

OVERVIEW of the Daf

1) **MISHNAH (cont.):** The Mishnah teaches that the same properties from which a bechor does not collect a double portion are the properties from which a woman does not collect for kesubah, a daughter for her sustenance nor a yavam from his deceased brother.

2) **Clarifying the Mishnah**

The source that a bechor does not collect a double portion from his mother's property is presented.

The source that a bechor does not collect a double portion from improvements made to the estate after the father's death is presented.

The rationale behind the Mishnah's ruling concerning a woman collecting her kesubah is clarified.

The reason a daughter does not collect from improvements and prospective assets is explained.

The reason a yavam does not collect from improvements and prospective assets is explained.

Abaye and Rava disagree whether the yavam receives improvements that occurred between the yibum and the division of the estate.

(Continued on page 2)

REVIEW and Remember

1. What is the source that a bechor does not receive a double portion from his mother's estate?

2. What is the point of dispute between Abaye and Rava?

3. What property does not return to the heirs of the original owners?

4. Is a husband's inheritance Biblical or Rabbinic?

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Distinctive INSIGHT

Canceling the division of the inheritance on Yovel

ומחזירין זה לזה ביובל

The Mishnah lists lands that are not included in the Torah's rule that land is returned to its owner when the Yovel year arrives. In the Gemara, R' Assi, in the name of R' Yochanan, says when brothers divide their deceased father's estate it is viewed as a division of partners. When the father dies, the entire estate belongs to all of the brothers. Rashi explains that when the family agrees that each one will receive a specific and exclusive portion of the father's property, we are saying that each heir is a buyer who exchanges his rights in the various parcels in order to receive his own private portion. This means that when the Yovel year arrives, the "buy-out" or arrangement among the brothers to sell to each other, reverts back to its original position and the division must be renegotiated and re-divided.

Chochmas Shlomo (Gittin 25a) explains that the Yovel cancels the original division of the estate completely, and the apportioning of the land must be begun anew. Pnei Yehoshua explains that with the arrival of Yovel, the lands are returned to the estate, but when Yovel concludes each brother takes the same portion he originally received when the estate was first divided. Mitzpeh Eisan questions this approach, because if the Yovel cancels the "sale" among the brothers, then the re-division of the land must be renegotiated. The Yovel does not simply serve to pause the sale, it cancels it.

The explanation given is that this ruling of R' Yochanan that the division of an estate is considered to be a buy-out among the brothers is a function of a doubt in halacha. There are two ways to view the division of an estate. The heirs are recipients of an inheritance, of which they all deserve a portion. After they decide who should receive which portion, they each walk away with a specific allocation. There are two ways to view this process. We can say that the division has revealed for us the portion which the father left for each son, and this is referred to as **יש ברירה**. According to this, there is no "sale" or "buy-out," because each brother is now taking that which was designated for him in the first place. Or, we can say that the father did not leave any specific portion for any one son, but the entire estate is for them all, and their willingness to divide it involves a "buy-out" from each other. This is referred to as **אין ברירה**.

Yovel only cancels a sale, and if the brother's dividing the land is a sale, it should be cancelled and renegotiated. If it is not a sale, Yovel should have no effect. Therefore, at one point the Gemara thinks that R' Yochanan had a doubt regarding how to view this division, so we allow Yovel to cancel the division of the inheritance, but we do not take any land away from anyone due to this doubt. Pnei Yehoshua holds that R' Yochanan holds **אין ברירה**, so the sale should not be cancelled. ■

HALACHAH Highlight

Exhuming a body to rebury it close to family members

באים בני משפחתו וקוברים אותו בעל כרחו מפני פגם משפחה

The family can come and bury the deceased there against the will of the buyer because of the disgrace to the family

Shulchan Aruch¹ rules that it is prohibited to exhume a body to bury it elsewhere. This prohibition is in force even if the intent is to move the body to a more distinguished grave and certainly to move to a comparable or less honorable location is prohibited. The only exception to this rule is that it is permitted to exhume a body so that it could be buried with its ancestors – קברי אבות. The reason this is permitted is that it is more pleasing for one to be buried with his ancestors and this honors the deceased. Poskim discuss whether it is permitted to exhume a body so that it could be buried with other family members.

Teshuvos Knesses Yechezkel² ruled that it is permitted to exhume a body so that it could be buried together with other family members and the reference to “ancestors” was not specific and includes other family members as well. One of the proofs that he cited is the ruling of Chazal that relatives may block the sale of land that contains the bodies of deceased relatives. Teshuvos Seridei Aish³ explains that he refers to the Beraisa cited in our Gemara that teaches that a family may block the sale of the family cemetery plot and the reason is that it demeans the family for their cemetery plot to be sold. This proves that it is demeaning to be buried away from one’s family and thus it is permitted to exhume a body so that it could be buried with the rest of the family.

Seridei Aish disagreed with this position. Rashbam⁴ explains

STORIES Off the Daf

The Family Plot

באים בני משפחה וקוברין אותו בעל כרחו

In the Yerushalmi we find that a deceased person's nefesh suffers if one moves his body from its grave. We learn this from Shmuel HaNavi. When Shaul HaMelech called him back from the grave he was upset, saying “למה הרגותני” —Why have you agitated me?”

The Kol Bo explains the reason why this is so disturbing: “It is hard for the nefesh when its deceased body is moved because the person's soul gets confused and is afraid of judgment. As the verse states: **יִשְׁנֵתִי אִזּוֹ יִנּוּחַ לִי**.”¹

When a stranger suddenly passed away in a distant town, the chevrah kadisha lost

no time. They figured out his name and that he was from a distant town and buried him in a local plot. When the family heard about their loss they were devastated. After mourning the necessary time, they had a bit of an altercation whether or not the deceased should be moved to the family plot in their local cemetery. After all, the Shulchan Aruch rules that one may even move the deceased to an inferior grave in his family plot. But other family members were less certain. As mentioned above, moving in this manner is painful to the nefesh. Although the Shulchan Aruch rules that one may move the body, explaining that it is more pleasant for the deceased to lie with his family, he doesn't cite any source for this.

When this question reached the Knesses Yechezkel, zt”l, he pointed out that the source to this is from a statement on to-

day's daf. “In Bechoros 52 we find that if one sells the place reserved for his grave, his family can bury him there against his will since it is a disgrace for his family for him to be buried out of the family plot. We see that it is a disgrace for the family if their relative is not buried in the family burial place. Since it is also more easeful for his soul to rest with his fathers, we may move him for this purpose.”²

But one may well wonder what exactly is so pleasant about being buried with one's family? The Kol Bo explains this in a moving manner. “This strengthens our faith in the resurrection of the dead. Families buried together shows that we believe that they will meet again with the ultimate redemption.”³

1. עיין כ"ז בטור וב"י, יו"ד, תחילת סי' שס"ג
2. שו"ת כנסת יחזקאל, סי' כ"ג
3. כל בו, סי' קי"ד

(Overview...continued from page 1)

The novelty of the Mishnah's last statement is explained.

3) **MISHNAH:** The Mishnah discusses ancestral fields that may not revert back to the heirs of the original owners on yovel.

4) **Clarifying the debate**

The rationale behind R' Meir's position is explained.

The rationale behind Rabanan's opinion is explained.

R' Elazar's position is explained.

5) **Brothers**

R' Assi in the name of R' Yochanan rules that brothers are considered purchasers and they must return to each other inherited land which they divided.

This ruling is unsuccessfully challenged.

6) **Clarifying the debate**

R' Yochanan ben Berokah's position is clarified. ■

הדרן עלך יש בכור

that the embarrassment to the family that results from selling the family plot is that the living family members do not have a place for burial. This implies that there is no embarrassment to family members who are already buried although not together with other deceased members of the family. As far as the Beraisa cited in our Gemara is concerned there is also no proof since the Gemara refers to before the deceased was buried. When given a choice it is embarrassing to be buried away from the family but once the deceased is buried there is no proof that the body may be exhumed to be reburied near its family. ■

1. שו"ע יו"ד סי' שס"ג סעי' א'

2. שו"ת כנסת יחזקאל סי' מ"ג.

3. שו"ת שרידי אש ח"ב סי' קכ"ה.