

# Daf Notes

Insights into the Daily Daf  
Bava Metzia Daf 39

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## Daily Daf

### *Captive's Property*

The *Gemora* 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 *braisa*: 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 only be paid 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 *braisa* 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 *braisa* 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.

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

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

The *Gemora* shows that this ruling cannot apply to any of the *braisa's* cases:

Case of the <i>braisa</i>	<i>Halachah</i>	Explanation why the ruling doesn't fit this case
<b>Captive's property</b>	He is swift and he profits	Unnecessary to state that he gets paid like a sharecropper
<b><i>Retushim</i> – forsaken property</b>	We take it away from him	If we remove it from his possession, he certainly doesn't get paid like a sharecropper!
<b><i>Netushim</i> – abandoned property</b>	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!
<b><i>Netushim</i> – abandoned property</b>	R' Shimon b'Gamliel holds that it is the same as a captive's property	Unnecessary to state that he gets paid like a sharecropper

The *Gemora* 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 only paid like a sharecropper.

The *Gemora* asks: Why is this different than the ruling from the following *Mishna*: 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 wife's field, why does the relative – according to Rabban Shimon ben Gamliel?*]

The *Gemora* answers: our case is only comparable 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 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.

The *Gemora* explains that the *braisa* 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 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.*]

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

The *Gemora* answers: A guardian is not appointed for bearded men (*they do not volunteer to work for adults*). (39a – 39b)

## ***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*). This is because he might ruin it.
2. 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.*]
3. 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.

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 *Gemora* 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. (39a – 39b)

## ***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. (39b)

## ***Mari bar Isak***

The *Gemora* 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 *Mishna*: 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 *Mishna'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?

Rav Chisda disagreed: 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: I was never informed that the brother was a minor at that time. (39b – 40a)