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Bava Basra Daf 158

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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

**Mishna**

A house fell on him and his wife (*and she has no sons from him*). The inheritors of the husband say that the wife died first (*and the husband inherits her entire property*), and then the husband died (*in which case, they will inherit his entire estate – including that which he inherited from his wife*). The inheritors of the wife claim that first the husband died (*and you – the relatives of the husband inherit him*) and then the wife died (*and we inherit her property*). Beis Shammai says: The money (*belonging to the wife*) should be divided between them. Beis Hillel says: The property (*the tzon barzel - ironclad property -- the property which the wife brings in to her husband in the dowry, and which the husband records in the kesuvah. The husband makes use of this property as he wishes, its profits or losses are his, and he is responsible for it. Hence the name, "ironclad property": the principal remains as does iron, for if it is lost, the husband is required to pay.*) should remain in their possession, and the *kesuvah* should go the husband's inheritors, and the property which comes in with her and leaves with her (*nichsei melog - usufruct property - the property which the woman brings in with her from her father's house, and which is not recorded in the kesuvah, as well as property which comes to her by inheritance or as a gift after the marriage; this property is hers, and her husband is not responsible for it, since he may only usufruct (the right to use and enjoy the profits and advantages of something belonging to another as long as the property is not damaged or altered in any way) it; the term nikhsei melog is derived from the Aramaic word meligah, plucking,*

*i.e., the husband plucks the property just as a chicken is plucked*) goes to her father's inheritors. (158a)

**Who Gets the Tzon Barzel?**

The *Gemora* asks: What did Beis Hillel mean when they said that the property (*the tzon barzel*) should remain in their possession? Whose possession is that referring to?

Rabbi Yochanan says: It means the husband's inheritors (*for he was responsible for the property; he would be obligated to pay her for any losses*). Rabbi Elozar says: It means the wife's inheritors (*for she brought the property into the marriage from her father's house*). Rabbi Shimon ben Lakish says in the name of Bar Kappara: It means that the property should be divided between them (*since we are uncertain as to who should get it; each of the inheritors have a legal claim to it*). And so Bar Kappara taught: Since they each are coming to inherit it (*they both have a valid claim to it*), they should split it. (158b)

**Mishna**

A house fell on a person and his mother (*and she has no other sons*). [*The inheritors of the son claim that the house first fell on the mother and killed her. The inheritors of the mother claim the son died first. If the mother died first, the son inherited her before he died, and passed this along to those who inherit him. If he died first, he never received a portion from her estate.*] Both (*Beis Shammai and Beis Hillel*)

agree that it should be divided. Rabbi Akiva says: I admit that the possessions should remain in their possession. [*Rashi and Tosfos argue regarding why Rabbi Akiva said "I admit." Their argument hinges on whether Rabbi Akiva was one of the disciples of Hillel or a disciple of Shammai.*] Ben Azzai said to Rabbi Akiva: We are pained because of their disagreements; yet you come to cause a disagreement where they agree. (158b)

### **Whose Possession?**

The *Gemora* asks: What did Rabbi Akiva mean when he said that the property should remain in their possession? Whose possession is that referring to?

Rabbi Illa says: It means the mother's inheritors (*and the reason will be explained below*). Rabbi Zeira says: It means the son's inheritors (*for once she became a widow, her son will be the one to inherit her before her relatives on her father's side*).

When Rabbi Zeira went up to *Eretz Yisroel*, he retracted and ruled like Rabbi Illa (*that it goes to the mother's inheritors*). [*Rabbah ruled according to what Rabbi Zeira initially said.*] Rabbi Zeira said: From the fact that I retracted when I ascended to *Eretz Yisroel*, one may deduce that the air of *Eretz Yisroel* makes people wise (*and that is why I was able to realize the correct ruling on this matter*). And what is the logic of this ruling? Abaye replied: It is because the inheritance has become the established possession of that tribe (*of the mother, for since she became a widow, the property was in her possession – the tribe of her father*). (158b)

### **Inquiries**

The *Mishna* had stated: Ben Azzai said to Rabbi Akiva: We are pained because of their disagreements; yet you come to cause a disagreement where they agree.

Rabbi Simlai said: This tells us that Ben Azzai was a student who subsequently became a colleague of Rabbi Akiva, for he said "you came" (*in second person, and not in third person – "the master came"*).

They sent from *Eretz Yisroel*: If a son borrowed on (*for the purpose of*) the estate of his father during the lifetime of his father, and he died, his son may seize the land from the purchasers; and this *halachah* presents a difficulty in the laws regarding monetary matters (*it cannot be understood*).

The *Gemora* challenges the ruling: If he borrowed, for what reason is he taking away the land? And, furthermore, what are the purchasers doing in this ruling (*there was no land sold*)?

Rather, if that ruling was made, it was as follows: If a son sold the estate of his father (*the portion which he was supposed to inherit*), during the lifetime of the father, and he died (*first the son and then the father*), his son (*the son of the son*) may seize it from the purchasers (for it has now been clarified that it was never in the son's possession to sell it, for he died before the father and never inherited it); and this *halachah* presents a difficulty in the laws regarding monetary matters (*it cannot be understood*), for they could say to him, "Your father has sold it and you are taking it away!" (158b – 159a)

### **HALACHOS OF THE DAF**

#### ***A Husband and Wife Die in a Building***

The Shulchan Aruch (Even Ha'ezer 90:6) rules in accordance with Beis Hillel. In the case where both the husband and wife die due to a building collapsing and it's not clear who died first, the *halachah* is that the *kesuvah* goes to the inheritors of the husband; the *nichsei melog* to the inheritors of the wife, and the *nichsei tzon barzel* they split



evenly. Obviously this only applies if they didn't have children together, for if they did, it wouldn't make a difference who died first, since the children would inherit everything.

Although a woman normally needs to take an oath (*that she never collected it yet*) in order to collect *nichsei tzon barzel* (ibid 96:1), in this case, we allow her, and now that she died - her inheritors collect it. Since the reason why a woman needs to take an oath is because we are suspicious that she might have taken some items before he died, in our case, where he died suddenly, we don't assume that she took anything (Celkas Michokek).

#### DAILY MASHAL

#### DISTANT CELEBRATION OF REB AKIVA EIGER'S WEDDING

Reb Wolf Eiger, the uncle of Reb Akiva Eiger was unable to attend his nephew's wedding. He made a simultaneous banquet of his own to celebrate the occasion. Reb Shaya Pik and other Rabbanim attended the festivities. He wrote to his nephew about the *halachic* issues (*if one can fulfill the mitzvah of counting the omer by way of writing*) which were discussed at the banquet.

What was the point of such a celebration? They weren't dancing before the groom or the bride; they weren't praising the groom in front of the bride. What caused these Rabbonim to celebrate in such a manner?

In the West (*Eretz Yisroel*) they would say: (*A man who does not have a wife lives*) without Torah.

Why is not having a wife like living without Torah; if anything, there exists more time for Torah study, not less?

Our *Gemora* refers to Ben Azzai as the "*Talmid chaver*" of Rabbi Akiva. Ben Azzai was considered somewhat of a disciple of Rabbi Akiva.

Rabbeinu Gershom comments: Since Ben Azzai was a "*bochur*," he was unable to comprehend *halachic* logic as well as Rabbi Akiva.

What is the connection between being a "*bochur*," and not comprehending to the fullest extent?

I once heard from my Rosh Yeshiva, HaRav Chaim Schmelczer zt"l that Rabbeinu Gershom means that Ben Azzai was a bachelor, and one who is not married does not have the same level of contentment as one who is married. Torah study requires one to be at ease; one must have a *menuchas hanefesh* in order to comprehend the depths of the Torah. This is what Ben Azzai was lacking.

This is the explanation of the *Gemora*. One who is not married is akin to living without Torah. He may have more time for Torah study, but he is lacking the inner contentment which is a prerequisite for Torah.

Perhaps this can explain what caused Reb Wolf Eiger to celebrate the wedding of his nephew Reb Akiva Eiger even though the bride and the groom were not present; in fact, they were miles away. Reb Wolf understood that the marriage of Reb Akiva Eiger will result in his becoming the Reb Akiva Eiger that we know now. The wedding was not only a private joy for the families of the bride and groom, but rather, it was a *simchas hatorah*; a celebration in the honor of Torah. Reb Akiva Eiger's Torah would spread throughout the world. This could be celebrated anywhere, even without the *choson* and *kallah*.