

## 22.8.1

108a (משנה א) → 109b (הואיל ובנה ובעלה יורשין אותה)

Note: this chapter begins a new phase in מסכת נזיקין, dealing with inheritance. The critical פרשה in the תורה about inheritance comes on the heels of the request made by צלפחד's daughters:

1. (ו) ויאמר ה' אל משה לאמר: (ז) כן בנות צלפחד דברת נתן נתן להם אחזת נחלה בתוך אחי אביהם והעברת את נחלת אביהן להן: (ח) ואל בני ישראל תדבר לאמר איש כי ימות וכן אין לו והעברתם את נחלתו לבתו: (ט) ואם אין לו בת ונתתם את נחלתו לאחיו: (י) ואם אין לו אחים ונתתם את נחלתו לאחי אביו: (יא) ואם אין אחים לאביו ונתתם את נחלתו לשארו הקרוב אליו ממשפחתו וירש אתה והיתה לבני ישראל לחקת משפט כאשר צוה ה' את משה: במדבר כז

## I נחלה vis-à-vis 4 groups of relations: משנה א'

- a נוחלין ומנחילין (inheritance is bidirectional): father from son, son from father; paternal brothers
- b נוחלין ולא מנחילין (only recipients): son from mother, husband from wife, nephew from mother's sister
- c מנחילין ולא נוחלין (only bequeathers): mother to son, wife to husband, mother's brothers
- d לא נוחלין ולא מנחילין (no inheritance): maternal brothers

## II Analysis of rhetoric

- a Question: why begin with father inheriting from son (if son predeceases him) – why not begin with son from father
  - i Support1: we shouldn't begin with a tragic circumstance
  - ii Support2: son inheriting from father is explicit (פסוק ח → if he does have a son, son inherits first)
  - iii Answer: since father inheriting from son is inferred via דרשה, the תנא appreciates it more and puts it first:
    - 1 שארו (פסוק יא) means father, teaching that father comes before brothers
      - (a) Next: we might have thought that he comes first (before son) – therefore the key word קרוב implies:
      - (b) הקרוב קודם → קרוב
        - (i) Question: why do we promote the son over the brother
        - (ii) Answer: because he stands in father's stead for ייעוד and for redeeming אהוזה שדה
          - 1. Challenge: brother is "closer" as he stands in brother's stead for ייבום
          - 2. Block: ייבום only exists in the absence of a child → son is "closer"
          - 3. Note: were it not for this block, we may have preferred brother – but isn't it 2>1?
          - 4. Answer: שדה אהוזה is also analyzed (in ערכין) and son is "awarded" based on same argument
    - (c) Suggestion: why not read that father comes before daughter as well?
      - (i) Answer: since daughter::son for (exempting from) ייבום, they are equated here as well for "קרוב"
    - (d) Suggestion: why not read that father comes (only) before his brothers (but after his other sons)?
      - (i) Answer: father's brothers are obviously after him (since they only inherit "through" him), no need for שארו to establish that priority
        - 1. Note: the verses do not follow his order (as "father" [שארו] comes after father's brothers)
        - 2. Answer: verses do not follow sequence of הנחלות סדר
- 2 Alternate route: ברייתא – only מעביר from father if there is a daughter, not if there are (only) brothers
  - (a) Suggestion: why not put daughter between father and brothers (only מעביר from brothers if no father)
    - (i) Answer: then there is no need for והעברתם
- 3 Analysis of two approaches:
  - (a) According to 2<sup>nd</sup> approach (והעברתם) – שארו – is the wife, teaching that a husband inherits from his wife
  - (b) According to 1<sup>st</sup> approach (שארו) – והעברתם – teaches that her son and husband inherit from her, thus causing נחלה to "pass" from tribe to tribe (if a girl with no brothers inherits from father and marries into another tribe, her husband or sons will inherit her ancestral/tribal land)
    - (i) Note: this is another source for inheritance rights of husband