

UNIT 42 – FRUIT AND CAPTIVES



There are two opinions in the גמרא concerning the *property* of someone who was taken *captive*.

- One opinion is that בית דין *brings down* a relative of the captive to take care of the property. The relative works the fields and takes a percentage of the produce as payment. The rest of the produce is set aside for the _____.
- The other opinion is that בית דין *should not* bring down a relative to take care of the property of a captive. The fields are left unattended until the _____ comes back or we find out that the captive died, in which case the fields would go to the captive's relative as an inheritance.



In UNIT 38, we learned about a שומר who was watching “diminishing” fruit:

חכמים



Don't touch them!
(Don't **sell** them)!



REASON:
רב כהנא: We assume that the owner would rather have *his* _____ fruit. (רוצה אדם בקב שלו מתשעה קבין של חבירו)
רב נחמן בר יצחק: We are afraid the owner may have made the fruit תרומה or _____.

רבן שמעון בן גמליאל



Sell them in front of בית דין.



REASON:
כמשיב אבידה לבעלים
By selling the fruit and then giving the money to the owner, it is considered as if the שומר returned a lost _____ to its owner.

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The גמרא attempts to deduce what the תנאים of our משנה would hold about bringing down a relative to take care of the property of a captive:



רשב"ג holds that the שומר *should* sell the fruit to protect the owner from a _____.



He would also say: Bring down a _____ to the captive's field to protect the owner from a loss.

The חכמים hold that the שומר *should not* sell the _____.



They would also say: Do *not* bring down a relative to take care of the captive's _____.

The גמרא rejects the above comparison for רשב"ג:



Perhaps רשב"ג only says to sell the fruit because if we don't, the entire "קרן" (in this case - the fruit) will be destroyed. The owner will lose his entire deposit!



Maybe רשב"ג would not allow a relative to take care of a captive's field, since leaving it unattended would not cause the owner to lose the entire "קרן" (in this case - the field itself).

PLEASE NOTE:

The word קרן – “base” refers to the *original* object. In the case of diminishing fruit, the *fruit itself* is the original object. In the case of the field of a captive, the *field* is the original object (as opposed to the produce that grows from the field which is a bonus).

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The גמרא rejects the above comparison for the חכמים:



Maybe the חכמים only say *not* to sell the fruit because of the reason of רב כהנא: "A person prefers 1 קב of his own rather than 9 קבין of his _____," or because of the reason of רב נחמן בר יצחק: "The owner may have made them תרומה or _____."



In the case of the captive's field (where these reasons do not apply) perhaps the חכמים *would* bring down a relative to take care of the captive's _____.



At this point, the גמרא understands that the case of rotting fruit and the case of the captive's property have *two different "reasonings"* (what one holds by the rotting fruit case does *not* necessarily determine what one would hold by the captive case).

The גמרא challenges this assumption by bringing two statements of שמואל.

אמר רב יהודה אמר שמואל

The הלכה is like רשב"ג that the שומר should sell the fruit.

שמואל

We bring down a _____ to take care of the captive's field.



From שמואל's rulings in these two cases it seems that the case of rotting fruit and the case of the captive's property have the same underlying "reasoning". In both cases, we intervene to protect the owner from a loss.

The גמרא rejects this assumption:



No! Rotting fruit and a captive's property are really two separate and independent cases. It just happens to be that שמואל paskens like רשב"ג that we sell the rotting fruit, and he also happens to pasken that we bring a down relative to work the captive's field.

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In theory, however, it is possible that:

- One could hold like רשב"ג - that the שומר should *sell* the _____, and still hold that we do *not* bring down a relative to take care of a captive's field.
- One could hold like the חכמים – that the שומר *should not* to sell the fruit, and still hold that we *do* bring down a _____ to take care of a captive's field.

The גמרא supports this conclusion based on two statements of רב נחמן:

אמר רבא אמר רב נחמן

The הלכה is like the _____ that the שומר should *not* sell the fruit.

רב נחמן

We do bring down a _____ to the captive's field to protect the owner from a loss.



The fact that רב נחמן holds both: 1) We *do not* sell the fruit and 2) We *do* bring down a _____ to a captive's field, shows that the two cases are *not connected*.

Summary

- THE גמרא TRIES TO COMPARE:
 - רשב"ג who says that the שומר *should sell* the rotting fruit will also say we *should bring down* a relative to take care of captive's field.
 - The חכמים who say the שומר *should not* sell the rotting fruit will also say *not* to bring down a relative to take care of a captive's field.
- The גמרא REJECTS THE COMPARISON:
 - רשב"ג only says to sell the rotting fruit because eventually the קרן (the deposited fruit) will be destroyed. By the captive's field, even if we do not bring down a relative, the "קרן" (the field itself) will not get destroyed.
 - רב חכמים only say not to sell the rotting fruit because of the reasons of רב נחמן בר יצחק or כהנא. Those reasons don't apply by the captive's field.
- CONCLUSION: The two cases are *independent*.

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- QUESTION: שמואל holds that we do *sell* the rotting fruit and he also holds that we *do bring down* a relative to the captive's field. Doesn't this imply that the two cases are *connected*?
- ANSWER: These cases are *not connected*! שמואל just happens to pasken similarly in both cases.
- SUPPORT: רב נחמן holds that we *do not* sell the rotting fruit, and he also holds that we *do* bring down a relative to a captive's field.
- CONCLUSION: The two cases are *independent*.



הכי נמי מסתברא – Like this is also logical

(What we just said makes sense because...)

This term is used when the גמרא brings support for a statement or for an answer from another source. In our גמרא, we brought a support for the idea that the rotting fruit and captive's property are two separate cases from the statements of רב נחמן.



קרוב	דמורידין	נשמע
דלמא	וממאי	לנכסי שבוי
דקא כליא קרנא	אלא משום	עד כאן לא קאמר
הכא	התם	הכי נמי
לאו משום	דתרי טעמי נינהו	למימרא
שמע מינה	הכי נמי מסתברא	דחד טעמא הוא

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- ◇ - The גמרא's attempt to deduce what רשב"ג would hold by a captive.
- ◇ - The גמרא's attempt to deduce what the חכמים would hold by a captive.
- - The rejection of the comparison by רשב"ג.
- - The rejection of the comparison by the חכמים.

NOTE: At this point, the גמרא understands that the case of rotting fruit and the case of the captives field are *independent* cases with two different reasonings.

- - The גמרא challenges the idea that there are “two different reasonings” from the rulings of שמואל.
- △ - The גמרא asserts that the cases are independent and have two different reasonings.
- - The גמרא's support for saying that the two cases are independent based on the two rulings of רב נחמן.

מדרבן שמעון בן גמליאל נשמע דמורידין קרוב לנכסי שבוי, מדרבנן נשמע - דאין מורידין קרוב לנכסי שבוי. וממאי? דלמא עד כאן לא קאמר רבן שמעון בן גמליאל הכא - אלא משום דקא כליא קרנא, אבל התם - הכי נמי דאין מורידין. ועד כאן לא קאמרי רבנן הכא - אלא אי כרב כהנא, אי כרב נחמן בר יצחק. אבל התם - הכי נמי דמורידין. למימרא דתרי טעמי נינהו? והאמר רב יהודה אמר שמואל: הלכה כרבן שמעון בן גמליאל, ואמר שמואל: מורידין קרוב לנכסי שבוי, לאו משום דחד טעמא הוא? לא, תרי טעמי נינהו. הכי נמי מסתברא, דאמר רבא אמר רב נחמן: הלכה כדברי חכמים, ואמר רב נחמן: מורידין קרוב לנכסי שבוי. אלא שמע מינה: תרי טעמי נינהו, שמע מינה!

UNIT 43 – PROPERTY OF A CAPTIVE



Before learning the next גמרא, we need to introduce several concepts:

אריס - Sharecropper



A sharecropper is someone who farms land that belongs to a landowner. The sharecropper plows, plants, and harvests the land and keeps a percentage of that year's crop (either a 1/4 or 1/3 or 1/2 depending on the local custom). The landowner gets to keep the rest.

קרוב לנסכי שבו - A relative for the property of a captive



When someone is taken captive, there is a discussion about what to do with that person's field. According to some opinions, בית דין brings down his _____ to take care of the property. Until the status of the captive is resolved, the relative works the fields and gets to keep a portion of the produce (like a sharecropper). The rest of the produce is set aside for the _____.

- If the captive dies, the relative will inherit the field. He will also get the produce that had been set aside for the owner.
- If the captive returns, he will get his field back and the produce that was set aside for him.
- NOTE: If the captive returns before the _____ had a chance to take his portion of that year's crop, the relative still receives a portion of the produce like a sharecropper.



QUESTION: Which relative is chosen to take care of the property?

ANSWER: The relative who would inherit the property if the captive dies. (רש"י)

QUESTION: Why do we only bring a *relative* down to the property?

ANSWER: There is a possibility that the captive has died in captivity. In that case, the field and its produce belong to the relative. If *someone else* is brought down to work the field and gets paid like a sharecropper, the *relative* (who now owns the field) will lose that portion of the produce which really should have been his. (רמב"ן)

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The **אמוראים** disagree about bringing down a relative to a captive's property.

רב

We *do not* bring down a relative to take care of the property.

שמואל

We *do* bring down a relative to take care of the property.

The **גמרא** clarifies the above **מחלוקת**:



If we heard (a rumor or from one witness - **תוספות**) that the captive died, **everyone** agrees that we *bring down* the relative to take care of the _____.

This is because there is no risk in bringing down a relative:

- If the rumor ends up being false and the captive returns, the relative will take a portion of the produce like a sharecropper and return the rest to the owner.
- If the rumor ends up being true and **עדים** testify that the captive died, the relative will inherit the property. (רש"י)



The **מחלוקת** between **רב** and **שמואל** is in a case where we did not _____ a rumor that the captive died.

רב

We *do not* bring down a relative to take care of the property.

We *are concerned* that the relative might *ruin* the _____. [He won't fertilize the field and he will constantly plant it in order to get as much produce as possible before the captive comes back. (רש"י)]

שמואל

We *do* bring down a relative to take care of the property.

We *are not concerned* that the relative will ruin the field. Since he gets a portion of the produce like a sharecropper, he will be motivated to take good care of the _____.

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QUESTION: Why is רב only concerned about the relative ruining the property when there is *no* rumor that the captive died?

ANSWER: If there *is* a rumor that the captive died, the relative *expects* that he will soon be *inheriting* the field. In this case, he will certainly take good care of the field (by fertilizing and not overplanting) since he expects that the field will be his!

When there is *no* rumor that the captive died, the relative *doesn't expect to inherit the field*. In this case, he won't care if the field gets ruined. He will try to get as much produce out of the field as possible before the captive returns.

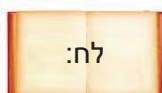
DID YOU KNOW?

The הלכה is like שמואל that we *do* bring down a relative to take care of the captive's property. This is because whenever there is a מחלוקת between רב and שמואל in *money matters*, the הלכה is like שמואל. In matters of אסור and היתר, the הלכה is like רב. The reason for this rule is because שמואל was a greater expert in laws involving money matters, and רב was a greater expert in the laws of אסור and היתר.



PROPERTY OF A CAPTIVE:

- If there is a rumor that the captive died, all opinions say to bring down the relative.
 - There is no concern that the relative will ruin the field because he thinks he will soon inherit the property.
- If there is no rumor that the captive died:
 - רב – Do not bring down the relative.
 - We are afraid that he will ruin the field.
 - שמואל – Bring down the relative.
 - Since he gets a percentage like a sharecropper, he won't ruin the field.



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לנכסיו	מורידין קרוב	שבוי שנשבה
כי פליגי	כולי עלמא לא פליגי	בששמעו בו שמת
כאריס	שיימינן להו	דלמא מפסיד להו



- The opinion of רב.



- The opinion of שמואל.



- The case where both רב and שמואל agree.



- The case where רב and שמואל disagree.

UNDERLINE - The דין and reasoning of רב.

UNDERLINE - The דין and reasoning of שמואל.



אתמר, שבוי שנשבה. רב אמר: אין מורידין קרוב לנכסיו, שמואל אמר: מורידין קרוב לנכסיו. בששמעו בו שמת - כולי עלמא לא פליגי דמורידין, כי פליגי - בשלא שמעו בו שמת. רב אמר: אין מורידין, דלמא מפסיד להו. ושמואל אמר: מורידין, כיון דאמר מר שיימינן להו כאריס - לא מפסיד להו.



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The next **גמרא** requires learning several **פסוקים** in **פרשת משפטים**:

כל אלמנה ויתום לא תענון
Do not afflict any widow or orphan.

 **אם ענה תענה אותו כי אם צעק יצעק אלי שמוע אשמע צעקתו** 
If you do afflict him, when he will cry out, I will surely hear his cry.

 **וחרה אפי והרגתי אתכם בחרב** 
My anger will be kindled and I will kill you by the sword

 **והיו נשיכם אלמנות ובניכם יתומים** 
and your wives will be widows and your sons will be orphans.

The גמרא quotes a ברייתא:

רבי אליעזר asks: From the fact that the פסוק says, “My anger will be kindled *and I will kill you by the sword*,” I already know that the wives will be widows and the sons will be orphans. Why does the תורה have to say: “Your wives will be _____ and your sons will be _____?”

רבי אליעזר answers: To teach you (that there will be an *additional* punishment): Their wives will want to remarry but will not be allowed to and their sons will want to go down to their father’s _____ but will not be allowed to. This is because the husband/father will be taken captive and we won’t know whether he is alive or _____).

The גמרא asks a question on שמואל from this ברייתא:

This ברייתא shows that when we don’t know if the captive is alive or not, we *do* _____ allow a relative (like his son) into his property! This is a question on שמואל who holds that we *do* allow a relative into the property even when there is no rumor that he died.


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שמואל answers the question on רבא:


When the ברייתא says: “The sons will not be allowed to go down to the property”, it was referring to allowing the sons (to *fully* inherit the property to the extent that the sons would be able) to *sell* the property. We do not allow the sons to *sell* the field until we have proof that the father _____. The ברייתא could agree that we do allow the sons to *take care* of the field, even if we don’t know if the father died!

ברייתא tells a story connected to the above גמרא:

...בנהרדעא - הוה עובדא בנהרדעא




My relative was taken captive! I want to take care of his field!




The ברייתא says: “The sons will *not be allowed* to go into the field.” Sorry, you can’t!

רב ששת


רב ששת responds and רב עמרם objects:



Maybe the ברייתא just meant the sons can’t (inherit and) *sell* the property? However, they could *take care* of their father’s field like a sharecropper!



Maybe you are from Pumpadisah where they try to “squeeze in” answers that don’t really fit like trying to put an elephant through the eye of a needle!



רב עמרם

רב ששת

Why רב ששת thought רב עמרם’s answer was a “squeeze”:

From the *context* of the ברייתא, it is *implied* that the sons cannot go down to the father’s field, *even just to take care of it*. In the ברייתא, the **sons** are mentioned together with the **wives**: “Their *wives* will want to remarry but will ____ be allowed to and the *sons* will want to go down into their father’s property but will not be allowed to.” Just like the _____ cannot remarry **at all**, so too, the sons cannot go down into the father’s property **at all** (*even just to take care of it*).

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- QUESTION: The ברייתא states that the sons of a captive are *not allowed* to go down into their father’s property.
 - This is a question on שמואל who holds מורידין קרוב לנכסי שבוי.
- ANSWER: The ברייתא is not a question on שמואל -
 - “Not allowing the sons to go down into their father’s property” means that they may not go down into the field (as an inheritance) to *sell it*.
 - We *do* allow the sons to go down into the field to *take care of it*.
- רב ששת understood the ברייתא to mean that the sons can’t go into the property *at all*, even to *take care* of it.
 - This is because in the ברייתא the sons are mentioned with the wives:
 - The wives cannot remarry *at all*.
 - The sons cannot go into the property *at all* (even to take care of it).



מה תלמוד לומר – What teaching (does this פסוק come) to say?

This term is used when words in a פסוק seem unnecessary and the גמרא explains what teaching is learned from these extra words. In our גמרא, רבי אליעזר learns from the seemingly extra words ויהיו נשיכם אלמנות ובניכם יתומים that there is an extra punishment: The wives cannot remarry and the sons cannot go down into their father’s fields.



והרגתי אתכם	וחרה אפי	ממשמע שנאמר
יתומים	שנשותיהם אלמנות	יודע אני

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מבקשות להינשא	מלמד	מה תלמוד לומר
לירד ולמכור תנן	לירד לנכסי אביהן	ואין מניחין אותן
מהא מתניתא	ופשטה רב ששת	הוה עובדא
דומיא	בקופא דמחטא	דמעילין פילא
אף הכא נמי	כלל לא	מה התם



()

- רבי אליעזר of ברייתא.

UNDERLINE

- The words in the ברייתא that are a question on שמואל.



- שמואל's answer for רבא.



- The case and ruling of רב ששת.



- The question of רב עמרם.



- The response of רב ששת.

מיתיבי, רבי אליעזר אומר: ממשמע שנאמר (שמות כ"ב) **וחרה אפי והרגתי אתכם** יודע אני שנשותיהם אלמנות ובניהם יתומים. אלא מה תלמוד לומר **והיו נשיכם וגו'**? מלמד שנשותיהם מבקשות לינשא ואין מניחין אותן, ובניהן רוצים לירד לנכסי אביהן ואין מניחין אותן! אמר רבא: לירד ולמכור תנן. הוה עובדא בנהרדעא, ופשטה רב ששת מהא מתניתא. אמר ליה רב עמרם: דלמא לירד ולמכור תנן? אמר ליה: דלמא מפומבדיתא את, דמעילין פילא בקופא דמחטא? והא דומיא דנשותיהם [ובניהם] קתני, מה התם - כלל לא, אף הכא נמי - כלל לא.