

21 Sivan 5777  
June 15, 2017



Bava Basra Daf 144

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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

**Estate Improvement**

If a man died and left adult and minor children, the *halachah* is that if the adults improve the property, they all split the profits equally.”

Rav Chaviva the son of Rav Yosef the son of Rava said in the name of Rava: This *halachah* is only true regarding the case where the improvement of the estate was effected out of the estate itself (*the funds from the estate*), but if it was improved at the expense of the elder brothers (*through their own money or effort*), the profits belong to them.

The *Gemora* asks: But this is not so! Did not Rabbi Chanina say that even if their father had left them only a covered cistern, the profits are to be equally divided? And the profits of a covered cistern are certainly due to the effort of the elder brothers themselves (for they must watch it that it should not be used by others)!?

The *Gemora* answers: A covered cistern is different, since it only requires watching, and even minors are capable of watching it.

The *Mishna* had stated: 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.

Rav Safra’s father left him some money. He took it and invested with it. His brothers and pleaded before Rava that they should receive a portion of the profits. Rava said to them: Rav Safra is a great man (*in Torah*); he would not leave his studies in order to toil for others (*and it is therefore as if*

*he said, “See what our father has left us; I would like to improve my part and benefit from it”).*

The *Mishna* had stated: Similarly, if someone left part of his possessions to his wife and she improves the estate, everyone splits the improvement evenly.

The *Gemora* asks: Why is the woman involved in the property of the orphans (*she could either take her kesuvah and go, or, she could work on their property and be sustained from them; she cannot profit from their property*)?

Rabbi Yirmiyah replied: The *Mishna* is referring to a case where she is also an inheritor. [*One of the cases mentioned by the Rashbam is where the deceased gave instructions that his widow shall inherit together with his sons.*]

The *Mishna* had stated: 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.

The *Gemora* asks: Is this *halachah* not obvious?

The *Gemora* answers: We might have thought that since it is a praise for her when people say that she works for the orphans, she might forego her claims to the profit; therefore it was necessary to teach us that this is not so. (143b - 144a)

**The Wedding House**

Rabbi Chanina said: If a man celebrates the marriage of his eldest son in a wedding house, the son becomes the owner

of the house. The *Gemora* qualifies this *halachah* to be referring only to a case where he is the eldest son, where she is a virgin, where she is his first wife, and where he was the first of the brothers that the father married off.

The *Gemora* challenges Rabbi Chanina's ruling from the following: If his father designated for him a house and furniture, he acquires possession of the furniture, but not of the house!?

Rabbi Yirmiyah replied: This refers to a case where his father used this house for storage (*and in such cases, he is not leaving the house for his son*). The *Nehardeans* said: Even if the father kept only a dovecote there (*the son does not acquire the house*). Rav Yehudah and Rav Pappi say: Even if the father kept only a pot of fried fish there.

Mar Zutra married off his son and hung up for himself a sandal (*in order to retain the house*). Rav Ashi married off his son and hung up for himself a cup of oil.

Mar Zutra said: This is one of three *halachos* that the Rabbis decreed arbitrarily without providing a reason (*similar to a halachah l'Moshe mi'Sinai*). The second of these *halachos* was that which Rav Yehudah said in the name of Shmuel: If a deathly ill person writes over all his possession to his wife, he has merely appointed her as the caretaker (*this was done with the power of hefker Beis Din hefker in order to ensure that the children will not lose their inheritance*). The third matter was that which Rav said: If one said, "You have a *maneh* of mine in your hand; give it to So-and-so," if this was said in the presence of the three of them (*the giver, the intermediary and the recipient*), he acquires it (*even without making a formal kinyan*). [*This is referred to as ma'amad shlashtan; in the presence of all three.*] (144a)

### **Mishna**

Brothers who are partners, and one fell into a trade, it falls (*the profit*) to the middle (*the brothers divide it evenly*). If he

became ill and was cured, he was cured by his own (*resources*). (144b)

### **Sharing the Profits**

A *Tanna* taught in a *braisa*: The trade in our *Mishna* means a government appointment (*to collect the monthly taxes for the king; this job was awarded to him because he was a member of his father's household and it was their turn, but if he entered another business, the profit is his*).

The *Gemora* cites a *braisa*: In the case where one of the brothers was appointed tax collector or magistrate, if the appointment was due to the brothers (*for it was their turn*), the profits belong to all the brothers (*even if he was exceptionally sharp*); if the appointment was due to himself (*on his own merits*), the profits belong to himself.

The *Gemora* cites a *braisa*: If one of the brothers took from an inherited estate (*before its division*) two hundred zuz to study Torah or to learn a trade (*and he pleads for support as well*), the brothers can tell him, "If you live with us you can have your sustenance; if you do not live with us, you cannot."

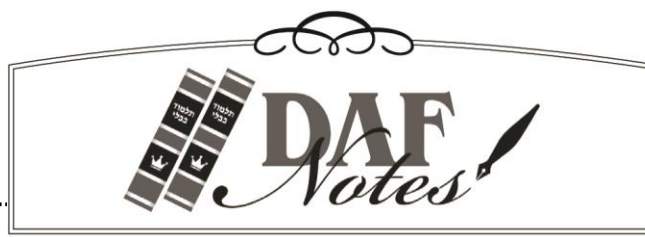
The *Gemora* asks: But let them give it to him wherever he is living?

The *Gemora* answers: This supports Rav Huna, for he said: The blessing of a house is proportionate to the amount of people residing in the house (*and if he does not stay with them, the blessing is diminished*).

The *Gemora* asks: But shouldn't they be obligated to support him and deduct the amount of the loss?

The *Gemora* answers: That is precisely what the *halachah* is.

The *Mishna* had stated: If he became ill and was cured, he was cured by his own (*resources*).



Ravin sent in the name of Rabbi Il'la: This applies only in a case where he became ill through his own negligence, but if it happened by accident, the cost of the cure is taken from the estate.

The *Gemora* asks: What is meant by negligence?

The *Gemora* answers: This is as Rabbi Chanina taught: all misfortune that befalls a person is from the hand of Heaven except a sickness which was caused by exposure to the cold or the heat (*it is because of man's carelessness*)! This is as the verse states: *The cold air blows in the way of a crooked person; one who guards his soul should stay far away from them.* (144b)

### **Mishna**

[*There was the custom in those days that when a man married, his friends and acquaintances sent him gifts in celebration of his wedding and to join him in the feasts. These gifts were known as groomsmen's gifts (shushvinus). These gifts were not outright gifts, but were more like loans, for when a person sent the presents, it was expected that the groom will reciprocate when he, in turn, married.*] If some of the brothers acted as groomsmen during the father's lifetime, when the groomsmen's gift was reciprocated, it returns to the middle (*for the brothers to divide evenly*), for groomsmen's gifts are collectable in *Beis Din*. But if one sends jars of wine or jars of oil to his friend, they are not collectable in *Beis Din*, because they are acts of kindness. (144b)

### **Shushvinus**

The *Gemora* asks a contradiction from a *braisa*: If his father had sent through him (*one particular son*) a wedding gift, when it is reciprocated, the gift returns to him (*that son, but not to all of them*). If a wedding gift was sent to his father (*when he married off his sons*), when it is reciprocated, it is returned from the father's estate (*for the orphans must pay their father's debt*).

Rav Assi replied in the name of Rabbi Yochanan: Our *Mishna* is also speaking of the case where the gift was sent to his father (*and not from his father; but if his father would have sent it, the Tanna of the Mishna would agree that when it is reciprocated, it is returned to that son*).

Rav Assi (*himself*) said: There is no difficulty. The *Mishna* is dealing with a case where the father did not specify (*that when it is reciprocated, it should be returned to that son*). The *braisa* is referring to a case where he did specify. This is as it was taught in a *braisa*: If his father sent wedding gifts through him, when it is reciprocated, the gift belongs to him. If his father, however, sent wedding gifts without specifying, when it is reciprocated, it is returned to the estate.

Shmuel answers: The *Mishna* (*agrees with the braisa that the gifts are returned to the brother who delivered them*) is dealing with a case of a *yavam* (*married the wife of the brother who delivered the gifts*), who (*upon receiving the reciprocated gifts, although he receives a double portion like a firstborn*) is not entitled to receive the prospective possessions of his dead brother as those which he already possessed.

The *Gemora* asks: Does this then imply that the initial recipient of the gifts must reciprocate (*even though the one who delivered the gifts has died*)? Why can he not say, "Give me my *shushvin* (*the brother who delivered the gifts*) and I will rejoice with him" (*which cannot happen, for he has died*)? Has it not been taught in a *braisa* (*regarding a betrothed woman who died*): Where it is the custom to return the *kiddushin* money, it must be returned, and where the custom is not to return, it does not need to be returned. And Rav Yosef bar Abba said in the name of Mar Ukva who said in the name of Shmuel: This applies only to the case where she died, but where he died, it does not need to be returned (*to his inheritors*). What is the reason? It is because she can say, "Give me my husband and I will rejoice with



him" (*I am prepared to get married*). Here also, he could say, "Give me my *shushvin* (*the brother who delivered the gifts*) and I will rejoice with him!"

Rav Yosef replied: The *Mishna* is dealing with a case where he rejoiced with him for the seven days of the wedding feast, but had no opportunity of repaying him before he died (*and since they celebrated together, the first groom is obligated to reciprocate; and although the yavam inherits the deceased's estate, he does not inherit the reciprocal gifts, for those are prospective possessions; it therefore goes to the estate*). (144b – 145a)

### HALACHOS FROM THE DAF

#### ***Bundle Up***

The *Gemora* states that catching a cold or heat related illness is considered a negligent illness. The *Gemora* teaches us that "everything is in the hands of heaven except for heat and cold."

Tosfos explain that all mishaps and occurrences that happen (*in contrast to misfortunes that we actively bring to ourselves, for example jumping into a raging ocean*) in our life, is not a random act attributed to queer and meaningless fate. Rather, everything that occurs in our lives, whether big or small, is directly caused by G-d. There is one exception to this Law of Occurrences - illnesses that are caused by heat or cold. This is exclusively in man's department.

There is an interesting difference between the two. The *Shulchan Aruch* (Orach Chaim Siman 276 Seif 5) rules that in cold places, it is permitted to tell a non-Jew on Shabbos to make a fire (*or in today's vernacular - turn on the heater*) for the little children (*because for them, it's cold, even in weather where the adults are comfortable*). Once there is a fire, everyone is allowed to benefit from it. However, the *Taz* and others add that one may not sit close to the fire out of concern that one might momentarily forget and make the

fire larger. In a place where it's extremely cold, one may tell a non-Jew to light a fire (*even for adults*). The reason for this is, as the *Shulchan Aruch* puts it, "Everyone is considered ill in regard to the cold." The ill here refers to the category of "an ill person that is not in danger," and therefore, we are not allowed to make a fire, but a non-Jew can, because a non-Jew may be specifically asked to perform forbidden labor when there is an ill person, without the hints that usually must accompany an "*Amirah Li'akum*" (*telling a non-Jew to do a melachah on Shabbos*).

Similarly, in a case where the air conditioner is on, and it is very cold, one may ask a non-Jew to turn it off. However, if it is very hot, there is no such concept of "Everyone is considered ill in regard to heat." Although some (*Minchas Yitzchak* and others) permit to ask a non-Jew to turn on an air conditioner for different reasons, Reb Moshe Feinstein forbade it (*Igros Moshe Yoreh De'ah Chelek 3 Shaila 47 Ois 2*).

### DAILY MASHAL

#### ***Those who Learned Mishnayos for their own Departed Souls***

Our *Gemora* highly praises anyone who leaves a son to inherit his estate. A previous *Gemora*, on 116a, applies the verse "...cry for the one who goes" (*Yirmiyahu 22:10*) to a person who fails to leave a son after him. The *Gemora* in *Sanhedrin* explains that sons increase their fathers' merits and the *halachah* accordingly stresses the importance of a son's saying *kaddish* for his father (*Remo in Shulchan Aruch, Y.D. 376:4; Responsa Binyamin Ze'ev, 51*).