

OVERVIEW of the Daf

1) Double portion of the first-born (cont.)

The previously-quoted Baraisa maintained that the first-born receives a double portion from an increase in the value of the estate that happens automatically. The Gemara attributes this position to Rebbi.

A Baraisa is cited that presents Rebbi's position.

An exchange between Rebbi and Rabanan concerning their respective sources for their positions is presented.

R' Pappa identifies the exact case that is under dispute.

Rabbah bar Chana in the name of R' Chiya states that one could follow either one of the two positions since he was uncertain whether halacha follows Rebbi when he disagrees with his colleagues.

The Gemara records additional discussion pertaining to whether halacha follows Rebbi when he disagrees with his colleagues.

Two Beraisos are cited and explained that relate to the disagreement between Rebbi and Rabanan.

2) Collecting a double portion from a loan

R' Yehudah in the name of Shmuel ruled that a first-born does not collect a double portion from a loan owed to his father.

The Gemara analyzes whether this ruling follows Rebbi or Rabanan.

In Eretz Yisroel it was ruled that a first-born collects a

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REVIEW and Remember

1. What is the point of dispute between Rebbi and Rabanan?

2. What was Rabbah bar Chana's ruling in the name of R' Chiya and why?

3. Why doesn't a firstborn receive a double portion from a loan collected after the father died?

4. What is the consistent position of people from Nehardea?

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 By Dr. and Mrs. Shmuel Roth
 In loving memory of their father
 ר' יצחק יעקב בן ר' יחיאל צבי, ע"ה

Distinctive INSIGHT

A first born may forgo the privilege of the double portion

ורבי נמי הכתיב לתת לו ההוא שאם אמר איני נוטל ואיני נותן רשאי

Rebbe is of the opinion that a firstborn receives his double portion not only from assets which are in the possession of the estate at the time of the death of the father, but he also receives a double portion in funds and assets which are collected later, such as the collection of a debt owed to the father. Similarly, Rebbe holds that the firstborn must pay any debt owed by the father at a rate of double what the other brothers pay. Yet, the Torah refers to his portion as being a "gift," which the Chachamim interpret to mean that the double portion is only in regard to collected assets, and not to funds which will be collected later. Nevertheless, Rebbe learns from this word that the firstborn may decline his position altogether, by declaring, "I do not wish to collect double, nor do I wish to pay double." The point is that we know that a person does not have to receive a gift from someone else if he does not want it. Therefore, the firstborn's double portion which is a "gift" need not be accepted. If he does not want it, he may forgo his right of double collection.

Rashbam notes that the main point of the statement of the firstborn is "I do not wish to collect the double portion." The additional comment of "I will not pay a double portion of the debt of the father" actually goes without being said. Once he forgoes the right to collect a double portion, it is obvious that he will not have to pay more than the other brothers. The reason the Gemara mentions this specifically is just in order to point out that the reason why the firstborn is turning down the right to collect more is certainly due to his unwillingness to accept the responsibility that goes with it of also having to pay a double amount of the debt of the father.

R' Elchonon Wasserman, in קובץ שיעורים asks regarding the comment of Rashbam (138a) who says that, in general, the reason we may not acquire a gift on behalf of a person without his knowledge is that the verse in Mishle (15:27) states, "He who despises gifts will live." This reason does not apply to a firstborn's receiving a larger portion of the inheritance from his father, so we would expect that the double portion would become his even without his needing to consent to it. Yet, as we see in our Gemara, this is not the case, and the firstborn may forgo this privilege. Sefer שערי שמועות explains that according to Rashbam, we must say that the double portion is not actually like a gift. The Torah refers to it as a gift, but it is only because it shares the halacha in common that the recipient need not accept it against his will, but the manner in which the double portion can be forgone works differently than a normal gift. ■

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 לע"נ מרת שיינדעל מרים בת ר' יחיאל יוסף
 Jean Erdfrucht, a"h

HALACHAH Highlight

Determining how to pay off a father's debt

ואם אמר איני נותן ואיני נוטל וכי

And if the first-born says I will not give a double portion [of my father's debt] and I will not collect a double portion [of his estate] etc.

Two brothers inherited their father's estate that contains both prospective assets (ראוי) and assets that the father had possession of (מוחזק) at the time of his death. Subsequent to the father's death a creditor claimed an outstanding debt against the estate of the deceased father. The first-born asked that the debt be paid from the prospective assets. Since he does not have the right to a double portion of the prospective assets he preferred that this debt come from those assets so that his double portion should not be depleted. The other brother adopted the opposite approach. He wanted the debt to be paid from the מוחזק property since the first-born would be liable to cover two-thirds of the debt and he would only have to cover one-third of the debt. Taz¹ ruled that the debt should be paid from both sets of assets. The two brothers will contribute equal amounts to the part of the debt that is paid from the ראוי assets but the first-born will have to pay two-thirds of the amount that comes from the מוחזק assets. Thus, for example, if three quarters of the estate was מוחזק and one quarter was ראוי the first-born will pay for two-thirds of the amount that is paid from the מוחזק property (2/3

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double portion from a loan but not from interest.

The Gemara analyzes whether this ruling follows Rabbi or Rabanan.

R' Acha bar Rav reported that Ameimar ruled that a first-born collects a double portion from a loan but not from interest.

Ravina told him that Ameimar is consistent with R' Nachman who also hails from Nehardea.

The relevant dispute is presented between R' Nachman and Rabbah whether a first-born collects a double portion from land or cash received for a loan owed to his father.

Abaye begins to challenge both positions on this matter. ■

of 3/4 of the debt) and half of the amount that is paid from the ראוי property (1/2 of 1/4 of the debt).

Noda B'yehudah² also subscribes to this position and cites Rashbam³ as support for this position. Rashbam cites opinions which maintain that when a first-born does not collect a double portion from a debt that is owed to his father he does not have to pay a double portion of the debt his father owed to others. What emerges from this comment is that the first-born only pays a double portion of his father's debts from the part of the estate from which he collects a double portion but he is not obligated to pay a double portion from the part of the estate from which he does not collect a double portion. ■

1. ט"ז אה"ע סי' קי"ג סק"י.

2. שו"ת נודע ביהודה מהדו"ק חו"מ סי' ל"ד.

3. רשב"ם ד"ה ואם אמר. ■

STORIES Off the Daf

The double portion

ואם אמר איני נותן ואיני נוטל רשא..."

A certain family came into a large inheritance, but they were unsure regarding the halacha. A significant portion of the money was invested in government bonds. They wondered if this was considered to be like any other loan from which a firstborn son does not receive a double portion, or is it like cash, since it was absolutely guaranteed?

When they asked the Noda B'Yehudah, ז"ל, the halachic status of these bonds he replied that the firstborn son was not entitled to a double portion of them. But when the eldest son heard about this he made a very interesting

point. "As we all know, our father not only had significant holdings, he also had large debts. Although a firstborn son also has a double portion in his father's debts, I do not think this is fair in our case. After all, it's not as though I am truly receiving a double portion of the inheritance. Why should I lose out? I suggest that we use the cash from the bonds to repay the debts. That way I will receive my fair share without being required to handle such an unfair portion of the debt."

His brothers were not thrilled by this notion, so they went back to the Noda B'Yehudah. They wanted an unequivocal ruling. Where they required to pay their father's debts from the bonds or not?

The Noda B'Yehudah replied that their eldest brother was correct. "We learn this from the Gemara in Bava Basra

124. There we find that if the firstborn waives his right to inherit double he is also not required to pay a double portion of their father's debts. One of the explanations offered by the Rashbam is that the firstborn need not pay double even if he only forgoes his portion in debts owed to their father. Although the Rashbam rejects this explanation since there is a lien to pay debts only from the property owned by the deceased and nothing else, this is no longer relevant. As is well known, the Geonim decreed that for heirs all assets have the same halachic status as land. It follows that if the firstborn gave up a portion of his inheritance he still does not pay a double portion of their father's debts."¹ ■

¹ שו"ת נודע ביהודה, מהדו"ק, סי' ל"ד ■