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**TALMUDIC METHODOLOGY**

**By Rav Moshe Taragin**

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**Shiur #06: A Father Inheriting His Son**

The first *mishna* in the eighth *perek* of *Bava Batra* lists the order of inheritance. The verses in *Bamidbar* 27 provide several candidates for inheritance as well as a general “pecking order.” A son inherits first; a daughter inherits in the absence of a son. The *pesukim* do not EXPLICITLY address a case of a father inheriting his childless son, since this constitutes a tragic circumstance. However, since the Torah DOES describe an uncle inheriting a childless nephew, it is quite apparent that a father can inherit his childless son as well. Presumably, the uncle of a childless nephew only inherits “through” his brother, the father of the deceased. Even without outright mentioning the case of a father who buries his son and inherits him, the Torah insinuates his rights.

What is less obvious is the “ranking” of paternal inheritance. Undoubtedly, children of the deceased would precede parents of deceased in inheritance. However, would the father precede a sibling of the deceased? The *gemara* considers this “contest” and rules in favor of the father since the *pasuk* describes the father as “*she’eiro*” and a primary inheritor.

Logically, the father’s ranking based on “*she’eiro*” can be understood in two different fashions. Perhaps the term underscores that he is a closer relative to the deceased than siblings (although he is more distant than children of deceased). By intensifying a father’s level of closeness to the deceased, he becomes ranked higher than siblings in the inheritance chain. Alternatively, he may not be ranked higher or closer as a relative to the deceased than the siblings. Rather, the term *she’eir* assigns a status – extrinsic to the question of who is a closer relative – which warrants his receiving “first dibs” ahead of siblings. In pure metrics of who is a closer relative, the father does not outrank the siblings, but he possesses an additional status that propels him to “victory” over the siblings.

In many ways, these two understandings of the father’s inheritance status hinge upon an interesting exchange regarding the son of the deceased inheriting prior to the father. Having established the *she’eir* status of the father, the *gemara* wonders whether he should preempt EVEN the son of the deceased, effectively becoming the FIRST inheritor. The *gemara* cites the next word in the *pasuk*, “*she’eiro* HA-KAROV,” “who is a [close] relative,” and interprets, “*ha-karov* *kodem*” – the relative, such as a child, precedes the father. By contrasting the child’s status as “*karov*” with the father’s status as “*she’eir*,” is the *gemara* undercutting the father’s status as “*karov*,” a relative? Perhaps the father ranks relatively low as a relative, but his priority above brothers of the deceased is based on the additional status as *she’eir* (which outranks siblings, but not children). The son of the deceased is prioritized since he is the closest *karov* – a relative. This status allows him to outrank the father of the deceased. The father isn’t a relative. His only leverage is that he is “*she’eir*.” Or does the *gemara* merely intend to position the child as a CLOSER relative than the father? If so, the term *she’eir* upgrades the father’s status as relative (ahead of siblings), but even though he is a closer relative, he is not closer than the children of the deceased.

Understanding the father’s status may impact two related issues. First, can this status be automatically applied to account for the father inheriting his childless daughter? If the father has been assigned as a penultimate closest relative to his male child, it would be reasonable to apply that status to his daughter as well. The paternal relationship does not differ between genders. However, if the *she’eir* status does not reflect the closeness of the father, but rather a unique, extrinsic halakha, perhaps THAT dynamic is unique to father and son. Both the Ramban and Rashba highlight the father’s FINANCIAL rights upon his daughter as basis for his inheriting his daughter. A father collects his minor daughter’s *kiddushin* money, as well as several others profits referred to as “*shevach ne’urim.*”If he has FINANCIAL access during her life, he should certainly inherit her posthumously. By identifying a special element unrelated to inheritance which warrants a father inheriting a daughter, perhaps these *Rishonim* are implying that the father does not enjoy ultimate relative status with his son, but rather some distinct *she’eir* relationship which is not automatically reflected in the father-daughter relationship. As such, inheritance of a daughter has to be otherwise justified.

In theory, this implication that a father isn’t a closer *karov* but leveraged as *she’eir* seems logical. However, the Ramban himself, in his commentary to the Torah, resoundingly establishes a father as ultimate RELATIVE to his son, rather than the beneficiary of some extrinsic *she’eir* status. Yet for some reason, in his commentary to *Shas*, he felt compelled to identify a separate reason to justify a father inheriting his daughter.

A second point of consideration concerns the possible *she’eir* status of a mother. If a father enjoys *she’eir* status and inherits his childless son, shouldn’t a mother be similarly empowered (perhaps in the absence of a father)? The *gemara* (109b) suggests this scenario but rejects it based on a *derasha* that maternal family is not considered halakhic “FAMILY.” Why should the absence of “family” status prevent a mother from enjoying the status of *she’eir* if *she’eir* status is INDEPENDENT of family relationships? Does this indicate that *she’eir* is itself a deepening of the relationship of relative – a deepening that presumes basic family relationship? Or perhaps the exclusion of a mother from the privilege of *she’eir* is purely textual. Since the *she’eir* term is followed by the term “*mishpacha*,” it can only pertain to someone who also possesses (independently) the status of *mishpacha*.

This may seem like a minute difference, but it can impact a very interesting question. Would a GRANDFATHER of a deceased person precede a sibling of the deceased (obviously in a situation in which the father of the deceased had already passed away)? This is actually a *machloket* (*Bava Batra* 116b) between Rava, who claims that he would, and Rami bar Chama, who claims that the sibling would precede a grandfather. Although this debate may revolve around the nature of sibling inheritance, it may also be impacted by the nature of paternal inheritance. If a father is a closer RELATIVE than a sibling, he may also be first inheritor for a grandchild. Fathers may take priority to siblings because they – dead or alive – are closer relatives. By extension – a grandfather would be considered a “close” relative to the deceased than the siblings are. However if the father is not considered a closer relative than a brother but merely receives first inheritance since he possesses a unique *she'eir* status - perhaps a grandfather does not triumph over a sibling. A father may be considered *she'eir* but not a grandfather.