

A בס"ד

Intro

Today we will learn בע"ה of דף ק"ג of בבא בתרא
Some of the topics we will learn about include.

A continuation of the Mishnah's Halachah
האיש נוחל את אשתו
A husband inherits the assets of his deceased wife, even if she has sons

בעל
אינו נוטל בראוי כבמוחזק
A husband inherits only those assets that were in his wife's possession before she died, but does not inherit those assets that were to come to his wife after she died.
Her sons or other relatives inherit these assets.

The Mishnah's Halachah of
ובני אחיות
נוחלין ולא מנחילין
If a person dies without children, and his father and brothers and sisters are no longer alive, the sons of his sister inherit the assets of their uncle.

A

האיש נוחל את אשתו

בעל
אינו נוטל בראוי כבמוחזק

ובני אחיות
נוחלין ולא מנחילין

B

The Halachah of
ביום אתה מפיל נחלות
ואי אתה מפיל נחלות בלילה
As the Gemara explains, this refers to
דין נחלות
Bais Din can divide the estate among the heirs only during the day but not during the night, because ירושה is considered דיני ממונות, a monetary case in which a Bais Din of three people is required, and
דנין ביום
וגומרין אף בלילה
The case must begin during the day, but it can be finalized even at night.

The Halachah of
שלשה שנכנסו לבקר את החולה
If three people came to visit a sick person on his deathbed and he gave instructions in how to divide his estate among his heirs, they have two options,
Either
רצו כותבין
They can act as עדים, witnesses, and record the חולה's wishes to testify later before another Bais Din, who will then divide the estate accordingly
OR
רצו עושין דין
They can act now as a Bais Din, and divide the estate according to his wishes.

אין עד נעשה דיין
A person who testifies on a case is disqualified to become a דיין, a judge on the very same case

B

ביום אתה מפיל נחלות
ואי אתה מפיל נחלות בלילה

דין נחלות

שלשה שנכנסו
לבקר את החולה

רצו כותבין
רצו עושין דין

אין עד נעשה דיין

1 So let's review ...

The previous Mishnah taught
האיש נוהל את אשתו
The husband inherits the assets of his deceased wife, even
if she has sons.

רבי adds
מנין לבעל שאינו נוטל בראוי כבמוחזק
The husband inherits only those assets that were in his
wife's possession at the time she died, such as ר
מת אביה
ואח"כ מתה
Her father died with no sons and she inherited his assets,
and then she died.

However, the husband does not inherit those assets that
were ראוי, would come to her after she died, such as
מתה
ואח"כ מת אביה
She died, and then her father died with no sons and his
assets were bequeathed to her after she died.

1

האיש נוהל את אשתו
The husband inherits the assets of his deceased wife,
even if she has sons.

**מנין לבעל שאינו נוטל
בראוי – כבמוחזק**

The husband inherits only
those assets that were in his
wife's possession at the time
she died,
such as

מת אביה ואח"כ מתה
Her father died with no sons
and she inherited his assets,
and then she died.

The husband does not inherit
those assets that were ראוי,
would come to her after
she died,
such as

מתה ואח"כ מת אביה
She died, and then her
father died with no sons and
his assets were bequeathed to
her after she died.

2 The husband does not inherit those assets. Her sons – or if
she has no children, her closest relatives inherit these
assets, because the Pasuk states

ואלעזר בן אהרן מת
ויקברו אותו בגבעת פנחס בנו
אלעזר died and was buried in the field of his son
אלעזר.
וכי מנין לפנחס
שלא היה לו לאלעזר
How did פנחס get a field that did not belong to his father
אלעזר?

מלמד שנשא אלעזר אשה
ומתה בחיי מורישיה
ומתו מורישיה וירשה פנחס
It must be that after אלעזר's wife died, her father died, and
her son פנחס inherited the field. However, her husband
אלעזר did not inherit this field, because it was ראוי.
And this is alluded to in the word בנו which implies
נחלה הראויה לו
וירשה בנו
The field was meant to go to אלעזר, but was inherited by
his son פנחס.
=====

2

The husband does not inherit those assets.
Her sons – or if she has no children,
her closest relatives inherit these assets,

because the Pasuk states

**ואלעזר בן אהרן מת
ויקברו אותו בגבעת פנחס בנו**
אלעזר died and was buried in the field of his son פנחס.

**וכי מנין לפנחס
שלא היה לו לאלעזר**

How did פנחס get a field
that did not belong to his father אלעזר?

**מלמד שנשא אלעזר אשה
ומתה בחיי מורישיה
ומתו מורישיה וירשה פנחס**

It must be that after אלעזר's wife died, her father died,
and her son פנחס inherited the field.
However, her husband אלעזר did not inherit this field,
because it was ראוי.

And this is alluded to in the word "בנו" which implies

**נחלה הראויה לו
וירשה בנו**

The field was meant to go to אלעזר,
but was inherited by his son פנחס.

3 The previous Mishnah taught

ובני אחיות
נוחלין ולא מנחילין
If a person dies without children, and his father, brothers
and sisters, are also no longer alive, the sons of his sister
inherit the assets of their uncle.

The Braisa adds

תנא בני אחות
ולא בנות אחות
Only the sons of a sister but not the daughters of a sister;

And as רב ששת explains;

למאי הלכתא
לקדם

If the sister had both sons and daughters, her sons, the
deceased's nephews, come before her daughters, the
deceased's nieces.

However, if the sister had no sons, only daughters, they do
inherit their uncle's assets.

The nephew's preference is derived from that all the
Pesukim regarding ירושה begin with the joining letter
VAV. Therefore,

מקיש ירושה שניה
לירושה ראשונה

All levels of ירושה are compared to the initial level of
children who inherit their father:

מה ירושה ראשונה בן קודם לבת

אף ירושה שניה בן קודם לבת

Just as in the inheritance of a father, the son comes before
the daughter, so too, in the inheritance of an uncle, the
nephew comes before the niece.

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3

ובני אחיות
נוחלין ולא מנחילין

If a person dies without children
and his father, brothers and sisters, are also no longer alive,
the sons of his sister inherit the assets of their uncle.

תנא בני אחות
ולא בנות אחות

Only the sons of a sister but not the daughters of a sister;

רב ששת
למאי הלכתא
לקדם

If the sister had both sons and daughters,
her sons, the deceased's nephews,
come before her daughters, the deceased's nieces.

However,
if the sister had no sons, only daughters,
they do inherit their uncle's assets.

The nephew's preference is derived from...

All Pesukim regarding ירושה
begin with the joining letter "ו".

Therefore,
מקיש ירושה שניה
לירושה ראשונה

All levels of ירושה are compared to the initial level
of children who inherit their father:

מה ירושה ראשונה בן קודם לבת
אף ירושה שניה בן קודם לבת

4 The Gemara proceeds with a Braisa, the Pasuk states
 והיה ביום הנחילו את בניו
 The word ביום teaches
 ביום אתה מפיל נחלות
 ואי אתה מפיל נחלות בלילה
 As the Gemara explains, this refers to
 דין נחלות
 The division of an inheritance;
 Bais Din can divide the estate among the heirs only during
 the day but not during the night, because the Pasuk that
 refers to ירושה states
 והיתה לבני ישראל לחוקת משפט
 אורעה כל הפרשה כולה להיות דין
 As the Rashbam explains;
 ירושה is considered דיני ממנות, a monetary case, for which a
 Bais Din of three people is required, and
 דנין ביום
 וגומרין אף בלילה
 The case must begin during the day, but it can be finalized
 even at night.
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4

קמיתא

והיה ביום הנחילו את בניו

קיום אתה מפיל נחלות
ואי אתה מפיל נחלות בלילה

This refers to

דין נחלות

*The division of an inheritance;
 Bais Din can divide the estate among the heirs
 only during the day but not during the night,
 because the Pasuk that refers to ירושה states*

והיתה לבני ישראל לחוקת משפט
אורעה כל הפרשה כולה להיות דין

*As the Rashbam explains;
 ירושה is considered דיני ממנות, a monetary case, for
 which a Bais Din of three people is required, and*

דנין ביום – וגומרין אף בלילה

*The case must begin during the day,
 but it can be finalized even at night.*

5 Based on this, the Gemara proceeds with the following Halachah:

שלשה שנכנסו לבקר את החולה

If three people came to visit a sick person on his deathbed and he gave them instructions on how to divide his estate among his heirs, they have two options:

Either

רצו כותבין

They can act as עדים, witnesses, and record the חולה's wishes to testify later before another Bais Din, who will then divide the estate accordingly.

OR

רצו עושין דין

They can act now as a Bais Din, and divide the estate according to his wishes.

As the Rashbam explains, even though

אין כאן אדם שמעיד בפניהם כלום

Generally, Bais Din can issue a ruling only through a testimony of עדים, and here no עדים testified before this Bais Din? However

לא תהא שמייעה גדולה מראיה

Since this Bais Din actually saw the חולה dividing his assets, this is superior to testimony that they merely hear from other עדים, and the ראייה of Bais Din alone is considered a קבלת עדות. ®

However

שנים

כותבין

ואין עושין דין

If only two people came to visit the חולה, they can only become עדים, but they cannot become a Bais Din, because a Bais Din must consist of at least three people.

5

שלשה שנכנסו לבקר את החולה
If three people came to visit a sick person on his deathbed and he gave them instructions on how to divide his estate among his heirs, they have two options:

רצו עושין דין

They can act now as a Bais Din, and divide the estate according to his wishes.

רצו כותבין

They can act as עדים, and record the חולה's wishes to testify later before another Bais Din, who will then divide the estate accordingly.

Even though

אין כאן אדם שמעיד בפניהם כלום

Generally, Bais Din can issue a ruling only through עדים, and here no עדים testified before this Bais Din?

However

לא תהא שמייעה גדולה מראיה

Since this Bais Din saw the חולה dividing his assets, this is superior to testimony from other עדים, and the ראייה of Bais Din alone is considered a קבלת עדות.

שנים

כותבין – ואין עושין דין

If only two people came to visit the חולה, they can only become עדים, but they cannot become a Bais Din, because a Bais Din must consist of at least three people.

6 לא שנו שלשה עושין דין

אלא ביום

Only during the day, three people can become a Bais Din and rule based on their ראייה, because as the Rashbam explains

ראו בשעה שיכולין לעשות הדין

Their ראייה was during the day when they are able to act as a Bais Din, and therefore their ראייה is considered a קבלת עדות. However,

בלילה

אפילו שלשה

כותבין ואין עושין דין

During the night, even three people can only become עדים to testify in another Bais Din, but they cannot become a Bais Din afterward and decide the case based on their own ראייה, because

because

ראו בשעה שאין כולין לעשות הדין

Since their ראייה was during the night when they were unable to act as a Bais Din, it cannot be considered a קבלת עדות, and therefore

הוּוּ לְהוּ עֵדִים

ואין עד נעשה דיין

A verbal testimony is required during a following day, and once they do so and became עדים, they are disqualified to become דיינים on the same case.

The Rashbam adds;

ונראה בעיני דגירת הכתוב היא דכתיב

'ועמדו שני האנשים לפני ה'

אנשים refers to the עדים and ה' refers to the דיינים, and this teaches that the עדים testify before other דיינים, but the עדים cannot become the דיינים.

6

רב חסדא

בלילה
אפילו שלשה כותבין
ואין עושין דין

because

ראו בשעה שאין כולין
לעשות הדין

Therefore

הוּוּ לְהוּ עֵדִים
ואין עד נעשה דיין

A verbal testimony is required during a following day,
and once they do so and became עדים,
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