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DAF Notes
Insights into the Daily Daf
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Bava Basra Daf 159

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

Difficult Ruling

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!"

The *Gemora* asks: Why is that a question? Could the son's son not reply as follows: "I come from the strength of my father's father (*whom I would inherit if my father is not alive*)"? Proof that such a claim is justified can be brought from the verse, "*Instead of your fathers shall be your sons, whom you shall appoint them as officials in all the land*."

Rather, however, if a message was sent to which an objection was raised, it was the following: A firstborn son who sold his firstborn share during the lifetime of his father, and he died during the lifetime of his father (*and then his father 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*). for they could say to him, "Your father has sold it and you are taking it away!"

And if you will say that in this case as well, he might claim, "I come from the strength of my father's father (*whom I would inherit if my father is not alive*)", we may rejoin by saying, "If you are coming from the strength of your father's father, what right do you have with the firstborn portion (*your father was a bechor; not you*)"?

The *Gemora* asks: Why is that a question? Could the son's son not reply as follows: "I come from the strength of my father's father (*whom I would inherit if my father is not alive*), but I am also in the place of my father (*and he was a firstborn*)"?

Rather, however, if a message was sent to which an objection was raised, it was the following: If a person knew testimony for another and signed as a witness on a document (*for a debt*) before he became a thief, and afterwards, he became a thief, the *halachah* is that while he is not allowed to confirm his signature (*in order to validate the document*), others may confirm it. And the difficulty with this ruling is that if he himself is not believed (*to testify*

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

regarding his signature), shall others be believed!? This, then, is a *halachah* presents a difficulty in the laws regarding monetary matters.

The *Gemora* asks: Why is that a question? Perhaps we are referring to a case where the witnesses are testifying now that his signature has already been confirmed in *Beis Din* by other witnesses (*before he became a thief; and they are just testifying that the henpek – the document made by Beis Din which certifies the original deed – is a legitimate one*).

Rather, however, if a message was sent to which an objection was raised, it was the following: If a person knew testimony for another and signed as a witness on a document (*regarding a certain piece of land*) before he was to inherit the land (*for the owner of the land was a distance relative of the signing witness*), and afterwards, he became the inheritor (*for the next in kin died, and consequently, he became the inheritor; however, now he has a personal interest in the case*), the *halachah* is that while he is not allowed to confirm his signature (*in order to validate the document*), others may confirm it. [*And the difficulty with this ruling is that if he himself is not believed (to testify regarding his signature), shall others be believed!? This, then, is a halachah presents a difficulty in the laws regarding monetary matters.*]

The *Gemora* asks: Why is that a question? Perhaps we are referring to a case such as the one above, where the witnesses are testifying now that his signature has already been confirmed in *Beis Din* by other witnesses (*before he became the inheritor; and they are just testifying that the henpek – the document made by Beis Din which certifies the original deed – is a legitimate one*).

Rather, however, if a message was sent to which an objection was raised, it was the following: If a person knew testimony for another and signed as a witness on a document before he became his son-in-law, and afterwards, he became his son-in-law, the *halachah* is that while he is not allowed to confirm his signature (*in order to validate the document*), others may confirm it. And the difficulty with this ruling is that if he himself is not believed (*to testify regarding his signature, for perhaps he is testifying falsely*), shall others be believed!? [*This, then, is a halachah presents a difficulty in the laws regarding monetary matters.*]

And if you will say that in this case as well, we are referring to a case where his signature has already been confirmed in *Beis Din* by other witnesses, surely, this cannot be the case, for Rav Yosef bar Minyumi said in the name of Rav Nachman: Even though his signature was not already been confirmed in *Beis Din* by other witnesses!

The *Gemora* asks: Why is that a question? Perhaps it is a decree of the King that he (*a relative*) shall not be believed (*as a witness*), while others shall be believed; and the reason (*why a relative is disqualified from testifying*) is not because he might lie! [*This is why the document signed by the current son-in-law can be valid if authenticated by other witnesses.*]

The *Gemora* proves that this logic is correct, for if this explanation would not be accepted, could it be possible that Moshe and Aharon would be disqualified from offering testimony regarding their fathers-in-law because they are untrustworthy! [*That cannot be!*] The explanation must be then that it is a decree of the King that they cannot offer testimony for them; so here also, it is the decree of the King that he cannot confirm his signature to benefit his father-in-law (*even though he is not suspected of testifying falsely*).

Rather, in truth, the message which was sent from *Eretz Yisroel* was as we said initially (*that a son sold the estate of his father during the lifetime of the father, and he died, his son may seize it from the purchasers, and the difficulty was that they could say to him, "Your father has sold it and you are taking it away!"*). And that which we rejected that by saying (*that the son's son not reply as follows: "I come from*

the strength of my father's father," and proof that such a claim is justified was brought from the verse), "*Instead of your fathers shall be your sons* (*proving that the son's son can inherit directly from his father's father*), I can respond that the verse is merely a blessing (*stating that righteous people will have sons and grandsons that will inherit them; and it does not teach us the laws of inheritance at all*)!

The *Gemora* asks: Can it be said that the verse is merely written for a blessing, but not with regard to any legal rulings? But we learned in a *Mishna* (*that a grandson inherits directly from his grandfather*): A house fell on him and his father, or on him and one who he inherits from, and he had a *kesuvah* along with other creditors that were demanding payment from his estate. The inheritors of his father say that the son died first, and then the father died. [*Accordingly, the son never inherited his father, and therefore his father's estate is not liable for the kesuvah or the son's debts.*] The creditors claim that first the father died and then the son (*and they can therefore claim money from the father's estate*). Now, when the *Mishna* says "the inheritors of the father," it is referring to the sons of the son, and when the *Mishna* says "one who he inherits from," it is referring to the brothers of the son; and if you would think that one (*the sons of the son*) cannot claim (*to the purchasers*) that he comes from the strength of the father of his father (*but rather, he gets it through his father*) because the verse is merely a blessing, what would it help that the son died first and the father died afterwards (*and therefore the son's inheritors will say that the creditor has nothing to collect from, for the son did not inherit his father*); let the creditor say, "I am collecting my debt from the inheritance of their father!"

The *Gemora* answers: No; when the *Mishna* says "the inheritors of the father," it is referring to the brothers of the son (*who are the sons of the father; and when they claim that the son died first, they are saying that they were the sole inheritors of the father, and the son never got anything at all*), and when the *Mishna* says "one who he inherits from," it is referring to the brothers of the father (*and this is what is meant when it said that this halachah is difficult, for there is no explicit proof to this*). (158b – 159b)

Son Inheriting his Mother in the Grave

They inquired of Rav Sheishes: May a son in the grave inherit from his mother to transmit her estate to his paternal brothers? [*A woman has one son, who also has paternal brothers. First the son died and then his mother died. Does the son inherit from his mother in the grave in order to bequeath her estate to his brothers?*]

Rav Sheishes said to them: It was taught in a *braisa*: If a father was taken captive (*in a distant land and subsequently died there*) and his son died in his home country, or if a son was taken captive (*where he died*) and his father died in his home country (*and we do not know who died first*), the *halachah* is that the estate should be divided between the father's inheritors and the son's inheritors. How is this to be understood? If you will say that it should be understood as it was taught (*that the father had no other sons*), who then are the father's inheritors and who are the son's inheritors? [*They are one and the same, for if the son had no sons, the father's inheritors inherit them both, and if the son does have sons, they would inherit the son and his father!?*] It must be that this is what was meant: If a father (*who had no son*) was taken captive (*in a distant land and subsequently died there*) and the son of his daughter died in their home country, or if the son of one's daughter was taken captive (*where he died*) and his mother's father died in his home country and we do not know who died first, the *halachah* is that the estate should be divided between the father's inheritors and the (*grand*) son's inheritors. Now, if it is like so (*that a son in the grave inherits from his mother to transmit her estate to his paternal brothers*), even if the son died first, he should in his grave inherit the estate of his mother's father and transmit it to his paternal brothers!? It must be inferred from here that a son in the grave does not

inherit the estate of his mother to transmit it to his paternal brothers!

Rav Acha bar Minyumi said to Abaye: We learned like this as well in our *Mishna*, which stated: 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. Now, if it is like so (*that a son in the grave inherits from his mother to transmit her estate to his paternal brothers*), even if the son died first, he should in his grave inherit the estate of his mother and transmit it to his paternal brothers!? It must be inferred from here that a son in the grave does not inherit the estate of his mother to transmit it to his paternal brothers! This is indeed a proof.

The *Gemora* asks: What is the reason for this *halachah*?

Abaye said: We compare the bequeathing of the estate of a woman to her son is to be in the same manner as the bequeathing of the estate of a woman to her husband. Just as in the case of the bequeathing of the estate of a wife to her husband, the husband is not heir to his wife in the grave (*a husband only inherits property actually owned by his wife when she died, but not her potential property, which she would only inherit after death*); so too in the case of the bequeathing of the estate of a woman to her son, the son in the grave does not inherit from his mother to bequeath the inheritance to his paternal brothers. (159b)

Rava and Rav Nachman

Someone sold his friend all of his property that was bought from the house of Bar Sisin. The seller claimed that one of the fields was not included, since it was not bought from Bar Sisin, but was just named "of the house of Bar Sisin." When they came in front of Rav Nachman, he ruled in favor of the buyer, while Rava said that the field is in the possession of the seller, and the buyer must prove his claim.

The *Gemora* notes a contradiction in both Rava and Rav Nachman's respective opinions from the following case: A person claimed that someone was illegally living in his house. The occupant said that he had bought the house, and had lived there for three years, establishing a *chazakah*. The claimant replied that he was living in the inner rooms of the house during that time, and constantly trespassed in the occupant's area. Since he was constantly impinging on the living space of the occupant, he never felt a reason to protest any further. When the case was brought to Rav Nachman, he required the occupant to prove that he lived in the house for three years without the presence of the claimant. Rava responded that the occupant is currently in possession, so the claimant should have to prove his claim. It emerges that Rava contradicts himself, for in this case he rules that the seller must provide the proof, and in the "Bar Sisin" case, he ruled that the buyer must provide the proof! Rav Nachman's viewpoint is difficult as well, for here he rules that the buyer must provide the proof, whereas in the "Bar Sisin" case, he rules that the burden of proof rests on the seller!?

The *Gemora* answers: Although Rava favored the seller in the first case, and the buyer in the second case, he is consistent, since he is always favoring the one who is in possession.

Rav Nachman's rulings can be explained as well, for in the "Bar Sisin" case, everyone would assume that a field that was known as one from the house of Bar Sisin should be included in the sale, and therefore the seller must prove that this is not the case. However, Rav Nachman ruled in favor of the seller in the *chazakah* case, since *chazakah* is no more proof than a contract. Just as a contract must be investigated and validated, so the *chazakah* must be cleared of any doubt. (159b)

WE WILL RETURN TO YOU, MI SHEMEIS

HALACHOS OF THE DAF

Grandson vs. Buyer

The *Gemora* rules: 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*). The *Gemora* concludes that there is no clear proof to this *halachah*.

The Rashbam writes that the *halachah* is in fact that the grandson may take back the field, but it is difficult to understand (*according to the Gemora's discussion*), since there is no conclusive proof.

Rambam (Hil. Mechira 22:7) rules explicitly in this very case that the grandson may take the field, and although the Shulchan Aruch (Choshen Mishpat 211:3) does not give this exact example, it is clear that the ruling would be the same.

The question is: Does the grandson need to repay the buyer?

A very important part to this is a concept that one cannot sell something that is not yet in this world, which is precisely what the son did, since the inheritance did not yet belong to him at the time of the sale (*it should be as if it was not yet in existence*). Therefore, the grandson has every right to take back the field. Tosfos and the Ra"n explain that the *Gemora's* difficulty was not with this part of the *halachah*, but rather, it was with the ruling that the grandson may seize the field without compensating the buyer.

The Rashba further explains that we are forced to say that the grandson does not have to pay back the buyer because if the *halachah* were to be that the buyer must be reimbursed, then it should emerge that even the father should be able to take back the field.

The Baal Ha'itur and the Baal Haterumos both follow the opinion of the above Rishonim as well. The Shulchan Aruch (ibid) rules that the buyer is not reimbursed.

DAILY MASHAL

After the Malbim left the town of Mohilov, the community was not in a hurry to find a replacement. Several years went by until the leaders heard that R' Yoshe Ber was leaving Slutsk. When they approached him and offered him the post of Rav, he immediately turned them down. Feeling insulted, they asked why he was so quick to decide. R' Yoshe Ber replied that Mohilov was indeed a wonderful place and it would be an honor to hold the position once held by the Malbim. However, he recalled some advice he had once heard, where a person looking to marry a widow was advised to marry one that had been recently widowed. Such a woman feels lost, without a partner, a breadwinner, someone to make Kiddush and Havdalah for her etc... She will definitely appreciate being remarried. A woman who has been widowed a long time has already settled in and knows she can survive quite well without a husband. A community is the same. If their Rav has been gone only a short time, they would still feel the need for one. As Mohilov has been without a Rav for a while, it undoubtedly believes it can do without.