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Bava Basra Daf 143

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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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

**“You and My Donkey”**

The *Gemora* relates an incident: Once a certain man said to his wife (*who was not pregnant at the time*), “My estate shall belong to the children that I shall have from you.” His eldest son came and asked him, “What shall become of me?” He replied to him, “Go and take possession as one of the other sons.” The *Gemora* notes that those sons (*that his wife will bear*) certainly do not acquire ownership, for they are not yet in existence; however, the *Gemora* inquires, does this son receive an additional share over the other sons (*for the father granted him a portion in his lifetime*), or does he receive no additional share over the other sons?

Rabbi Avin and Rabbi Meyasha and Rabbi Yirmiyah say: The son receives an additional share over the other sons. Rabbi Avahu and Rabbi Chanina bar Pappi and Rabbi Yitzchak Nafcha say: The child receives no additional share over the other sons.

Rabbi Avahu asked Rabbi Yirmiyah: Does the *halachah* follow our opinion or yours?

Rabbi Yirmiyah replied: It is obvious that the *halachah* is like us, for we are older than you, and the *halachah* cannot follow you, who are younger than us.

Rabbi Avahu asked him: Does the *halachah* depend on

who is older? It is surely dependent on logic (*and our logic is sounder than yours*)!?

Rabbi Yirmiyah replied: And what indeed is your reason?

Rabbi Avahu told him: Go to Rabbi Avin, for I explained it to him at the Academy, and he nodded his head in approval. Rabbi Yirmiyah went to him and he explained: Would anyone acquire possession if he were told, “Acquire ownership as a donkey”? [*Obviously not! So too, the son will not take possession, since he was told to take possession like the other sons. Just as they cannot acquire, he cannot.*] For it was stated: If one was told, “Acquire ownership as a donkey,” he does not acquire ownership. If, however, one was told, “You and this donkey should acquire these gifts,” Rav Nachman said: He acquires half of it. And Rav Hamnuna said: He has said nothing at all. And Rav Sheishes said: He acquires everything (*for that was obviously the donor’s intention*).

Rav Sheishes says: How do I know this? The *braisa* states: Rabbi Yosi says that the inside of a gourd is sometimes bitter. Therefore, when he takes off *terumah*, he adds on to the outer part of the gourd and takes *terumah*. [*The Rashbam explains that he adds the amount of an egg on to the usual mount that is taken for terumah in order to ascertain that he is taking terumah from the sweet gourd on other sweet gourds, and not from bitter gourds on sweet gourds.*] Rav Sheishes says: How can we say that the bitter part of the gourds is helped by taking *terumah*,

if we say they are so different? If they indeed remain untithed, they should also make the sweet part of the gourd remain untithed! Rather, it must be that although we do not take *terumah* from the bitter part, we say that all of the parts of these gourds are tithed due to the sweet part. This is like our case, where despite the fact that the donkey clearly does not inherit, the person does inherit everything. The statement of “You and the donkey” is equivalent to the sweet part of the gourd and the bitter part of the gourd being considered tithed, even though we are only dealing with the sweet part.

The *Gemora* refutes this proof by answering that the case of the gourds is different, as according to Torah law, *terumah* is effective, even when using the bitter part of the gourd as well.

This is as Rabbi Il’ai says: How do we know that if someone separates *terumah* from inferior quality produce for a superior quality, his *terumah* is valid? This is as the verse states: *And you will not carry a sin when you take its fat from it.* If taking “scrawny” produce is invalid, why would the verse say that it is a sin? It must be that this teaches us that if someone separates *terumah* of inferior quality off of produce of superior quality that the taking of *terumah* is valid (*but considered sinful*).

Rav Mordechai said to Rav Ashi that Rav Avya asked a strong question on the other opinions (*Rav Nachman and Rav Hamnuna*). There was an incident with five women; two of them were sisters, and someone gathered a basket of figs. The figs belonged to the women, and they were from *shemitah* (*meaning that anyone had a right to take them*). The man said to them, “All of you are betrothed to me with this basket,” and one of the women accepted the basket for all of them. The *Chachamim* ruled that the sisters are not *mekudeshes* (*because*

*kiddushin is only valid if it is one that has the possibility of cohabitation, but not in a case where he cannot legally cohabit with her*). This implies that the other (*three*) women are *mekudeshes*. Why should this be? Why shouldn’t it be akin to a case of “You and my donkey”? [*It must be that the law is like Rav Sheishes!*]

Rav Ashi replied: This is what Rav Huna bar Avya saw in his dream (*that Rav Avya asked this question*). However, it is not a question. Didn’t we establish that this case is when he says, “Anyone amongst you is fit for me to have relations with should be *mekudeshes* to me?” [*This would mean it is unlike a case of “you and my donkey” as everyone he mentioned is fit to be his wife.*] (142b – 143a)

### **“For you and for others”**

There was a person who told his wife: My possessions are for you and your sons. Rav Yosef says: She acquires half of his possessions.

Rav Yosef says: How do I know this is true? The *braisa* states: Rebbe says that the verse, “*And it will be for Aharon and his sons*” indicates that half (*of the lechem ha’panim*) should go to him and half should go to his sons (*to split amongst themselves*). [*Similarly, being that he equated his wife with his sons, they should split the possessions equally.*]

Abaye says: It is understandable that Aharon would receive half, as he is someone who is in any event supposed to receive a portion. This is why the Torah indicated that he should take half. However, a wife does not inherit her husband. It is enough that she should take a portion equal to one of the sons.

The *Gemora* asks (*on Abaye*): Is this so? Wasn’t there an incident in Nehardea where Shmuel collected half of the



money for the wife? Wasn't there also a similar incident in Teveryah, and Rabbi Yochanan did the same? Additionally, when Rabbi Yitzchak bar Yosef came, he said: The cost to make a crown was placed on the rich and the officers of the state. Rebbe said: They must each provide half of the money (*as they were mentioned equally, even though the rich people were richer than the officers*). [Why, then, does Abaye insist she should only receive a portion?]

The *Gemora* answers: Regarding the crown, it was actually the rich who were mentioned originally with the officers helping only a little. It was clear that this was the intent of the king. However, when the king mentioned them equally in the document, it is clear he wanted each category to pay half.

Rabbi Zeira asked a question on Rav Yosef from a *braisa*. The *braisa* says: If someone says, "It is upon me to bring a flour offering of one hundred *issarons* to be brought in two vessels," he must bring sixty in one vessel and forty in another. If he brings fifty in one and fifty in another, he fulfills his vow. This implies that if he did so it is valid, but he should not do so to begin with. If you say that whenever two things are mentioned they should be split equally, why shouldn't fifty and fifty be good to begin with?

The *Gemora* answers: It is clear to us that this person wanted to bring a large *korban*. He only said two vessels because he knew he could not bring them in one vessel. We therefore tell him to bring one *korban* at maximum capacity, and the other should contain the rest.

The law follows Rav Yosef regarding the case of a field, topic, and half (*three separate cases, as explained in the Rashbam, with half being the case above*).

There was a person who sent pieces of coat to his house. Rabbi Ami says: Whatever is fit for boys should be split amongst the boys, and whatever is fit for girls should be split amongst the girls. This is only if he has no daughters-in-law. If he does, he sent them to his daughters-in-law. If his daughters are not married, he would not skip over his daughters and send to his daughter-in-law.

There was a person who said (*on his deathbed*), "My possessions should go to my sons," but he only had a son and a daughter. Does a person call his son - "sons," or perhaps he doesn't, and he wanted to include his daughter?

Abaye says: We can bring a proof from the verse, "*And the sons of Dan were Chushim*" (*even though there is only one son listed*).

Rava says: Perhaps the meaning of this verse is as was taught in the house of Chizkiyah, that his (*Dan's*) sons were many like bundles of reeds?

Rather, Rava says: There is proof from the verse, "*And the sons of Falu were Eliav.*"

Rav Yosef quotes a similar proof from the verse, "*And the sons of Eisan were Azaryah.*"

There was a person who said, "My possessions should go to my sons," but he only had a son and grandson. Does a person call his son's son his son, or not? Rav Chaviva says: A person will call his son's son his son. Mar bar Rav Ashi says: A person will not call his son's son his son.

There is a *braisa* that supports Mar bar Rav Ashi. The *braisa* states: If someone vows that he cannot benefit from his sons, he may have benefit from his grandsons. (143a – 143b)



### **Mishna**

If someone left older children and younger children, and the older children improved the estate, everyone splits the improvement evenly. If they said: See what our father has left us, we would like to improve our part and benefit from it (*in full*), they keep all of the improvement.

Similarly, if someone left part of his possessions to his wife and she improves the estate, everyone splits the improvement evenly. If she says: See what my husband has left me, I would like to improve my part and benefit from it (*in full*), she keeps all of the improvement. (143b)

### **INSIGHTS TO THE DAF**

#### ***Is a Disqualified Esrog always Inferior?***

The owner of an *esrog* orchard separated the required *terumah* and tithes, including *ma'aser rishon* which he gave to a Levite. The latter was glad to get such a large amount of *esrogim* and thought he would find at least one of them to be a choice specimen for the *mitzvah* of *arba'ah minim*. After a thorough search, however, he discovered that all the fruit were unfit for the *mitzvah* and he came to the owner of the orchard in resentment. "You took great care to separate *ma'aser rishon*," he asserted, "but you separated inferior fruit from the superior – *esrogim* unfit for their *mitzvah* as *ma'aser* for those kosher for their *mitzvah* – and the *Gemora* says that someone who uses bad fruit to separate the required gifts for good fruit is a sinner." The owner of the orchard asked Rav Yitzchak Silberstein to decide the question and the latter referred him to his brother-in-law HaGaon Rav Chayim Kanievski. Rav Kanievski ruled that the *ma'aser* had been properly separated as "good" and "bad" refer only to the fruit's edibility. In that sense one

should prefer using a big, ripe *esrog* for tithing rather than an *esrog* considered choice for its *mitzvah*, even if the former is disqualified for the *mitzvah* of *arba'ah minim*.

### **HALACHOS FROM THE DAF**

#### ***"My Dear Sons" - Who is Included?***

A father of five is overseas on a business trip, and decides to send his children a present. He shops around for a nice gift for his beloved children, and sends it off with UPS. The next day his children receive the package, tear off the wrapping paper, and out comes a note from their father. "My dear sons, just a little present from Daddy. I miss you tons! Love, Daddy." The children are nonplussed. "Sons"? asked Rachel. "We only have one brother." The four sisters as one stare at Chaim. "What is the meaning of this, Chaim?" they ask the bewildered young man.

We learned that when a father calls his children - sons, he means to include his daughters as well. That doesn't mean that the four sisters in the above story will automatically get their present. First we have to analyze a number of factors. a) The type of gift. b) Are the children married? The son? The daughters? c) What would be the *halachah* if the father didn't write sons, rather just wrote, "A present from Daddy" without specifying any of his children? d) What would the *halachah* have to say in the same exact story, but with one difference? Instead of on an overseas trip, the father is deathly ill!?

A) The Shulchan Aruch (Choshen Mishpat Siman 247 Seif 1) rules that both the sons and daughters receive the gift, only when the presents clearly indicate that some are for boys (walkie talkie) and some are for girls (dollhouse). However, if it can be used by both the sons and daughters



(for example, money), then, only the son would get it. The rationale (as explained by the Kesef Mishnah and Aruch Hashulchan) is that the father does normally refer to his daughters by calling them “my sons,” and therefore, she receives a gift too when it is obviously meant for her. But if the present can be for both, logic dictates that “sons” means sons - even if there is only one son.

B) All of this is true whether the sons and daughters are both not married, only the sons are married or only the daughters are married (S’ma). There is a dispute in a case where they are both married. S’ma rules that the daughters-in-law receive the gift, but not the daughters. K’tzos cites the Bach that the daughters are the ones that receive the gift, and not the daughters-in-law.

C) In a case where the father didn’t specify “sons,” the Mechaber records two opinions. 1) If it’s a type of gift that is clearly meant for his daughters, then they receive it, and if they are married, then the daughters in law get it. This is true even according to the Bach, because the daughters-in-law are part of his household. 2) If the father has a wife, then she is the one that receives the gift, and not the daughters. But in the above case where the father wrote “sons,” she is obviously not included.

D) Regarding a deathly ill person that wrote “my sons,” his daughters are not included, even if the present is clearly for them. The reason is, that when it comes to a deathly ill person, he is essentially dividing his inheritance, and there we assume his language is following the Torah’s directive that the daughters do not inherit when there is a son.

## DAILY MASHAL

### *Rabbi Meir’s Text*

The Torah says that “all the souls of the House of Yaakov coming to Egypt were 70” (Bereishis 46:27), but the Midrash says that if we count them, we find only 69 (*Bereishis Rabah*, 94:9). The Torah, though, reckons 70 because Yocheved was born at the gates of Egypt, and by the time the Israelites passed through the walls, they numbered 70. Alternatively, Chushim is counted as two since he would eventually beget many offspring, as the Torah says: “...the **sons** of Dan: Chushim” (see Tosfos, s.v. *Shehayu*). Still, the Midrash adds that Rabbi Meir had a *sefer Torah* whose text read “the **son** of Dan: Chushim”; this statement is altogether perplexing.

According to the commentary *Avnei Shoham* (on Bereishis 46:23), the above two explanations depend on the difference of opinions as to if a fetus is regarded as a limb of its mother, or is the unborn child a separate entity. If like the latter, we can count Yocheved separately and include her in the total of 70. If a fetus is a part of its mother’s body, we cannot count Yocheved and must rather count Chushim as two. Rabbi Meir holds that a fetus is not part of its mother’s body. He therefore reckoned Yocheved as an individual, though she had not yet been born as they approached Egypt, and his *sefer Torah* said “the **son** of Dan...,” counting Chushim as only one.