

## Section 20

### Mourning and Inheritance

The fundamentals of the laws of inheritance and mourning are not found in the Torah. The laws of inheritance predate the Torah and are known through *sevel hayerushah*. These laws are also discussed in the written text in Numbers 27. The fundamentals of mourning are known through reason and are clarified through Scriptural references.

The topics covered in this section are:

1. Source of the Requirement to Mourn
2. Whom Must One Mourn
3. How One Must Mourn
4. Time of Inheritance
5. Priority of Inheritance
6. Children's Inheritance
7. Parent's Inheritance
8. Spouse's Inheritance
9. First Born's Inheritance
10. Non Believer's Inheritance

*"Any Israelite is required to comfort the mourner that is in his community with food and drink...because the mourner out of his great bitterness will not care to prepare food for himself, and, even if they bring him prepared food, he will not enjoy it unless one pressures him to enjoy. Therefore, all the people of his community shall comfort him according to a schedule for all seven days...such that there should not remain one day without comfort [for the mourner]." -Adderet Eliyahu's Dinei Avelut Ch. 2.*

#### §20.1 Source of the Requirement to Mourn

The Sages disagreed on whether one is *halakhically* required to mourn one's close relatives (§20.2). A minority of the Sages held that one is not required to mourn the dead because God commanded several biblical figures not to mourn the dead. In particular, God commanded Aaron not to mourn the death of his sons (Leviticus 10:6). God also commanded Ezekiel not to mourn the death of his wife (Ezekiel 24:16-18). Finally, King David chose not to mourn the death of his newborn son (2 Chronicles 12:21), and Scripture does not criticize him for his choice.

Most of the Sages, however, held that one is required to mourn certain relatives (§20.2). These Sages argued that Aaron, Ezekiel, and King David did not mourn because Kings and prophets should not mourn on account of their prophetic ability or because they had "*ruach hakodesh*" ("the spirit of God") upon

them. According to these Sages, neither prophetic ability nor “*ruach hakodesh*” manifests itself in those who are sad.<sup>1</sup>

As for the source of the requirement to mourn, *Adderet Eliyahu* explains that reason requires us to mourn. First, *Adderet Eliyahu* argues that it is natural for man to mourn his kin. Second, man ponders his loss through mourning and is in this manner set apart from animals who do not dwell on their losses or their gains. Finally, in mourning one reflects on the reason for the loss and adjusts his practice to avoid further losses. Mourning is done for the sake of the deceased’s living relatives, not for the deceased himself.

#### Notes on §20.1:

##### *Why is the Requirement to Mourn not Learned Through Sevel Hayerusha?*

In most cases, *mitzvot* not explicitly mentioned or detailed in the Torah were practiced pre-Sinai. Such *mitzvot* are generally learned through *sevel hayerusha* (“Notes on §1.6”). Why, then, does *Adderet Eliyahu* not claim that the requirement to mourn is derived from *sevel hayerusha*, especially given the *Adderet’s* claim that mourning predates the Torah? The answer is that in order for a commandment to be considered valid *sevel hayerusha*, it must be accepted by “all Israel” (§1.6). However, some of the Sages held that mourning was not a requirement. Their dissent means that this unanimity condition is not satisfied with respect to mourning.

##### *Is There Truly a Requirement to Mourn?*

While I believe that reason demonstrates that mourning the loss of loved ones is conducive to good character, I am unsure that Karaite mourning rites find a sufficient legal basis in reason. For example, even if it is rational to mourn one’s loved ones, is it rational to be required to mourn only one’s close family? Should one not also mourn a beloved teacher, close friend, or grandparent? Why should “reason” draw the line at one’s nuclear family to the exclusion of other family members? What if one never knew one’s biological father; is it still rational to mourn him? Furthermore, are the specific mourning rites that some Sages held to be required (§20.3) the only ones that could be derived through reason? In short, because the basic details of whom and how to mourn are not derivable through reason, I doubt that there is a *halakhic* requirement to mourn.

Rather, I believe that mourning is an expression of good character traits (*midot*), which are commendable but not *halakhically* required (§1.1). *Midot* are learned through the various narratives in *Tanakh*, instead of through direct commands (§1.1). Therefore, the many references to mourning in Scriptural narratives and the absence of any Scriptural command to mourn further indicate that mourning is an expression of *midot*.

##### *Priests and Mourning?*

Some Sages cite God’s command to Ezekiel not to mourn his wife as evidence for the position that mourning is optional. Ezekiel, however, was a *kohen*. It is questionable whether regular *kohanim* may mourn anyone but their parents, children, and siblings. This is because Scripture explicitly prohibits a *kohen* from becoming ritually impure through contact with a corpse other than the corpse of his parent, child, brother, or sibling (Leviticus 23:1-3). But does the fact that he may not become “impure” through anyone but these relatives also imply that he may not mourn anyone but these relatives? Scripture prohibits the *Kohen Gadol* from mourning or becoming

<sup>1</sup> For example, the Torah does not record a single revelation between God and Jacob, from the time Jacob was told Joseph was dead until the time Jacob learned that Joseph was indeed alive (see Genesis 46:2).

impure for anyone (Leviticus 21:10-11). Therefore, one could argue that a regular *kohen* should similarly not mourn anyone but the relatives for which he may become impure<sup>2</sup>.

In “Notes on §13.4b”, I speculate that *Adderet Eliyahu* holds this very position (a *kohen* may not mourn anyone but his parents, children, or siblings). This would mean that a *kohen* could not mourn his wife. If regular *kohanim* are prohibited from mourning their wives, then the example of Ezekiel not mourning for his spouse provides no support for the opinion that mourning is optional. Yet, *Adderet Eliyahu* makes no mention of Ezekiel’s priestly status in its refutation of the position that mourning is optional. This is evidence either that 1) contrary to my contention in “Notes on §13.4b”, Rav Bashyatzi held it permissible for a regular *kohen* to mourn whomever he chooses; or 2) that at least some of the Karaites Rav Bashyatzi was trying to convince held mourning to be permitted for *kohanim*.

#### *The Case of Aaron and His Sons*

Aaron’s sons, Nadav and Avihu, died after burning a “strange fire” (Leviticus 10:1) in the Tabernacle. God commands Aaron to refrain from mourning his deceased sons (Leviticus 10:6). God also commands Aaron’s surviving sons, Elazar and Itamar not to mourn their brothers.

The Sages who hold that mourning is not a requirement pointed to Aaron’s lack of mourning as evidence for their position. This is surprising, however, because the *Kohen Gadol* is forbidden from mourning any deceased individual (Leviticus 21:10-11, §13.4b), including his sons. Because of this, it would appear that Aaron’s being commanded not to mourn provides no support for the position that mourning is optional. Aaron’s case (Leviticus 10:6) would still be a relevant example, however, if one could show it occurred chronologically before God gave the laws of priestly mourning (Leviticus 21:10-11).<sup>3</sup>

Alternatively, it is possible that the Sages’ reference to Aaron’s lack of mourning was not intended as a reference to Aaron in particular, but rather to the Torah passage containing Aaron’s lack of mourning. The Sages did not use the chapter-verse citation familiar to modern readers to reference Scriptural passages. Instead, they referenced passages by very briefly describing them. Thus, when speaking of “Aaron’s lack of mourning”, perhaps *Adderet Eliyahu* is not referring to Aaron himself, but to the whole passage describing Aaron’s lack of mourning. In this same passage, Aaron’s other sons, Eleazar and Itamar, are also forbidden from mourning Nadav and Avihu (Leviticus 10:6). According to all opinions, a regular *kohen* is permitted to mourn his brothers. Therefore, even if the example of Aaron himself does not shed light on the issue of whether mourning is optional, the fact that Eleazar and Itamar did not mourn still serves as evidence that mourning is not a requirement.

## §20.2 Whom Must One Mourn

Those Sages that held mourning to be *halakhically* required (§20.1) held that one was required only to mourn the passing of certain relatives. According to these Sages, one is required to mourn the death of any member of one’s nuclear family (parent, sibling, half-sibling, child). One is also required to mourn one’s spouse because it is written: “and they shall be as one flesh” (Genesis 2:24). The requirement to

<sup>2</sup> I personally do not find this logic convincing because it generalizes from the major case to the minor case instead of vice versa. While one might assume that all stringencies applying to a regular *kohen* should also apply to the *Kohen Gadol*, it does not seem that stringencies applying to the *Kohen Gadol* need necessarily apply to a regular *kohen*.

<sup>3</sup> To establish which Scriptural laws were given first in time, it is not sufficient to rely on which passages appear first in the Torah. An analysis of which narratives and which commandments might appear in the Torah out of chronological order is beyond the scope of this work.

mourn one's spouse finds further support in the fact that Uriah's wife mourned her husband (2 Samuel 11:27). Furthermore, it is implied that Ezekiel would have mourned for his wife, had he not been commanded otherwise (Ezekiel 24:16-18). In addition to one's nuclear family (including one's wife), one should mourn the nuclear family of one's nuclear family out of respect for one's own nuclear family.<sup>4</sup> However, this is only required when one is in the presence of one's nuclear family. One need not mourn a miscarriage. One should not mourn a non-believer. According to most of the sages, one should not mourn someone for whom a report of their death has been heard without confirmation. Adderet Eliyahu, however, holds that because one mourns for the sake of the living relatives of the deceased, one should still mourn upon hearing a report of death<sup>5</sup>.

### §20.3 How Must One Mourn

#### §20.3a General Practices

Upon the death of Ezekiel's wife, God commands Ezekiel not to mourn. In particular, God forbids Ezekiel from engaging in nine distinct practices. Most of the Sages understood the nine practices forbidden to Ezekiel to be references to what people generally *should* do during mourning. Therefore, based on Ezekiel 24:16-17, the majority of the Sages concluded that one should observe the following nine practices:

1. Lamentation: from the command to Ezekiel: "you shall not make lamentation" (Ezekiel 24:16)
2. Weeping: from the command "nor shall you weep" (Ezekiel 24:16);
3. Crying tears: from the command "nor shall tears run down" (Ezekiel 24:16);
4. Speaking extensively of the deceased: from the command "sigh in silence" (Ezekiel 24:16). In other words, God tells Ezekiel to "Sigh in silence" to prohibit him from explicitly speaking of the deceased. That means that in general one *should* speak of the deceased. ;
5. Making a seven day mourning (a *shiva*) for the dead: from the command "make no mourning for the dead" (Ezekiel 24:17);
6. Uncovering one's head: from the command "bind your headdress upon yourself" (Ezekiel 24:17);
7. Uncovering one's feet: from the command "put your shoe upon yourself" (Ezekiel 24:17);
8. Covering one's upper lip: from the command "cover not your upper lip" (Ezekiel 24:17); and
9. Gathering with friends to have meals of bread and wine: This is as is told to Ezekiel "eat not the bread of men" (Ezekiel 24:17). The term "bread of men" refers to the meals a mourner has with his friends as a source of comfort. This practice is also referenced in Jeremiah: "neither shall men break bread for them in mourning, to comfort them for the dead; neither shall they give them to drink the cup of consolation to drink for their father or for their mother" (Jeremiah

<sup>4</sup> For example, it is commendable to mourn the loss of a son's wife or daughter's husband, even though these relatives-by-marriage are not part of one's nuclear family.

<sup>5</sup> Presumably the family of the deceased are equally distressed upon hearing of the death of their loved one regardless of whether this death is appropriately confirmed.

16:7). This is a requirement for one's friends as well as the mourner. The friends are also required to gather to the mourner for morning and evening prayers.

Rav Binyamin Nahawandi believed that one should also tear one's clothes and wear sackcloth because Jacob mourned in this manner when he thought Joseph had died: "then Jacob tore his clothes and put on sackcloth" (Genesis 37:34). Most of the Sages, however, held that Jacob only did this due to his great grief, not because it is a required mourning practice.

The first four practices in the list above are to be observed between the deceased's time of death and his time of burial. The last five practices, starting with the command to observe the "*shiva*", are to begin after the deceased is buried until the end of the seven day "*shiva*".

### §20.3b *The Shiva*

God's command to Ezekiel to "make no mourning (*evel*) for the dead" refers to what in other cases would be a required seven-day mourning period (traditionally called the "*shiva*"). Joseph is recorded to have performed a seven-day mourning period for his father: "and he made for his father a mourning (*evel*) of seven days" (Genesis 50:10). During these seven days, items 5-9 listed in §20.3a are required acts of mourning.

*Shiva* begins after burial not immediately after death. This is despite the fact that Joseph mourned his father (Genesis 50:10) before his burial (Genesis 50:13). It is possible that in doing so, Joseph was following the Canaanite practice because he wanted to demonstrate to the surrounding Canaanites how greatly he mourned his father. Joseph had similarly observed the Egyptian mourning rites, including embalming, when he was in Egypt (Genesis 50:3).

### §20.3c *After the Shiva*

After the "*shiva*", one is no longer required to mourn. Nevertheless, the Sages held that it is commendable to avoid going to happy ceremonies (such as weddings) for 12 months after the death of one's parents, and for 30 days after the death of another relative. They also held it commendable not to shave during this 30 day period, and to delay shaving as much as is bearable for the 12 month period. Finally, they believed one should avoid wearing lightly colored or beautiful clothing during either the 30 day or 12 month period. At the same time, the Sages warned against excessive mourning because death is part of being human.

## §20.4 Burial

The mitzvah of burying the dead is known through reason and pre-dates the Torah. Accordingly, the Torah does not explicitly command burial. Rather, the obligation to bury is known through *sevel hayerusha*.

The entire community is responsible for burying the deceased. Once any individual or group of individuals has properly buried the deceased, all others are exempt from their requirement. Every community is also required to construct a cemetery.

The deceased should be washed and dressed in simple burial shrouds of linen or white "*moch*"<sup>6</sup>. It is forbidden to bury anyone, whether great or small, in lavish clothing. This is forbidden for three reasons: (i) it shames those families unable to afford such clothing; (ii) it is a wasteful act that accomplishes nothing; and (iii) it is a forbidden foreign practice. Although no coffin is required, it is permissible to place the dead in a simple wooden coffin.

The deceased should be carried on a funeral bed to the grave. Those encountering the funeral bed on its way to the cemetery should accompany the body to the cemetery so as to honor the dead. The deceased should be buried deep enough so as to prevent the scent of his body from reaching above ground. The community is required to place markers on top of graves, as was done for the "man of God" mentioned in 2 Kings 23:17. Furthermore, the community is to inscribe the names of the deceased on these markers so that their names won't be forgotten.

Each person should have their own grave. Two people may be buried in the same grave only under conditions of great duress. It is preferable for one to be buried near one's ancestors just as Jacob requested of his sons: "but when I sleep with my ancestors you shall carry me out of Egypt and bury me in their burying-place" (Genesis 47:30). It is also preferable to be buried in the land of Israel, just as Joseph requested of his kin (Genesis 50:25).

## §20.5 Time of Inheritance

A person's heirs receive his inheritance upon his death. However, a person may choose to gift his property to his heirs when he is near death. Should he do this, however, he must obey all the relevant laws of inheritance. Furthermore, he may not give away gifts in any manner pleases when he knows he is near death, so as not to rob his heirs of their lawful inheritance. He may, however, give away wealth to people whom he needs to thank, even when near death. When he is in good health, he may give away gifts as he so chooses.

## §20.6 Priority of Inheritance

### §20.6a Source of Inheritance

The laws of inheritance predate the Torah and are known through *sevel hayerusha*. The Torah does, however, clarify the laws of inheritance after Tzelophechad's daughters inquire regarding the proper application of these laws.

Upon his passing, Tzelophechad had no living sons. His daughter's then asked Moses whether they could inherit the wealth that would otherwise be bequeathed to Tzelophechad's sons (Numbers 27:4). The

<sup>6</sup> I believe "*moch*" refers to muslim.

Sages explain that although the laws of inheritance had already been established pre-Sinai, Tzelophechad's daughters requested clarification after God had assigned the land of Israel as tribal inheritance. Because tribal land is passed exclusively to male relatives, Tzelophechad's daughters wished to know if all inheritance now passed exclusively through the male line.

*Notes on §20.6a:*

*Gan Eden* brings Scriptural evidence that the laws of inheritance predate Sinai. Rav Aharon notes that Avraham tells God: "behold you have given me no descendant and behold one born in my house [but not of my blood] is to be my heir" (Genesis 15:3).

*§20.6b Moses' Response to Tzelophechad's Daughters*

Moses inquires of God to answer the question posed by Tzelophechad's daughters: could they inherit their fathers wealth given that he had no sons? God responds by clarifying the laws of inheritance:

*"If a man dies and has no son, then you shall give his inheritance to his daughter. If he has no daughter then you shall give his inheritance to his brothers. If he has no brother's you shall give his inheritance to his father's brothers. If his father has no brothers you shall give his inheritance to his nearest kin from his family" - (Numbers 28:8-11).*

According to the simplest literal reading of God's words, priority of inheritance proceeds as follows, with each heir inheriting only in the absence of any heir of higher priority:

1. A person's sons
2. A person's daughters
3. A person's brothers
4. A person's paternal uncles

Scripture makes no reference to parents inheriting anything when their children pass away. Seemingly paradoxically, though, Scripture provides for "paternal uncles" to inherit. Clearly, then, Scripture allows inheritance to pass to the generation of a deceased person's parents. Why, then, does Scripture apparently prefer inheritance to pass to a person's paternal uncles, over a person's parents?

The Sages believed that, because parents generally die before their children, Scripture avoids referencing the tragic case where parents survive their children. Because Scripture allows individuals in the parents' generation to inherit, the Karaite Sages tried to determine what to do in the tragic situation where a child passes away before the parents. In such situations, the Sages held that parents have higher priority in inheritance than one's brothers.<sup>7</sup> This is because one is more closely related to his

<sup>7</sup> That is, if a decedent has no children, his parents – if living – stand to inherit prior to the decedent's brothers and paternal uncles. As discussed below, the Karaite Sages also determined that one's grandparents, if living, inherited before paternal uncles.

parents than to his brothers. Indeed, the relation between a person and his or her brother is only established by way of shared parents.<sup>8</sup>

### *§20.6c General Rules of Inheritance*

I now explain the rules of inheritance according to *Adderet Eliyahu*. The Sages, however, expressed several different opinions regarding these rules, particularly with regards to female heirs (§20.6, §20.7). Even *Adderet Eliyahu* alters the rules given below under certain conditions (§20.6b). I will discuss these caveats later, but I believe it is best to first introduce the reader to a unified theory of inheritance and then to discuss disagreements about the Sages.

*Adderet Eliyahu* adopts the following priority rules of inheritance:

1. one's inheritance is divided among one's sons;
2. absent any sons, one's inheritance is divided amongst one's daughters;
3. absent any sons or daughters, one's inheritance is divided amongst one's parents; and, finally,
4. if one who would have received inheritance is dead, that person's heirs receive what s/he would have received.

Consider the following case as an example application of Rule 4. Reuven has a son, Moshe, and a daughter, Rivka. Moshe sires a daughter Rachel and then Moshe dies. Shortly thereafter, Reuven (the patriarch) dies. In this situation, Moshe's daughter Rachel inherits all of Reuven's wealth and Rivka (Reuven's daughter) inherits nothing. This is because Moshe was Reuven's highest priority heir (Rule 1). Because Moshe was already deceased at the time of Reuven's passing, Moshe's own highest priority heir then receives the inheritance. In short, as a result of Rule 4, Reuven's son's daughter has higher priority than his own daughter.

Let us consider how the rules above explain the chain of inheritance presented in Numbers 27, according to the reasoning of the Karaite Sages. Inheritance passes first to sons ("If a man dies and has no sons"). In the absence of sons, to daughters ("you shall surely cause his inheritance to pass to his daughters"). In the absence of daughters, to parents. However, because Scripture assumes parents die before their children (§20.6b), the written text skips over parents and states that inheritance passes to one's parents' highest priority heirs: one's parents' sons (*i.e.*, one's brothers, "you shall give his inheritance to his brothers"). Should one's parents have no sons, the inheritance would pass to their parents' daughters (*i.e.*, one's sisters), by analogy to the case where one has no sons and the inheritance passes to one's daughters. If one's parents have no other children, inheritance passes to one's parents' parents (*i.e.*, one's grandparents). However, Scripture assumes one's grandparents to have died before one's parents; therefore, Scripture states that inheritance passes to one's grandparents sons (*i.e.*, one's uncles) ("you shall give his inheritance to his father's brothers"). Although the verse mentions only

<sup>8</sup> Indeed, parents usually die before their children. Yet, in historical times and even today in non-Western cultures, the age range of siblings in a family is great. And it would not be uncommon for paternal uncles to outlive their nephews. This is likely the reason that Scripture tells us in which order paternal uncles inherit, but does not tell us (expressly) that parents inherit.

*paternal* uncles, *Adderet Eliyahu* holds that *maternal* uncles also inherit to the same extent that paternal uncles inherit. This is because, according to *Adderet Eliyahu*, a mother's right to inherit her deceased child's wealth is the same as a father's.

Notably, the right of the first born to a double portion (§20.9) must be applied in addition to the above rules when determining inheritance. As previously mentioned, the Sages disagreed regarding the exact priority of female heirs, whether daughters or mothers (see §20.7, §20.8). The rules above reflect *Adderet Eliyahu's* opinion.

## §20.7 Daughter's Inheritance

### §20.7a Introduction

The Torah states, "if a person dies and has no son then you shall give his inheritance to his daughter" (Numbers 27:8). The Sages formed three different positions regarding a daughter's inheritance. The majority held that a daughter inherits only in the absence of sons and their heirs. Other Sages, by contrast, held that inheritance is split equally between sons and daughters (subject to the laws of the first born §20.9). Finally, some Sages argued that each daughter should inherit half as much as each son (excepting the first born, who receives a double portion §20.9). Each of these positions is explained below.

### §20.7b Daughters Inherit in the Absence of Sons

The Torah states: "if a person dies and has no son then you shall give his inheritance to his daughter" (Numbers 27:8). Most of the Sages understood this verse to mean that in the case where a man does have a son, the inheritance does not pass to his daughters.<sup>9</sup> Rav Bashyatzi held by this position, but noted that after their parents' death, sons have an obligation to provide for their unmarried sisters and ensure they get married to people worthy of them. He further argues that in his day, many men could not be trusted to perform this duty. Thus despite his contention that sons should theoretically inherit before daughters, in practice he held that each daughter should receive a portion of inheritance equal to half each son's portion (excluding the first born, who receives a double portion §20.9).

### §20.7c Daughters Inherit Equally with Sons

According to a second group of Sages, daughters should share inheritance equally with sons (subject to the laws of the first born). These Sages believed that there is no logical reason to distinguish between genders in this regard.

Rav Yosef (who held this position), explained that the verse "if a person dies and has no son, then you shall give his inheritance to his daughter", does not imply that if a man does have a son then you should

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<sup>9</sup> Because one's brothers and sisters inherit by virtue of being children to one's parents (§20.6c), under this view, the same priority rule applies in the case of one's brothers and sisters. That is, one's sisters only inherit if one has no brothers.

refrain from giving his inheritance to his daughter. More generally, Rav Yosef believed that when the Torah states that a rule applies under a certain condition, it does not mean to imply that the opposite rule applies in the absence of that condition. For example, although the Torah states: “no sin-offering for which any of the blood is brought into the tent of meeting... shall be eaten; it shall be burned with fire” (Leviticus 6:23), some sin offerings not “brought into the tent of meeting” are also not to be eaten. For example, Aaron sprinkled the blood of his offering outside the holies (Leviticus 9:9), but the sin offering was burned, not eaten (Leviticus 9:10-11). Similarly, a he-goat sin-offering’s blood is sprinkled outside the holies but the offering is burned, not eaten<sup>10</sup>. This demonstrates that a ruling given under a certain condition does not imply that the opposite ruling holds in the absence of that condition. Therefore, the statement “if a person dies and has no son, then you shall give his inheritance to his daughter” (Numbers 27:9), does not imply that inheritance is withheld from daughters if a person has a son.

In response to this argument, many of the Sages noted that regardless of whether it is generally valid to conclude opposite rulings for opposite cases, in the case of this particular verse (Numbers 27:9) it is clear that one’s daughters do not receive one’s inheritance if one has sired a son. According to these Sages, the verses immediately following numbers 27:9 confirm this interpretation. They argued that even Rav Yosef accepts that the following verse, “if he has no daughter he shall give his inheritance to his brother” (Numbers 27:10), does not intend to grant a portion of the inheritance to one’s brothers in the case where one has a daughter. Thus, one must likewise conclude that the statement “if a person has no sons he shall give his inheritance to his daughter”, does not grant inheritance to one’s daughter in the case where one does have a son.

Rav Yosef responded, however, that the case of one’s brothers is different from the case of one’s daughters. In support of his view, he showed that before granting inheritance to one’s brothers, the Torah had already stated what should otherwise happen to the inheritance: “you shall give his inheritance to his daughter”. Thus the Torah explicitly states that if one’s daughter is alive, one’s brothers do not inherit. The Torah never gives an explicit ruling for the case where a son is present. As a result, according to Rav Yosef, it is possible that daughters inherit together with sons.

#### *§20.7d Daughters Inherit half as much as sons*

Some of the Sages held that each daughter should inherit half as much as each son, excepting first-borns who receive a double portion (§20.9). Rav Bashyatzi, although holding that daughters generally do not inherit, accepted this position as a practical measure (§20.7b).

### **§20.8 Parent’s Inheritance**

The Sages disagreed with respect to how a parent inherits. Most held that each parent should inherit their children’s wealth equally. These Sages held that there is no textual or logical reason to prefer one

<sup>10</sup> *E.g.*, Leviticus 16:27

parent to the other. If anything, they argued, a mother should inherit more of her children's wealth, because of the pain she bears in birthing them. Rav Bashyatzi was among this group of Sages.

Other Sages, including Rav Aharon the Younger, held that a mother inherits only after a father or his heirs have inherited. These Sages argued that the inheritance of mothers should be analogous to the inheritance of daughters, who, according to some Sages, inherit only after sons (§20.7b).

Still other Sages held that a mother should inherit half as much as a father. This position is analogous to the case of daughters, who, according to some Sages, inherit half as much as sons (§20.7d).

Finally, some Sages held that a mother never inherits her children's wealth. This was the opinion of Rav Levi.

#### Notes on §20.8:

The claim that one's mother has equal priority to inheritance as one's father raises some textual questions. Numbers 27:10 states that one's father's brothers may inherit one's wealth. The Sages explain that this is by virtue of the uncles' status as heirs of one's paternal grandparents (§20.6c). One's paternal grandparents are, in turn, heirs to one's wealth by virtue of being heirs of one's father. Thus, if one's mother had the same priority to one's inheritance as one's father, by a similar argument, the text should state that one's maternal uncles should inherit one's wealth. Of course, it is possible that a mother's right to inheritance is learned through *hekeish*.

#### §20.9 First Born's Inheritance

A man's first-born son is to receive a double portion of his father's inheritance:

*"If a man has two wives the one beloved and the other hated and they have born him sons, both the beloved and the hated, and if the first-born son (ben habechor) be from her that was hated then on the day that he causes his sons to inherit that which he has, he may not make the son of the beloved the first-born before the son of the hated who is the first-born, but he shall acknowledge the first born, the son of the hated by giving him a double portion of all that he has" (Deuteronomy 21:15-17).*

The first-born son's right to a "double portion", is a right to receive twice as much as any one of his brothers, not to take two thirds of the inheritance while all other heirs split one third of the inheritance.<sup>11</sup>

The term "first-born son" refers only to when one is born in comparison to one's brothers. A first-born son with an elder sister is still *halakhically* considered a "first-born son". Additionally, as is clear from the Biblical passage, the term applies to a father's "first-born son". If a man has had multiple wives, the son born first to the man is considered the first born - not the son born first to each mother. Based on this,

<sup>11</sup> Assume that parents gave birth to a daughter followed by three sons, and, for simplicity, let's assume that the daughter will not inherit any of the parents' wealth (*see* § 20.7). If the parents' estate is worth \$100, the first-born son receives \$50 and the other two sons each receive \$25.

most of the Sages concluded that the first-born receives a “double portion” only of his father’s inheritance but not of his mother’s inheritance.

The Sages held that just as a first-born son receives a double portion of his father’s wealth, so too does a first-born daughter receive a double portion of her father’s wealth. That is, both the first born son and the first born daughter receive a double portion of their father’s wealth (assuming the daughter receives any inheritance at all under the relevant priority rules)<sup>12</sup>. As proof for this position, they noted that the daughter of a man’s first born son could receive her father’s double portion in cases where there were no heirs of higher priority to her father’s inheritance. Thus, all the more so a first-born daughter should have the opportunity to directly inherit a double portion.

### §20.10 Spouse’s Inheritance

Spousal status is irrelevant to the laws of inheritance. A spouse is granted no special priority in inheritance and spouses do not share wealth for the purpose of inheritance<sup>13</sup>. The exception to this rule is that a woman receives her late-*mohar* upon her husband’s death (§18.2b).

### §20.11 Non-Believer’s Inheritance

A non-believer foregoes what would normally be his inheritance. This is in accordance with what Sarah tells Avraham regarding Ishmael: “the son of this maidservant shall not inherit along with my son, with Isaac” (Genesis 21:10). A believer may, however, inherit from a non-believer.

<sup>12</sup> According to some Sages, daughters only inherit in the absence of sons (§20.7b). Thus, according to these Sages, the first born daughter would inherit a double portion absent any sons. However, she would inherit nothing if there is at least one son. According to other Sages, daughters inherit even in the presence of sons. According to these Sages, the first born daughter and the first born son would each inherit twice as much as their siblings. Finally, some Sages held that daughters inherit half as much as sons. I believe that under this view the first born daughter would still inherit twice a son’s portion not twice a daughter’s portion (*i.e.*, she inherits just as much as the first born son). This is because the reason for allowing a first born daughter a double portion is that a first born son’s daughter may inherit her father’s double portion. The double portion in the case of the first born son’s daughter refers to a portion that is twice that of a son’s portion. Likewise, in the case of the first born daughter, the portion in question should be twice a son’s portion.

<sup>13</sup> When a man dies, the only way his wife may inherit his wealth is if she is her husband’s highest priority heir through some other means. For instance, she may inherit if she is her husband’s cousin and her husband has no higher priority heir. The same rule applies in the case where a wife dies and leaves inheritance.