

OVERVIEW of the Daf

1) Trenches (cont.)

In the middle of the citation of the Baraisa that discusses the location of the trenches mentioned in the Mishnah the Gemara explains why two trenches are necessary.

הדרן עלך בית כור

2) **MISHNAH:** The Mishnah presents different relationships and whether they inherit and bequeath to one another.

3) Clarifying the Mishnah

The reason the Mishnah begins with the case of a father inheriting his son's property is explained.

Two reasons are given why the Mishnah should begin with the son inheriting his father's property before the explaining why the Mishnah begins with the case of the father inheriting from his son.

The related exposition is presented and analyzed. ■

REVIEW and Remember

1. Why are two trenches necessary?

2. Who inherits but does not bequeath?

3. Why did the Tanna discuss the case of a father inheriting from his son first?

4. What is יעוד?

Today's Daf Digest is dedicated
 May Hashem have mercy on Klal Yisroel

Distinctive INSIGHT

Where are the brothers of the father (paternal uncles)?

ואלו נוחלין ומנחילין...האב את הבנים והבנים את האב והאחין
 מן האב

The Mishnah sets forth the system of inheritance of the Torah. A father and son bequeath and inherit one to the other. This is also the case with paternal brothers.

The Rishonim ask why the Mishnah does not mention the halacha of a nephew and his father's brothers (paternal uncles - אחי האב) among those who inherit one to the other, as this is a relationship which is featured explicitly in the verse.

Some answer that the case of paternal uncles is implicit within the halachos of a son, a father and one's brothers. The underlying mechanism (Mishnah 115a) is that a father inherits even posthumously from his son, and the inheritance then transfers "through the father's grave" to his own sons, the brothers of the deceased. This process is called מישמוש, as the inheritance searches and proceeds until it finds a surviving receiver. These halachos are derived from the verses in Parashas Pinchas. The Torah mentions the paternal uncles to teach this very halacha, that מישמוש propagates upward to earlier generations, and not just down to later generations.

It would apparently not be necessary for the Mishnah to even mention the brothers of the deceased, just as it did not mention the paternal uncles, as both receive inheritance via the rule of מישמוש of the inheritance moving up to the father of the deceased and then to either his sons (the brothers of the deceased) or to his own brothers. However, the Mishnah wanted to clearly rule that only paternal brothers inherit from their brother, and that maternal brothers are not included in this system. The verse states that "brothers" inherit, which might have led us to mistakenly think that even maternal brothers are included. This would have been a reasonable misunderstanding, because the precedence of a father in the inheritance chain is not written explicitly in the verse.

An alternative explanation why paternal uncles are not listed in the Mishnah is that they are already written in the Torah itself. On the other hand, paternal brothers are mentioned in the Mishnah, because they are not written clearly in the verse, which only lists "brothers." This is why the Mishnah had to clarify that it is only brothers who share a common father that inherit to one another, but not those who only share a common mother. ■

HALACHAH Highlight

Reciting a beracha when receiving news of an inheritance

דאתחולי בפורענותא לא מתחילין

We do not begin a Mishnah with a tragedy

Shulchan Aruch¹ rules that when a person's father dies the son should recite the beracha of **דיין האמת**. In the event that the father had assets that will be inherited by the son he should recite the beracha of **שהחיינו**. If there is more than one son so that the inheritance will be shared by multiple brothers the correct beracha is **הטוב והמטיב** – the beracha that is recited when many people benefit from an acquisition of property.

Rav Akiva Eiger² cites the sefer Livyas Chein who writes that if a son dies and his father will inherit his estate the father does not recite the beracha of **שהחיינו** for the estate that he stands to inherit. The reason is that it is a tragedy and curse for a child to die in the lifetime of his parent. Proof to this principle is found in our Gemara that explains that the Mishnah does not begin with the case of a father inheriting the property of his deceased

son because, "We do not want to begin with a tragedy." Rashbam³ explains that it is a curse for a person to see the death of his child. Consequently, how could a father recite the beracha of **שהחיינו** when it is a tragedy to have witnessed the death of a child?

Some authorities maintain that even a child does not recite the beracha of **שהחיינו** for the estate he stands to inherit. For example, Nimukei Orach Chaim⁴ writes that it is unheard of for a child to recite the beracha of **שהחיינו** upon the death of a parent and it appears cruel for a person to recite **שהחיינו** immediately after hearing about a parent's death. Rav Moshe Shternbuch⁵ also confirms that the common custom is that people do not recite the beracha of **שהחיינו** for any inheritance. Shulchan Tahor⁶, on the other hand, suggests that if the father died at an old age where people are not broken by his death it is appropriate to recite the beracha of **שהחיינו**, but otherwise the beracha should not be recited. ■

¹ שו"ע או"ח סי' רכ"ג סעי' ב'.

² חידושי הגרעק"א שם.

³ רשב"ם ד"ה מאי שנא.

⁴ נימוקי או"ח שם.

⁵ שו"ת תשובות והנהגות ח"ג סי' ק"מ.

⁶ שלחן טהור על שו"ע הנ"ל סעי' ב'.

STORIES Off the Daf

A miscarriage of justice

"והאיש את אשתו..."

Acertain very wealthy man married off his daughter to an eligible young man and provided a very generous dowry, but somehow the father-in-law and his son-in-law had a mutual dislike for one another right from the start. Tragically, the bride passed away suddenly after the wedding.

Shortly after the shivah the father-in-law sent his deceased daughter's husband a summons to the non-Jewish court system claiming that he was entitled to a full refund of the dowry he had given the hapless young man.

When the bereaved husband heard this he was outraged. "You are nothing but an informer! How could you go

against what every child knows is the halachah and attempt to involve the non-Jewish courts just to gain an advantage?"

"That's simply not true," the father protested. "Everyone knows that the non-Jewish law stipulates that a father inherits the property of even his married daughter under certain circumstances. Therefore, it is as if I made a condition to this effect and the money should be returned to me. In addition, doesn't everyone know that dina d'malchusa dina?"

When this question was brought before the Rashba, zt"l, he ruled in favor of the son-in-law. "It is clear in the mishnah in Bava Basra 108 that a husband is the sole inheritor of his wife. And as far as your claim that dina d'malchusa dina means that whatever the non-Jewish law declares becomes the halachah in money matters—chas

v'shalom that the holy nation of Hashem should act in such a manner! Especially in our case, it would be a terrible miscarriage of justice to take every penny away from this broken young man.

"A person who relies on this error and takes money based on it is nothing more than a thief. In addition he is wicked, since he wishes to uproot the Torah. According to his foolish claim we need not learn Mishnah or Gemara about money matters at all! Instead we should spend our time poring over the non-Jewish statutes to determine the halachah! Heaven forbid that there should be such a person among the Jewish people. Surely the Torah herself would gird sackcloth for such a terrible perversion!"¹ ■

1. שו"ת הרשב"א, ח"ו, סי' רנ"ד