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Shekel or Money?

A firstborn son only takes a double portion of his father’s possessions and not his mother’s possessions. He does not take a double portion in the improvements (*made to the estate after the death of the father*). He does not inherit a double portion in a prospective asset like he inherits things that are clearly in the possession of his father when he dies! [A firstborn only gets a double portion of possessions that are clearly in his father’s possession when his father dies, not what comes into the estate’s possession after his father dies.] A woman does not take these assets when collecting her *kesuvah*. The daughters do not collect from these assets for their sustenance. [If a man undertakes to support the daughter of his wife whom she had from another man for five years, after his death it can be taken only from the present value of the estate, but not from any increment in the estate.] A *yavam* (who married the wife of his childless brother; although he receives a double portion like a firstborn) does not collect from these as well. They all are not entitled to receive the improvements, or from the prospective possessions as those which he already possessed.

[The Gemora cites the Scriptural sources for the laws mentioned in the Mishna.] The Gemora asks: What is the reason (that a firstborn son only takes a double portion of his father’s possessions and not his mother’s possessions)?

The Gemora answers: The verse states: *To him is the law of the firstborn*. The double portion of the firstborn only applies when inheriting from a father, not a mother.

He does not take a double portion in the improvements (*made to the estate after the death of the father*) because it is written: *in all that is found with him (and the improvements were not present at the time of his death)*.

He does not inherit a double portion in a prospective asset like he inherits things that are clearly in the possession of his father when he dies, because it is written: *in all that is found with him*.

The Mishna had stated: A woman does not take these assets when collecting her *kesuvah*.

The Gemora asks: Is it really so? Hasn’t Shmuel said: Shmuel had stated: A creditor can seize the appreciation of the land from the buyers.

Rabbi Abba answers: This is one of the leniencies of a *kesuvah* (that she cannot collect from the improvements).

The Mishna had stated: The daughters do not collect from these assets for their sustenance.

The Gemora asks: What is the reason?

The Gemora answers: Stipulations in a *kesuvah* are like the *kesuvah* (and has the same halachos).

The Mishna had stated: A *yavam* does not collect from these as well.

The Gemora asks: What is the reason?

The Gemora answers: The Torah refers to him as a firstborn.

Abaye said: They have taught this (*that the yavam does not take from the improvements*) only with regard to the improvement in the value of the estate between the death of the brother and the performance of the *yibum*, but he does take a double portion of the improvement of the value of the estate which took place between the period of the performance of the *yibum* and the division of the estate. What is the reason for this? The Torah says: He shall succeed to the name of his brother that is dead; but here is a case of one who succeeded (*by performing the yibum*).

Rava, however says: He does not take the improvement in the brother's share even between the period of the performance of the *yibum* and the dividing up of the estate. What is the reason? He has the same law as a firstborn; just as a firstborn does not take (*a double share of the improvement in the value of the estate*) before the division, so too a *yavam* as well does not take (*a double share of the improvement*) before the division.

The *Mishna* had stated: They all are not entitled to receive the improvements, or from the prospective possessions as those which he already possessed.

The *Gemora* notes that this (*the superfluous statement at the end of the Mishna*) implies even an improvement in the value of the estate which comes by itself (*without any labor on the part of the brothers*), e.g., where the field (*at the time of the father's death*) contained shoots and now it is ears, or (*at the time of the father's death*) they were buds and afterwards became full-grown dates.

The *Mishna* also comes to include the grandfather's estate. [*If their grandfather was alive when their father died and his estate was coming to them eventually, for even if he had another son, their father would ultimately receive his share, I might have thought that this is counted as having the estate in one's possession. The last clause in the Mishna (by repeating) informs us that this is not so. For, from the previous clause in the Mishna which says that a firstborn does not take a double portion etc., I might have thought that this referred only to a case where there fell to them the estate of their father's brother, the latter having*

children at the time of their father's death, so that it did not appear coming to them on their father's death, but both he and his sons died before the division.]

The following (*ancestral lands*) do not return (*to their owners*) in *Yovel*: the share of the firstborn, (*the inheritance of*) one who inherits his wife's estate, and of one who performs *yibum*, and a present; these are the words of Rabbi Meir. But the Sages say: A present has the law of a sale (*and must be returned*). Rabbi Elozar says: All of these must be returned in *Yovel*. Rabbi Yochanan ben Berokah says: if one inherits his wife's estate, he returns it to the members of the family and makes a deduction from the purchase money (*which will be explained in the Gemora*).

The *Gemora* explains the reason of Rabbi Meir: Only in the case of a sale does the Torah instruct that it must be returned (*to its original owners*) in the year of *Yovel*, but not with regard to a present or an inheritance; and the cases (*enumerated in the Mishna as not returning in Yovel*) are either cases of inheritance or such that come under the category of a present.

The *Gemora* explains: With reference to a firstborn, the Torah says: *to give him a double portion*; we see from here that the Torah describes his portion as a present. A man's inheritance of his wife's estate is a Biblical law (*and therefore it is a genuine inheritance*). Regarding one who performs *yibum*, the Torah describes the *yavam* as a firstborn.

The *Gemora* explains that the Sages maintain that the extra verse, '*you shall return*' intimates the inclusion of the case of a present; but all the other cases are those of inheritance; with regard to a firstborn, the Torah says, *to give him a double portion* - thus comparing the portion he receives as a firstborn with the ordinary portion; just as the ordinary portion of the firstborn is considered as an inheritance, so too the extra portion received by a firstborn is also considered as an inheritance.

The *Gemora* explains that Rabbi Elozar agrees with the Sages who say that '*you shall return*' intimates the inclusion of the

case of a present, and he holds that all these cases (*enumerated in the Mishna as not returning in Yovel*) come under the category of a present. With reference to a firstborn, the Torah says: *to give him a double portion*; we see from here that the Torah describes his portion as a present. A man's inheritance of his wife's estate is a Rabbinical law (*and therefore regarded as a present*). Regarding one who performs *yibum*, the Torah describes the *yavam* as a firstborn.

Rav Assi said in the name of Rabbi Yochanan: If brothers divide an inheritance, they are regarded as purchasers (*for they are exchanging their true portions for those that they actually receive*), and they therefore are required to restore their shares to each other at *Yovel*. [*When brothers are partners to their father's estate, they own everything in partnership. When they split the estate, bereirah can tell us that whatever they received in the split was originally what they owned while partners. Rabbi Yochanan, however, considers these brothers to be buyers of each other's portion, indicating that Rabbi Yochanan does not accept bereirah.*]

Rav Hoshaya challenged him from our *Mishna* which states: The following (*ancestral lands*) do not return (*to their owners*) in *Yovel*: the share of the firstborn.

Rabbi Elozar replied to him: The expression 'do not return' here means that the return in *Yovel* does not nullify his right to the extra portion (*but rather, the firstborn, after the Yovel, receives his double portion again*).

Rav Sheishes asked him: Does this imply that the one (*R' Elozar*) who disagreed and said that the extra portion does return by *Yovel* means that the return in *Yovel* nullifies his right to the extra portion? [*Why should the firstborn lose his privileged portion? Therefore R' Elozar's reply above is not acceptable, and the difficulty still remains with regard to Rav Assi's opinion!?*]

Rami bar Chamah applied to Rav Sheishes the following verse: *Wisdom is good with a heritage*, for has he not heard the following: When Ravin came, he reported in the name of Rabbi Yochanan, or another version is that when Ravin came he

reported that Rabbi Elozar said in the name of Rabbi Elozar ben Shammua: returning in *Yovel* here means that it nullifies his right to the extra portion. [*For had Rav Sheishes known Ravin's wise observation, he would never have objected in the manner he did!*]

The *Mishna* had stated: Rabbi Yochanan ben Berokah says: if one inherits his wife's estate, he returns it to the members of the family and makes a deduction from the purchase money.

The *Gemora* inquires: What is Rabbi Yochanan's reasoning? If he holds that a husband inherits based on Torah law, why should he give it back at all? If he holds that this inheritance is Rabbinic in nature, why does he take money? Rav explained: Rabbi Yochanan holds that a husband's inheritance is established in Torah law. However, the case here is where his wife owned her family's burial plots. Being that their inability to bury their dead and the burial of others there instead would denigrate the family, he should return the plot to them for a (*small*) amount of money.

The *Gemora* asks: What does it mean that he should subtract some money? The *Gemora* answers: This is the amount of money that his wife's plot is worth. This is in accordance with a statement of a *braisa* that someone who sells his burial plot, the path to it, the place where one stands to deliver a eulogy and the place for the eulogy, his family can come bury him there anyway, as otherwise it is denigrating to the family. (51a – 51b)

WE SHALL RETURN TO YOU, YESH BECHOR

INSIGHTS TO THE DAF

Family burial to rise together at the Resurrection

BY: Meoros HaDaf HaYomi

After the First World War everything changed: centuries-old borders between countries and nations suddenly were moved. One of the towns in Schlesia changed its location from Germany to Poland. The Jews left the town and several ousted residents settled in Breslau, Germany, leaving behind the graves of their mothers and sisters.

Moving a relative's grave to a family plot: They eventually wanted to move their graves to Breslau in order to visit them on their *yahrtzeit*, to be buried all the family together and because they were concerned for the fate of the cemetery where the mother and sister were buried. The question was brought before HaGaon Rabbi Yechiel Yaakov Weinberg zt"l, author of *Seridei Eish*, who composed an encompassing work on the topic in which he discusses all its aspects (Responsa *Seridei Eish*, II, 100).

Their first reason, to move the deceased to visit them on their *yahrtzeit*, was utterly rejected. The deceased must not be moved for that purpose. Their third reason, that the cemetery could be destroyed, cannot be argued with, as *Shulchan 'Aruch* rules (Y.D. 363:1). However, their second claim, that they requested to move them to have them buried in the family plot, aroused a broad discussion.

Shulchan 'Aruch asserts (ibid) that it is permitted to move a deceased to a family plot because "it is agreeable to a person to rest by his parents". *Seridei Eish* innovates that one may use this permission also for future joint burial – i.e., it is allowed to move the deceased to the place where his relatives will be buried. However, we must discuss if this concerns only his parents and ancestors, or also his other relatives.

The Chasam Sofer zt"l claims (Y.D. 331) that this means the general family and not necessarily the deceased's parents and

he even offers a version cited by *Beis Yosef*: "It is agreeable to a person to rest by his **family**".

The author of *Kenesses Yechezkel* (§23) finds interesting proof for such in our *sugya*, which says that someone who sells his burial plot is buried there perforce by his relatives because it is a disgrace for the family that one of them is not buried with them. *Kol Bo* states an interesting reason (§114) for the advantage of family burial as it is meant to strengthen the belief in the Resurrection, that the relatives want to be buried together in order to meet each other immediately at *techiyas hameisim*!

The spine-chilling remark of the author of *Marcheshes zt"l*: Rabbi Weinberg's work aroused many remarks on the part of the greatest Torah authorities. One of the letters was sent by HaGaon Rav Chanoch Henach Eigash zt"l, the author of *Marcheshes*, who was killed in the Holocaust. The author of *Seridei Eish* mentions that "I present this letter in its entirety to memorialize one of the greatest of the last generation...who was murdered by the Nazis in Vilna". The *Marcheshes* writes: "Who can promise us that the living children will be buried in the same cemetery as their mother - maybe they'll be transferred in their lifetime elsewhere and will be buried in another town?" Therefore he rejects Rabbi Weinberg's *chidush* that the deceased should be moved to the plot which will serve as a family plot in the future.

This was written shortly before the Second World War when, as the *Marcheshes* says, everyone was "transferred" from place to place and murdered, including himself, *hy"d*.

"Rabeinu Tam": about what and why

A husband inherits the property of his wife from the Torah. However, different regulations were instituted over the generations concerning marriages that end suddenly with the tragic death of the wife shortly after marriage, before bearing children. The regulations are known as the regulation of Rabeinu Tam, the regulation of Shum, the regulation of Tulitula, the Slutsk regulation, etc. The forerunner of these regulations

was Rabeinu Tam, who sent his regulation to all the communities in his environs, which took upon themselves with a severe oath that if a wife dies within a year of her marriage without bearing children, her husband should return his *nedunyah* and her ornaments to her family.

Rabeinu Tam explained that his regulation is limited to the first year because after a year memories fade: the father-in-law doesn't think so vividly about the gifts he gave his son-in-law and his mourning is not so great (*Sefer Hayashar*, 579; Responsa *Maharam bar Baruch*, 934). In this light the *poskim* discussed how one should act concerning a wife who died after a leap year: does the regulation extend to 13 months? As a result, some say that the regulation does not apply to the first year of marriage but to the first 12 months (Responsa *Shevus Ya'akov*, II, 125).

Dispelling the curse of “and your strength will end in vain”:

Rabeinu Tam wrote: “And after this messenger went (to the communities to publicize the regulation) I remembered that stated in the *parashah* of the Reprobation (*tochachah*, *Toras Kohanim* Vayikra 26:20), “ ‘...and your strength will end in vain’: Sometimes a person marries off his daughter and pays a lot of money (for her dowry) and she dies before the end of the seven days of feasting and he loses his money.” Happy are we that we didn't experience that decree and just as we escaped that decree, may we avoid all evil decrees – Yaakov bar Rav Meir.” In other words, by means of his regulation this awful curse – that a father buries his daughter and his money – was dispelled, as his money returns to him.

DAILY MASHAL

Yaakov Ish Tam: As we said, Rabeinu Tam's name was Rabbi Yaakov ben Rabbi Meir, who was Rashi's son-in-law. He was called Rabeinu Tam for the verse (Bereishis 25:27): “...and Yaakov was *ish tam* – an honest man”. This phenomenon is common by the Rishonim. A Rishon by the name of Rabbi Yosef was called Rabeinu Poras for the verse (Bereishis 49:22): “*Bein poras Yosef* – Yosef is a son of grace”, and Rabeinu Yakir, whose

name was Rabbi Efrayim, was so called for the verse (Yirmiyahu 31:19): “Efrayim, the son who is *yakir* – dear to Me”.

“Will end in vain”: It is interesting to note that in the remarks of the Maharid – Rabbi Yaakov David Birman, *Av beis din* of Vishgrad – printed at the end of *Sifra devei Rav*, it is written: It was revealed to me in a dream in Iyar 5604 that Rabbi Yaakov Ish Tam was called Rabeinu Tam because he instituted the return of the *nedunyah* and dispelled the curse of “will end (*tam*) in vain”. Eventually, Rabeinu Tam nullified this regulation (Tosfos, Kesubos 47b) and some say that anyway the regulation did not spread in his era (*Semag*, *lo ta'aseh* 81). Eventually, the Ashkenazic communities reassumed this regulation and added that if the wife dies without bearing children in the second year of marriage, the husband should return half of the *nedunyah*.

The latter regulation, mentioned by the Remo (*E.H.* 52 and 118), is known as *Takanas Shu"m* for the three communities that joined in instituting it: Spera, Worms and Mainz (The three communities mentioned in *kinos* of *tisha b'av* “*Mi yitein roshi mayim*”, that were massacred by the Crusaders). Similar regulations were instituted in other communities, such as *Takanas Tulitula*, instituted in Toledo, Spain (see the *Tur*, *E.H.* 118), etc. (see Responsa *Rashba*, III, 434).

About 500 years later, *Takanas Shum* was expanded: In 5521 it was instituted in Slutsk that the husband should return the *nedunyah* if his wife dies within the first three years of their marriage (see *Otzar HaPoskim*, 52:4).

We should point out that a husband's inheriting from his wife is unique in that a husband may decline receiving the inheritance before his marriage. Concerning other inheritances such statements have no influence. Thus, Rabeinu Tam's regulation was that it is obvious and declared that all the husbands decline their wife's inheritance if she dies within the first year of their marriage.