

A בס"ד

Intro

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

The continuation in the Halachah of

הכותב כל נכסיו לאשתו
לא עשאה אלא אפוטרופא

If a dying person, assigned all his assets to his wife, the מתנה is not effective and she merely becomes the manager of the assets for the heirs, because לא נתכוין אלא לעשותה אפוטרופא כדי שיחלקו לה בניו כבוד

His intention was merely to appoint her to manage the estate, so that her sons will give her the proper respect.

The question of

בברייתא היאך

If a healthy person assigned all his assets to his wife, is the מתנה effective, or she merely becomes an אפוטרופוס?

כל נכסיו אחראין לכתובתה

All the properties of the husband are mortgaged to the wife's Kesubah.

Therefore, the husband's debtor cannot collect a debt from the properties that the wife accepted for her Kesubah.

B The Machlokes regarding

כתב כל נכסיו לאשתו

ויצא עליו שטר חוב

If a person assigned all his assets to his wife, can the husband's debtor collect a debt from these assets?

The discussion regarding

אזלינן בתר אומדנא

Whether Bais Din considers the intent of people in general?

The Mishnah in פאה מסכת

הכותב נכסיו לבניו

וכתב לאשתו קרקע כל שהוא

אבדה כתובתה

If a dying person assigned all his assets to his sons, and he also assigned even a small parcel of land to his wife, she cannot collect her Kesubah from all the other assets, because she was מוחל, she relinquished her rights to these assets.

The question of

בברייתא היאך

If a healthy person assigned all his assets to his sons, and only a small parcel to his wife, was she מוחל her Kesubah rights or not?

A

הכותב כל נכסיו לאשתו
לא עשאה אלא אפוטרופא

לא נתכוין אלא לעשותה אפוטרופא
כדי שיחלקו לה בניו כבוד

בברייתא היאך

כל נכסיו אחראין לכתובתה

B

כתב כל נכסיו לאשתו
ויצא עליו שטר חוב

אזלינן בתר אומדנא

הכותב נכסיו לבניו
וכתב לאשתו קרקע כל שהוא
אבדה כתובתה

בברייתא היאך

1 So let's review ...

The Gemara in the previous Daf taught

הכותב כל נכסיו לאשתו
לא עשאה אלא אפוטרופא

If a dying person, assigned all his assets to his wife, the מתנה is not effective and she merely becomes the manager of the assets for the heirs, because as the Rashbam explains

אומד הדעת הוא

דאין אדם מניח את בניו ונותן הכל לאשתו

There is an assumption that a person would not exclude his children from their inheritance. Therefore, we must say

לא נתכוין אלא לעשותה אפוטרופא
כדי שיחלקו לה בניו כבוד

His intention was merely to appoint her to manage the estate, so that her sons will give her the proper respect.

The Gemara inquires

בעי רבא
בבריא היאך

What would the Halachah be regarding a healthy person who assigned all his assets to his wife?

Do we say that the מתנה is effective, because בשכ"מ הוא דניחא ליה דלישתמעון מלה

אבל בבריא הא קאי איהו

Only a dying person appoints his wife as an אפוטרופוס, to ensure that when he dies his wife will be treated with respect.

But a healthy person would not appoint his wife as an אפוטרופוס, because he is still able to ensure that they respect her.

Therefore, the מתנה is effective.

OR

Do we say that the מתנה is not effective, because בריא נמי

ניחא ליה דלישתמעון מלה מהשתא

Even a healthy person would appoint his wife as an אפוטרופוס, because even now he wants his sons to obey his wife knowing that she will eventually manage their estate. Therefore, the מתנה is not effective.

1

הכותב כל נכסיו לאשתו
לא עשאה אלא אפוטרופא

If a *מרע* assigned all his assets to his wife, the מתנה is not effective and she merely becomes the manager of the assets for the heirs,

because as the Rashbam explains

אומד הדעת הוא

דאין אדם מניח את בניו ונותן הכל לאשתו
There is an assumption that a person would not exclude his children from their inheritance.

Therefore, we must say

לא נתכוין אלא לעשותה אפוטרופא

כדי שיחלקו לה בניו כבוד

His intention was merely to appoint her to manage the estate, so that her sons will give her the proper respect.

קאי רבא

בבריא היאך

What would the Halachah be regarding a healthy person who assigned all his assets to his wife?



Do we say that the מתנה is effective, because

בשכ"מ הוא דניחא ליה דלישתמעון מלה
אבל בבריא הא קאי איהו

Only a dying person appoints his wife as an אפוטרופוס, to ensure that his wife will be treated with respect.
But a healthy person is able to ensure that they respect her.

Therefore, the מתנה is effective.

Do we say that the מתנה is not effective, because

בריא נמי ניחא ליה דלישתמעון מלה מהשתא

Even a healthy person would appoint his wife as an אפוטרופוס, because even now he wants his sons to obey his wife knowing that she will eventually manage the estate.

Therefore, the מתנה is not effective.

2 The Gemara attempts to bring proof from the following Braisa:

כתב כל נכסיו לאשתו
ויצא עליו שטר חוב

If a person assigned all his assets to his wife, and after he died his debtor wants to collect a debt from these assets; there is a Machlokes:

רבי אליעזר says

תקדע מתנתה ותעמוד על כתובתה

The חוב can collect the debt from these assets, because we disregard the מתנה and the wife retains her original rights to these assets through the Kesubah which preceded the debt. As the Rashbam explains;

דליפות כחה נכתבה מתנה זו לזכות במותר נכסים

אבל היא לא מחלה שיעבוד קרקעתה

The מתנה was merely intended to strengthen her rights to collect more than the Kesubah amount, but she did not relinquish her original Kesubah rights to these assets. ®

While the חכמים say

תקדע כתובתה ותעמוד על מתנתה

ונמצאת קרחת מכאן ומכאן

The חוב can collect the debt from these assets, because the wife lost her original Kesubah rights and she only has the rights of the מתנה which came after the חוב, because

הואיל ובמתנת חנם באו לידה

מחלה לה שיעבוד קרקעתה

Since she accepted these assets as a gift, she relinquished her Kesubah rights to these assets.

The Braisa implies

שעמא דיצא עליו שטר חוב

הא לא יצא עליו שטר חוב

קניא

The חוב can collect from these assets according to רבי רבי אליעזר, because she relinquished her Kesubah rights and his מתנה preceded the חוב;

But if there is no חוב בעל חוב, all agree that the מתנה was effective, and she does not become an אפטרופוס.

Now, this Braisa cannot refer to a מרע שכיב because

והא אמרת לא עשאה אלא אפטרופוס

It was previously taught that in the case of a מרע שכיב she does become an אפטרופוס?

Therefore, we must say that the Braisa refers to a בריא, and this proves that regarding a בריא the מתנה is effective, and she does not become an אפטרופוס.

The Gemara answers that this is not necessarily so:

Perhaps the Braisa does refer to a מרע שכיב, and this was the sort of a wife whom one does not appoint as an אפטרופוס as taught in the previous Daf.

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2

ברייתא

כתב כל נכסיו לאשתו ויצא עליו שטר חוב

If a person assigned all his assets to his wife, and after he died his debtor wants to collect a debt from these assets;

מכאן

תקדע כתובתה ותעמוד על מתנתה

ונמצאת קרחת מכאן ומכאן

The חוב can collect the debt from these assets, because the wife lost her original Kesubah rights and she only has the rights of the מתנה which came after the חוב,

because

הואיל ובמתנת חנם באו לידה
מחלה לה שיעבוד קרקעתה

Since she accepted these assets as a gift, she relinquished her Kesubah rights to these assets.

רבי אליעזר

תקדע מתנתה ותעמוד על כתובתה

We disregard the מתנה and the wife retains her original rights to these assets through the Kesubah which preceded the debt.

As the Rashbam explains;

The מתנה was intended to strengthen her rights to collect more than the

Kesubah, but she did not relinquish her original rights to these assets.

According to רבי אליעזר...

הא לא יצא עליו שטר חוב - קניא

But if there is no חוב בעל חוב, all agree that the מתנה was effective, and she does not become an אפטרופוס.

שעמא דיצא עליו שטר חוב

The חוב can collect from these assets because she relinquished her Kesubah rights and his חוב preceded the מתנה;

This Braisa cannot refer to a מרע שכיב because והא אמרת לא עשאה אלא אפטרופוס
It was previously taught that in the case of a מרע שכיב she does become an אפטרופוס?

Therefore, we must say that the Braisa refers to a בריא, and this proves that regarding a בריא the מתנה is effective, and she does not become an אפטרופוס.

This is not necessarily so:

Perhaps the Braisa does refer to a מרע שכיב, and this was the sort of a wife whom one does not appoint as an אפטרופוס as taught in the previous Daf.

3 Regarding the Braisa's Halachah; רב נחמן says the final ruling is like the חכמים who say הלכה תקרע כתובתה ותעמוד על מתנתה ונמצאת קרחת מכאן ומכאן

The Gemara points out; למימרא דלא אזיל רב נחמן בתר אומדנא רב implies that he holds Bais Din does not consider the intent of people in general who are not מוחל their original rights, and he holds that she assumingly WAS מוחל her original Kesubah rights to the assets.

The Gemara asks however from a Braisa הרי שהלך בנו למדינת הים ושמע שמת בנו ועמד וכתב כל נכסיו לאחרים ואחר כך בא בנו A person's son traveled abroad and when the father heard that his son died, he assigned all his assets to others, and then his son returned: The תנא קמא says מתנתו מתנה The מתנה is effective, and his son does not inherit the assets.

רבי שמעון בן מנסיא disagrees and says אין מתנתו מתנה שאילו היה יודע שבנו קיים לא כתבן The מתנה is not effective, because had the father known that his son was alive, he certainly would not have assigned them to others.

3 רב נחמן
The final ruling is like the חכמים who say
הלכה
תקרע כתובתה ותעמוד על מתנתה
ונמצאת קרחת מכאן ומכאן
למימרא דלא אזיל רב נחמן
בתר אומדנא
רב נחמן implies that he holds
Bais Din does not consider the intent of people in general
who are not מוחל their original rights,
and he holds that she assumingly
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הרי שהלך בנו למדינת הים
ושמע שמת בנו
ועמד וכתב כל נכסיו לאחרים
ואחר כך בא בנו
A person's son traveled abroad
and when the father heard that his son died,
he assigned all his assets to others,
and then his son returned.

רבי שמעון בן מנסיא
אין מתנתו מתנה
שאיילו היה יודע שבנו קיים לא כתבן
The מתנה is not effective,
because had the father known
that his son was alive,
he certainly would not have
assigned them to others.

תנא קמא
מתנתו מתנה
The מתנה is effective
and his son does not
inherit the assets.

4 And there רב נחמן rules
 הלכה כרבי שמעון בן מנסיא
 This implies that רב נחמן holds
 אלזינן בתר אומדנא
 Bais Din does consider the intent of people in general,
 who would not assign their assets to a stranger if their son
 was alive.

The Gemara reconciles the two:
 Generally, רב נחמן does hold
 אלזינן בתר אומדנא
 And regarding
 כתב כל נכסיו לאשתו
 ויצא עליו שטר חוב
 There is an opposing אומדנא that
 דניחא לה דתיפוק עלה קלא
 דכתבינהו ניהלה להנהו נכסים
 She wants the מתנה rights rather than the Kesubah rights
 to publicize that she is trustworthy and held in high
 esteem by her husband.
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4

רב נחמן

הלכה כרבי שמעון בן מנסיא

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This implies that רב נחמן holds
 אלזינן בתר אומדנא
 Bais Din does consider the intent of people in general, who
 would not assign their assets to a stranger
 if their son was alive.

רב נחמן does hold

אלזינן בתר אומדנא

And regarding

כתב כל נכסיו לאשתו
 ויצא עליו שטר חוב
 There is an
 OPPOSING אומדנא
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 דניחא לה דתיפוק עלה קלא
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 She wants the מתנה rights rather than the Kesubah rights
 to publicize that she is trustworthy
 and held in high esteem by her husband.

5 The Gemara proceeds with a Mishnah in פאה מסכת תנן התם הכותב נכסיו לבניו וכתב לאשתו קרקע כל שהוא אבדה כתובתה

If a dying person assigned all his assets to his sons, and he also assigned even a small parcel of land to his wife, she cannot collect her Kesubah from all these assets.

The Gemara offers three explanations as to why she loses her Kesubah.

1.

רב says

במזכה להן על ידה

The wife supplied her סודר, her kerchief, and performed the קנין חליפין for the son's portion, even if she was not קיבלה, she did not give explicit consent.

אבדה כתובתה

Because as the Rashbam explains

כיון דאיכא תרתי

דקא משתדלא בזכיית הבנים וגם נתן לה קרקע

ודאי נתרצית בלב שלם ומחלה להן השיעבוד

Since there was both; her assistance with the קנין for the sons AND she was given some land as a מתנה, this indicates that she consented wholeheartedly and relinquished her Kesubah rights to these assets.

2.

שמואל says

במחלק לפניה והיא שותקת

Even if she did not perform the קניו, but she was present during the מתנה to the sons and she remained silent;

אבדה כתובתה

Because

כיון שכתב לה קרקע ושתקה כהודאה דמי

Since there was both; her silence AND she was given a מתנה, this alone indicates that

ודאי נתרצית בלב שלם ומחלה להן השיעבוד

5

מסכת פאה

תנן התם הכותב נכסיו לבניו וכתב לאשתו קרקע כל שהוא אבדה כתובתה

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6

3.

באומר לה טלי קרקע זו בכתובתיך
ומקולי כתובה שנו כאן

Even if she was not present during the son's מתנה, but her husband told her to accept a parcel of land in lieu of her Kesubah and she did not object, this indicates that ודאי נתרצית בלב שלם ומחלה להן השיעבוד

The Gemara however brings proof otherwise, that שהיתה שם וקבלה עליה אבדה כתובתה

Only if both, she was present at the time of the son's מתנה, AND she gave explicit consent, only then she was מוחל her Kesubah rights.

However

היתה שם ולא קבלה עליה
קבלה עליה ולא היתה שם
לא אבדה כתובתה

If she was not present at the time of the מתנה, or she did not give explicit consent, she is not מוחל her Kesubah rights.

תיובתא דכולהו תיובתא
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6

3

רבי יוסי בר' חנינא

באומר לה טלי קרקע זו בכתובתיך
ומקולי כתובה שנו כאן

Even if she was not present during the son's מתנה, but her husband told her to accept a parcel of land in lieu of her Kesubah - and she did not object,

this indicates that

ודאי נתרצית בלב שלם ומחלה להן השיעבוד

The Gemara however brings proof otherwise,

שהיתה שם - וקבלה עליה
אבדה כתובתה

Only if both,
she was present at the time of the son's מתנה,
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היתה שם ולא קבלה עליה
קבלה עליה ולא היתה שם
לא אבדה כתובתה

If she was not present at the time of the מתנה,
or she did not give explicit consent,
she is not מוחל her Kesubah rights.

תיובתא דכולהו תיובתא

7

בעי רבא

בבריא היאך

What would the Halachah be regarding a healthy person who assigned all his assets to his sons, and only a small parcel of land to his wife?

Do we say that she was not מוחל her Kesubah rights, because

בשכיב מרע הוא

דידעה דלית ליה וקמחלה

אבל בבריא סברה הדר קני

Only regarding a שכיב מרע, we assume the wife was מוחל her Kesubah rights to the assets, because since she knows that he has no other assets she should have objected.

However, regarding a בריא she was not מוחל her Kesubah rights, because she assumes that he will acquire other assets and she can collect her Kesubah from those assets, and therefore she did not need to object.

OR

Even regarding a בריא she would be מוחל her Kesubah rights, because

השתא מיהת לית ליה

Since he currently has no other assets for her to collect from, she should have objected.

תיקו

This question remains unresolved.

7

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קני רבא

בבריא היאך

What would the Halachah be regarding a healthy person who assigned all his assets to his sons, and only a small parcel of land to his wife?

Do we say...

She was not מוחל her Kesubah rights, because

**אבל בבריא
סברה הדר קני**

However, regarding a בריא she was not מוחל her Kesubah rights, because she assumes that he will acquire other assets and she can collect her Kesubah from those assets, and therefore she did not need to object.

**בשכיב מרע הוא
דידעה דלית ליה
וקמחלה**

Only regarding a שכיב מרע, the wife was מוחל her Kesubah rights to the assets, because since she knows that he has no other assets she should have objected.

OR

Even regarding a בריא she would be מוחל her Kesubah rights, because

השתא מיהת לית ליה

Since he currently has no other assets for her to collect from, she should have objected.

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