

OVERVIEW of the Daf

1) Inheriting from a mother

A lengthy Baraisa is cited that provides the source that a son inherits from his mother.

The Gemara questions the position of Tanna Kamma of the Baraisa who seemingly rejects the principle of דין.

The Gemara answers that in general Tanna Kamma accepts the principle of דין and it is in this specific context that he rejects it.

A number of incidents are mentioned related to the dispute of the Baraisa of whether a son inherits ahead of his sister even for their mother's estate.

Following the last incident R' Yehudah Nesiah and R' Yannai engage in a lengthy debate regarding the source that a son inherits ahead of his sister in their mother's estate.

2) Husbands and wives

A Baraisa is cited that presents the source that a husband inherits from his wife but she does not inherit his estate.

This interpretation of the verse is challenged.

Abaye suggests an explanation.

Rava challenges this interpretation and offers an alternative explanation.

A Baraisa is cited that provides another source for these halachos. ■

REVIEW and Remember

1. How is it possible for a woman to inherit property from two shevatim?

2. What is the source that a son inherits ahead of his sister even when inheriting their mother's estate?

3. Is the firstborn son after a stillborn considered the firstborn for halachos of inheritance?

4. What is the source that a woman does not inherit her husband's property?

Distinctive INSIGHT

The abrupt response of R' Yannai

אמר ליה לשמעיה גוד לית דין צבי למילף

The Gemara relates the story of R' Yannai who was walking with his attendant when they met Rav Yehuda Nesiah. R' Yehuda asked R' Yannai from where do we know that a son receives before a daughter in the inheritance of the mother. R' Yannai answered that it is determined from the word "מטות," which teaches us that there is a parallel between the inheritance from the father and from the mother. Just as the son precedes the daughter when receiving inheritance from the father, so too does he precede the daughter when receiving inheritance from the mother.

R' Yehuda Nesiah challenged this point, by noting that if there is a comparison between the possessions of the father and that of the mother, we should also find that a firstborn should receive a double portion from the property of the mother just as from the property of the father. At this point in the discussion, R' Yannai reacted abruptly and told his attendant to take him away, saying, "This person does not want to listen, let's go on our way."

The Gemara does continue and offers the answer to the question of R' Yehuda Nesiah. Nevertheless, Ben Yehoyada asks why R' Yannai reacted so negatively, and where did he detect anything inappropriate about the response of R' Yehuda? Perhaps R' Yehuda sincerely did not know the answer to his question, and he genuinely wished to know the answer.

Ben Yehoyada explains that R' Yannai detected that R' Yehuda asked his follow-up question too quickly, almost without thought. R' Yannai was disappointed that R' Yehuda did not seem to think over the answer he had given, and the follow-up question was blurted out, as if it was at the tip of R' Yehuda's tongue ready to be asked no matter what R' Yannai would have said. This type of question seemed to be asked just in order to attack and to not be accepting of whatever answer would be given, and it was therefore rejected as not being tolerable.

The Chofetz Chaim (Klal 4:2) writes that it would be lashon hara to say about someone that he does not want to learn Torah. Be'er Mayim Chaim (6) points out that we should not ask about this halacha from our story of R' Yannai who proclaimed about R' Yehuda Nesiah that "He does not want to listen." The explanation is, as Rashbam

HALACHAH Highlight

At what point does death sever the husband/wife relationship?

יכול אף היא תירשנו תלמוד לומר וכי

I might think that she should inherit her husband's estate, therefore the verse states, etc.

Our Gemara entertains the possibility that a woman should inherit her husband's estate. Rav Elchonon Wasserman¹ questions this possibility based on a comment of Tosafos. Tosafos² explains that the reason a husband does not inherit his wife's property even after his death (so that he could pass her estate to his closest surviving relative) is that at the moment of death they are no longer related to one another. This principle, namely, that death severs the husband/wife relationship makes our Gemara difficult to understand. How could we even consider the possibility that a woman would inherit her husband's estate if immediately upon his death they are no longer related for her to inherit it from him?

He explains the rationale behind our Gemara's thinking based on a comment of Rashba. Rashba³ writes that inheritances occur immediately at the moment of death. This is in contrast with the process of severing the husband/wife relationship that does not occur until some time shortly af-

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notes, that R' Yannai did not mean that R' Yehuda did not wish to learn, but rather that he just wanted to keep asking questions that were not necessary, even though there were answers that were easy to understand or to figure out. An alternative answer may be that it is permitted for a rebbe (R' Yannai) to challenge students and to reject their poor responses in learning in order to sharpen their thought processes. ■

ter death. Rav Wasserman proves this from the Gemara (137a) that discusses a man who gives a *get* to his wife and declares that this *get* will take effect upon his death which is an ineffective stipulation since *אין גט לאחר מיתה* – a *get* cannot take effect after the husband has died. Now, if death had already severed the husband/wife relationship the *get* would not be possible since they are no longer married. The very fact that such a stipulation is invalid due to the principle of *אין גט לאחר מיתה* indicates that the husband/wife relationship continues after the husband's death. Accordingly, since inheritance occurs at the moment of death and the husband/wife relationship is not severed until some time after death the Gemara has a basis to entertain the possibility that a woman could inherit her husband's estate. ■

1. קובץ ביאורים גיטין אות ל"א ד"ה ולדברי.
2. תוס' בשם ריב"ם לקמן קי"ד: ד"ה מה.
3. שו"ת הרשב"א ח"ג סי' קכ"ה. ■

STORIES Off the Daf

A fee for a favor

"וכל בת יורשת במטות בני ישראל..."

Today's daf discusses a daughter's inheritance.

A certain man had three children, two boys and a girl. When the parents passed away their will was nowhere to be found, and so the government immediately began to process the estate through probate, putting the three children down as heirs with equal shares. The brothers suggested that their sister had a halachic obligation to sign that she wished to abstain from receiving her inheritance, but she was unconvinced. Although the brothers ex-

plained that she was clearly obligated since the government was taking money which belonged to them and giving it to her and she had a duty to return their "lost object," she refused to sign.

When this case came before the Ben Ish Chai, zt"l, he ruled that although the brother was correct that she was obligated to sign over what had been given to her from her parents' estate, she definitely had a right to demand payment for this. "This is as true of her as it would be of any person who is permitted to demand payment for doing a favor for another. As far as the brothers' claim that she is obligated to do this for free to fulfill the mitzvah of hashavas aveidah, who told them that one may not take money for hashavas aveidah? One most certainly

can, and so can she!

"I believe that she has the right to ten percent of the third that will be assigned to her if she does not sign. If she insists on more and he makes a *kinyan* to give it to her, even though she is taking more than her fair due, he is still obligated to give it to her. Of course, the only question is in a case where she need not do anything to inherit such as in this instance. But if she must do anything, like put in a request or sign a document to attain this right, it is obvious according to all authorities that she has no right to inherit, since the law of the land cannot change the halachah."¹ ■

1. שו"ת רב פעלים, ח"ב, חו"מ, סי' ט"ו. ■