



Unlawful Estates

The eighth *perek* discusses the laws of inheritance. The *Mishnah* (8:5) teaches that if a father declares that his first born will not receive double share, or that one of the son's will not receive a share of the inheritance, it has no effect since it is an going against the *Torah* law. We shall try to understand this *Mishnah*.

The *Gemara* (126b) notes that the principle that one cannot stipulate against a *Torah* law is the subject of debate when the matter is financial. The example brought is in the case of *kiddushin* where the man stipulates that he will be exempt from providing for her. *R' Meir* argues that since it is a biblical obligation, the condition falls away, whereas *R' Yehuda* argues that the condition holds. Considering that our *Mishnah* is a financial matter, it would appear that it does not accord with the position of *R' Yehuda*. The *Gemara* however asserts that even *R' Yehuda* would agree with the ruling in our *Mishnah*. That is because in this case, he only maintains that such conditions can work, where both parties are aware and forgo their financial right. In this case, the rightful heir does not forgo his right. The *Rashbam* explains that even if the son was present and remained silent, it does not mean that he agreed. His silence is simply because he did not want to upset his father.

The *Rashba* understand that according to the *Rashbam*, if the son accepted the condition to part with his share of the inheritance, then it would indeed work. The *Rashba* however disagrees. He maintains that one cannot forgo something that will eventually be his (by way of inheritance) but is not his now. The example he brings is that one if one tries to sell property that he will eventually inherit, it does not work. When the *Gemara* states that *R' Yehuda* would agree with our *Mishnah* because he has not been *mochel* (given up his share) it is meant to be

understood as follows. Even if you would think *mehila* could work, in this case the son has not been *mochel*.

The *Ketzot* (278:13) cites three different explanations. The first is the *Tosfot* (*Ketubot* 83a) who explains that it is only rabbinic enactments that one can stipulate to forgo. The second is the *Ran* (*Ketubot* 41a, *Rif*) who explains that one can even remove a biblical right. In the case of inheritance however, since he is fit to inherit at any moment, it as if the right has already be realized and it is already in his possession. Finally, he cites the *Magid Mishneh* he cites others who explain that there is a difference between the husband right to inherit, which can be forgiven and this case. The difference being that the right itself came about through his actions.

How then do we understand that *Rashbam*? The *Ketzot* explains that the *Rashbam* was only explaining the case of the *bechor*, where if he agreed to give up his double share then it would work. Importantly, the result would be that he is no different to his brothers. Why is the double-share any different? The *Ketzot* explains that the *Torah* refers to it is a *matana*. That being the case, even after the father dies, he would be able to refuse the "gift". Consequently, he would be able to stipulate against it even during his father's life.

This understanding works according to all three explanations above. According to *Tosfot*, even if it is biblical, it would not be problem, because, again, it is a gift. According to the *Ran*, since after death he can refuse that share, it means it is different to other inheritance where removing himself is not possible. Finally, according to those cited by the *Magid Mishneh*, since the gift is dependent on his receipt, it too is considered dependent on an action.

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Revision Questions

בבא בתרא ח' ה' – ט' י'

- 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 who 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' י')
- Regarding the second case in the previous question, provide two practical ramifications of this law? (ח' י')
- Explain the debate regarding how one can ensure that his possessions are transferred to his son after he dies. (ח' י')
- Regarding the previous question, what are the practical ramifications of such an approach? (ח' י')
- Why is it harsher if a young girl is an heir amongst only sisters as apposed to being amongst brothers? (ח' י')
- 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')

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
15 December י"ד כסלו	16 December ט"ו כסלו	17 December ט"ז כסלו	18 December י"ח כסלו	19 December י"ח כסלו	20 December י"ט כסלו	21 December כ' כסלו
Bava Batra 10:1-2	Bava Batra 10:3-4	Bava Batra 10:5-6	Bava Batra 10:7-8	Sanhedrin 1:1- 2	Sanhedrin 1:3- 4	Sanhedrin 1:5- 6

