

OVERVIEW of the Daf

1) Caring for a captive's property (cont.)

A Baraisa teaches that all those who enter another's property are reimbursed like a sharecropper.

The Gemara explores to which of the previously-discussed cases does this statement refer, and concludes that it refers to the case of נטושיץ according to R' Shimon ben Gamliel.

This ruling is unsuccessfully challenged.

The Gemara explains that the phrase, "All those" includes who one who flees.

The circumstances of putting a relative on the property of one who flees are explained.

R' Yehudah in the name of Rav further elaborates on the process of taking care of the property of a captive.

The reason a relative is placed on the land rather than a guardian is explained.

R' Huna presents additional rulings related to placing someone on another's property.

Rava infers from one of R' Huna's rulings that one may not make a חזקה on the property of a minor even after he becomes an adult.

The Gemara qualifies R' Huna's ruling that a relative may not be appointed as the administrator of a minor's property but then rejects these qualifications.

A related incident is presented about which Abaye and Rava disagree concerning the correct course of action.

More details regarding the incident become known but Abaye and Rava continue to have a disagreement.

Another related incident is presented in which R' Chisda issued a ruling that was challenged by one of the litigants. ■

REVIEW and Remember

1. When do those who enter the property of others receive a percentage like a sharecropper?
2. What is done with the field of a person taken into captivity?
3. Why did the brothers not recognize Yosef?
4. Why did R' Chisda require Mari to bring in witnesses to defend himself against an unsupported claim?

Distinctive INSIGHT

There is a possibility that the elderly grandmother has died
 דלמא שכיבא סבתא

R' Huna taught that a minor related to an owner who was taken captive is not permitted to enter the abandoned land, as we are concerned that the underage relative will ruin the land. We also do not allow any relative to enter the land of a minor to maintain it. There is a risk that the one occupying the land will continue and keep the land, concealing its true ownership from the unsuspecting minor.

The Gemara brings a case study where an elderly woman who had three daughters was taken captive together with one of the daughters. Of the two remaining daughters, one of them died and left a son. Abaye analyzed the options available to deal with this case. On the one hand, we cannot allow the surviving daughter to enter the land. There is a possibility that the elderly woman died, and the land is now owned by the surviving daughter and the child of the sister who died, and, as R' Huna taught, we do not allow a relative to occupy the land of a minor. Abaye's solution is that half the land is given to the daughter, and the other half is presented to a court-appointed supervisor.

Tosafos (ד"ה דלמא) points out that part of Abaye's consideration is that the elderly woman might have died. Yet, the Gemara in Gittin (28a) states that the halacha does not work with the premise that a person has suddenly died. For example, where a husband sends a גט with a messenger, even if the husband was sick, the messenger can continue and deliver the גט, and he does not have to consider that the husband might have died in the meantime. Why, then, does Abaye inject the possibility of the elderly woman's demise into this analysis? Tosafos answers that we are only lenient in regard to delivering a גט in order that the wife not remain an עגונה. There are also various other cases, as Tosafos delineates, where leniency is appropriate. However, we must be more cautious regarding the land of a minor and the land of orphans, and here we are strict in order to protect them. It is in this case that we take into consideration the remote possibility of the death of the elderly woman.

Ramban answers that, in fact, the halacha in general does not presume that a person has died. However, the beis din cannot issue a perverse judgment, and they do not have the

(Continued on page 2)

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 By The Reifer family
 לעיני מרת שושנה בת הרב דוב בער, ע"ה

HALACHAH Highlight

A concern for someone's death

דלמא שכיבא סבתא

Perhaps the elderly woman died

Commentators wonder why the Gemara expresses concern with the possibility that the grandmother may have died when the Gemara Gittin (28a) states that we are not concerned that a person may die. That is the reason why an agent who was sent to deliver a גט can follow through on the delivery even if when he left the husband he was ill or old. Tosafos¹ suggests that we only assume that a person is still alive regarding a גט because of the concern of leaving a woman an agunah. When it comes to the property of orphans, however, we are stringent to their benefit and thus we are concerned with the possibility that the grandmother died so that they inherited the property and we would thus not allow other relatives to enter the property.

Another resolution suggested by Tosafos is that the case in our Gemara is unique in that the person in question was taken into captivity where captives are often tortured and thus there is a greater concern with the possibility of death. This issue raises an interesting dispute. Rabbeinu Yeruchum² maintains that we do not distinguish between a male or female captive; in both cases we are concerned with the possibility for the death of the captive. Bach³ disagrees and writes that only regarding females are we concerned that she died from the torture but it is assumed that men are able to better with-

(Insight. Continued from page 1)

authority to take land from its current owner and to present it to someone else unless this move is justified. If there is a possibility that this land now belongs to a minor (due to the death of the grandmother), beis din should not be issuing it to the child's aunt. This is why the beis din is cautious and will not allow the surviving daughter to enter the land. ■

stand torture and even after a man was taken into captivity it would be assumed that he is still alive.

This discussion of Tosafos was essential to answering a difficult inquiry. There was a man who during the Second World War received word from the army that his son was missing-in-action. The father made a vow that he would not eat meat or sleep on a bed until he could obtain definitive information about the status of his son. After extensive research he discovered that his son was taken into captivity by the Japanese army. Seemingly, this information gave the father definitive knowledge that his son is alive and he should be permitted to eat meat and sleep in a bed. Sefer Emek Halacha⁴, however, expressed uncertainty about the matter. Since Tosafos writes that there is cause to be concerned that a person taken into captivity may not be alive the father does not have sufficient knowledge about the whereabouts of his son and remains bound by the same uncertainty as when he initially took his vow. ■

1. תוס' ד"ה דלמא.
2. רבינו ירוחם מישירים נתיב ל"ב ח"ג.
3. ב"ח חו"מ סי' רפ"ה ד"ה ההיא.
4. ספר עמק הלכה ח"א סי' ל"ב. ■

STORIES Off the Daf

A return on an investment

"...המוציא הוצאות..."

On today's daf we find that in certain cases a husband's investment in developing his wife's property returns to him. There are times when the money used for the maintenance of property is subject to dispute.

Someone once purchased an ox from his friend. For two weeks he fed the creature and was fairly satisfied with it but then he found that the animal was blemished and was of no use for the purpose for which he had bought it. When he brought the blemish to the

seller's attention, the surprised man claimed that he had not known about the flaw.

Since the buyer had clearly stipulated why he was buying the animal, the seller had no choice but to give him his money back, which he did willingly enough. But then the purchaser demanded the money he had paid out for the beast's food for the last two weeks.

The seller felt that this was an absurd claim. "The animal was not improved from the day I sold it to you, so why must I pay your expenses?"

But the buyer was not placated by this at all. "Even you admit that this entire sale was a mistake. Why shouldn't you recompense me for every penny I spent on the animal's upkeep?"

When this question was brought before the Maharsham, zt"l, he ruled that the seller must pay the buyer. "In Shulchan Aruch we find that if someone purchased merchandise for the expressly stated purpose of selling it in a distant country and when he arrived he found that the merchandise was blemished, the seller must pay the expenses of returning the merchandise to their country. Paying food expenses is just like paying for the return of merchandise since without food the ox, which was later confirmed to be the seller's property, would have died. Surely he must at least recompense the purchaser even though he fed it only because he thought it was his property."¹ ■

1. שו"ת מהרש"ם, ח"ו, סי' רכ"ט