

## OVERVIEW of the Daf

### 1) Conveying property to an unborn child (cont.)

Another possible explanation of the Mishnah according to R' Huna is suggested.

The suggestion is rejected since R' Huna ruled that an unborn child does not receive a gift even if the father says, "When the mother gives birth."

The discussion involving R' Nachman, R' Huna and R' Sheishes about conveying property to an unborn child is presented.

R' Sheishes suggests a proof to his position.

Abaye and Rava give different reasons why they reject R' Sheishes's proof.

The practical difference between the approach of Abaye and Rava is noted.

Another challenge to R' Sheishes from a Mishnah is presented.

An alternative explanation of the Mishnah is suggested that does not refute R' Sheishes.

Mar bar R' Yosef in the name of Rava presents another explanation of the Mishnah that is compatible with R' Sheishes.

A second version of Mar the son of R' Yosef's explanation in the name of Rava is offered.

The Gemara rules that both explanations are accepted in halacha.

R' Yitzchok in the name of R' Yochanan rules that an unborn child does not acquire property that someone conveys to him.

Shmuel disagrees and rules that an unborn child does

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## REVIEW and Remember

1. Is one able to convey property to an unborn child?  
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2. What is the practical difference between Abaye and Rava's explanation of the Baraisa?  
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3. What halacha is derived from the phrase וילדו לו?  
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4. Does halacha automatically follow those who are older?  
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By the Frankel and Wolper families  
In loving memory of their grandmother  
מרת שרה בת ר' ברוך ניסן ע"ה

## Distinctive INSIGHT

### *A fetus "born" after the death of the mother*

הוה עובדא ופרכס תלתא פרכוסי

The Mishnah taught the halacha that a fetus cannot inherit. Only once a child is born (i.e. "one day old") does he have the right to inherit. Rav Sheishes had said that it is possible for a fetus to acquire things, and the Gemara cites the ruling of the Mishnah to show that the contention of Rav Sheishes is wrong. Rav Sheishes responds and explains that the Mishnah is not referring to the inability of a fetus to inherit from the property of the father, because in regard to the father's property a fetus is not a factor at all. The other brothers will inherit either directly from the father or from the fetus, because it is impossible for a fetus to have other heirs other than the brothers themselves.

Rather, the lesson of the Mishnah is to teach about the status of a fetus regarding the property of his mother. The halacha is that only once a child is born may it inherit from its mother, in order to then have its paternal brothers inherit that property from him. However, as a fetus, he cannot yet inherit from his mother, and if it is not born, the property of the mother will go back to her father and his family. The point of this halacha, therefore, is that if a mother dies before the fetus is born, we say that the fetus actually expired first, and it was not alive to then inherit from its mother upon her death.

The Gemara challenges this observation, and it reports about an actual case where a mother died, but then her fetus was "born" and it jumped and made several movements before it then died. This suggests that the fetus born after the death of the mother was alive, at least for a few moments. Mar bar Rav Ashi answers that in fact, the fetus born after the death of its mother was never alive. The movements that were witnessed were merely spasms, as we sometimes notice when a tail of a lizard is cut from the body. It moves, but that does not indicate a sign of life.

יד רמה adds that even if the fetus is born "alive" after the death of the mother, and it jumps or moves and then dies, it does not inherit from its mother in order to pass the property over to its paternal brothers. This would only be the case if the fetus was born "alive" before the death of the mother. In fact, in this case the child would not have to even survive an entire day. In this context, even one hour would be sufficient, as we say מקצת היום ככולו, part of the day has the halacha of a full day. The reasoning of Rav Sheishes was that if the mother dies before the birth, the fetus would have had to die first. However, any case of a live birth is enough, and surviving a full day is not the point. ■

# HALACHAH Highlight

## Is the Angel of Death responsible for an unnatural death?

דהוא מיית ברישא

Because the fetus dies first

**S**hulchan Aruch<sup>1</sup> cites the custom to pour out the drawn water that is in the area close to where a person died. The source of this halacha is the Kol Bo<sup>2</sup> and one of the explanations he gives for this custom is that the Angel of Death – מלאך המות – puts poison into the water that is in close proximity to one who died. Since this water is now dangerous it is appropriate to pour it out. Accordingly, Poskim discuss whether it is necessary to pour out water that was in the room of a person who was killed. The essence of the question is whether a person who was killed by unnatural means was killed by the Angel of Death or not.

Sefer Leket Hakemach<sup>3</sup> on the laws of mourning cites Sef-er Beis Yaakov who maintains that it is unnecessary to pour out the water in the vicinity of someone who was killed since his death was not in the hands of the Angel of Death. He cites as proof Rashi's comment to the Gemara in Taanis<sup>4</sup> where he states that only a person who dies naturally on his bed is considered to be a victim of the Angel of Death but those who were killed by sword or even hunger are not considered to be victims of the Angel of Death. The perspective is also found in Tosafos<sup>5</sup> in our Gemara where he mentions that the case of the Gemara where we assume that the fetus died before his mother is when she died of natural causes. In such a case it is

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acquire property that is conveyed to him.

The Gemara rules that an unborn child does not acquire property.

### 2) Conveying property to another together with a gift to unborn children

The Gemara recounts an incident in which someone stated that he was giving a gift to his unborn children, which is ineffective, and then granted his older son a gift together with them

One group of Amoraim hold that the older son does receive the gift whereas a second set maintain that he does not receive the gift.

R' Avahu and R' Yirmiyah enter into a discussion which opinion is to be followed in halacha. ■

clear that the Angel of Death killed her and the poison that he put in her killed the fetus first due to its size. When the mother died of unnatural causes it was not the act of the Angel of Death and thus we assume that the mother died before the fetus. Daas Kedoshim<sup>6</sup> disagrees and writes that whenever someone dies the water should be poured out, even if the death is an unborn child in its mother's womb. ■

1. שוייע יו"ד סיי שליט סעי ה'.
2. כל בו פ"ו. ומובא בב"י שם.
3. ספר לקט הקמח הלי אבילות ד"ה יוכיח.
4. רש"י תענית י"א. ד"ה מיתה משונה.
5. תוס' ד"ה דהוא.
6. דעת קדושים יו"ד סיי שליט סק"ה. ■

# STORIES Off the Daf

## The contested Shadchanus

"רפוי מרפיאן בידיהו..."

**A**certain shadchan proposed a potential shiduch to a young man. When the two met, they did not communicate well and they decided not to continue.

Immediately after this, the young man met another girl who seemed to be more suitable and the two got engaged. But of course, sometimes a shiduch who initially appears just right is found to be inappropriate for some reason. After a short time, both parties realized that they had erred and called off the engagement.

Strangely, the young man felt drawn to meet the girl that had previously been

suggested to him by the shadchan and this time their date went well. When in a short time the two were engaged to be married the shadchan reminded them that he expected the customary remuneration for making a match, but he was surprised when the chosson rebuffed him. "When we met at your behest, the match did not work out. I even got engaged to someone else in the interim. Why do you deserve shadchanus in such a case?"

The shadchan pointed out that if not for him the chosson would likely never have met his bride, and the chosson admitted this. "I appreciate that. But I still doubt if I am obligated to pay you for it."

When a similar question was

brought before the Minchas Petaim, zt"l, he ruled that the chosson was correct. "This is clear from Bava Basra 142 regarding people who took the property of a childless convert. If they subsequently heard that his wife was pregnant their acquisition becomes invalid. Even if the woman miscarried, and the property is truly ownerless, the original acquisition is worthless since they gave up on their original acquisition. They figured that she would give birth and the child would inherit his father.

"The same is true in our case. Since the shadchan surely gave up on receiving money for this shiduch, his rights are lost and the chosson is not required to pay him."<sup>1</sup> ■

1. שויית מנחת פתים, חו"מ, סי קפ"ה, ס"י