

OVERVIEW of the Daf

1) Attached produce

The Mishnah implied that attached produce does not belong to the heirs but a Beraisa is cited that indicates that it does belong to the heirs.

Ulla resolves the contradiction.

2) **MISHNAH:** The Mishnah discusses the rights of the children to the undivided estate when their father did not leave explicit instructions how to divide the estate. The Mishnah concludes by contrasting the rights of the sons and the rights of the daughters.

3) Buying clothing from the undivided estate

Rava rules that if the oldest brother bought clothing from the undivided estate he is not required to reimburse his brothers for that purchase.

This ruling is unsuccessfully challenged from our Mishnah.

4) Marrying at the expense of the undivided estate

R' Yehudah explains the Mishnah's ruling related to the brothers marrying from the undivided estate.

5) A husband's acquisition of his wife's property

Avuha bar Ganiva inquired whether a husband is a purchaser or heir to his wife's estate. A practical difference will arise when a woman borrows money without documentation and then she marries.

Rava unsuccessfully demonstrates from a Mishnah that a husband is an heir to his wife's property.

R' Pappa offers a proof from a statement of Ravin that a husband is considered an heir.

Abaye proves this principle from a Mishnah thus rendering the proof from Ravin's statement unnecessary.

Rava proves from another source that the husband is considered a buyer.

R' Ashi suggests that regarding some halachos the husband is considered a buyer and regarding other halachos he is considered an heir.

One of R' Ashi's statements is unsuccessfully challenged.

הדרן עלך יש נוחלין

6) **MISHNAH:** The Mishnah discusses the distribution of a man's estate when he died wealthy and when he died with limited assets.

7) A large estate

R' Yehudah in the name of Rav and Shmuel disagree what is considered a large estate.

R' Yochanan follows Shmuel's position that a large estate is when there is enough property to support the daughters until they marry. ■

Distinctive INSIGHT

Some differences between where the estate has adequate or limited funds

בזמן שהנכסים מרובין הבנים יירשו והבנות יזונו, נכסים מועטים הבנות יזונו והבנים ישאלו על הפתחים

Apparently, the Mishnah could have combined the halachos of a large estate and a small estate and state simply that whether the estate is large or small, the daughters are supported, and if there is anything left, the sons inherit it. That the Mishnah presents the cases separately suggests to the Rishonim that there are substantive differences between the cases.

Rashba and Ran explain that there is a difference in the manner the daughters receive their support in these cases. If the assets are adequate, the sons own the entire estate, and they manage the funds. The daughters receive from their brothers. If the assets are limited, we immediately hand these limited resources to the daughters, and they or a court-appointed supervisor would manage the funds for their support.

Toras Chaim explains that the opinion of Rashbam is that in both scenarios the sons have control of the estate, and the daughters receive their support from the funds managed by the brothers. However, if the assets were abundant at the time the father died, and they subsequently lost value, both the sons and the daughters each lose, and each loses proportionately to what they would have received. Because the assets were abundant, we see it as if the daughters were assigned part of the estate as payment for their ongoing needs for support.

If, however, the assets were limited as of the time of the death of the father, and they later lost some of their value, the daughters do not lose, because they were not immediately assigned any of the assets as of the time of the death of the father.

Tosafos (140a, ד"ה יתומים) begins by asking a question similar to ours. What, he asks, is the difference between where the assets are adequate and where they are insufficient? In both cases the orphan sons may not sell all the property, and in both cases if they do sell the property the sale is valid בדיעבד. Tosafos answers that if the assets are adequate, the sons may sell the property if there is a great need.

Sefer Yequb (E.H. 112:#11) explains that if there is just enough value in the land of the estate to pay for the support of the daughters and for the mitzvah of redeeming captives, and a buyer is found who only wishes to buy all the land, if the assets are adequate, the sons may sell the land, and then, after performing the mitzvah of פדיון שבויים, set aside the money remaining for the daughter's support. If the estate has limited funds, the girls can stop their brothers from selling the land and raising cash. In this case, they may insist that they do not wish to be supported from cash, but rather from the profits of the land. ■

HALACHAH Highlight

The enactment of Usha

באושא התקינו האשה שמכרה נכסי מלוג וכו'

In Usha they enacted that a woman who sells melog property etc.

Shach¹ offers the following explanation of the enactment of Usha. At the moment a couple marries the husband has acquired potential title to the melog property. During the time the couple is married the husband only has the right to the produce of the field (קנין פירות) but not the actual ownership of the field (קנין הגוף). Although halacha holds that a right to the produce is not equivalent to ownership of the field, nevertheless, if she dies during his lifetime it will be considered retroactively that from the moment they married the property was his. It is for this reason that the husband will be able to repossess the melog fields his wife sold before she died.

Ketzos Hachoshen² disagrees with Shach's assertion that the husband has some degree of ownership of the fields from the moment the couple marries. He proves from a Gemara in Bava Kamma (89b) that the husband does not become owner of the field until his wife dies. The Gemara there comments that were it not for the enactment of Usha a non-Jewish slave who is melog property should go free if the wife knocked out his eye or tooth. Subsequent to the enactment the non-Jewish slave does not go free when the wife knocks out his eye or tooth. Rashi³ explains that before the enactment of Usha the husband had the right to use the slave but title remained with his wife, as such, if she, as the owner, were to knock out his eye or tooth the slave would go

REVIEW and Remember

1. What is an advantage that girls have over boys?

2. What is the practical difference whether a husband is a buyer or an heir of his wife's property?

3. Regarding which cases is a husband considered a buyer?

4. What is considered an abundant estate?

free. The enactment of Usha involved extending the husband's right to the produce to be considered as if he has ownership (קנין פירות). Therefore, when the wife knocks out the slave's eye or tooth the slave does not go free since the husband also has part ownership of the slave. At the same time the slave does not go free if the husband knocks out his eye or tooth since he does not have exclusive ownership of the slave. This proves that the husband is not granted ownership of the melog property. The real mechanism of the enactment of Usha is that Chazal strengthened the husband's right to the produce to be considered as though he has ownership of the land. Accordingly, if a wife sells her melog property the husband has the right to collect that property from the buyer since his rights preclude his wife from selling the property. ■

1. שי"ד חו"מ סי' קי"ג סק"כ.

2. קצות החושן שם סק"ט.

3. רש"י ב"ק פ"ט: ד"ה סברוה. ■

STORIES Off the Daf

The immutable inheritance

"התם אינהו אפסידו אנפשייהו..."

A certain man required a large sum of money. After much searching he finally found a friend willing to help. They drew up a loan document which was duly witnessed and signed and the debtor received his money. Although the borrower was unable to repay the debt, his wife owned a fairly valuable piece of property, a courtyard, which was more than ample to cover it.

Before the loan was due, his wife became very sick. On her deathbed she gave the courtyard to her daughter. Her husband was present and did not protest this gift. After all, anything he inherited

would go to repay his debt. Surely it was better to allow the daughter to acquire the courtyard.

When the wife passed away, and the creditor heard that the daughter claimed the courtyard, he protested. "What about the money I lent him? Surely the debtor had no right to agree to a gift and cause me a loss! In our country the halacha has always been that the husband inherits half of his wife's holdings. I demand half the property as repayment for the debt."

But the daughter refused to repay even a penny of her father's debt without going to a din torah. "I don't see how the custom of inheritance is at all relevant to my mother's property and what she does with it. It was clearly hers and she gave it to me. End of story."

When this question was sent to the Rosh, ז"ל, he ruled that the debtor had

the right to half the property. "The fruits yielded on this property are the husband's. For this reason they proclaimed in Usha that if the wife sells her property and her husband outlives her he can forcibly evict the purchaser from the property, as we find in Bava Basra 139. The reason the husband is permitted to cause the buyer an irretrievable loss is because the buyers are responsible for their own actions. Why did they purchase property from a married woman?

"In our case the husband should really inherit the whole property, but the community has a decree that he only gets half. Nevertheless, we cannot allow the daughter to collect what is really her father's and must be used to repay his debt."¹ ■

¹שו"ת הרא"ש, כלל מ', סי' ב' ■