

21.3.6

39a (לא סיימוה קמי דקטן הוא) → 40a (אמר רב הונא אין מורדין קטן)

1. וַיָּבֹר יוֹסֵף אֶת אָחָיו וְהֵם לֹא הִכְרָהוּ: בְּרֵאשִׁית פֶּרֶק מִבַּ פְּסוּק ח

- I limitations to rule allowing relative to take control of captive's property
- a קטן may not take control – he may destroy it
 - b A relative may not take control of קטן's property – קטן doesn't know to protest – קרוב may take full possession
 - c A relative of a relative may not take control of קטן's property – maternal brother's paternal brother – may be מחזיק
 - d **Implication:** הונא ר' maintains that we cannot effectively take possession of קטן נכסי
 - i **Even:** if the possessor stayed on the land for 3 years after he came of age
 - 1 **Suggested limitations:**
 - (a) **Relation:** only applies to paternal brothers, who may claim inheritance, but not maternal brothers
 - (b) **Property:** only applies to land, but not houses, as neighbors will testify that it belongs to קטן
 - (c) **Writ:** only applies if there is no writ of division granting part of the property; if there is, it is well known
 - 2 **Rejection:** applies to both types of brother, to houses as well as land and even if there is an עיטרא
 - e **Story:** exposition: a woman had 2 living daughters, and a grandson from a deceased daughter
 - i **event:** woman and a daughter were taken captive and their fate was unknown
 - 1 **considerations (אב"י):** we cannot give control to sister, as woman may have died and we cannot give a relative control over קטן נכסי (the baby is an heir of at least 1/3); we cannot give child control – as woman may not have died and we cannot put a קטן in control of נכסי שבוי
 - 2 **ruling:** we give 1/2 to the free sister and the other 1/2 is given in trust to the קטן
 - (a) **dissent (רבא):** since we appoint an אפוטרופוס for the 1/2, we appoint one for the entire property
 - ii **Events:** news of the old woman's death came
 - 1 **Ruling (אב"י):** we give 1/3 to the sister, 1/3 to the baby, then, regarding the portion of the captive sister (whose fate is still unknown), 1/6 is given to free sister and 1/6 is given in trust to קטן
 - (a) **Dissent (רבא):** since we appoint אפוטרופוס on 1/6, we appoint one over other 1/6 (given to sister)
 - f **Story:** איסק בר מרי had a fellow show up from בי חוזיא, claiming to be his brother, demanding he share father's land
 - i **ד' חסדא:** he may indeed be a brother that מרי doesn't recognize, as per v. 1
 - ii **Ruling:** new brother must bring witnesses that he is, indeed, a son of איסק
 - 1 **Response:** cannot do so, as מרי is powerful and witnesses are afraid
 - 2 **Ruling:** מרי must bring witnesses that he is **not** a brother
 - (a) **Challenge (מרי):** this isn't the law – המוציא מחברו עליו הראיה!
 - (b) **Answer (רבא):** it is the law in case of powerful people (like מרי) who frighten witnesses
 - (c) **Protest (brother):** witnesses will come but be afraid to testify against מרי
 - (d) **Response (רבא):** they won't go that far (they might evade court, but not lie)
 - 3 **Event:** witnesses came and testified that the newcomer was a son of איסק
 - (a) **Claim:** he also claimed half of the orchards and gardens that מרי had improved
 - (b) **Ruling (רבא):** in support – as per ט:ג ב"ב – if adult children improved property, minors share proceeds
 - (i) **Challenge (אב"י):** disanalogous; in ט:ג ב"ב, adults were aware of minors & forgave that half, not so here
 - (ii) **Eventually:** issue came to ר' אמי, who ruled in favor of newcomer as per our ruling that a קרוב who is placed in control of missing relative's property is paid like a sharecropper
 - 1. **Block (רבא):** in that case, the ב"ד allowed him to take control; here, מרי took control on his own
 - 2. **Additionally:** the newcomer was a קטן at the time
 - a. **אמי ד':** accepted ruling, since he didn't originally know that newcomer had been a קטן