



בס"ד

Intro

Today we will בע"ה learn דף קכ"ח of איז בבא בתרא מסכת בבא בתרא of the topics we will learn about include.

Seven Halachos of שלח ליה ר' אבא לרב יוסף בר חמא

The Machlokes regarding

גובין מן העבדים

Whether or not a lender can collect a servant for a debt from the יתומין of the borrower, which depends on whether we say

עבדא כמקרקעי דמי

Slaves are considered non-movable assets like land, which a בעל חוב can collect even from יתומין.

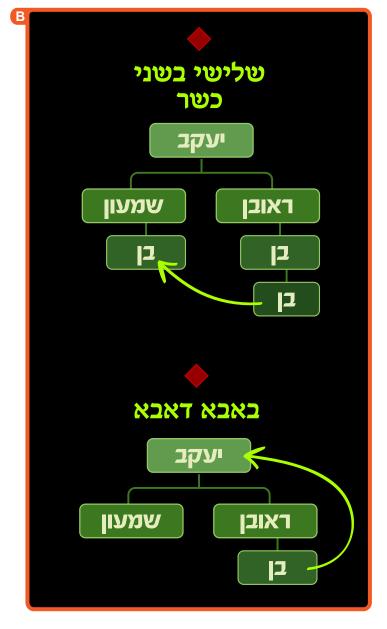
The Halachah of שלישי בשני כשר

A third generation of one brother can testify for a second generation of another brother, in other words for a first-cousin once removed.

The Machlokes regarding באבא דאבא

Whether or not a third generation, a grandson, can testify for his grandfather?











C

Several opinions regarding היה יודע לו בעדות עד שלא נסתמא

ונסתמא

פסול

If a person saw someone's item and then became blind; Does he become disqualified to testify for the size of the item such as שדה, a field, גלימא, a garment, and נסכא, a piece of silver?

The two approaches in the Machlokes regarding האומר על תינוק בין הבנים

נאמן

If a person testifies for a child among his other children, do we accept his testimony or not.

Does this Machlokes refer to

האומר על תינוק בין הבנים

יירש כל נכסי

A father who bequeathed his entire estate to only one son, while the other sons are to get nothing, and this is the Machlokes רבי יוחנן בן ברוקה וחכמים in the following Mishnah.

OR

The Machlokes refers to

האומר על תינוק בין הבנים

בכור הוא

There was an established חקדה that one son was the בכור, and the father testified that another son is the בכור and he is entitled to פי שנים, and this is the Machlokes רבי יהודה in the previous Daf.









So let's review ...

The Gemara proceeds with seven Halachos of שלח ליה רבי אבא לרב יוסף בר חמא

1.

האומר לחבירו עבדי גנבת והוא אומר לא גנבתי אתה מכרתו לי, אתה נתתו לי במתנה

If a person claimed that someone stole his servant, while the מוחזק, the possessor claimed that the servant was sold or given to him as a gift, the מוחזק is believed, and he is not required to swear, because as the Rashbam explains אין נשבעין על העבדים

There is no שבועה obligation on a servant. ®

However,

רצונך השבע וטול ונשבע

אינו יכול לחזור בו

If the מוחזק gave the claimant the option to swear and collect the servant and he did so, the מוחזק cannot retract, because

הא הימניה בשבועה

וכמאן דאודי ליה דמי

Since the מוחזק accepted the claimant's שבועה, it is considered like he admitted to his claim.









2 2.

הלכה גובין מן העבדים

A creditor can collect a servant for a debt even from the יתומין of the borrower.

Even though in general

מטלטלי דיתמי לא משתעבדי

Moveable assets cannot be collected from יתומין? However,

עבדא כמקרקעי דמי

Slaves are considered non-movable assets like land, which a בעל חוב can collect from יתומין. $\ensuremath{\mathbb{R}}$

רב נחמן disagrees and says

אין גובין

A creditor cannot collect a servant for a debt from the יתומין of the borrower, because as the Rashbam explains לענין בעל חוב

עבדא כמטלטלי דמי

Regarding a creditor, a servant is considered only a moveable asset, but not like קרקע because לא סמכא דעתיה

When extending a loan one does not rely on collecting the borrower's servant, because a servant is moveable and not everlasting.

The Gemara later corrects this ruling to read אטר בי יוסף בר אבא לרב יוסף שלח ליה רבי אבא האין גובין מן העבדים הלכה אין גובין מן העבדים וכן אמר רב נחמן









הלכה שלישי בשני כשר

A third generation of one brother can testify for a second generation of another brother, in other words for a first-cousin once removed.

רבא adds

אף בראשון

A third generation of one brother can testify even for the brother, for his great-uncle.

And מר בר רב אשי adds

אכשר באבא דאבא

A third generation, a grandson, can testify even for his grandfather.

However, the Gemara concludes

ולית הלכתא כמר בר רב אשי

A grandson cannot testify for his own grandfather, because as the Rashbam explains דבני בנים עד אלף דורות לא יעידו לאבותיהם

דבן ירך אביו הוא

A descendant, even after one thousand generations, cannot testify for his forefather, because he is considered like a limb of his forefather, and אדם קרוב אצל עצמו

A person cannot testify for himself.









היה יודע לו בעדות קרקע עד שלא נסתמא היה יודע לו בעדות קרקע

פסול

If a person saw the boundaries of someone's field, and he then became blind, he cannot testify for this field, because as the Rashbam explains

דמאומד דעת אינו יכול להעיד

One cannot testify using his own judgment, only through his actual vision.

שמואל disagrees and says כשר

אפשר דמכוין מצרנהא

A blind person can testify for a field, because he can give the boundaries of the neighboring fields. However, אבל גלימא לא

A blind person cannot testify for someone's garment even by giving its measurements, because as the Rashbam explains

שהרבה טליתות מדתן שוה

There are many garments of the same size.



היה יודע לו בעדות קרקע עד שלא נסתמא ונסתמא פסול

If a person saw the boundaries of someone's field, and he then became blind, he cannot testify for this field



One cannot testify using his own judgment, only through his actual vision

אואל disagrees and says

אפשר דמכוין מצרנהא

A blind person can testify for a field, because he can give the boundaries of the neighboring fields

אבל גלימא לא

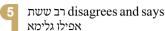
A blind person cannot testify for someone's garment even by giving its measurements

שהרבה טליתות מדתן שוה









אפשר דמכוין מדת ארכו ומדת רחבו

A blind person can testify even for a garment by giving the measurements of its length and width. However, אבל נסכא לא

A blind person cannot testify for a piece of silver, because it has no measurements.

רב פפא disagrees and says אפילו נסכא אפשר דמכוין מדת משקלותיו

A blind person can testify even for a piece of silver by giving its weight.

The Gemara rejects all these opinions, and brings a proof from a Braisa that a blind person is disqualified from all testimonies, as the Braisa rules

If the witness was able to see at the time of the incident but was blind at the time of testimony, he is disqualified to testify. However,

פיתח ונסתמא וחזר ונתפתח כשר

If he was able to see during both times, but he had become blind in between, he is eligible to testify.









האומר על תינוק בין הבנים

נאמן

If a person testifies for a child among his other children, his testimony is accepted.

רבי יוחנן disagrees and says

אינו נאמן

His testimony is not accepted.

The Gemara asks

מאי קאמר

What was the testimony referring to?

And the Gemara offers two explanations:

1.

אביי says

הכי קאמר

האומר על תינוק בין הבנים

יירש כל נכסי

A father bequeathed his entire estate to only one son, while the other sons are to receive nothing

רבי אבא holds

נאמן

His אוואה is fulfilled, because he concurs with ברני יוחנן בן in the following Mishnah.

While רבי יוחנן holds

אינו נאמן

His צוואה is not fulfilled, because he concurs with the רבנן in the following Mishnah.

(5) האומר על תינוק בין הבנים נאמו If a person testifies for a child among his other children, his testimony is accepted ובי יוחןן disagrees and says אינו נאמן His testimony is not accepted ?מאי קאמר What was the testimony referring to? ">t says הכי קאמר האומר על תינוק בין הבנים יירש כל נכסי A father bequeathed his entire estate to only one son, while the other sons are to receive nothing :Kak 127 נבי יוחון: אינו נאמן נאמן His צוואה is not fulfilled, His צוואה is fulfilled, because he concurs because he concurs with the רבנן with רבי יותכן בן ברוקה in the following Mishnah in the following Mishnah







2.

רבא says הכי קאמר

הכי קאטה האומר על תינוק בין הבנים

ככור הוא

There was an established חזקה that one son was the בכור, and the father testified that another son is the בכור, בכור holds

נאמן

His testimony is accepted and this son receives פי שנים, because he concurs with רבי יהודה's opinion in the previous Daf that the father's testimony can override a חזקה.

While רבי יוחנן holds

אינו נאמן

His testimony is not accepted, and the other son receives פי שנים, because he concurs with the ירבנן opinion that the father's testimony cannot override a חזקה.

יגעני והא והא הכי קאמר הכי קאמר האומר על תינוק בין הבנים בכור הוא

There was an established חזקה that one son was the בכור and the father testified that another son is the בכור

ייי יוחן: אינו נאמן

And the other son receives פי שנים, because he concurs with the לכנן's opinion that the father's testimony cannot override a נאמן: נאמן

And this son receives פי שנים, because he concurs with הבי יהודה's opinion that the father's testimony can override a חדקה

8

האומר תטול אשתי כאחד מן הבנים נוטלת כאחד מן הבנים

If a person gave instructions that his wife should receive a portion in his estate equal to one of his sons;

If he dies, she receives this portion.

As רבא explains,

בנכסים של עכשיו

She receives a portion only in the assets that were currently in his possession, but not in the assets that he acquired afterward, because as the Rashbam explains אין אדם מקנה דבר שלא בא לעולם

A person cannot bequeath an item that is non-existent; ® AND

ובבנים הבאין לאחר מכאן

She receives a portion only as per the amount of sons he had when he died, but not as per the sons he had at the time of his צוואה, because ®

לשעת חלוקה אכוין

Dedicated By: ___

לא שנא נתרבו ולא שנא נתמעטו

His intentions were as per the sons who will actually divide his assets, regardless of whether they became more or less.

<u>(6)</u>

האומר תטול אשתי כאחד מן הבנים נוטלת כאחד מן הבנים

If a person gave instructions that his wife should receive a portion equal to one of his sons; If he dies, she receives this portion

> As ten explains, בנכסים של עכשיו

She receives a portion only in the assets that were currently in his possession, but not in the assets that he acquired afterward אין אדם מקנה דבר שלא בא לעולם

ובבנים הבאין לאחר מכאן

She receives a portion only as per the amount of sons he had when he died, but not as per the sons he had at the time of his צוואה

> לשעת חלוקה אכוין <u>לא שנא נחרבו</u> ולא שנא נתמעטו







7.

המוציא שטר חוב על חבירו מלוה אומר לא נפרעתי כלום ולוה אומר פרעתי מחצה והעדים מעידין שפרע כולו

If a lender produced a loan document and claimed that he was not paid at all, while the borrower claimed that he did pay half the loan;

Even though two witnesses claimed that the לוה paid the entire loan:

הרי זה נשבע וגובה מחצה

מנכסים בני חורין

The מלוה swears and collects half the loan from the לוה unbound assets, because as the Rashbam explains הודאת עדים

The ילוה's admission is stronger than the testimony of עדים.

אבל ממשועבדין לא

The מלוה cannot collect half the loan from the ללוה sassets that were already sold to others, because the לקוחות, the buyers can claim

אנן אעדים סמכינן

We accept the יעדים's testimony that the entire loan was paid, and the לוה 's claim is merely a קנוניא, a ruse, for him and the מלוה to illegally extract the field from the.

The Gemara concludes הלכתא בכל הני שמעתתא כדשלח ליה רבי אבא לרב יוסף בר חמא All the above rulings are accepted as Halachah.



המוציא שטר חוב על חבירו

ולוה אומר פרעתי מחצה מלוה אומר לא נפרעתי כלום

והעדים מעידין שפרע כולו

If a lender produced a loan document and claimed that he was not paid at all, while the borrower claimed he did pay half;

Even though two witnesses claimed that the כוה paid the entire loan

הרי זה נשבע וגובה מחצה מנכסים בני חורין

The מלוה swears and collects half the loan from the לוה 's unbound assets

Because הודאת בעל דין שוה יותר מהעדאת עדים



The מלוה cannot collect half the loan from the 's assets that were already sold to others

Because the buyers can claim



The Gemara concludes

הלכתא בכל הני שמעתתא כדשלח ליה רבי אבא לרב יוסף בר חמא



