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Captive’s Property

The *Gemara* notes that it is actually a *Tannaic* dispute if we bring down a relative to a captive’s property or not. For we learned in a *Baraisa*: If one goes down to a captive’s property, we do not take it away from his possession. And furthermore, even if the relative heard that the owners were coming back, and he quickly picked the produce and ate it, he is swift and therefore he profits (*for if would not have acted quickly, he would be paid only like a sharecropper*). And the following are included in the term, a captive’s property: If one’s father, brother, or any relative from whom he would inherit went overseas, and it was reported that he had died.

The *Baraisa* continues: If a man goes down into an abandoned (*netushim*) property, we take it away from his possession. And the following are included in the term, an abandoned property: If one’s father, brother, or any relative from whom he would inherit went overseas, and it was not reported that he had died. Rabban Shimon ben Gamliel said: I have heard that the *halachah* regarding an abandoned property is the same as that of a captive’s property. [*Here is the Tannaic dispute, for the Tanna Kamma holds that we do not allow the relative to go down when there is no rumor that he died, and Rabban Shimon ben Gamliel maintains that he is allowed to go down.*]

The *Baraisa* continues: If a man goes down into a forsaken (*retushim*) property, we take it away from his possession. And the following are included in the term, a forsaken property: If one’s father, brother, or any relative from whom he would inherit is here, but we do not know where he is.

Now, wherein do the former differ [from the latter], that the former are designated ‘abandoned,’ and the latter ‘forsaken’? ‘Abandoned’ implies against their will, as it is written: But the seventh year you shall let it rest and abandon it, [i.e.,] by royal dispensation; whereas ‘forsaken’ implies voluntarily, as it is written: The mother shall be forsaken of her children.¹ (38b3 – 39a1)

The *Baraisa* concludes: And regarding all those who go down to someone else’s property – they are evaluated like a sharecropper.

The *Gemara* shows that this ruling cannot apply to any of the *Baraisa*’s cases:

Case of the <i>Baraisa</i>	<i>Halachah</i>	Explanation why the ruling doesn’t fit this case
Captive’s property	He is swift and he profits	Unnecessary to state that he gets paid like a sharecropper

¹ The *Gemora* shows where in Scripture the word “*netushim*” connotes “unwillingness,” and where in Scripture the word “*retushim*” connotes “willingness.”

Retushim – forsaken property	We take it away from him	If we remove it from his possession, he certainly doesn't get paid like a sharecropper!
Netushim – abandoned property	The <i>Chachamim</i> hold that we take it away from him	If we remove it from his possession, he certainly doesn't get paid like a sharecropper!
Netushim – abandoned property	Rabban Shimon ben Gamliel holds that it is the same as a captive's property	Unnecessary to state that he gets paid like a sharecropper

The *Gemara* answers that this ruling applies to the case of *netushim* – abandoned property, according to Rabban Shimon ben Gamliel. Although he said that it has the same *halachah* as a captive's property, it is not entirely the same. It is similar in the fact that we do not take it away from his possession. However, they are dissimilar regarding the following: A relative in a captive's property is swift and therefore he profits if he plucks and he eats; however, a relative in the *netushim's* property is paid only like a sharecropper. (39a1)

The *Gemara* asks: Why is this different than the ruling from the following *Mishnah*: If someone spends money to improve the possessions brought into the marriage by his wife (*nichsei melog*), whether he spent a lot and ate a little, or if he spent a little and ate a lot, whatever he spent he spent, and whatever he ate he ate. [*If the husband does not get paid like a sharecropper when he works in his*

² The *Gemora* explains that the *Baraisa* means to include a case of a fugitive – that we allow a relative to go down to his field. We are not referring to one who is fleeing in order to avoid paying the head-tax, for this would be regarded as a willful abandonment (*and we would not allow a relative to go down, for*

wife's field, why does the relative – according to Rabban Shimon ben Gamliel?]

The *Gemara* answers: Our case is comparable only to a different ruling: If someone spends money to improve the possessions brought into the marriage by his wife who is a minor (*and was married to him in a Rabbinical marriage through her mother or brothers*), it is akin to him spending money on improving someone else's possessions. [*He can collect the amount he improved the field like a regular sharecropper.*] Why? The Rabbis decreed that this should be the law in order that he should not ruin her field (*if we would say that she can take everything if she eventually refuses the marriage*). So here too, the Rabbis instituted that he should get paid like a sharecropper in order that he will not ruin the property. (39a1 – 39a2)

The *Baraisa* had stated: And for all of these (that enter another's property), a valuation is made for them according to that of a sharecropper.

What does 'all of these' include? — It includes that which Rav Nachman said in the name of Shmuel: If a man is taken captive, his relative is authorized (by *Beis din*) to enter into his property. If he leaves voluntarily, his relative is not permitted to enter his property. Now Rav Nachman, giving his own opinion, said: A fugitive is as a captive. — Why does he flee? Shall we say, on account of the head-tax? But that is voluntary? — Rather, [he means] one who flees on account of (an impending execution for) murder.² (39a2)

Rav Yehudah said in the name of Shmuel: If a man is taken captive, and he leaves standing grain ready to be reaped, or grapes, dates or olives ready to be harvested, *Beis Din*

the owner should have had the composure to appoint an administrator to take care of his field before he fled). We are referring to one who fled because he murdered someone (*and he runs to avoid being executed*). [*The relative may go down, and he is paid like a sharecropper.*]



goes down to his property and appoints a (*non-related*) guardian, who reaps, vintages, harvests and gathers. After that the relative is permitted to take possession.

The *Gemara* asks: Why don't they appoint a permanent guardian?

The *Gemara* answers: A guardian is not appointed for bearded men (*they do not volunteer to work for adults*). (39a2 – 39a3)

Property of a Minor

Rav Huna issued three rulings:

1. We do not allow a minor to go down to a captive's property (*even if he is the closest relative*).
2. We do not allow a relative to go down to a minor's property.
3. We do not allow a relative's relative to go down to a minor's property.

The *Gemara* explains his reasoning:

1. We do not allow a minor to go down to a captive's property (*even if he is the closest relative*). This is because he might ruin it.
2. We do not allow a relative's relative to go down to a minor's property. The case is where the relative is a maternal brother of the minor's relative.
3. We do not allow a relative to go down to a minor's property. This is because a child does not know how to protest against a claim, and the relative might eventually possess the property by claiming that it is his inheritance as well (*if one enjoys possession of a property for three consecutive years without its owner formally protesting that it is not his, he is assumed to have bought or otherwise acquired it*). [A non-relative cannot claim this at all.] (39a3)

Rava said: it is evident from Rav Huna that one cannot establish a *chazakah* on the property of a minor, even if he later grew up (*for otherwise, how would we allow a non-relative to go down to the field of a minor; perhaps he will claim that he purchased it from the father*).

The *Gemara* qualifies Rav Huna's rulings:

1. It applies only to a paternal brother (*who can claim that he inherited it*), but there is no concern if he would be a maternal brother.
2. It applies only to land, but there is no concern with respect of houses (*where the neighbors, who live nearby, will testify that it belonged to the child*).
3. It applies only if no deed of partition was drawn up (*when the property was initially divided between them*), but if a deed of partition had been drawn up, it will be publicly known that it belongs to the child.

This, however, is not so. It makes no difference whether he is a paternal brother or a maternal brother; whether it is land or houses; whether a deed of partition had been drawn up or not — we do not allow the relative to go down to the property of a minor. (39a3 – 39b1)

Elderly Woman and Three Daughters

A certain elderly woman had three daughters; she and one daughter were taken captive, and regarding the other two daughters, one died, leaving a child behind.

Abaye said: What shall we do with her property? Shall we place the property in the hands of the remaining sister? We cannot, for perhaps the elderly woman has died, and a relative is not permitted to go down to the property of a minor (*and the child inherits a portion of the land through his deceased mother*). Shall we place the property in the hands of the child? This also is not an

option, for perhaps the woman did not die, and a minor is not permitted to go down to the property of a captive!

Therefore, Abaye ruled as follows: Half of the property should be given to the remaining sister (*for her to manage – since there is no question that the child does not own this portion*), and a guardian for the child should be appointed in respect of the other half. Rava said: Since a guardian is appointed for one half, a guardian is appointed for the other half as well.

At the end, it was heard that the elderly woman had died. Abaye then ruled: A third of the property should be given to the sister (*which is her rightful share of the inheritance*), a third to the child (*as his rightful share*), and as for the remaining third - a sixth is given to the sister (*for her to manage – since there is no question that the child does not own this portion*), and a guardian is appointed for the other sixth on behalf of the child. Rava said: Since a guardian is appointed for one sixth, a guardian is appointed for the other sixth as well. (39b1 – 39b2)

Mari bar Isak

The *Gemara* relates an incident with Mari bar Isak: To him, there came a brother from Bei Chozai (*Isak had travelled there together with Mari; he married there and had a son; later, Mari returned to his former city and took possession of his father's property as his inheritor*) who said to him, "Give me a share in the property of our father." Mari answered him, "I do not know you." The brother came to Rav Chisda, and Rav Chisda said to him, "Mari answered you well, for it is written: *And Yosef knew his brethren, and they did not recognize him*. This teaches us that Yosef went away before he had grown a beard and he came back after growing a beard (*it is therefore possible and even natural that your brother does not recognize you*). Rav Chisda said to the brother, "Go and bring witnesses that you are indeed his brother." The brother answered him, "I have witnesses, but they are

afraid of Mari because he is a powerful man." Rav Chisda said to Mari, "Go and bring witnesses that he is not your brother." Mari asked Rav Chisda, "Is this the *halachah*? Surely, he who claims must produce evidence!" Rav Chisda said to him, "So I rule for you and all who are powerful like you!" Mari asked him, "But they may also come and lie (*on my behalf*)?" Rav Chisda responded, "Two things they will not do (*to be silent to the truth and to tell a falsehood*)."

At the end, witnesses arrived and testified that he is indeed a brother. The brother told Rav Chisda, "He should divide with me from the vineyards and orchards that he planted." Rav Chisda said, "This is a valid claim, for we learned in a *Mishnah*: If a man died and left adult and minor children, the *halachah* is that if the adults improve the property, they all split the profits equally."

Abaye asked: Is this a valid comparison? In the *Mishnah's* case, the brothers knew that they had younger brothers, and therefore waived their rights in the improvement; here did Mari know that he had a brother (*who wished to divide the improvements*)?

The matter rolled on until Rabbi Ami said: If we give a caretaker in a captive's property a percentage like a sharecropper, shouldn't we certainly give Mari a percentage of the improvements in his brother's half?

The students returned this ruling to Rav Chisda. He said to them: How can you compare the two cases? There, the caretaker enters the captive's property with authorization from *Beis din*; here, no such permission was given!? And furthermore, the brother was a minor when Mari took possession of the properties, and we have learned: A relative is not allowed to enter the property of a minor!?

When Rabbi Ami heard this, he said to them: I was never informed that the brother was a minor at that time. (39b2 – 40a1)

INSIGHTS TO THE DAF

Our sugya mentions the commandment to relinquish ownership of the produce growing in Eretz Israel each seventh year (Shevi'is or Shemithah), as decreed in Shemos 23:11. Someone who bars entry to his field, not allowing access to others, fails to observe a positive commandment (Rambam, Hilchos Shemithah veYovel, 4:24).

A field kept in private ownership during Shemithah: The Poskim disagree as to a farmer's actual duty in relinquishing ownership. Beis Yosef (Responsa Avkas Rochel, 24) holds that he must announce relinquishment orally and failing to do so, his produce remains his. Mabit (Responsa, I, 1; Maharit, I, 43) maintains that the produce becomes ownerless (hefker) without any action or statement by the owner as that is the meaning of the expropriation by the King (HaShem) stressed in our sugya. (This is the source of their disagreement as to whether ma'aser must be taken from fruit grown by non-Jews in Shevi'is; see Minchas Chinuch, mitzvah 84; Chazon Ish, Shevi'is, 19:24, 20:27; Maharsham, III, 101; Igros Moshe, Y.D., III, 90, etc.).

Shmitah produce kept from public access: The Rishonim mention another division of opinions about someone who ignores the above commandment and bars entry to his field. Such produce is called "privately kept" (peiros meshumarim) as it is kept from the access of others and the Rishonim disagree as to its permissibility. Some Rishonim (Rambam, ibid; Rashi, Yevamos 122a; Ramban on the Torah, Vayikra 25:5) hold that such produce may be eaten but Rabenu Tam (Sukkah 39b in Tosfos, s.v. "Bameh devarim amurim" according to Toras Kohanim, Behar, I:3,5; see also Rashi, Behar 25:6, s.v. "Shabos"), Razah, Raavad and others maintain the opposite opinion.

Moreover, the Poskim were unsure of the parameters of the latter opinion: is produce kept from general access for an hour also forbidden? (See Chazon Ish, Shevi'is, 6, S.K. 5). They subsequently ruled that we may rely on the lenient approach but those who adopt the strict opinion deserve to be blessed (Maharik, ibid; see Chazon Ish, 10, S.K. 6; Drerech Emunah, 4, S.K. 184 and Tziyun Halachah).

Using watchdogs to guard a field in Shemithah: The prohibition to keep Shemithah produce from public access does not only relate to locking the gates of a field but includes any method preventing entry, such as stationing fearsome dogs that deter all who see them. Similarly, our Gemara (12a) forbids a person to put a lion in his field to prevent the poor from taking portions allotted them by the Torah (matenos 'aniyim).

Labeling an esrog still on the tree: The Poskim discuss the ramified question of an esrog farmer who relinquished ownership of his orchard during Shemithah but discovered an extraordinary esrog on a certain tree. He was in a quandary as he wanted to leave it on the tree to grow but, on the other hand, in doing so, perhaps another would take it. As he must not erect a fence around the tree or forbid others to take the esrog, poskim discussed the possibility that he may acquire it for himself on the tree and thus prevent others from taking it suggests a novel solution: The farmer may attach a notice on the esrog announcing that he wants it. He does not acquire it in this manner as merely labeling an article is not a halachically valid form of acquisition. Still, he may be likened to "a poor person fingering a loaf of bread" (Kiddushin 59a) in the sense that if another circumvents the poor person's intention to acquire the bread and gets it for himself, he is considered malevolent. Here too, the farmer expresses his wish to acquire the esrog and others would be unfair to take it. (Nonetheless, this solution depends on the two opinions cited in Shulchan 'Aruch, C.M. 237, as to whether we may liken someone trying to get a hefker item to a



"poor person"; see Remo's comment [ibid] that the major opinion negates the comparison).

DAILY MASHAL

"And Yosef said to his brothers, 'I am Yosef. Is my father still alive?' They could not respond to him, for they were startled by his face." [Breishis, 45:3]

The Imrei Aish points to several difficulties in this verse. Firstly, the brothers had not returned home since the last time that Yosef had asked them this question. Secondly, since Yaakov was the father of all the brothers, and Yosef had just revealed himself as one of them, it would be more appropriate to ask, "Is our father still alive?" In addition, this question, repeated several times, is itself inappropriate. This is because a person has a *chezkas chaim*, a presumption that once it is known that he is alive, he remains so [unless we're told otherwise]. Finally, why does the verse say that the brothers were startled "by his face" [or "presence"]? Why not merely say that "they were startled by him"?

The Imrei Aish resolves these questions with yet another question. How is it, he asks, that after such prolonged negotiations with Yosef, that the brothers never recognized him? Even though our Sages note [Yevamos, 88a] that when Yosef was sold into slavery he was beardless, but when his brothers encountered him as the "viceroys" of Egypt he had a beard; this would only explain why they did not recognize him at first glance, even though he recognized them. [The Rosh Yeshiva of Modzitz added that since Yosef's appearance was similar to that of Yaakov - who had a beard - they surely should have recognized him as a family member, at least!]

Indeed, says the Imrei Aish, Yosef's appearance was similar to that of Yaakov, but at this point in time [while Yosef was posing as the "viceroys" of Egypt], Hashem removed this similarity, so that the brothers wouldn't recognize him, and they could have remorse over selling

him into slavery. Perhaps with this, at least partially, their sin of selling him could be atoned for. Therefore, they didn't recognize him even after such a long time.

However, Yosef HaTzaddik, in his extreme humbleness, thought that his resemblance to his father had vanished because of his own sins. Therefore, the verse relates [earlier], "he washed his face" [Breishis, 43:31]. That is, he "washed" [cleansed] himself with *teshuva* [repentance], "his face," because of the change in his face.

Afterwards, upon revealing himself to his brothers, his resemblance to his father returned. He thus asked them, "Is my father still alive?" That is, do I still resemble him - is my face like his? This explains why he asks in the singular ["my father"], and why he repeats the question - for it is a different question altogether. And finally, that's why the brothers were "startled by his face," for his face had changed [back] to resemble that of his father Yaakov once more.