*, and conceives a child with him, the fetus is considered a non *Kohen*. Therefore, if the husband dies, the fetus does not allow her to eat *terumah*, as his child would, and this fetus's share in his father's non Jewish slaves prevents them from eating *terumah*. Since Rabbi Yosi says the fetus owns the slaves, he is saying that a fetus can acquire property.

Rav Huna rejects this since he says that Rabbi Yosi only says this in the case of inheritance, which is an automatic acquisition, but not in the case of one transferring property.

The *Mishna* is the opinion of Rabbi Yochanan ben Berokah, who says that if one designates one of his sons as his sole heir, it takes effect. The *Gemora* assumes that this is true, even if he designated a fetus.

Rav Huna rejects this since he says that Rabbi Yochanan ben Berokah was only discussing born children, but not a fetus. We have no indication that Rabbi Yochanan ben Berokah agrees with Rabbi Yosi, who considers a fetus a bona fide heir.

The *Mishna* is a case of one who promised money to the person who will inform him of his wife's delivery.

Rav Huna rejects this, since the *Mishna* continues to discuss what happens if his wife delivers a *tumtum*, whose genital area is concealed, and concludes by saying that if this child is the only child, he inherits all the property. If the *Mishna* were discussing the money given to the one informing the father, and not the child, there would be no connection to the final statement of the *Mishna*, identifying the *tumtum* child as the heir.

The *Mishna* is a case of one who promised the money after his wife already delivered.

Rav Huna rejects this, since the *Mishna* says that if he says, "Whatever my wife *will deliver*, should receive a *maneh*, the child receives the *maneh*, regardless of the gender." If she already delivered, the *Mishna* should have said that the man says, "whatever my wife *delivered*."

The *Mishna* is stating that the child acquires it only after it is born.

Rav Huna rejects this, since Rav Huna holds that if one gives something to a fetus, it is never effective, even after the child is born.

The *Gemora* quotes the three opinions regarding when a fetus, given property before birth, may acquire it:

	Before birth	After birth
Rav Nachman	No	Yes
Rav Huna	No	No
Rav Sheishes	Yes	Yes

(141b – 142a)

INSIGHTS TO THE DAF

Is Support Tzedakah?

The *Gemora* discusses the obligation for one to support his sons and/or daughters.

The Shulchan Aruch (E"H 71:1) rules that one is obligated to support his children, but only up to the age of six. Beyond that age, the Sages instituted that he support them, but the court has no power to force him to do so.

The Shulchan Aruch (YD 253:3) rules that supporting one's children is a form of *tzedakah*, based on the *Gemora* (Kesuvos 50a) that explains the verse extolling one who is *oseh tzedakah b'chol ais* – does *tzedakah* at all times, as referring to one who supports his young children.

The Shach (4) explains that this refers to children above the age of six, whom the father has no enforceable obligation to support.

The *Poskim* discuss whether one may therefore use money set aside as *ma'aser* for supporting his children.

The Taz (YD 249:1), echoing the Rama, says that *ma'aser* is meant exclusively for the poor, and supporting one's children is like any other monetary obligation, which may not be fulfilled with *ma'aser* money.

The Shach (YD 249:3) disagrees, based on the Maharam miRutenburg, citing the *Gemora* in Kesuvos, which refers to supporting one's older children as a form of *tzedakah*.

The Igros Moshe (YD 1:143) states that the obligation to support one's wife includes an obligation to support her children, as long as they live with him. Such an obligation is like any other monetary obligation, which may not be fulfilled with *ma'aser* money. The Igros Moshe says that even the Shach only meant to include children who are of an age to earn their own living and live on their own, but would agree that one's support for children living at home may not come from *ma'aser* money.

The Yechave Da'as (3:76) rules that one may take *ma'aser* money to support children above the age of six, and rejects the Igros Moshe's assumption that support of one's wife includes an obligation to support her children. Further, he rules that one may use *ma'aser* money for any form of support – including providing food, furnishing an apartment for a new couple, and supporting children learning Torah pre and post marriage. He recommends that one stipulate before earning money that he will use the *ma'aser* to provide such support, as some *Poskim* allow such a stipulation to allow use of *ma'aser* for other purposes. He adds that although the Rabbinat of Israel instituted a rule to force parents to support their children until the age of fifteen, this is simply giving more power to the institution of the Sages, but does not change the nature of such support from the status of *tzedakah*.

A Father who Told his Son to Say Kaddish for 12 Months

To be careful for his father's honor, a son stops saying *kaddish* for him 11 months after his demise; saying *kaddish* for the full year of mourning would suggest the father was a *rasha*, as only the evil stay in *Gehinnom* for 12 months (*Remo*, *ibid*).

Halachic authorities have discussed the question of a son, whose father commanded him to say *kaddish* for a full year.

HaGaon Rav Shlomo Kluger zt"l commanded his son to do so and the latter asked Rabbi Yitzchak Shmelkes of Lvov, author of *Beis Yitzchak*, as to how to behave, fearing that such an act would disgrace his father.

The *Beis Yitzchak* (II, 157) ruled that he should say *kaddish* for a full year to obey his father, as that would be the best way of honoring him (*see ibid as to the halachah concerning the thirteenth month in a leap year*).

Hiring a Person to Say Kaddish

If the deceased had no son, some relative should say the *kaddish* according to the following order of preference: the deceased's sons' sons, his daughters' sons, his father, his brothers and other relatives. In the absence of any relative, a person should be hired to say *kaddish* for the elevation of his soul and according to the *Kaf HaChayim* (55:30), the person hired should say before any prayer that the *kaddeishim* he is about to say are for the elevation of the soul of So-and-so.

May a Daughter Say Kaddish?

Several *halachic* authorities ruled that if the deceased had no son, his daughter should say *kaddish* in a *minyán* at her



home, and some even had the custom that if the daughter was very small, she would say *kaddish* in a synagogue. Still, almost all the *Poskim* hold that daughters must not say *kaddish* even at home, and if she wants to increase her father's merits, she should answer *amen* after the *sheliach tzibur* (*Penei Baruch: Aveilus BaHalachah*, 34:20, in the name of *Shevus Ya'akov*, etc., and see S.K. 36).

HALACHOS FROM THE DAF

Must a Father Support his Son in Kollel?

The *Gemora* cites Rabbi Meir that says: It is a *mitzvah* for a person to support his daughters and certainly his sons that learn Torah. This *Gemora* appears in *Maseches Kesubos* (49a) as well, and there the *Gemora* infers that it is a *mitzvah*, but not a *chovah* (obligation).

At what age is Rabbi Meir referring to? What about the sons that don't learn Torah?

There are three categories:

1) **Children under six years old:** Their father is obligated to support them, even if the children have money (*one of the only ways that money would be theirs and not automatically belonging to their father is if it was from an inheritance*), and even if their mother died. (Shulchan Aruch *Even Ha'ezer* Siman 71 Sief 1)

2) **Children aged six to Bar/Bas Mitzva:** Chazal instituted that their father should support them if they don't have money, even if he himself is not wealthy. If he chooses not to, we scream at him and shame him. If this doesn't work, then we take even more drastic measures: We publicly announce that this person is a callous cold-hearted man that refuses to support his own children. However, we can't actually force him to support them. In a case where the father is wealthy and can easily afford to support his

children and he doesn't, then we forcibly take away money from him to support them (ibid).

3) **Children that are over the age of Bar/Bas Mitzva (gadlus):** The father is obligated to support them like any other poor person (Shulchan Aruch *Yoreh De'ah* Siman 151 Sief 4).

The *Bais Shmuel* (in *Even Ha'ezer* ibid) explains that the father's obligation to these children is equivalent to any other of his relatives. However, regarding the children under *gadlus*, the father has a greater obligation towards them than he has to other relatives.

A father that gives money to his children who he is not obligated to support, so that they can learn Torah, that money is considered *tzedakah* (*and can be deducted from his ma'aser*). Furthermore, he must support them before any other *tzedakah*. This is true for any relative that learns Torah, not just a son (ibid Sief 3).

There are many other halachos regarding tzedakah and ma'aser that was not mentioned here. One should always ask a competent Posek in this or any other area of halachah. There are many halachos about the order of tzedakah, how much to give, who should one not give to, etc.

DAILY MASHAL

A Daughter First is a Good Sign for Sons

The *Maharsha* explains that a firstborn daughter prevents any discord that would arise between the sons if one of them were a firstborn, as now all of them inherit equal portions. If, however, a father leaves a firstborn son after him, he gets a double portion and his brothers become jealous. "A daughter first" is therefore a good sign that peace will reign among her brothers.



Others explain that a big sister will care for her brothers willingly and energetically, as she knows that “most sons are like their mother’s brothers.” In other words, when she is ready to marry, people will inquire after her brothers and she therefore has a good reason to help them grow up properly (*Peninei Kedem*).