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Bava Basra Daf 115

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### ***Mother Inheriting her Son***

Rabbi Yochanan said in the name of Rabbi Yehudah the son of Rabbi Shimon: We can derive from the words of the Torah that a father inherits his son and that a woman inherits her son, for it is written: *tribes*. We compare the tribe of the mother to the tribe of the father. Just as in the case of the father’s tribe, a father inherits his son, so too, in the case of the mother’s tribe, a mother inherits her son. [*This is a dissenting opinion from that which was taught in our Mishna.*]

Rabbi Yochanan asked a question from our *Mishna* to Rabbi Yehudah ben Shimon. The *Mishna* states: A mother to her son, a wife to her husband, and brothers of a mother, all of them bequeath but do not inherit. [*This shows that a woman does not inherit her son!?*]

Rabbi Yehudah answered: I do not know who authored our *Mishna*. [*In other words, he did not hold that this Mishna was correct.*]

The *Gemora* asks: Why didn’t Rabbi Yehudah answer that it is according to the opinion of Rabbi Zecharyah ben HaKatzav, who does not hold of “*matos*?” [*He does not compare the “tribe” of the mother to the father, and that is why he maintains that a daughter divides with the son in their mother’s estate, and therefore he clearly would not hold like Rabbi Yehudah.*]

The *Gemora* answers: Our *Mishna* cannot be according to Rabbi Zecharyah, for the *Mishna* says: Sons of a sister inherit their uncle (*their mother’s brother*), but do not bequeath to him. The *braisa* explains the *Mishna* as specifically meaning that sons of sisters inherit and not daughters of sisters. And we said, what is the law that the *braisa* is teaching us? Rav Sheishes answered: It is teaching that sons of sisters inherit before daughters of sisters. If our *Mishna* would be according to Rabbi Zecharyah ben HaKatzav, didn’t he say that sons and daughters equally inherit their mother? [*Therefore, it is clear that our Mishna was not authored by Rabbi Zecharyah.*]

The *Gemora* asks: How can we explain our *Tanna*? If he uses the *hekeshe* of “*matos*,” then a woman should inherit her son! If he does not use the *hekeshe* of “*matos*,” how does he know that a son takes precedence over a daughter when it comes to inheriting their mother?

The *Gemora* answers: The *Tanna* does use the *hekeshe* of “*matos*.” However, the verse states: *And any daughter who inherits a legacy*, implying that she inherits, but does not bequeath. [*The Rashbam explains that the verse continues, “mi’matos” -- “from tribes,” implying that a daughter inherits from her mother and father. However, she does not inherit from her son and daughter.*] (114b – 115a)

***Mishna***

This is the order of inheritance. The verse states: *If a person dies and he has no son, and you will pass over his inheritance to his daughter.* This shows that a son takes precedence over a daughter. All of those who are descendants of the son take precedence over the daughter. A daughter is before brothers (*of the deceased*). All of the descendants of a daughter take precedence over a brother. Brothers are before the brothers of the deceased's father. The descendants of a brother take precedence over the brothers of the deceased's father. This is the rule: Whoever is first to inherit, his descendants are also first to inherit. A father is before all of his descendants (*i.e. to inherit his son or daughter, unless that son has children*). (115a)

#### **Ain Lo – Ayin Alav**

The *braisa* states: The verse says: “*son.*” I only know this applies if he does not have a son. How do I know that this also applies if he does not have a son of a son, daughter of a son, or son of a daughter of his son? [*In other words: how do we know that they are inheritors when the son (their father) has already died?*] The verse says: *ain lo* -- he has none. *Ain lo* also implies “*ayein alav*” -- “look into him (*his descendants, to ensure there are none before passing the inheritance to the daughter*).”

The verse says: “*a daughter.*” I only know this applies if he has a daughter. How do I know this also applies if he has a daughter of a daughter, son of a daughter, or daughter of a son of a daughter? The verse says: *ain lo* -- he has none. *Ain lo* also implies “*ayein alav*” -- “look into him (*in this case - her descendants*).” How does this work (*if there are no descendants at all*)? The inheritance continues to “search and go up” until Reuven, the son of our forefather Yaakov. [*The Rashbam explains that indeed, if the person who is supposed to inherit is not*

*alive, we keep expanding the search to any of his living relatives, either before or after him who would inherit him, before we pass the inheritance to the next person on the list. See Rashbam at length for how this search works.*]

The *Gemora* asks: Why don't we say that it should go until Yaakov (*our forefather*)?

Abaye answers: There is a tradition that no tribe will be completely wiped out (*and there will most certainly be a descendant of Reuven alive to give the inheritance to*). (115a – 115b)

#### **Tzedukim's Opinion**

Rav Huna says in the name of Rav: Whoever says that a daughter (*of the deceased*) should inherit together with the daughter of a son (*of the deceased*), even if he is a Nasi of Israel, we do not listen to him. Such an action is an action of the *Tzedukim* (*Sadducees*).

This is as the *braisa* states: On the twenty-fourth of Teves we returned to our judgment (*against the Tzedukim; this was regarded as a minor holiday*). The *Tzedukim* used to say: A daughter (*of the deceased*) should inherit along with the daughter of a son (*of the deceased*). Rabbi Yochanan ben Zakkai came to them and said: Fools! How do you know this? Nobody answered him besides one old man who was fighting against him. He said the following *kal vachomer*: Just as the daughter of a son (*of the deceased*) is coming from the strength of the son in order to inherit, then the daughter (*of the deceased*), whose strength to inherit comes from the deceased himself, should certainly inherit!

Rabbi Yochanan read the following verse (*to refute his logic*): *These are the sons of Seir ha'Chori, dwellers of the*

land: Lotan, Shoval, Tzivon and Anah. The verse also states: *These are the sons of Tzivon: Ayah and Anah.* [Was Anah the son of Seir, or the son of Tzivon?] This teaches us that Tzivon cohabited with his mother, producing Anah (*his son/brother*). [The Rashbam explains that his reply centered around the fact that Anah was actually Seir's grandson, and yet he is equated regarding inheriting Seir with Seir's sons, as he too is called a "dweller of the land." It would seem that Tzivon already died and that Anah (Seir's grandson) inherited together with Seir's sons. This indicates that sons of sons inherit alongside sons (when the grandson's father is not alive). So too regarding a son of a son, he will inherit as a son and cause a daughter not to receive any inheritance. Following this logic, we would say the same thing regarding the daughter of a son: She stands in as a son and would take precedence over the deceased's daughter.]

The Gemora asks: Perhaps there were two different people named Anah?

Rava answers: I will say something that the King of Shapor did not say. He was referring to Shmuel. Some say that Rav Pappa said: I will say something that the King of Shapor did not say. He was referring to Rabbah. The verse says: *He was Anah*, implying that he was the same Anah mentioned originally.

The old man retorted: Rabbi, do you dismiss me with such an answer? [We also agree to you that a daughter will not inherit her father when there is a son of a son alive; we only maintain that a daughter will inherit together with the daughter of a son – and you have no refutation to that!]

Rabbi Yochanan ben Zakkai replied: Fool what you are! Our perfect Torah (*where we expound: Ain lo implies*

*"ayein alav" -- "look into him"*) is not like your idle talk! Your reasoning (*for your kal vachomer*) is erroneous for the following reason: The daughter of the son has a right of inheritance because her claim is valid where there are brothers (and she inherits equally with the sons of the deceased, her father's brothers); but can the same be said of the deceased's daughter, who does not inherit at all where there are brothers (*and therefore, she should not inherit when there are daughters to her brothers*). Thus they were defeated, and that day was declared a holiday. (115b – 116a)

## INSIGHTS TO THE DAF

### *The Masculine Gender Used for an Heiress*

According to Rabbeinu Tam in Tosfos (s.v. *Melamed*), Anah mentioned in the verse "and these are the children of Tzivon: Ayah and Anah" was a daughter, though later referred to in the masculine gender: "...he is Anah". The reason, he asserts, is that her brother Ayah died before Tzivon's demise and she therefore inherited Tzivon's estate.

Rebbe Heshel of Krakow zt"l supported the view that heiresses are referred to in the masculine from the story of Tzelofchod's daughters: Hashem tells Moshe to give them (*lachem*, in the masculine) a portion of their father's estate (Bemidbar 27:7) as they inherited it like any sons (*Chanukas HaTorah, Pinchas*).

The commentator *Pardes Yosef* adds that Yaakov said to Rachel and Leah: "Hashem saved **your** father's (*avichem*, in the masculine) livestock and gave it to me" (Bereishis 31:9). Lavan had no sons till Yaakov came to Charan (see Rashi on Bereishis 30:27) and his estate would have fallen to Rachel and Leah. Hashem saved the property destined



for Rachel and Leah from Lavan's sons and gave it to Yaakov.

### ***The Torah's Viewpoint on the Rights of Inheritance***

The Torah says in Bemidbar 27:8 that "if a man dies **without a son**, pass his estate to his daughter." Now, had we been asked to formulate the verse, we would probably write "if a man dies, pass his estate **to his son** and if he has no son, to his daughter."

In his Torah Temimah (ibid), Rabbi Baruch Epstein explains that the Torah thus hints that a son is his father's natural heir and that there is no need to state this detail. The Torah starts to dictate the order of inheritance from the point where a father has no son.

The *Torah Temimah* is just one of the commentators who elucidate that the Torah's order of inheritance may be understood by ordinary intelligence. For many reasons, a son is his father's natural heir. Even his name, *ben*, is related to the word *boneh* – "builder" – as a son builds and perpetuates his father's family. *Nachalah* – "inheritance" – comes from *nachal*, a "stream," in the sense that it forms a continuity, and, in contrast, the Torah calls passing an estate to a daughter *ha'avarah* – "transfer" (HaGaon Rav Binyamin Tsvi Rabinovitz-Teomim zt"l in *Be'inyan Yerushas HaBas*).

In his *Dinei Mamonos*, HaGaon Rav Yechezkel Abramsky zt"l asserts that a son's inheritance is not a statute beyond our understanding – a *chok* – as our *sugya* in 119b quotes Tzlofchod's daughters as saying "had he a son, we would not have spoken"; i.e., they themselves understood that a son would have been the natural heir (see Tosfos, s.v. *llu*).

### ***A Person Wants his Relatives to Inherit his Estate***

In his aforesaid work, Rav Abramsky explains that the inner logic of the Torah's property-related statutes conforms to human understanding since the Torah sees deeply into human nature. The first rule of inheritance, for example, determines that the closest relative takes precedence in inheriting the estate if there are no children. We understand this rule quite well as any person who has toiled his whole life to amass an estate wants the person closest to him, of all his family, to inherit it. The Torah also explains the firstborn's double portion of the estate as his due because of his being the first of his father's "strength" (Devarim 21:17). A firstborn is beloved to his father like an only child before he has more children, with a love unshared with others. Moreover, a firstborn usually helps his father in his business to increase his wealth and therefore earns a double portion.

### ***"And it will be to you...a statute of judgment"***

What about twin boys born within minutes of each other or other instances where the above characteristics of a firstborn do not actually apply? Rav Abramsky therefore explains the following important point: The laws of inheritance express the deceased's intention and conform to human understanding. Once the Torah rules them, however, their observance does not depend on our understanding, as the final verse in the chapter on inheritance concludes: "...and it will be to you...a statute of judgment" (Bemidbar 27:11). A general rule of the Torah is that many *halachos* are based on logical estimation, such as that a wife only makes a vow that her husband would approve, etc., but once the Torah determines them, they cannot be changed.



### **Should Daughters Sign that they Relinquish any Inheritance Rights?**

A daughter inherits no part of her father's estate if she has brothers but over the generations various people have tried to uproot the halachah and match it to gentile custom. The first were the *Tzedokim* (Sadducees), as mentioned by our *Gemora*, who were strongly repressed by our sages.

Rabbi Shlomo ben Aderes, known as the Rashba, reacted vociferously to those claiming that "the law of the government is the law" and that daughters should be given inheritance rights equal to those of sons (Responsa Rashba, VI, 254, cited in *Beis Yosef*, C.M. 26): "There will never be such a custom in Israel lest the Torah be girded in sackcloth because of them" (regarding "the law of the government", see Vol. 5 of the bound series *Meoros HaDaf HaYomi*, p. 124).

### **A Signature has a Price**

Still, the laws of various countries caused a disagreement among *halachic* authorities. In some places the law ruled that no estate should be divided till all the heirs sign that they consent to the planned division and daughters sometimes refused to sign till their brothers paid them a considerable fee or, say, compensation. Is such a demand legitimate? In his Responsa *Penei Moshe* (II, 15), HaGaon Moshe Benbeneshti remarks that some believe that a daughter does not have to sign any document without receiving a fair price – some say 10% of the worth of the estate and some say even more (see Responsa *Shoel Umeshiv*, 2nd edition, I, 1 and III, 110; *Chukos HaChayim* by HaGaon Rav Chayim Falaji, 184; etc.) while others say that the fee should be ruled by a *beis din* according to the exigencies of each circumstance (Responsa *Rav Pe'alim*, II, 15).

### **A Sister's Signature is like Returning a Lost Article**

Nonetheless, Maharit and other *halachic* authorities hold that a sister must sign such a declaration out of her simple obligation to return a lost article – the estate – to her brothers as without her signature, they would be losing it. The Chasam Sofer even describes any attempt to extract a fee for such as outright robbery (Responsa, C.M. 142). In his Responsa *Tzitz Eli'ezer* (XVI, 52), HaGaon Rav E.Y. Waldenberg cites Responsa *Divrei Chayim* (C.M., II, 3) that the *poskim* tend to be lenient toward the sisters and grant them a fee for their declaration and signature.

Though, strictly speaking, daughters do not inherit their father's estate if they have brothers, our sages instituted regulations for the welfare of those daughters who are still minors, as explained in Kesubos 52b: The brothers must support their minor, unmarried sisters and give them funds to enable their marriage. We shall even learn further in Chapter 9 of our tractate that when funds from the estate are limited, daughters are given precedence over the sons for their basic needs. A custom began about 700 years ago for a father to give his daughters a document for "half of a male's inheritance" (*shtar chatzi zachar*) at their marriage. Moreover, some families have a custom for the sons to voluntarily grant a considerable portion of their inheritance to their sisters though the latter are not allowed to demand such.

### **DAILY MASHAL**

We conclude with Rav B. Rabinovitz-Teomim's clarification that the above regulations are not meant to rectify the Torah, as some Reformers charged, but to rectify our lives (*Kuntres Be'inyan Yerushas HaBas*). The regulations serve to apply the light of the Torah to all situations and for all times, providing support and building protective fences in all facets of life.