



Volume 4. Issue 19

The Order of Death

When a matter comes before a *Beit Din* for a decision, there is often uncertainty as to the facts of the case. The *Beit Din* has to consider the evidence before it and in some cases there is conflicting evidence. There are detailed *halachot* which govern the admissibility of evidence and the validity of witnesses. Within the parameters of these *halachot* the *Beit Din* attempts to ascertain the facts and it then proceeds to determine the appropriate *psak*.

However, sometimes there is no evidence clarifying the facts. An example would be where a house collapses and two people are killed (the last three *Mishnayot* of *Perek* 9). The order of death can be critically important when determining how to apportion the estates. In these circumstances it is often not possible to know who was killed first.

For example, if the two people who are killed are husband and wife and they have no children:

- if the wife was killed first (even if the difference in time was only a moment) the husband will inherit the wife's possessions, and on his death, these possessions will pass to his heirs; or
- if the husband was killed first the wife's property will pass to her family.

These types of issues are not uncommon and they occur in secular law as well. To deal with this issue, the civil law in many countries consider the deaths to have occurred in order of seniority, i.e. the person who is older is assumed to have died first.

The *Halacha* deals with this uncertainty differently. The general principle is that the possessions are considered to be the property of whoever had them at the time of death. The burden of proof is on the party who wants to challenge that and thereby establish that the possessions should be transferred to the other party. For example, property that is in the wife's

possession at the time of her death will be inherited by her family unless the heirs of the husband can prove that the wife was killed first (in which case the property will be inherited by the husband and then passed on to the husband's heirs).

The secular law has decided upon an arbitrary solution to deal with the uncertainty. Yet, the Jewish law approach also does not appear to guarantee the correct result. However, *Chazal* teach us that when there is a properly constituted *Beit Din*, *Hashem* Himself stands amongst the judges (so to speak) and assists them to reach the correct decision (see *Rashi* to *Bereishit* 18:1). In cases where the *Beit Din* is not able to reach the correct decision, *Hashem* may cause events to occur in such a way that the money eventually ends up in the right hands. (For an example of where *Hashem* orchestrates events to cause justice to be done see *Rashi* to *Shmot* 21:13). We must also remember that any residual wrongdoing will be compensated in *Olam Haba*.

We are obligated to engage in *hishtadlut*, to exert ourselves in pursuing justice (*Devarim* 16:20). However at the end of the day, we are subject to human limitations and we can only do what we can humanly do. Beyond that point, we have faith that *Hashem* is controlling the world and that He will ensure that everything turns out for the best. Only *Hashem* knows the answer to the question of who died first and who is entitled to the inheritance.

This is a timely message for this time of year. As we leave the apparent security of our homes of bricks and mortar and move into our flimsy *sukkot*, we realise our human limitations and recognise that the true answer to everything and source of our security is *Hakadosh Baruch Hu*.

Allon Ledder

Revision Questions

בבא בתרא ט' א' – י' ד'

- How is the inheritance managed if the deceased leaves sons and daughters and the inheritance is: (ט' א')

 - Large?
 - Small?

- Regarding the previous question what if one of the children was a *tumtum*? (ט' ב')
- What other case is raised in the *Mishnah* where a child being a *tumtum* has similar implications? (ט' ב')
- What is the law regarding a case where there are both adult and minor heirs, and the adult brothers develop and increase the value of the inheritance? (ט' ג')
- When is the law in the previous case different? (ט' ג')
- Regarding the previous two questions, what other case is similar? (ט' ג')
- What is the law regarding brothers that are supported by the inheritance where one brother: (ט' ד')

 - Receives a significant promotion?
 - Become ill and used significant finance to heal?

- What are *shushvinot* and why is it important to the case in the previous question? (ט' ד')
- If a wedding is broken off, when are the *sivlonot* returned and when are they not? (ט' ה')
- What is a *matanat shchiv mera*? (ט' ו')
- If the *shchiv mera* recovers, when can he renege on the *matana*? (ט' ו')
- What are the three opinions regarding the formulation of a *matanat shchiv mera*? (ט' ו')
- What case is discussed where there would be a dispute and how is it resolved if a house collapsed on:
 - A man and his father? (ט' ח')
 - A man and his wife? (ט' ט')
 - A man and his mother? (ט' י')
- What is the difference between a *get pashut* and a *get mekushar* regarding:
 - The location of the signatures? (י' א')
 - The number of witnesses? (י' ב')
- What is the law if two different sums of money were written in a loan document? (Include two different cases.) (י' ב')
- Can a *get* be written in the absence of the wife? (י' ג')
- What other two cases share a similar law to the previous question? (י' ג')
- Regarding a share-cropping agreement, who finances the writing of the contract? (י' ד')
- What does *Rabban Shimon ben Gamliel* argue regarding settlement documents produced by *beit din*? (י' ד')

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
- www.shemayisrael.com/mishna/



www.
mishnahyomit
.com

Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
30 th September י"ח תשרי	1 st October י"ט תשרי	2 nd October כ' תשרי	3 rd October כ"א תשרי	4 th October כ"ב תשרי	5 th October כ"ג תשרי	6 th October כ"ד תשרי
Bava Batra 10:5-6	Bava Batra 10:7-8	Sanhedrin 1:1-2	Sanhedrin 1:3-4	Sanhedrin 1:5-6	Sanhedrin 2:1-2	Sanhedrin 2:3-4

