YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**TALMUDIC METHODOLOGY**

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**Shiur #08: A Son Inheriting his Father**

The Torah’s list of the sequence of inheritors concludes with “*ha-karov*,” “THE relative,” suggesting there is a "super" relative who precedes all other inheritors. The *gemara* (108b) deliberates who this super-inheritor is and concludes that it refers to a son, who inherits before all others. Is his inheritance FIRST or DIFFERENT? In other words, is his position of privilege due to his being FIRST in the pecking order or is it a result of his inheritance working through a different mechanism entirely?

A different phrase in this *parasha* may indicate that a son's inheritance is structurally unique. In describing the inheritance of a daughter, the Torah writes, "If there is no son, the inheritance should be TRANSFERRED to the daughter." The fact that the Torah employs a verb describing a daughter's inheritance (in the absence of a son) but does not employ any verb describing the awarding of the inheritance to a son alerts us to the possibility that a son inherits through an entirely different mechanism - one that should not be described through a verb.

Several *gemarot* indicate this point, employing the term "*kam tachat aviv*" (“he steps in place of his father”) to describe the role of a son. The phrase is used outside the context of *yerusha* to describe general activities that a son can perform "in place” of his father. For example, the *gemara* (*Erukhin* 25) describes the redemption of family tracts of land (*sedei achuza*). If an individual personally redeems lands that he dedicated to *hekdesh*, unique *halakhot* apply; if others redeem those lands, different perameters apply. The gemara claims that a son who redeems is equivalent to a father who redeems HIS OWN land, since the son is *kam tachat aviv.* This status – that of a son who replaces or continues in the footsteps of his father – allows him to redeem lands in ways that others cannot.

This unique status and function is already described by the Torah, which allows a son to “marry” a Jewish female servant who his father had indentured. When a son performs *yi'ud* upon this girl, he can even marry her through the original money with which the father purchased this servant, without delivering additional *kiddushin* money (at least according to one position in the gemara in *Kiddushin*). No halakha can more compellingly indicate that a son can replace his father than the son's ability to step into his father's *yi'ud* marriage'!

These two instances highlight the son's ability to act on behalf of his father DURING HIS FATHER'S lifetime. Does this mechanism also explain the son's [unique] inheritance of his father? Unlike others, who are merely relatives of the deceased, does a son actually step in and replace his father by “assuming” the estate? If this were true, we would expect that a son can inherit items which others cannot.

The first indication that a son’s INHERITENCE is different stems from a *gemara* in *Kiddushin* (17b) that allows a son to “receive” his father's *eved ivri* after his father's death. Presumably, this reinforces the concept of a son's unique *yerusha*, as HE ALONE receives the *eved ivri*; in his absence, other inheritors do not, and the slave is emancipated.

However, it is unclear if the son's receiving his father's *eved ivri* is based upon *yerusha*. After all, the father does not truly OWN a Jewish slave in the same manner in which he owns land or an *eved kena'ani*. Perhaps – as the Minchat Chinukh argues (*mitzva* 42) – the transfer of an *eved ivri* to a son is not based upon *yerusha*, but on a completely separate mechanism. Although many disagree with the Minchat Chinukh, if we adopt his approach, we cannot prove a son's unique apparatus of inheritance from the fact that he receives his father's *eved ivri*.

However, a *gemara* in *Nazir* (30b) DOES indicate the son's unique status. The *mishna* claims that a son can use the *korban* of his *nazir* father. The ensuing *gemara* describes the case of a father and son who were simultaneously *nazirs* and the father designated monies for his post-*nazir* *korban* and subsequently died. The son can use those designated monies for his own post-*nazir korbanot*, and thereby avoid further expense. Since OTHER inheritors CANNOT use these monies, it would appear that a son possesses unique abilities to inherit items which others cannot.

However, in this case as well, it is unclear whether this privilege is based upon classic *yerusha* patterns. After all, the origin of this privilege is a *halakha le-Moshe mi-sinai* and it is unclear whether the apparatus is one of *yerusha* or some different mechanism. In fact, it appears that the *gemara* itself probed this question when it wondered whether a *bechor* *nazir* would enjoy a double share of the father's *nazir–korban* monies. Apparently, the *gemara* is exploring whether the ability to use these monies in truly based upon *yerusha* (so that a *bechor* would enjoy double privileges) or is unrelated to *yerusha* and based on a different mechanism (so that a *bechor* is not entitled to a double portion). Once again, we may be thwarted in our attempt to prove the unique inheritance mechanism of a son.

Perhaps the most compelling proof of a son's unique apparatus stems from his ability inherit something which no other inheritor can receive – rights to prosecute *kenas* payments. Unlike compensatory payments (known as “*mammon*” payments), halakhic fines are IMPOSED by *beit* *din* and are not considered tangible debts or tangible owed monies until *beit* *din* adjudicates the case and levies the fine. Thus, for example, the fines owed by a rapist are only transferable once *beit* *din* levies them. Before *ha'amada be-din* (*beit* *din*'s verdict), entitlement to fines cannot be inherited because they do not exist as financial entities. However, the *gemara* DOES allow a son of a rape victim who died to prosecute and collect from the rapist. This unique ability to inherit a “right of prosecution and collection” indicates that a son does not merely receive transferred monies from his deceased father's estate. If this were the extent of his inheritance, he would not receive non-monetary rights, such as the right to prosecute. Evidently, he “assumes” his father's (and in this case, his mother's) identity and can pursue her rapist.

This question may have stirred an interesting *machloket* between Rava and Rami bar Chama (*Bava Kama* 111b). If a victim of theft surrenders hope of recovery (*yi'ush*) and the item is transferred by the *gazlan* to a different ownership – *shinuy reshut* – the item can no longer be reclaimed by the *nigzal*. Of course, the *gazlan* owes remuneration, but the item has been “acquired” by the *gazlan* through *yi'ush* and *shinuy reshut*. Would a son inheriting stolen items from his father – a *gazlan*- constitute *shinuy reshut*? Rami bar Chama felt that it does, while Rava claimed that *reshut yoresh lav ke-reshut lokei'ach dami*. This debate may very well revolve around the aforementioned question. Rami bar Chama viewed a son as a classic *yoresh* who acquires *yerusha* from his father. The money has actually been transferred from one *reshut* to another and *shinuy reshut* has occurred. Rava may have viewed a son as “assuming” his father's identity; hence, the *yerusha* does not TRANSFER from one owner to another and no *shinuy reshut* has occurred.

Interestingly, Rava and Rami bar Chama engaged in a very different debate in *Bava Batra* 116b which might stem from the same disagreement first noticed in *Bava Kama* 111b. The *gemara* cites a scenario in which Yitzchak has already passed away when afterwards his son Esav passes away as well, but without children. In the absence of a child or father, Esav's inheritance can pass to either his grandfather Avraham or his brother Yaakov. Rami bar Chama claims that obviously Yaakov should triumph. Yitzchak, the father of the deceased, “inherits” the childless Esav, but since Yitzchak is dead, we transfer the inheritance to HIS closest inheritor, his son Yaakov, the brother of Esav. How could Rava allow Avraham – the grandfather of the deceased and the father of Yitzchak, the first inheritor of the deceased – to preempt the son of Yitzchak, the brother of the deceased?

Evidently, Rava viewed the general preference of a son over a father as irrelevant to this situation. If a son's prioritization stems from his ability to step into his father place and assume his identity, he may only assert that role if his father has JUST died and the son is taking control of the father's estate. In this instance, however, Yaakov's father Yitzchak has died well before the current inheritance episode unfolded. Yaakov is vying with Avraham to receive secondary inheritance from Esav THROUGH Yitzchak. Perhaps the son cannot assert primacy in this case and Avraham becomes first inheritor of his son Yitzchak, who posthumously has inherited his son Esav. The very unique strength of the son's inheritance LIMITS his advantage to cases in which he can be seen as actually entering his father's footsteps.