

OVERVIEW of the Daf

1) Benefit to the father's estate after his death

R' Assi rules that if the firstborn protests his brother's activities to improve the quality of the field he has the right to later collect a double portion from that increased value.

Rabbah qualifies this ruling.

R' Yosef takes Rabbah's qualification one step further.

R' Yosef's statement is explained in the context of a related ruling of R' Ukva bar Chama.

The context of R' Ukva bar Chama's original ruling is identified.

2) A firstborn forgoing his double portion

R' Assi rules that a firstborn who takes a single portion loses the right to collect a double portion.

R' Pappa and R' Pappi disagree about the degree at which the firstborn loses his right to a double portion.

The basis of the dispute is explained.

It is noted that R' Pappa and R' Pappi inferred their respective positions from a ruling of Rava.

In Eretz Yisroel they ruled that a firstborn who sells part of his portion before the division of the estate has accomplished nothing.

Although this indicates that the firstborn does not have the right to his extra portion until the estate is divided, nevertheless the halacha is that he does have rights even before the division of property.

A related incident is recorded.

3) MISHNAH: The Mishnah discusses different stipulations a father may make pertaining to the division of his estate and whether those stipulations are valid.

4) The author of the Mishnah

The Gemara assumes that the Mishnah that invalidates

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Distinctive INSIGHT

Declaring that the firstborn not receive the double portion

האומר איש פלוני בני בכור לא יטול פי שנים, איש פלוני בני לא יירש עם אחיו, לא אמר כלום, שהתנה על מה שכתוב בתורה

The Mishnah teaches that if a person identifies a person to be his firstborn, but that he should not receive a double portion, this declaration is null and void. Similarly, if a person identifies someone to be his son, but he states that this son should not inherit among the other sons, this declaration is also null and void. Regarding both situations, the Mishnah states that the father's saying that a firstborn should not receive double, and regarding a regular son that he should not inherit at all, are both conditions which are contrary to the law of the Torah. The rule is that one is not permitted to make a condition which is contrary to the guidelines of the Torah, and in this case the firstborn will receive double, and the regular son will inherit.

Based upon the ruling of this Mishnah, Sefer **יד רמה** asks about that which we find (Bereshis 49:4) that in his final comments to his sons, Yaakov Avinu declared that due to Reuven's impetuous nature, the double portion of the firstborn which was his was forfeited, and this privilege was instead transferred to Yosef. How was Yaakov able to declare that his firstborn Reuven would not receive the double portion? Even though Yaakov gave a reason why he wished to redirect this privilege, our Mishnah seems to rule that a father is not allowed to tamper with this right. Furthermore, Yaakov also promised Yosef that his two sons, Menashe and Ephraim, would each receive full portions as tribes among Yosef's brothers (ibid. 48:5). This, in effect, was the manner by which Yosef was presented with the double portion which Reuven was forced to forfeit. Again, we must ask how Yaakov was legally permitted to do this.

יד רמה answers that it was only after the Torah was given that this system of inheritance was implemented and fixed. Yaakov had made these adjustments and arrangements before the Torah was given.

דעת זקנים and Sforno to Devarim 21:16 discuss this issue, and they suggest that a father is permitted to transfer the double portion away from a firstborn in a situation where the son has committed an offense. In this case, Reuven was guilty of rearranging the furniture of his mother Leah following the death of Rachel, which was improper. ■

REVIEW and Remember

1. What is the point of dispute between Rabbah and R' Yosef?

2. What is the point of dispute between R' Pappa and R' Pappi?

3. What is the correct language for giving all of one's sons an equal portion?

4. Why does a tumtum who is discovered to be a male not receive the double portion of the firstborn?

HALACHAH Highlight

Deviating from the order of inheritances

המחלק נכסיו לבניו על פי

One who divides his estate amongst his children

Shulchan Aruch¹ rules that a person may not bequeath property to those who are not fit to inherit his property nor can one deny an inheritance from someone who deserves to inherit. This ruling is based on the verse that states (Bamidbar 27:11): והיתה לבני ישראל לחקת משפט – And this will be a statute of law for Bnei Yisroel which teaches that the laws of inheritance cannot be altered. Bais Yosef² cites a Teshuvos Harashba who discusses the case of someone who wanted to bequeath property to his sister's sons instead of his brother's sons. Rashba responded that this person does not have the authority to bequeath property to his sister's sons when the Torah mandates that his brother's sons should inherit the property.

There was once a man who gave instructions as he was dying that his estate should be divided equally amongst all of his children, sons and daughters alike. After he died the daughters sought to collect their portion of the estate but the brothers protested claiming that their sisters do not have the right to inherit their father's estate when there are sons who stand to inherit. The question was presented to the author of Teshuvos Divrei Chaim³ who wrote at great length demonstrating that the language utilized by the father that all his children should inherit equally runs counter to the intent of the Torah, therefore, the stipulation is not valid and the brothers will inherit the estate and the sisters have no halachic claim whatsoever.

Poskim⁴ also discuss whether we use circumstantial evidence to prove that the deceased intended to give the property

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stipulations against the Torah does not follow R' Yehudah who accepts financial stipulations that run counter to the Torah.

It is explained how the Mishnah could be consistent with R' Yehudah.

5) Identifying the firstborn

R' Yosef discusses whether a person's declaration regarding his child can establish him as the firstborn.

A related incident is recorded.

A second incident is recorded.

6) A טומטום

R' Ami rules that a טומטום who is discovered to be male does not receive a double portion.

R' Nachman bar Yitzchok rules that a טומטום who is discovered to be a male can not be established as a בן סורר ומורה. ■

to others as a gift rather than as an inheritance. Their conclusion is that circumstantial evidence is not sufficient to take away property from definitive heirs. This conclusion is based on a Teshuvos Harosh who wrote that we do not utilize circumstantial evidence to uproot a Biblical inheritance. This thought is echoed in Teshuvos Shvus Yaakov⁵ who writes that any time there is an uncertainty regarding the language of a gift it is the recipient's responsibility to prove his claim since he is trying to collect from someone who has a definitive claim as an heir to the estate. ■

1. שו"ע חו"מ סי' רפ"א סעי' א'.
2. בי"י שם.
3. שו"ת דברי חיים ח"א חו"מ סי' ל"ח.
4. מתיבתא פניני הלכה לסוגיין "בני פלוני לא יירש"
5. שו"ת שבות יעקב ח"ב חו"מ סי' קמ"ו. ■

STORIES Off the Daf

The double portion

"האומר איש פלוני בכור לא יטול פי שנים..."

Three brothers received a large inheritance from their father. For an extended period of time, they were partners, but when they eventually decided to dissolve the partnership, there was a fight about how to do it. The eldest claimed that he was entitled to a double portion of their father's estate, but his younger brothers disagreed.

They protested, "For the longest time, the custom in our country has been for a

firstborn to take the same share as his brothers. Since that is the undisputed custom, it seems obvious that the principle, 'custom nullifies halachah,' applies here. Because of this custom, we should split the estate evenly."

When this question was brought before the Maharik, ז"ל, he was quite sharp in his response. "On the contrary; it is obvious that the eldest receives a double portion despite the custom. Although the Yerushalmi and Maseches Sofrim do in fact state that the custom negates the halachah, the Ohr Zarua explains that this is only true regarding a custom which was established by resident Torah sages. This is explicit in the Maseches Sofrim which

adds that a custom established with no proof from the Torah is considered a mistaken custom due to a lack of proper perspective, and it does not override the halachah.

"In addition, why should the minhag be stronger than the ability of each person to bequeath his inheritance to his children as he sees fit? Just as in Bava Basra 127 we find that even if the father declares that his firstborn should not inherit a double portion this statement is meaningless, the same principle is at work in our case!"¹ ■

1. שו"ת מהר"י"ק, סי' ח', שו"ת דברי ריבון, סי' קע"ד