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Yevamos Daf 38

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Daf Notes is currently being dedicated to the neshamah of

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May the studying of the Daf Notes be a zechus for his neshamah and may his soul find peace in Gan Eden and be bound up in the Bond of life

The Gemora discusses another case of inheritance: The uncertain child and the *yavam* come to inherit the possessions of the grandfather (*the father of the deceased and the yavam*). The uncertain one says: “I am the son of the deceased, and I am entitled to half of the estate.” (*The deceased son inherits “while in the grave,” and he passes it on to his son, the uncertain one.*) The *yavam* counters: “You are my son, and you have no claim on my father’s estate.”

The Gemora rules that the *yavam* receives the entire estate, for he is a definite inheritor of the grandfather (*his father*), and the uncertain one is only a possible heir, and the principle is that an uncertain claim cannot take away from a definite claim. (38a1)

The Gemora discusses another case: The uncertain child and the sons of the *yavam* come to inherit the possessions of the grandfather (*the father of the deceased and the yavam*). The uncertain one says: “I am the son of the deceased, and I am entitled to half of the estate.” The sons of the *yavam* counter: “You are our brother, and you should receive an equal share together with us.

The Gemora rules: They should take half of the estate. A third of the estate he should take. The remaining sixth, as it is money that lies in doubt, should be divided among them. (38a1)

The Gemora discusses another two cases: The grandfather (of the uncertain one) and the *yavam* claim their shares in the estate of the uncertain one (who died childless; the grandfather claims that he (the uncertain one) is the son of the deceased brother, and therefore, he, the grandfather is the sole inheritor, whereas the *yavam* claims that he (the

uncertain one) is his own son, and he is the sole inheritor). Or where the grandfather and the uncertain one claim their shares in the estate of the *yavam* (who died childless (at least, besides this uncertain one); the grandfather claims that he (the uncertain one) is the son of the first deceased brother, and therefore, he, the grandfather is the sole inheritor, whereas the uncertain one claims that he) is the son of the *yavam*, and he is the sole inheritor), the estate is to be regarded as money that lies in doubt, and is to be equally divided. (38a1 – 38a2)

The Mishnah states: If while a woman was awaiting *yibum*, she inherited property from her father, and subsequently sold it or gave it away, Beis Shammai and Beis Hillel agree that it is valid. (*Although Beis Hillel rules that a woman who is an arusah may not sell property in which she inherited, the yevamah is permitted to do so.*)

The Mishnah asks: If she died, what shall they do with her *kesuvah* and with the property which comes in and goes out with her? (*Does the yavam inherit her in the same manner that a husband inherits his wife?*) Beis Shammai says: The husband’s heirs divide it with the father’s heirs (*the woman’s inheritors*). Beis Hillel disagrees: The property remains with those that presently possess it. The *kesuvah* goes to the husband’s heirs. The property which comes in and goes out with her goes to the father’s heirs.

The Mishnah concludes: If the *yavam* marries her, she is regarded as his wife in every respect, except that the obligations stemming from the *kesuvah* rests upon the property of her first husband. (38a2 – 38a3)

The Gemora asks: Why do Beis Shammai and Beis Hillel agree in the first part of the Mishnah and argue in the latter part?

Ulla answers: The first part of the Mishnah is referring to a case where she fell for *yibum* as an *arusah* (her first husband died while they were only betrothed), and the latter part of the Mishnah is referring to a case where she fell for *yibum* as a *nesuah*.

The Gemora explains: The *zikah*-attachment of an *arusah* to a *yavam* makes her like a possible *arusah*, and the *zikah*-attachment of a *nesuah* makes her a possible *nesuah*.

The Gemora explains: The *zikah*-attachment of an *arusah* renders her doubtfully betrothed, for were we to assume that she is regarded as definitely betrothed, how could both Beis Shammai and Beis Hillel agree that if while a woman was awaiting *yibum*, she inherited property from her father, and subsequently sold it or gave it away, that it is valid - when we learned in a Mishnah: If the properties fell to her after she became an *arusah* (and she is still an *arusah*), Beis Shammai say: She may sell them, but Beis Hillel say: She may not sell them. They both agree that if she sold them or if she gave them away, it is valid!? Consequently, it must be inferred that the *zikah*-attachment of an *arusah* renders her doubtfully betrothed.

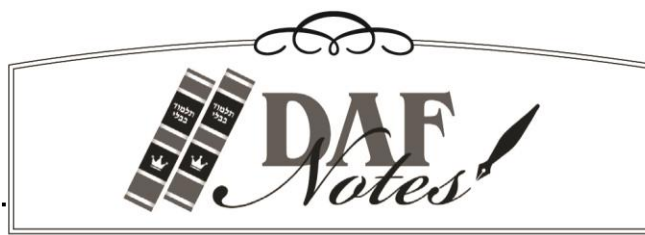
The *zikah*-attachment of a *nesuah* renders her doubtfully married, for had it been possible to assume that she is regarded as definitely married, how could Beis Shammai state that the husband's heirs divide it with the father's heirs (the woman's inheritors), when we learned in a Mishnah: If the properties fell to her after she became a *nesuah*, they both agree that if she sold them or if she gave them away, the husband may seize it from the hand of the purchasers!? Consequently, it must be inferred that the *zikah*-attachment of a *nesuah* renders her doubtfully married. (38a3 – 38b1)

Rabbah asked: If Ulla's explanation is correct, why does the Mishnah have to state a case in which she died, let Beis

Shammai and Beis Hillel argue while she is alive in respect to the distribution of the produce? (Beis Shammai would rule that she and the *yavam* would divide the produce because she is a possible *nesuah* and Beis Hillel would rule that we apply the principle of *chazakah* and the produce would remain in her family, and she would have exclusive rights to the produce.)

Rabbah offers a different explanation of the Mishnah: Both parts of the Mishnah are discussing cases where she fell for *yibum* as a *nesuah*, and the *zikah*-attachment of a *nesuah* makes her a possible *nesuah*. The first part of the Mishnah is discussing a case where she is alive (and the principle of the property certainly belongs to her); she has a definite claim and their claim is an uncertain one (since she is only possibly a *nesuah*). The principle is that an uncertain claim cannot take away from a definite claim. The latter part of the Mishnah is discussing a case where she died, and the husband's heirs and her father's heirs are coming to inherit her inherited properties. (If she would be regarded as a *nesuah*, the husband's heirs would inherit her properties; if she is not a *nesuah*, the father's heirs would inherit her properties.) Since both claims are uncertain, they divide the property. (38b1 – 38b2)

Abaye asks on Rabbah: Is it true that Beis Shammai holds that an uncertain claim cannot take away from a definite claim; didn't we learn in a Mishnah in Bava Basra (157a) otherwise? The Mishnah stated: If a house fell down on a person and his father, killing both of them, and we are uncertain which one of them died first. The son owed money for a wife's *kesuvah* or to another creditor (and he died without any personal assets). The father's heirs claimed that the son died first (and he doesn't inherit anything from the father) and afterwards the father died. The creditor claims that the father died first (and the son inherits a share of the father's assets) and afterwards the son died. Beis Shammai maintains that the father's heirs and the creditors divide the money. The Gemora concludes its question: The father's heirs have a definite claim and the creditors claim is an



uncertain one; and nevertheless, Beis Shammai rules that an uncertain claim can take away money from a definite claim?

The Gemora answers: Beis Shammai maintains that a debt from a document which awaits collection is considered as if it has already been collected (*and the creditors also have a definite claim*).

The Gemora proves from the following Mishnah that Beis Shammai accord this power to a document: If their husbands (of a suspected adulteress) died before they had a chance to drink, Beis Shammai says that they take a *kesuvah* and do not drink. Beis Hillel says: Either they drink or do not take a *kesuvah*.

The Gemora interrupts: Can they really drink? But the Merciful One said: *And the man shall bring his wife to the Kohen* (and here there is no man)? Rather, Beis Hillel meant that since they cannot drink, they do not take their *kesuvah*.

The Gemora returns to its proof: Now here, surely, it is a matter of doubt, it being uncertain whether she did commit adultery or not, and yet the doubt overrides the certainty. Consequently, it must be inferred that a debt from a document which awaits collection is considered as if it has already been collected. (38b2 – 38b3)

The Gemora asks: Abaye, then, should have raised his objection from the same Mishnah in Sotah (which indicates that Beis Shammai maintains that an uncertain one can remove money from a definite one)?

The Gemora answers: The law of a wife's *kesuvah* might be different, owing to considerations of the attractiveness of marriage (which the Rabbis wanted to enhance).

The Gemora asks: Then let him (Abaye) challenge him (Rabbah) from the law of the *kesuvah* in our Mishnah?

The Gemora answers: They do not dispute this point.

The Gemora asks: But do they not? Surely we learned in the Mishnah: If a woman awaiting *yibum* dies, what is done with her *kesuvah* and her properties that go and come (*based on marital status*) with her? Beis Shammai says: The inheritors of the husband and the inheritors of her father should split them. Beis Hillel says: The properties should remain in the possession of those who currently possess them.

The Gemora answers: This is what the Tanna of that Mishnah meant: If a woman awaiting *yibum* dies, what is done with her *kesuvah*? and then the enquiry was left aside. The Tanna continued: And as to properties that go and come with her, Beis Shammai says: The inheritors of the husband and the inheritors of her father should split them. Beis Hillel says: The properties should remain in the possession of those who currently possess them.

Rav Ashi said: The inference from the expressions in our Mishnah leads to the same conclusion; for it was stated: Beis Shammai says: The husband's heirs divide it with the father's heirs, and it was not stated: the father's heirs divide it with the husband's heirs. [Evidently, Beis Shammai is referring to the *melog* properties, and not that of the *kesuvah*.] This indeed proves it. (38b3 – 38b4)

INSIGHTS TO THE DAF

MEN LIVE LONGER

The Mishnah states: If while a woman was awaiting *yibum*, she inherited property from her father, and subsequently sold it or gave it away, Beis Shamai and Beis Hillel agree that it is valid. (*Although Beis Hillel rules that a woman who is an arusah may not sell property in which she inherited, the yevamah is permitted to do so.*)

The Mishnah asks: If she died, what shall they do with her *kesuvah* and with the property which comes in and goes out with her? (*Does the yavam inherit her in the same manner that a husband inherits his wife?*) Beis Shamai says: The husband's heirs divide it with the father's heirs (*the woman's*

inheritors). Beis Hillel disagrees: The property remains with those that presently possess it. The *kesuvah* goes to the husband's heirs. The property which comes in and goes out with her goes to the father's heirs.

Tosfos asks: Why is Beis Hillel's ruling in this case different than the case in Bava Basra? The Mishnah there (158a) states: If a house fell on him and on his mother, killing them both, and we are uncertain which one of them died first. The son's heirs claimed that the mother died first and afterwards the son died. The mother's heirs claim that the son died first and afterwards the mother died. Beis Hillel rules that the property is divided between them. Why there does he rule to divide the estate and here he rules that the property remains with those that presently possess it?

Tosfos answers: It is more common for a mother to die before the son; the Gemora in Bava Basra (108a) considers it a tragedy when a son dies in the lifetime of the mother. It is for this reason that Beis Hillel rules that the money is divided between them and we do not award the property to the mother's heirs.

Sheorim Mitzuyanim B'halacha asks: The Gemora in Bava Basra is referring to a case where the son died from a sickness while the mother was alive; the mother is in tremendous grief and sorrow, and that is when it is regarded as a tragedy. In our case, a house fell on top of both of them, and that is a tragedy in itself. Since both of them died, the tragedy is not any more if the son died moments before the mother?

He continues that Tosfos could have said like he said in Kesuvos (52a) in the name of the Yerushalmi: It is common for women to die faster than men do. This is because women are generally weaker due to childbirth and the raising of children.

DAILY MASHAL

Three Months

"In the third month, from the time that Yisrael left Egypt, on this day they arrived in the Desert of Sinai" (19:1).

To explain the significance of the third month, the Rosh cites our Gemora, which requires a convert and a slave-girl who has been set free to wait three months before getting married. And K'nesses Yisrael, he says, belonged to both these categories. To conform fully with this ruling, he points out, Hashem ought to have waited three full months before giving the Torah. Only so strong was His love for Yisrael that He gave it to them already on the sixth day of the third month (a little earlier than He should have).