



Volume 4. Issue 18

## Inheritance

This week we learnt above the law of inheritance. The *Torah* (*Bamidbar* 27: 8-11) sets out strict guidelines regarding the rightful heirs. We also learnt about the hierarchical system that determines who inherits the deceased's property in the absence of those initial heirs (8:2).

This system is described in the *Torah* as "*chukat mishpat*" (a statute judgement) such that one is not allowed to divert from this system. One example of this is that we learnt (8:5) that even if one said, "my son will not inherit with his brothers" it is meaningless and has no effect.<sup>1</sup>

One might understand these laws as the *Torah* dictating how a deceased person's property is to be transferred or divided. The *Sefer HaChinnuch* (400) however explains that:

...the rights of the heir are attached to the property of the one who leaves it to him, and as the power of the one who leaves the legacy is removed from the property, upon his death, the rights of the heir take effect over it immediately paralleling [nature's lifecycle in which young replace the old].

It appears that there is no break; no settlement period. Rather the heirs have a connection to property. When a person passes away, their own right disappears; one cannot take their worldly possessions with them. Consequently the transition is immediate.

There is one exception where a person may alter some components of the inheritance. We learnt (8:5) that *R' Yochanan ben Bruka* maintains that the *Torah* also gave one the ability (in his lifetime) to select a single person as the sole heir from a pool of rightful heirs. The two examples brought are selecting one son from

many sons and selecting one daughter from many daughters.

We have learnt however that in the absence of sons and daughters (and a father) the brothers share the inheritance. One question may be asked, in such a case can one select one brother as the sole heir? Is there any reason to differentiate?

*R' Akiva Eiger* (*Choshen Mishpat* 281) explains that it depends on how the brothers become the heirs. If they are the heirs directly<sup>2</sup> then the principle should be applicable in the same way as it is regarding sons or daughters. However there is another way to understand how the brothers become heirs. It might be that in the absence of sons and daughters, the deceased's father becomes the heir, even "in the grave". As the deceased's father has also passed away, then the deceased's brothers inherit by virtue of them being the heirs to the father's property.<sup>2</sup> In such a case, the person would have no control of the allocation and would not be able to isolate one brother over the other brothers.

The *Rambam* (*Nachalot* 6:2) writes that same rule applies to selecting one brother from many. Consequently *R' Akiva Eiger* maintains that the *Rambam* must understand that the brothers are direct heirs (the first understanding).

The *Kzot Ha'Choshen* (281:2) however maintains the *Rambam* can hold that one may isolate one brother yet still hold that the brothers are only heirs via the deceased's father. He argues that the *Rambam* may understand that since the father (who inherits "in the grave") does so only by virtue of the deceased, he maintains the right to channel the inheritance in such a manner.

**David Bankier**

<sup>1</sup> For those interested in the validity or possible options regarding modern wills, please consult your local *Halachic* authority.

<sup>2</sup> *Beit Yosef, Choshen Mishpat* 253.

<sup>3</sup> This is the understanding of the *Darkei Moshei* (*Ibid*).

## Revision Questions

בבא בתרא ו' ז' – ח' ח'

- What is the law regarding a case where a public pathway is running through person's field, and he allocates a another pathway on the side of his field as a replacement? (ו' ז')
- How wide is: (ז' ו')
  - A private path?
  - A public path?
  - A "king's way"? What else is the same width?
- How large is a grave site? (Include both opinions) (ח' ו')
- What is excluded when a person sells another a *beit kur* of "soil"? And when is it included? (ז' א')
- How is the *beit kur* measured? (ב' ז')
- What is the law if the actual land is smaller or larger? (ב' ז')
- How is the law different if the seller said:
  - "Approximately a *beit kur*"? (ז' ב')
  - "A *beit kur* between these markers"? (ז' ג')
- According to *Ben Nanas* what is the law if the seller used both the terms "measured" and "approximately" when selling the *beit kur*? (ז' ג')
- Regarding a case where a person sells half a field: (ז' ד')
  - On what basis is the division determined?
  - On whose property is the dividing fence built?
- How wide is a *charitz*? A *ben charitz*? (ז' ד')
- Which three cases are: (ח' א')
  - *Nochlin u'manchilin*?
  - *Nochlin ve'lo manchilin*?
  - *Lo nochlin u'manchlin*?
- List the order of people that inherit? (ב' ח')
- How many portions did the daughters of *Zlophchad* receive? (ז' ח')
- From what inheritance does the *bechor* not take a double portion? (ז' ח')
- Regarding the previous question, what other special law applies to that inheritance? (ז' ח')
- Can someone exclude a son from his inheritance? (ח' ה')
- In what manner can one give more of his inheritance to one child over another? (ח' ה')
- What is the discussion regarding a person how gave away all his possessions to another, even though he had children that would have inherited it? (ח' ה')
- Is a person believed if he says "this is my son"? "This is my brother"? (ח' ו')
- Regarding the second case in the previous question, provide two practical ramification of this law? (ח' ו')
- Explain the debate regarding how one can ensure that his possessions are transferred to his son after he dies. (ז' ח')
- Regarding the previous question, what are the practical ramifications of such an approach? (ז' ח')
- Why is it harsher if a young girl is an heir amongst only sisters as apposed to being amongst brothers? (ח' ח')

## Local Shiurim

### Sunday -Thursday

Between mincha & ma'ariv  
Mizrachi Shul

### Friday & Shabbat

10 minutes before mincha  
Mizrachi Shul

### Audio Shiurim on-line!

- [613.org/mishnah.html](http://613.org/mishnah.html)
- [www.shemayisrael.com/mishna/](http://www.shemayisrael.com/mishna/)

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## Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
23 <sup>rd</sup> September י"א תשרי	24 <sup>th</sup> September י"ב תשרי	25 <sup>th</sup> September י"ג תשרי	26 <sup>th</sup> September י"ד תשרי	27 <sup>th</sup> September ט"ו תשרי סוכות	28 <sup>th</sup> September ט"ז תשרי סוכות	29 <sup>th</sup> September י"ז תשרי
Bava Batra 9:1-2	Bava Batra 9:3-4	Bava Batra 9:5-6	Bava Batra 9:7-8	Bava Batra 9:9-10	Bava Batra 10:1-2	Bava Batra 10:3-4

