

## OVERVIEW of the Daf

1) **MISHNAH:** Beis Shammai and Beis Hillel disagree about the halacha when it is not known whether a husband or his wife died first.

### 2) Tzon-barzel property

R' Yochanan, R' Elazar and Reish Lakish disagree about who retains possession of tzon-barzel property.

A Baraisa is cited that supports the position that it is divided between the heirs of the husband and the wife.

3) **MISHNAH:** R' Akiva and Ben Azzai disagree about the halacha when it is not known whether a man or his mother died first.

### 4) Explaining R' Akiva's position

R' Illa and R' Zeira disagree about the meaning of R' Akiva's ruling that the property remains in the possession of the one who had it up until this point.

R' Zeira changed his position when he came to Eretz Yisroel and commented that it was the air of Eretz Yisroel that made him wiser.

### 5) Ben Azzai's position

R' Simlai infers from Ben Azzai's words that he was a student who became a colleague of R' Akiva.

### 6) A difficult monetary ruling

A ruling was sent from Eretz Yisroel related to a son borrowing against his father's property and the Gemara declares that it is amongst the most difficult halachos to understand.

The ruling as presented is successfully challenged. ■

## REVIEW and Remember

1. What is the point of dispute between Beis Shammai and Beis Hillel?  
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2. What are הנכסים הנכנסים והיוצאין עמה?  
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3. What is the issue debated by R' Akiva and Ben Azzai?  
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4. How do we know that Ben Azzai was a student who became a colleague of R' Akiva?  
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## Distinctive INSIGHT

*Does the halacha follow the opinion of Rabbi Akiva?*

אלו ואלו מודים שיחלוקו אמר רבי עקיבא מודה אני בזו שהנכסים בחזקתן

The Mishnah on 'עמוד א' discusses the case of a house which fell on a man and his wife, killing both. The heirs of the husband and of the wife argue regarding which spouse died first and the legal advantage each stands to gain. Beis Shammai rules that the property should be divided between two sides, while Beis Hillel rules that the various forms of property remain in their respective status. The Gemara explains the details of the opinion of Beis Hillel.

On 'עמוד ב', the Mishnah presents a case of a building which fell on a person and his mother. Again, the heirs of each claim that the other relative died first, leaving their closer relative with his property intact, and now available for them to claim and own. Here, the Mishnah reports that Beis Hillel and Beis Shammai agree that the property should be divided between the two sides. Rabbi Akiva disagrees, and he holds that in this case Beis Hillel remain with their position in opposition of Beis Shammai, and they hold that the property remains in its relative status and is not to be divided.

The Rishonim discuss the halachic conclusion of this Mishnah. Ri"ף does not explicitly issue a ruling in this Mishnah, but the commentators note that the wording of Ri"ף indicates that he holds like Rabbi Akiva. In the Gemara, R' Iyla and R' Zeira expound upon the opinion of R' Akiva, and Ri"ף cites this discussion. This indicates that Ri"ף rules according to R' Akiva.

בעל המאור states that the halacha follows Tanna Kamma, using the rule "the halacha is according to R' Akiva with his friend (when he is opposed by a single contender), but not against his friends (when he is opposed by several contenders)." Also, we rule regarding the previous Mishnah according to Bar Kappara, who says the halacha is יחלוקו, that the property is divided. Here, too, the same arguments can be offered to say יחלוקו, which is the opinion of Tanna Kamma.

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 In memory of  
 Florence bas Louis, a"h  
 Mrs. Florence Sonnenschine  
 By her friends and neighbors

# HALACHAH Highlight

## Inheriting the property of a family that perished together in the Holocaust

נפל הבית עליו ועל אשתו וכו'

If the house fell on him and his wife etc.

After the Holocaust there was a disagreement between two families regarding ownership of property. There was a couple who was sent to Auschwitz with their two children and they were all killed הי"ד. When the couple married, the bride's father gave some property to the couple that qualified as tzon-barzel property. The husband's family was presently in possession of this property and the wife's family was looking to take it for themselves. The question was what should be done if it is not known who died first and the families turned to the author of Teshuvos Minchas Yitzchok for a ruling.

Minchas Yitzchok<sup>1</sup> wrote that since it is not known whether the husband or one of his children outlived his wife or whether she outlived the rest of her family, halacha should follow what is stated in our Gemara. The Gemara teaches that when a house collapses on a couple and it is not known who died first the tzon-barzel property is divided between the heirs of the husband and the heirs of the wife.

He then raised the possibility that the heirs of the wife may not receive anything since the majority of possible outcomes would leave them with nothing. It is only if the wife outlived everyone, husband and children, would her relatives inherit her property but if either the husband or one of the children outlived the wife her heirs would receive nothing. He rejected this notion, however, based on the commentary of Mordechai<sup>2</sup> to our Gemara. Mordechai also dealt with a

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Rosh explains the rationale of Ri"ף who rules according to R' Akiva, although the rule is that we usually do not follow him when he is opposed by multiple contenders. Immediately after the opinion of R' Akiva appears in the Mishnah, Ben Azzai responds and says that it is bad enough that we find a disagreement in the previous Mishnah, but now R' Akiva comes to create a disagreement when we finally found that Beis Hillel and Beis Shammai agree! This indicates that Ben Azzai is the author found in Tanna Kamma, and the halacha follows R' Akiva when he is opposed by Ben Azzai. It is also reasonable to say that in the previous Mishnah that the נכסי מלוג remain with the heirs of the wife, as she was the principal owner of the property. Here, too, the property of the mother should remain with her heirs. ■

case of a couple with many children who died when their home collapsed and there was a debate amongst authorities whether the heirs of the woman should receive less than half the estate since the majority of possible outcomes would leave them with nothing to inherit. Mordechai rejected this because of the principle על מחצה דמי מחצה – Anything that is set in its place is treated as though it is half of the total. Accordingly, we look at the percentages as though they are equal and thus the woman's relatives will be given half the estate. So too in our case, concludes Minchas Yitzchok, we will grant the wife's relatives half of the tzon-barzel property even though there is a greater likelihood that they would not have inherited. ■

1. שו"ת מנחת יצחק ח"א סי' ס"ט.

2. מרדכי סי' תרל"ח. ■

# STORIES Off the Daf

## Silence is wisdom

"אוריא דארץ ישראל מחכים..."

The Sefer Habris, ז"ל, explains the greatness of living in Eretz Yisrael. "We find in Bava Basra 158 that the very atmosphere of Eretz Yisrael imparts wisdom. Any person who is pure of heart and who has any option to immigrate will surely wish to move to Eretz Yisrael. I have never understood the wealthy among us who have the means but don't bother to ascend to the land on which

'the eyes of Hashem are at all times.' How can they be so foolish? Surely if anyone who moved to Eretz Yisrael was granted a large sum of money they would have moved long ago. It is surely fitting for any person who is able to run to the land, just like a young child races to his mother's lap with great longing and joy. The Jewish nation is only called an am echad when we are on our land. This is clear from the verse, 'עשיתי אותם עם אחד' - בארץ בהרי ישראל 'one nation in the land, in the hills of Yisrael.'<sup>1</sup>

"But what should one do if he truly cannot immigrate to Eretz Yisrael? He

must visit, of course. Since even treading four cubits in the land with the intention of accepting its unique holiness affords one a portion to the world to come, surely one visit impart wisdom as well."<sup>2</sup>

Once, when the Imrei Emes, ז"ל, visited Eretz Yisrael, he met Rav Kook, ז"ל. When Rav Kook asked him if he could feel the wisdom imparted by the holy land entering into him, the Rebbe responded with characteristic sharpness. "Don't our sages teach: סייג לחכמה שייג לשתיקה?"<sup>3</sup> ■

1. ספר הברית, ח"א, מאמר ז', פרק ו'

2. עיני כתובות, דף ק"י, ופניי שם

3. אמרי אמת, ליקוטים, דף ע"ט ■