

OVERVIEW of the Daf

1) A large estate (cont.)

R' Yochanan's explanation of the Mishnah implied that if the father's estate is not large enough to support the sons and daughters until the daughters marry, the sons would not collect anything. This assumption is challenged.

Rava explains the meaning of the Mishnah.

The Gemara inquires about the halacha if the property increased in value subsequent to the father's death.

The Gemara demonstrates from a statement of R' Assi in the name of R' Yochanan that the increased value belongs to the sons.

R' Yirmiyah inquired whether the cost of supporting the widow is subtracted from the value of the estate, thus possibly rendering a large estate into a small estate.

Further related questions are presented.

R' Avahu resolved one of R' Yirmiyah's four inquiries.

2) Clarifying the Mishnah

Abaye suggests an explanation for Admon's statement in the Mishnah.

Rava rejects this explanation and offers an alternative explanation.

3) **MISHNAH:** The Mishnah begins with a presentation of the laws of inheritance when one of the children is a tumtum. Another set of halachos is recorded that also relates to the birth of a tumtum.

4) Tumtum

An inconsistency in the Mishnah regarding the status of a tumtum is noted.

Abaye offers one resolution for the Mishnah.

Rava offers a second resolution for the Mishnah.

Abaye's explanation is challenged. ■

REVIEW and Remember

1. What is the halacha when a man's estate increases after his death?

2. What is the essential issue of R' Yirmiyah's four inquiries?

3. What part of the estate does a tumtum receive?

4. Is a tumtum considered to be a separate gender?

Distinctive INSIGHT

Do those learning Torah deserve more support?

אלא מעתה מאן דעסיק בתורה הוא דירית, דלא עסיק בתורה לא ירית

In the Mishnah, Tanna Kamma ruled that if the estate of the dead father did not have enough funding for the daughters to be supported and for the sons to inherit, the money must go to the daughters for support. As a result, the sons might be left penniless, and perhaps forced to beg door to door for money. Admon disagreed with Tanna Kamma, saying, "Should I have to lose just because I am male?" Our Gemara brings a discussion between Abaye and Rava to explain the contention of Admon.

Abaye explains that Admon's argument was that men have a mitzvah to learn Torah. This is a great merit, something that women do not have. Therefore, it does not make sense that the boys should be at a disadvantage when it comes to receiving funding from the limited funds of the estate.

Rava asks against the explanation of Abaye, "According to your position, even among the sons we would only allow the ones who are learning Torah to be supported, but those who are not actively learning would be left out!"

Tosafos (ד"ה אלא) notes that the Baraisa later (141a) in fact says that there is a greater mitzvah to support sons more than daughters, because they learn Torah. Why, then, does Rava contend that the argument of Abaye is without merit? Tosafos explains that the Baraisa later is dealing with the father's responsibility to support his children during his lifetime. Technically, there is a point when the father is exempt from supporting his children, but the Baraisa adds that there is a mitzvah for the father to nevertheless support his daughters, and also the sons who learn Torah. Because this is only a mitzvah rather than an obligation, there is room to say that those who are learning Torah are given a higher priority. However, our Gemara is dealing with the law of inheritance, and in this regard there is no room to argue that sons who learn Torah deserve more than those who are not learning.

Toafos is Kesubos (108b, ד"ה אמר) offers a different answer to the question from the Baraisa. In our Mishnah, Admon was speaking about adult children, so Rava noted that those learning Torah should not be given preference in terms of support. The Baraisa later is dealing with minors, who are all in line to be educated to learn Torah. There is no room to question the right of minor children to study Torah and to be supported while doing so. ■

HALACHAH Highlight

A contract that leaves the name of the buyer blank

האומר אם תלד אשתי זכר יטול מנה ילדה זכר יטול מנה

One who declares: "If my wife gives birth to a son he shall take one hundred zuz," – If she delivers a son he is given one hundred zuz.

The Mishnah discusses the case of a person who declares, "If my wife gives birth to a son, he shall take one hundred zuz." The halacha is that if the man's wife gives birth to a son he should be given one hundred zuz. Rosh¹ cites this Mishnah as proof that there is nothing wrong with drawing up a document to transfer property and leave blank the name of the one acquiring the property to be filled in at some future date. This could happen when something is sold in public to the highest bidder. The seller gives the object to those who will oversee the sale together with a document of transfer with a blank space for the name of the buyer. When the buyer is ultimately chosen his name is filled into the document. The question is whether this type of document is valid. One could argue that the transaction is an **אסמכתא** since the seller does not have the necessary conviction (*גמירת דעת*) for a binding transaction being that

he does not know to whom the property will be transferred. Rosh rules, however, that the transaction is valid.

The specific case addressed by Rosh involved the sale of the license to sell wine or meat or some other commodity in town. The contract was drawn up with the name of the buyer to be filled in after analyzing all the bids. In one town someone won the bid but members of the community did not want the winner to be given the contract, and they put together a list of reasons why the license should not be given to that individual. One of their claims was that the contract should be considered an **אסמכתא** since the contract was drawn up without the name of the buyer. Rosh answered that not knowing who will make the acquisition does not detract from the validity of the transaction, and he cited our Mishnah as proof, since the Mishnah recognizes the ability of a father to transfer money to his yet unborn son.

This position, however, is not universally held. Tur² cites authorities who explain that the Mishnah's ruling is limited to a case of a person who is deathly ill, but if the declaration was made by a healthy person the transaction would not be valid since it is considered an **אסמכתא**. ■

1. שו"ת הרא"ש כלל י"ג סי' כ'.

2. טור חו"מ סי' רנ"ג. ■

STORIES Off the Daf

Letter of the Law

"אם תלד אשתי זכר..."

Today's daf discusses the halacha when a natural heir is circumvented.

A certain man lost his wife who had borne him one son. The wealthy widower remarried, but was forced to send his firstborn away from home.

When the father got older, he became very infirm. It was then that the second wife hatched a plan to cheat the firstborn son out of his inheritance. She did not allow him to visit and insisted that the invalid father cut him out of the will. When the sickly man finally agreed, she immediately had a competent Rav called in to draw up a halachic will and finish the matter, once and for all.

After the father died, and the

firstborn was informed that he would only inherit fifty dollars, he took his family to court. When he fortuitously encountered Rav Elkin, zt"l, he poured out his heart to him and begged him for help.

Rav Elkin suggested that he have the will translated to enable it to be used as evidence in court. Rav Elkin himself supervised the translation. He ordered a completely literal rendition of the text and showed the young man's lawyer how to exploit this translation.

The lawyer stood up before the court and explained that it was clear that the will was not relevant to the immediate future, since before portioning out his property the deceased writes: "After a hundred and twenty years..."

He explained that if the family remained adamant in cheating his client from his fair inheritance based on this document, it must be obeyed to the let-

ter and they would have to wait a whopping hundred and twenty years before collecting a penny.

When they understood his proposal, the entire court immediately burst into uncontrollable laughter, but the judge agreed to abide by this interpretation. All attempts to explain that this was merely the form of every religious will fell on deaf ears, since he understood that they had tried to exploit the firstborn and was glad for a chance to restore justice.

Not surprisingly, the family immediately offered to give the firstborn son his full halachic share if he would agree to drop the case.

All the newspapers of the day were full of praise for the clever Rabbi Elkin, whose council thwarted a devious attempt to rob an innocent young man of his inheritance.¹ ■

1. מגד גבעות עולם. ■

