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DAF Notes
Insights into the Daily Daf
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Bava Basra Daf 142

Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o"h

Tzvi Gershon ben Yoel (Harvey Felsen) o"h

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

A Fetus may Acquire

Rav Sheishes said: How do I derive this (*that a fetus may acquire*)? It is from the following the *braisa*: If a convert died and Jews appropriated his estate (*thinking that he left no inheritors*), and then they heard that he had a son or that his wife was pregnant, they must return that which they acquired. If after returning everything, they heard that his son died or that his wife miscarried, those who took possession the second time have acquired it, but those who took possession the first time have not acquired it. Now, if you would hold that a fetus cannot acquire ownership, why should they need to take possession a second time (*the fetus did not acquire the property, so why should it be necessary for them to reacquire it*)? They have already acquired it one time! [*This proves that a fetus, in fact, does acquire, and after the convert's wife miscarries, they must take possession again.*]

Abaye rejects the proof: An inheritance which comes by itself (*as a son inherits from the father*) is different (*and a fetus can acquire; it cannot, however, acquire from someone else*).

Rava said: [*In fact, a fetus can never take take possession, but…*] there (*by the convert*) it is different, because initially (*when they attempted to take possession of his estate*) they were really uncertain (*if there was a son or if his wife was pregnant; they therefore did not have full intention of acquiring*).

The *Gemora* asks: What practical difference is there between them (*for according to both Abaye and Rava, their initial acquisition is not valid*)?

The *Gemora* answers: The difference between them would be in the case where we heard (*when they took possession*) that the fetus died, while in truth he was not dead, and afterwards he died. [*According to Rava, they take possession since they thought that the sole inheritor was dead, and they therefore initially took definite and certain possession of the estate. According to Abaye, however, their initial acquisition was of no avail since the fetus acquired it first*.]

The *Gemora* asks on Rav Sheishes from a *Mishna*: A child who is one day old inherits (*from his father*) and bequeaths (*to his inheritors*). We may infer from here that only one who is one day old may inherit, but not a fetus!?

The *Gemora* answers: Rav Sheishes could explain this to be referring to the following case: The child is inheriting the estate of his mother in order to transmit it (*after his death*) to his paternal brothers. This can only happen when he is one day old, but a fetus cannot. What is the reason? It is because the fetus dies first (*when the pregnant mother dies*), and a son in the grave cannot inherit from his mother in order to transmit the inheritance to his paternal brothers (*but if the mother would die first, the fetus would inherit in accordance with Rav Sheishes in order to transmit the inheritance to its paternal brothers*).

The *Gemora* asks: Do you mean to say that (*when the pregnant mother dies*) it dies first? But surely there was a

L'zecher Nishmas HaRav Raphael Dov ben HaRav Yosef Yechezkel Marcus O"H

case when (*a fetus was born after its mother died*) it made three convulsive movements (*indicating that it did live for some time*)?

Mar the son of Rav Ashi replied: Those were only muscle spasms, similar to those of the tail of the lizard which moves convulsively (*even after it has been cut off*). (142a – 142b)

A Fetus and the Double Portion

Mar the son of Rav Yosef said in the name of Rava: [*In truth, a fetus can die after its pregnant mother…*] the *Mishna* is teaching us that a child one day old can cause a reduction in the double portion of the firstborn. This only applies to a child who is one day old, but not to a fetus. [*The Rashbam explains as follows: If there are two brothers – Reuven a bechor, and Shimon an ordinary son. The father died leaving an estate of twelve maneh. The money is divided into three portions - two for the double portion of the firstborn and one for the ordinary son. The bechor receives eight maneh and Shimon receives four. If a third brother, Levi, is born while the father is still alive, and then the father dies, Reuven will receive six maneh, and Shimon and Levi will each receive three. If Levi would then die, Reuven and Shimon will inherit him. Reuven will have seven and a half maneh in total, and Shimon will receive four and a half. It emerges that Levi's birth (even though he subsequently died) reduces Reuven's portion from eight to seven and a half. If, however, Levi was only born after his father died; he was merely a fetus by his death, Rava teaches that the fetus does not decrease the size of the double portion. Therefore, Reuven receives four maneh as his birthright. The remaining eight maneh is divided amongst the three of them – each one receiving two and two-thirds. If Levi will then die, his portion will be divided amongst the two remaining brothers. It emerges that in this case, the fetus did not decrease Reuven's portion at all, for Reuven will receive eight maneh – four as his birthright, two and two-thirds as his portion, and one and a third from Levi.*]

What is the reason for this? The Torah said: *And they bear unto him* (*this excludes a fetus*). This is expounded by Mar the son of Rav Yosef in the name of Rava: A son who was born after the death of his father does not cause a reduction in the portion of the firstborn. What is the reason? The Torah said: *And they bear unto him*, which does not apply by a fetus.

In Sura, they cited the discussion as previously stated. In Pumbedisa, they learned it as follows: Mar the son of Rav Yosef said in the name of Rava: A firstborn son who was born after the death of his father does not receive a double portion. What is the reason for this? The Torah said: *He should recognize*, and he is not yet in existence so the father can recognize him.

The *Gemora* rules that the *halachah* is in accordance with both versions of what Mar the son of Rav Yosef said in the name of Rava.

Rabbi Yitzchak said in the name of Rabbi Yochanan: If possession was granted to a fetus, it does not acquire ownership. And if a challenge is raised from our *Mishna*, it may be replied that there it is different because a person's thoughts are close to his son (*and he fully resolves to give it to him*).

Shmuel said to Rav Chana Bagdasaah (*from Baghdad, or an Aggadah expert*), "Go out and bring me ten people (*so that the ruling should be publicized*) in order for me to say to you before them that one who gives something to a fetus, the fetus has acquired it."

The *Gemora* rules: The *halachah* is that if possession was granted to a fetus, it does not acquire ownership.

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, sice 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*). (142b – 143a))

INSIGHTS TO THE DAF

HOW MANY JEWS ARE NEEDED TO MAKE SOMETHING PUBLIC?

Shmuel once said to Rav Chana Bagdasaah (*from Baghdath, or an Aggada expert*), "Go out and bring me ten people (*so that the ruling should be publicized*) in order for me to say to you before them that one who gives something to a fetus, the fetus has acquired it."

It would seem form this *Gemora* that if something should be publicized, ten people are required.

This is also evident from the *Gemora* Sanhedrin (74b) which states that a person who is in public must be martyred even for a minor precept rather than violate it. Rabbi Yaakov said in the name of Rabbi Yochanan: The minimum for publicity is ten. This is derived from the verse [Vayikra 22:32]: *And you shall not profane My holy name; but I will be holy among the children of Israel*.

It is written [Bamidbar 16:21]: *Separate yourselves from among this congregation, that I may consume them in a moment*. An analogy is drawn from the use of congregation (*edah*) in two passages; one, just quoted, and the second, [ibid 14:27]: *How long shall I bear with this evil congregation*. 'Congregation' there refers to the Spies sent out by Moshe. As Yehoshua and Calev had dissociated themselves from their evil report, ten were left, all Israelites. Thus we see, that ten Israelites creates a quorum.

This applies to desecrating the Shabbos in public as well. The Peri Megadim (Sifsei Daas Y"D 2:17) states in the name of the Rashba: If there are ten men present when one violates the Shabbos, one is regarded as a desecrator of Shabbos in public.

L'zecher Nishmas HaRav Raphael Dov ben HaRav Yosef Yechezkel Marcus O"H

This would seemingly be inconsistent with a *Gemora* in Bava Basra (39b) which states according to one opinion: A protest must be lodged in the presence of three people because this way, we are certain that the protest will become known.

The *Gemora* in Gittin (33a) also states that three people make a matter public. The *Gemora* rules that if a husband wishes to nullify a *get*, he must do so in front of three people. This is to ensure that the matter becomes known, and his wife will not mistakenly get married.

The Sdei Chemed (V p. 260) answers: Three people are sufficient when we wish to make something public knowledge; once three people know about the matter, we are certain that the public will become aware of this. However, when something must be performed in public, it is only regarded as being public, if ten Jews are present at the moment it occurred.

Refuting a Denial of Paternity

In the previous *sugyos* (127b) we learned that a father is believed to declare one of his sons as his firstborn even if another had been assumed as such and that the newly declared firstborn gets a double portion of his father's estate. The *halachah* was ruled according to Rabbi Yehudah, that a father is believed even in opposition to *chazakah* – the long-assumed status of another son. Moreover, a father is believed to declare a certain son as his firstborn even if the older brother must perforce be understood to be another's son born to his married wife, and therefore *passul* (Tosfos, ibid, s.v. *Kach*; Tosfos also offer another explanation for a father's credibility to discredit a son). The *Gemora* learns this *halachah* from the verse "…for the firstborn…he shall **recognize**" (Devarim 21:17) – i.e., he may recognize him even in the presence of others.

Many Rishonim hold that a person is also believed to recognize someone who was not even known to be his son, as his firstborn, or, in modern terms, declare his first paternity. The Rishonim explain that the Torah lends a father such credence as no one else can reliably offer such testimony.

Ramban maintains that every Jewish father has a positive *mitzvah* to let people know that a certain one of his sons is his firstborn who is to inherit a double portion. If this fact is known already, the father fulfils the *mitzvah* by remaining silent (Ramban on *Sefer HaMitzvos,* negative *mitzvah* 10).

Lack of space prevents us from elaborating the many details, rules and differences of opinion concerning a father's recognition of his firstborn. A sad event, though, occurred in Europe about 180 years ago when a person with a pregnant wife claimed that the baby wasn't his as his having been far from home precluded his paternity. The couple eventually divorced and 20 years later the son asked the local *beis din* to examine the circumstances of his birth. Witnesses then came forward who discredited the husband's claim that he had been away at the time of the son's conception and the only remaining support for the father's claim was if a father has the right to "recognize" who is his son.

The question was referred to HaGaon Rabbi Akiva Eiger zt"l who thoroughly investigated the issue. He mentions (Responsa Rabbi Akiva Eiger, I, 128) several opinions of *Rishonim* to support the view that in such a case the father is not believed. Among others, he cites the *Tosfos Rid* on Bava Basra 128b, that a father is not believed if the mother contradicts him, and the *Ba'al Halachos Gedolos* that he is believed to declare a young man his firstborn even if his wife's older son is perforce **understood** to be another's son and *pasul,* but he is not believed to **directly** declare that someone is not his son (see ibid another opinion attributed to the *Riaz*).

The main *chiddush* of Rabbi Eiger's long reply stems from our *sugya*, which explains that a firstborn born after his father's demise is not entitled to a double portion of the

L'zecher Nishmas HaRav Raphael Dov ben HaRav Yosef Yechezkel Marcus O"H

estate as the father could never **recognize** him. If so, contends Rabbi Akiva Eiger, a father can't "recognize" (i.e. declare) his firstborn before his birth either, as then, too, he can't see him. In our case, the father denied his paternity before the birth, but, according to the *Gemora*, he can't do so! The father's authority to recognize his firstborn is valid only when he sees him (see ibid with proof from the *Rosh*).

DAILY MASHAL

How Far is the Perception of Tzadikim!

Concluding his reply, Rabbi Eiger departed from his usual style and quoted his son-in-law, the Chasam Sofer zt"l, whom he asked for his opinion. The Chasam Sofer then expanded on the topic and discussed a subject which had not yet been raised: What would the decision be if the witnesses contradicting the husband's testimony were related to each other and therefore disqualified? His father-in-law subsequently wrote: "I've now seen how far is the perception of *tzadikim* as he extraordinarily dealt with an issue without being asked. When Rav Pila (the local Rabbi) investigated the matter, however, he discovered that the witnesses were indeed related and we thus see that **Hashem's spirit spoke through him**."

HALACHOS FROM THE DAF

A Deceased Convert's Property

The *Gemora* mentions a case involving a deceased *ger*'s (*convert*) property that was acquired. Although a *ger* is a bona fide Jew in every aspect, when it comes to inheritance, there is often a major difference between him and the rest of *Klal Yisroel* - namely, Jewish relatives. Every Jew has some living relative if you go far enough up or down his family tree. A *ger*, however, has a status of a newborn in terms of relation; therefore, unless he married and had children, his property would have nowhere to go, and therefore anyone that is *machzik* (*a legal acquirement though kinyan chazaka*h) this *ger*'s property, now becomes the owner.

The *Gemora* discusses a case in which a *ger* died and someone was *machzik* the *ger's* property, and then he heard that the deceased *ger* has a son, or he heard that the *ger's* wife is expecting - either case would obviously negate this person's *kinyan*, for the property belongs to the relatives of the *ger*. And then he heard that the son died, or he heard that the *ger's* wife had a miscarriage - now there isn't any living relatives. So if the person is *machzik* it again (*or anyone else for that matter*) then he would acquire the *ger's* property.

There is a major dispute as to the reading of the *Gemora*. Rashbam learns that when he heard that the son died, that is when he actually died, meaning, that when he heard that there was a son, that report was true.

Rambam (Hil. Zchiah Perek 2 Hal. 18) learns that when he heard that the son died, that means that the report that the son was alive, was false. For in actuality, the son had died before this person was ever *machzik*. The Maggid Mishnah proves that the Rambam's way of learning this *Gemora* is correct, and brings up serious questions on how one can learn this *Gemora* the way the Rashbam does. The Mishnah Lamelech argues with the Maggid Mishnah and explains the Rashbam in a novel approach.

The *halachah* would depend on how one learns this *Gemora*. Without going into a lengthy rationale (see the Maggid Mishnah and Mishnah Lamelech above), if one would understand the *Gemora* like the Rashbam, the *halachah* would be that the first person that was *machzik* would in fact be the owner. According to the Rambam the *halachah* would be that the second person that was *machzik* is the owner.

The Shulchan Aruch (Choshen Mishpat Siman 275 Sief 30) rules in accordance with the Rambam, and the *halachah* is that the second person is the owner and not the first.

L'zecher Nishmas HaRav Raphael Dov ben HaRav Yosef Yechezkel Marcus O"H