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Kesuvos Daf 69

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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

***An Orphan’s Right for her Dowry***

Rav Huna said in the name of Rebbe: The orphan’s right for a dowry is not the same as a condition stipulated in the *kesuvah*.

The Gemora asks: What did Rebbe mean that it is not the same as a condition stipulated in the *kesuvah*? If you say that he means that when we are collecting payment for her dowry, we may seize even from encumbered properties (*if the orphans sold the land*); however, when collecting payment for the *kesuvah* conditions, we may not seize the encumbered properties; this explanation is rejected, for the following reason: What would be the novelty of his teaching? Behold, it was common practice to seize encumbered properties for her dowry and not for her maintenance!

The Gemora suggests that Rebbe means the following: The dowry can be collected even from movable property, but the conditions stipulated in the *kesuvah* may be collected from land, but not from movable property.

The Gemora rejects this explanation as well, for according to Rebbe, both this (the dowry) and that (her maintenance) are indeed collected (from movable property), for it was taught in a Baraisa: Both land and movable property may be seized (*from the orphans*) for the maintenance of the wife and for the daughters (*and certainly for her dowry*); these are the words of Rebbe.

Rather, the Gemora concludes that when Rebbe said that the orphan’s right for a dowry is not the same as a condition

stipulated in the *kesuvah* - that reflects that which was taught in the following Baraisa: If a father would say that he did not want his daughters to be maintained by his estate, we would not listen to him (*for this is an obligation explicitly written in the kesuvah*); however, if he would say that he does not want his daughters to be provided with a dowry, we would listen to him (*because this is an obligation incumbent on the heirs, not on the father - if he didn’t provide specific instructions*).

Rav inserted (the following inquiry) between the lines (of a letter he sent) to Rebbe: What is the law where the brothers have encumbered the properties they inherited from their father? May it be collected by the daughter for her dowry? [When the inquiry reached him] Rabbi Chiya was sitting before Rebbe, and he asked him, “Did Rav mean that they (the brothers) sold it or (merely) pledged it?” Rebbe said to him, “What difference does this make? Whether they sold it or pledged it, we collect from the properties for the daughter’s dowry, but we do not collect them for her maintenance.”

The Gemora asks: As to Rav, however, if his inquiry related to brothers who sold (the properties), he should have written to him, ‘(brothers who) sold’; and if his inquiry related to brothers who pledged it, he should have written to him, ‘(brothers who) pledged’!?

The Gemora answers: Rav wished to ascertain the law concerning both cases and he thought: If I write to him ‘sold,’ I shall be pleased if he were to send in reply that ‘we collect from the properties (that were sold),’ since the same ruling would apply with even greater force to the case where the

properties were pledged. If, however, he were to send me in reply that 'we may not collect from the properties (that were sold),' the question in respect of brothers who pledged (the properties) would still remain. And if I were to write to him, 'pledged,' then if he sent in reply that 'we may not collect from the properties (that were pledged),' this ruling would apply with even greater force to the case where they sold it. Should he, however, send a reply that 'we collect from the properties (that were pledged,' the question in respect of brothers who sold it would still remain. I will, therefore, write to him 'encumbered,' which might mean the one as well as the other (and when he replies, he will clarify what the ruling is in each case).

Rabbi Yochanan (disagrees with Rebbe, and) said: Both this (the dowry) and that (her maintenance) are not collected (from encumbered properties – whether they were sold or pledged).

The question was raised: Did Rabbi Yochanan not hear the ruling of Rebbe, but if he had heard it, he would have accepted it? Or is it possible that he heard it and did not accept it?

The Gemora suggests an answer: Come and hear from that which has been stated: If a man dies and leaves two daughters and a son, and if the first one took her tenth of the property (*as a dowry; the Rabbis decreed that she should receive a tenth of the estate when she gets married*), but the second one did not take her tenth before the son died, Rabbi Yochanan said that the second one has forfeited her tenth (*for now, she is inheriting half the estate*). Rabbi Chanina said to him: The Rabbis went even further than this by ruling that we collect from encumbered property for his daughter's dowry, but not for maintenance, and how can you say then that the second forfeits her tenth? [*If she can collect from others, how can we rule that she should give up what is already in her hands?*] Now (the Gemora concludes), if that were the case (that R' Yochanan never heard Rebbe rule that we collect from encumbered property for one's daughter's

dowry), he (R' Yochanan) should have asked him (R' Chanina): "Who said it?"

The Gemora rejects the proof: But is it not possible that (initially) he in fact did not hear of Rebbe's ruling, and when he did hear of it, he accepted it, but there (in the case where one daughter is attempting to collect her dowry from the other daughter), the circumstances are different, since the house of the other daughter has now ample provisions? [At first she was entitled to only a tenth, and now she gets a half. In such circumstances, she may well be expected to surrender her claim to the tenth. Rebbe, however, deals with a case where the brothers are alive, and the daughters are entirely dependent on their tenths.]

Rav Yeimar said to Rav Ashi: Now then, if she (an orphaned daughter) found something (that is ownerless), so that her house is amply provided for, would we in such a case also not give her a tenth of the estate?

Rav Ashi replied: I said: A house amply provided for from the same estate (not from something that she found). (68b3 – 69a2)

### ***Daughter's Right to a Tenth of the Estate***

Ameimar said: The daughter is regarded as an inheritor of one tenth of her father's estate.

Rav Ashi asked Ameimar: Do you mean to say that the brothers cannot offer her money and take the land in exchange?

Ameimar said: Yes! (*They have no right to force her to accept money and forfeit the land.*)

Ameimar said further: She is considered an inheritor, and the brothers cannot force her to take a specific piece of land, but rather, she will take a tenth from each and every field.

Rav Ashi disagrees and maintains that the daughter is only regarded as a creditor (*and she may be forced to accept money or a specific piece of land*).

The *Gemora* notes that even Ameimar retracted from his opinion, for Rav Manyumi the son of Rav Nachman said: I was once sitting before Ameimar and a woman who claimed a tenth of (her deceased father's) estate (for her dowry) appeared before him, and I observed that it was his opinion that if her brothers desired to oust her (from the land) by means of a money payment, they could have ousted her. For I heard the brothers say to her, "If we had the money we would oust you by (giving) a cash payment," and he remained silent and told them nothing to the contrary.

The *Gemora* inquires: And now that you have said that she is a creditor, is she regarded as the creditor of her father (*and the brothers inherited this debt*) or that of her brothers?

The *Gemora* asks: And what difference does it make?

The *Gemora* explains the practical differences between the two. If the debtor died and the creditor is collecting from the inheritors, they may give him inferior land; but, if the debtor is alive, he is required to pay with average land. Also, when one is collecting from orphans, they are required to take an oath that they did not receive payment yet, but the debtor himself is not required to make an oath. What is the law?

The *Gemora* cites an incident for the sake of resolving the inquiry: When Ravina was collecting the dowry for the daughter of Rav Ashi, he collected average land and without an oath from Mar the son of Rav Ashi, but when he collected from the son of Rav Sama the son of Rav Ashi (*her brother's son*), he collected inferior land and only with an oath. (*According to Ravina, then, the daughter was regarded as the creditor of her brothers.*)

Rabbi Nechemiah the son of Rav Yosef sent the following message to Rabbah the son of Rav Huna Zuta of Nehardea: When this woman presents herself to you, collect for her a

tenth of her deceased father's estate even from the base of a mill (*since it is connected to the ground, it is regarded as real estate*).

Rav Ashi stated: When we were at the academy of Rav Kahana, we authorized the collection of the dowry even from the rent of houses (*the rent for the house is also regarded as real estate*).

Rav Anan sent this instruction to Rav Huna: "To our colleague Huna, greetings. When this woman presents herself before you, authorize her to collect a tenth of her father's estate." When the communication arrived, Rav Sheishes was sitting before him. Rav Huna said to Rav Sheishes, "Go and convey to Rav Anan the following message, and he who does not deliver the message to him shall be excommunicated – 'Anan, Anan, is the collection to be made only from land, or also from movable property? And who presides at the meal in a house of mourning?'" Rav Sheishes went to Rav Anan and said to him, "The master is a master, but Rav Huna is a master of the master, and he pronounced that he will excommunicate anyone who would not convey this message to you; and had he not pronounced the excommunication, I would not have said, 'Anan, Anan, is the collection to be made only from land, or also from movable property? And who presides at the meal in a house of mourning?'" Thereupon, Rav Anan went to Mar Ukva and said to him, "See, master, how Rav Huna addressed me as 'Anan, Anan.' And furthermore, I do not know what he meant by the message he sent me on *marzeicha*." Mar Ukva said to him, "Tell me now, how the incident actually occurred." Rav Anan replied to him, "The incident happened in such and such a way." Mar Ukva exclaimed, "A man who does not know the meaning of *marzeicha* should scarcely presume to address Rav Huna as, 'our colleague Huna'."

The *Gemora* asks: What is the meaning of *marzeicha*? The *Gemora* answers: A mourner, as it is written: *Thus said Hashem: "Do not go to a house of mourner (marzei'ach), etc."*

Rabbi Avahu said: The mourner should recline at the head of all the consolers. This is derived from the following verse: *I would choose their way; I would sit at the head, I would rest like a king among his troops, as one who consoles (yenacheim) mourners.*

The Gemora asks: But (the word) *yenacheim* refers to the one who is consoling others (not the mourner)?

Rav Nachman bar Yitzchak answers: It is written *yinacheim* (which literally means 'he will be comforted' – referring to the mourner).

Mar Zutra said that it is from the following verse: *excessive mourning will approach.* This means: The mourner becomes prince of the exalted ones. (69a2 – 69b1)

Rava said: The law is that we collect from land and not from movables, whether for maintenance (of the deceased daughters and wife), or for the wife's *kesuvah*, or for the facility of the daughter's dowry. (69b1)

### Mishnah

If a man deposited a sum of money (to purchase a field for his (unmarried) daughter with a trustee, and (after she was betrothed) she says, "I trust my husband (not to keep the money for himself, and buy the field when I would like him to)," the trustee must act in accordance with the condition of his trust (by the father, and ignore the daughter's request); these are the words of Rabbi Meir. Rabbi Yosi, however, said: Were the trust actually a field and she wished to sell it, would it not be deemed sold from this moment (and she may keep the money)?

When do these words apply? It is in the case of an adult. In the case of a minor, however, there is no validity at all with regard to her actions. (69b1 – 69b2)

### Granting her Wishes

The Gemora cites a Baraisa: If a man deposited for his son-in-law with a trustee a sum of money with which he is to buy a field for his daughter, and she says, "Let it be given to my husband," the law is as follows: If (it was expressed) after *nisuin*, she is entitled to have her wish fulfilled, but if (it was expressed only) after her betrothal the trustee must act according to the conditions of his trust; these are the words of Rabbi Meir. Rabbi Yosi, however, said: If she is an adult, she has a right to obtain her desire - whether (it was expressed) after *nisuin* or only after betrothal, but in the case of a minor (whether her wish was expressed) after *nisuin* or after betrothal, the trustee must act in accordance with the conditions of his trust.

The Gemora explains: What is the practical difference between them? If you would say that the practical difference between them is the case of a minor after *nisuin*, where Rabbi Meir holds the opinion that even she is entitled to have her wish granted, and Rabbi Yosi comes to state that even after *nisuin* - it is only an adult who is entitled to have her wish granted but not a minor; accordingly, let us consider the last clause: In the case of a minor, however, there is no validity at all with regard to her actions. Who could have taught this? If you will say that it was authored by Rabbi Yosi, it could be objected: This, surely, could be inferred from the first clause; for, Rabbi Yosi said: Were the trust actually a field and she wished to sell it, would it not be deemed sold from this moment (and she may keep the money)? Does it not follow that only an adult, who is eligible to effect a sale, was meant, but not a minor, who is ineligible to effect a sale. Consequently, it must be Rabbi Meir who authored it, and it is as if a clause is in fact missing from our Mishnah, and this is what it stated: the trustee must act in accordance with the condition of his trust (by the father, and ignore the daughter's request). When do these words apply? It applies only to a woman whose desire was expressed after her betrothal, but if (it was expressed) after her *nisuin*, she is entitled to have her wish fulfilled. And (furthermore), when do these words apply? It is in the case of an adult. In the case of a minor, however, there is no validity at all with regard to her actions.

[The Gemora has established that they both agree that we do not heed the wishes of a minor – even after nisuin.] Rather, the practical difference between them is the case of an adult whose wish was expressed after her betrothal. [R' Meir makes a distinction between betrothal and nisuin, and R' Yosi holds that as she is an adult, her wish is always fulfilled.]

It was stated: Rav Yehudah said in the name of Shmuel: The halachah is in agreement with Rabbi Yosi. Rava in the name of Rav Nachman said: The halachah is in agreement with Rabbi Meir. (69b2 – 69b3)

#### DAILY MASHAL

##### *External and Internal*

Rav Anan sent this instruction to Rav Huna: “To our colleague Huna, greetings. When this woman presents herself before you, authorize her to collect a tenth of her father’s estate.” When the communication arrived, Rav Sheishes was sitting before him. Rav Huna said to Rav Sheishes, “Go and convey to Rav Anan the following message, and he who does not deliver the message to him shall be excommunicated – ‘Anan, Anan, is the collection to be made only from land, or also from movable property? And who presides at the meal in a house of mourning?’” Rav Sheishes went to Rav Anan and said to him, “The master is a master, but Rav Huna is a master of the master, and he pronounced that he will excommunicate anyone who would not convey this message to you; and had he not pronounced the excommunication, I would not have said, ‘Anan, Anan, is the collection to be made only from land, or also from movable property? And who presides at the meal in a house of mourning?’” Thereupon, Rav Anan went to Mar Ukva and said to him, “See, master, how Rav Huna addressed me as ‘Anan, Anan.’ And furthermore, I do not know what he meant by the message he sent me on *marzeicha*.” Mar Ukva said to him, “Tell me now, how the incident actually occurred.” Rav Anan replied to him, “The incident happened

in such and such a way.” Mar Ukva exclaimed, “A man who does not know the meaning of *marzeicha* should scarcely presume to address Rav Huna as, ‘our colleague Huna’.”

The *Gemora* asks: What is the meaning of *marzeicha*? The *Gemora* answers: A mourner.

Rabbi Avahu said: The mourner should recline at the head of all the consolers.

The Yeshuos Malko explains the connection of the two statements: The Rambam, in Hilchos Melachim, explains that a Jewish king, on the one hand, is required to maintain a humble spirit, while at the same time, he needs to put on an external impression that demands respect. (Shaul Hamelech was punished for not defending his honor as is explained in Yuma.) It emerges that a leader of the Jewish people must demand respect, but he must do so only on an external level.

Our Gemora notes that there is a law regarding a mourner that he acts as a dignitary and sits at the head of the table. It is obvious that such a stature does not lead to any haughtiness in his heart, for he is saddened inside due to his mourning. This, precisely, is what Rav Huna was alluding to in his message to Rav Anan: Despite the fact that he found a need to defend his honor and rebuke Rav Anan, he wasn't doing so from a feeling of haughtiness; rather, internally, he was saddened to do so, while externally, he was required to rebuke him.