

A בס"ד

Intro

Today we will Be"H begin learn דף קל"ו of בבא בתרא.
Some of the topics we will learn about include:

מהיום ולאחר מיתה

A stipulation that a document take effect "From today and after my death"

The Gemara discusses

1.

הכותב נכסיו לבניו

Whether one who writes over his property to his sons needs to write מהיום, from today; OR

זמנו של שטר מוכיח עליו

The date on the document indicates that it is to be effective immediately.

2.

גט

If one writes this expression in a Gett, whether

אי תנאה הוי

אי חזרה הוי

This is a condition or a retraction;

3.

הקנאה

Whether this stipulation is also required in a document that records a transfer of property with a Kinyan.

קנין פירות כקנין הגוף דמי

או

קנין פירות לאו כקנין הגוף דמי

The right to the produce of a field is the primary ownership in the property.

B The Gemara discusses

1.

הכותב נכסיו לבנו לאחר מותו

One who writes over his property to his son, but retains the rights to the produce, if

מכר האב

או מכר הבן

The father or the son can sell the property.

2.

המוכר שדהו לפירות

מביא וקורא

או מביא ואינו קורא

If someone buys the rights to a field's produce, and then brings the first fruit, to the בית המקדש and recites the Pesukim in פרשת כי תבא;

Whether he includes the phrase

'ועתה הנה הבאתי את ראשית פרי האדמה אשר נתתה לי ה'

Referring to the land Hashem gave him.

3.

נכסי לך

ואחרייך יירש פלוני

ואחרי יירש פלוני

If someone said, "My property is bequeathed to you, and afterwards to another, and after him to yet another;"

מת ראשון קנה שני

מת שני קנה שלישי

When the first recipient dies, the second person gets the property;

And when he then dies, the third person gets the property.

They do not leave this property to their heirs.

A

מהיום ולאחר מיתה

הכותב נכסיו לבניו

גט

הקנאה

קנין פירות כקנין הגוף דמי

או

קנין פירות לאו כקנין הגוף דמי

B

הכותב נכסיו לבנו
לאחר מותו

המוכר שדהו לפירות

מביא וקורא

או מביא ואינו קורא

נכסי לך

ואחרייך יירש פלוני

ואחרי יירש פלוני

מת ראשון קנה שני

מת שני קנה שלישי

1 So let's review...

Zugt di Mishnah

הכותב נכסיו לבניו

If someone writes over his property to his sons; as the Rashbam explains

רוצה לכתוב להם נכסיו לאחר מותו
אלא שיאכל פירות בחייו

He wants to give them the property now to preclude any future liens, but he also wants to retain the rights to its produce until his death;

There's a Machlokes:

צריך שיכתוב מהיום ולאחר מיתה

דברי רבי יהודה

Rabbi says that he must specify that the gift is effective, "From today and after my death."

And as the Gemara explains;

הכי קאמר ליה

גופא קני מהיום

פירא לאחר מיתה

The actual property is acquired by the sons immediately, but the right to its produce is only acquired upon his death.

However, as the Rashbam explains,

בלא מהיום

לא נתן כלום

דאין מתנה לאחר מיתה

If he does not specify מהיום, the gift is void, because one cannot transfer his property effective after his death.

The Mishnah continues however,

רבי יוסי אומר

אינו צריך

Rabbi says that it is not necessary to add מהיום, because as the תנא explains;

זמנו של שטר מוכיח עליו

The date on the document indicates that it is to be effective immediately. ®

דאי לא תימא הכי

זמן שנכתב בשטר

בחנם נכתב

Otherwise, the date is useless. Clearly, he wanted the document to take effect from this date.

The Gemara cites Rav's ruling

הלכה כרבי יוסי

=====

1

מלך

הכותב נכסיו לבניו

If someone writes over his property to his sons;

as the Rashbam explains

רוצה לכתוב להם נכסיו לאחר מותו
אלא שיאכל פירות בחייו

He wants to give them the property now to preclude any future liens, but he also wants to retain the rights to its produce until his death;

צריך שיכתוב "מהיום ולאחר מיתה"

דברי רבי יהודה

He must specify that the gift is effective,

"From today and after my death."

And as the Gemara explains;

הכי קאמר ליה

גופא קני מהיום

פירא לאחר מיתה

The actual property is acquired by the sons immediately, but the right to its produce is only acquired upon his death.

However, as the Rashbam explains,

בלא "מהיום" – לא נתן כלום

דאין מתנה לאחר מיתה

If he does not specify מהיום, the gift is void, because one cannot transfer his property effective after his death.

רבי יוסי אומר

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It is not necessary to add "מהיום,"

because as the תנא explains;

זמנו של שטר מוכיח עליו

The date on the document indicates

that it is to be effective immediately.

דאי לא תימא הכי

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Otherwise, the date is useless. Clearly, he wanted the document to take effect from this date.

The Gemara cites Rav's ruling

הלכה כרבי יוסי

2 The Gemara cites מחלקות regarding הקנאה
 Whether רבי יהודה also requires מהיום in a document that records a transfer of property with a קנין:
 קנין רב נחמן ruled
 בהקנאה אינו צריך
 This is not necessary, since the קנין was not performed with the שטר, but through a different קנין, which is assumed to be effective immediately.
 And רב הונא בריה דרב יהושע added
 בדוכרן פתגמי דהוי באנפנא פליגי
 The Machlokes is only in a case where the document merely records the transfer of property, without mentioning the Kinyan. Therefore, רבי יהודה does require it to state מהיום, because there is no indication of when it took place.

However, רב פפי ruled
 איכא אקניתא דצריך ואיכא אקניתא דלא צריך
 Sometimes the document requires מהיום, and sometimes it does not; and he differentiated as follows:
 אקנייה וקנינא מיניה לא צריך
 If it first describes the owner's instructions to transfer the property and then describes that the witnesses indeed performed the קנין, it does not require מהיום, because ®
 קנין יתירא הוא ייפוי כח
 The extra expression reinforces the קנין and conveys that it is effective immediately, even without מהיום. ® However, קנינא מיניה ואקנייה צריך
 If it first states that the קנין was done, and then describes the instructions, it does require מהיום, because ®
 פרושי קא מפרש
 The document merely explains that they performed the קנין upon his instructions. Therefore, there is no superfluous expression of קנין, and he must add מהיום.
 =====

2

הקנאה

Does רבי יהודה also require "מהיום" in a document that records a transfer of property with a קנין

רב נחמן

בהקנאה אינו צריך

This is not necessary, since the קנין was not performed with the שטר, but through a different קנין, which is assumed to be effective immediately.

And רב הונא בריה דרב יהושע added

בדוכרן פתגמי דהוי באנפנא פליגי

The Machlokes is only in a case where the document merely records the transfer of property, without mentioning the Kinyan.

Therefore, רבי יהודה does require it to state מהיום, because there is no indication of when it took place.

רב פפי

איכא אקניתא דצריך ואיכא אקניתא דלא צריך

Sometimes the document requires מהיום, and sometimes it does not; as follows:

קנינא מיניה ואקנייה צריך

If it first states that the קנין was done, and then describes the instructions, it does require מהיום, because

פרושי קא מפרש

The document merely explains that they performed the קנין upon his instructions. Therefore, there is no superfluous expression of קנין, and he must add מהיום.

אקנייה וקנינא מיניה לא צריך

If it first describes the owner's instructions to transfer the property, and then, that the witnesses indeed performed the קנין, it does not require מהיום, because

קנין יתירא הוא ייפוי כח

The extra expression reinforces the קנין and conveys that it is effective immediately, even without מהיום.

3 The Mishnah continues
הכותב נכסיו לבנו לאחר מותו
If someone writes over his property to his son;
And as the Gemara explained

גופא קני מהיום
פירא לאחר מיתה

The actual property is acquired by the son immediately, but the right to its produce is retained by the father until his death.

Therefore,

האב אינו יכול למכור
מפני שהן כתובין לבן

The father cannot sell the property completely, because the son owns the גוף, the property itself. And

הבן אינו יכול למכור
מפני שהן ברשות האב

The son cannot sell the property completely either, since the father still owns the פירות, the rights to the produce.

Therefore,

מכר האב
מכורים עד שימות

If the father sold the property, the buyer acquires only the right to the פירות, and only until the father's death.

מכר הבן
אין ללוקח בהן כלום

עד שימות האב

If the son sold the property, the buyer acquires nothing until the father's death. And upon the father's death the buyer will acquire the property completely, IF the son is still alive at that time.

3 הכותב נכסיו לבנו לאחר מותו
If someone writes over his property to his son;

And as the Gemara explained

גופא קני מהיום
פירא לאחר מיתה

The actual property is acquired by the son immediately, but the right to its produce is retained by the father until his death.

האב אינו יכול למכור והבן אינו יכול למכור
מפני שהן כתובין לבן מפני שהן ברשות האב

The son cannot sell the property completely either, since the father still owns the פירות, the rights to the produce.

The father cannot sell the property completely, because the son owns the גוף, the property itself.

מכר האב

מכורים עד שימות

If the father sold the property, the buyer acquires only the right to the פירות, and only until the father's death.

מכר הבן
אין ללוקח בהן כלום
עד שימות האב

If the son sold the property, the buyer acquires nothing until the father's death. And upon the father's death the buyer will acquire the property completely, if the son is still alive at that time.

4 However, the Gemara explains;
 מכר הבן בחיי האב
 ומת הבן בחיי האב
 If the son sold the property AND he then died in his
 father's lifetime, there's a מחלוקת אמת:
 אמר רבי יוחנן
 לא קנה לוקח
 The sale is not effective, and
 ריש לקיש אמר
 קנה לוקח
 The sale is effective.

The Gemara explains:
 רבי יוחנן אמר
 לא קנה לוקח
 The sale is not effective, because
 קנין פירות כקנין הגוף דמי
 The right to the produce is the primary ownership in the
 property.
 Therefore, the son is only able to sell his rights
 conditional upon his acquiring them. Since he died before
 his father, the Rashbam explains,
 סילק נפשו משעת מכירה
 ויחזרו ליורשי האב
 By selling the property, he forfeits his rights to inherit it,
 and he never actually acquired the property. Therefore,
 the buyer cannot acquire it, and the father's heirs inherit
 the property.
 However,
 ריש לקיש אמר
 קנה לוקח
 The sale is effective, because
 קנין פירות לאו כקנין הגוף דמי
 The right to the produce is NOT the primary ownership in
 the property.
 Therefore, the buyer acquired the גוף immediately, but he
 can only benefit from the פירות after the father dies.

4

However, the Gemara explains;
מכר הבן בחיי האב
ומת הבן בחיי האב
 If the son sold the property AND he then
 died in his father's lifetime, there's a מחלוקת אמת:
 רבי יוחנן
לא קנה לוקח
 The sale is not effective.

רש"ל
קנה לוקח
 The sale is effective.

קנין פירות
לאו כקנין הגוף דמי
 The right to the produce is
 not the primary ownership
 in the property.
 Therefore, the buyer
 acquired the גוף
 immediately, but he can
 only benefit from the פירות
 after the father dies.

קנין פירות
כקנין הגוף דמי
 The right to the produce
 is the primary ownership
 in the property.
 Therefore, the son is only able
 to sell his rights conditional
 upon his acquiring them.
 Since he died before his father,
the Rashbam explains,
סילק נפשו משעת מכירה
ויחזרו ליורשי האב
By selling the property, he
forfeits his rights to inherit it,
and he never actually
acquired the property.
Therefore, the buyer cannot
acquire it, and the father's
heirs inherit the property.



5 The Gemara cites another scenario involving this Machlokes regarding ביכורים:
 One who brings ביכורים, the first fruit, recites the Pesukim in תבא כי תבא, including the phrase
 'ועתה הנה הבאתי את ראשית פרי האדמה אשר נתתה לי ה'
 Referring to the land Hashem gave him.
 Now,
 המוכר שדהו לפירות
 If someone sold the rights to the produce of a field;
 רבי יוחנן אמר
 מביא וקורא
 The buyer brings ביכורים and also recites the relevant Parshah, including this phrase, because
 קנין פירות כקנין הגוף דמי
 And so he can rightfully say לי האדמה אשר נתתה לי, because he is considered the primary owner of the land. However,
 ריש לקיש אמר
 מביא ואינו קורא
 The buyer brings ביכורים, but he cannot recite the Parshah, because
 קנין פירות לאו כקנין הגוף דמי
 And so he cannot say לי האדמה אשר נתתה לי, because he is not considered the primary owner of the land.

5

ביכורים
 One who brings ביכורים, the first fruit, recites the phrase
ועתה הנה הבאתי את ראשית פרי האדמה אשר נתתה לי ה'
 Referring to the land Hashem gave him.

המוכר שדהו לפירות
 If someone sold the rights to the produce of a field;

<i>יש לקיש</i>	<i>רבי יוחנן</i>
מביא ואינו קורא	מביא וקורא
<i>The buyer brings ביכורים, but he cannot recite the Parshah, because</i>	<i>The buyer brings ביכורים and also recites this Parshah, because</i>
קנין פירות לאו כקנין הגוף דמי	קנין פירות כקנין הגוף דמי
<i>And so he cannot say לי האדמה אשר נתתה לי, because he is not considered the primary owner of the land.</i>	<i>And so he can rightfully say לי האדמה אשר נתתה לי, because he is considered the primary owner of the land.</i>



6 The Gemara asks
איפליגו בה חדא זימנא
Why do רבי יוחנן וריש לקיש need to dispute both of these cases? We would understand one from the other?

The Gemara offers two differences:

1.

סד"א

אבא לגבי בריה

אחולי אחיל

We might have thought that when a father sells the גוף to his son, although he retains the פירות, he wants his son to have primary ownership because he does not want his rights to limit the son's rights at all.

If so, perhaps in this particular case רבי יוחנן agrees that קנין קנין לאו כקנין הגוף

And only regarding ביכורים or elsewhere does he hold

קנין פירות כקנין הגוף

Therefore, he had to teach us that even here he holds

קנין פירות כקנין הגוף

And the Rashbam adds;

Perhaps קנין פירות לאו כקנין הגוף holds ריש לקיש only in this case, but regarding ביכורים or elsewhere he agrees that קנין פירות כקנין הגוף

Therefore, he had to teach us that even regarding ביכורים he holds

קנין פירות לאו כקנין הגוף

6
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איפליגו בה חדא זימנא
Why do רבי יוחנן וריש לקיש need to dispute both of these cases?
We would understand one from the other?

1

סד"א
אבא לגבי בריה
אחולי אחיל

We might have thought that when a father sells the גוף to his son, although he retains the פירות, he wants his son to have primary ownership because he does not want to limit the son's rights at all.

If so, perhaps in this particular case רבי יוחנן agrees that

קנין פירות לאו כקנין הגוף

And only regarding ביכורים or elsewhere does he hold

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Therefore, he had to teach us that even regarding ביכורים

קנין פירות לאו כקנין הגוף

7

2.

סד"א

כל לגבי נפשיה
אפילו במקום בריה
נפשיה עדיפא ליה

We might have thought that when one sells the גוף but retains the פירות, he certainly wants to retain primary ownership even if his son is the buyer of the גוף. If so, perhaps in this particular case קנין ריש לקיש agrees that פירות כקנין הגוף.

And only regarding ביכורים or elsewhere, where he sells the פירות but retains the גוף, does he hold

קנין פירות לאו כקנין הגוף

Therefore, he had to teach us that even here he holds קנין פירות לאו כקנין הגוף

And the Rashbam adds;

Perhaps רבי יוחנן holds קנין פירות כקנין הגוף only in this case, but regarding ביכורים or elsewhere he agrees that קנין פירות לאו כקנין הגוף.

Therefore, he had to teach us that even regarding ביכורים he holds

קנין פירות כקנין הגוף

Therefore, the Gemara needs to tell us that their מחלוקת applies in both cases.

=====

7

2

סד"א
כל לגבי נפשיה
אפילו במקום בריה
נפשיה עדיפא ליה

We might have thought that when one sells the גוף but retains the פירות, he certainly wants to retain primary ownership even if his son is the buyer of the גוף.

If so, perhaps in this particular case ריש לקיש agrees that קנין פירות כקנין הגוף.

And only regarding ביכורים or elsewhere, where he sells the פירות but retains the גוף, does he hold

קנין פירות לאו כקנין הגוף

Therefore, he had to teach us that even here he holds קנין פירות לאו כקנין הגוף

And the Rashbam adds;

Perhaps רבי יוחנן holds קנין פירות כקנין הגוף only in this case, but regarding ביכורים or elsewhere he agrees that קנין פירות לאו כקנין הגוף.

Therefore, he had to teach us that even regarding ביכורים he holds קנין פירות כקנין הגוף

Therefore, the Gemara needs to tell us that their מחלוקת applies in both cases.

8 The Gemara cites two contradictory ברייתות regarding this מחלוקת:

נכסי לך
ואחריו יירש פלוני
ואחריו יירש פלוני

If someone said, "My property is bequeathed to you, and afterwards to another, and after him to yet another;"

מת ראשון קנה שני
מת שני קנה שלישי

When the first recipient dies, the second person gets the property;

And when the second person then dies, the third person gets the property.

They do not leave this property to their heirs.

However,

מת שני בחיי ראשון

If the second person dies in the first person's lifetime, there's a Machlokes of two Braisos:

One ברייתא says

יחזרו נכסים ליורשי ראשון

Because ®

לא זיכה לשלישי

אלא מכח השני

The third person only has the rights to inherit the property from the second recipient. Therefore, since the third person does not receive the property, it reverts to the first recipient's heirs, even though he only had the פירות.

Apparently, because

קנין פירות כקנין הגוף

The first recipient's right to the פירות is the primary ownership. And since the original owner ceded his rights to the גוף, and the third person cannot get it because the second person never got it, the first recipient is now the full owner of the property.

However, a second ברייתא rules

יחזרו ליורשי נותן

The property reverts to the original owner's heirs, because קנין פירות לאו כקנין הגוף

Therefore, the first recipient has no rights to the גוף, and it remains with the original owner's heirs.

Apparently, these Braisos disagree in the same מחלוקת רבי whether

קנין פירות כקנין הגוף

OR

קנין פירות לאו כקנין הגוף

8

ברייתא

נכסי לך
ואחריו יירש פלוני
ואחריו יירש פלוני

If someone said, "My property is bequeathed to you, and afterwards to another, and after him to yet another;"

מת שני
קנה שלישי

And when the second person then dies, the third person gets the property. They do not leave this property to their heirs.

מת ראשון
קנה שני

When the first recipient dies, the second person gets the property;

However,

מת שני בחיי ראשון

If the second person dies in the first person's lifetime, there's a Machlokes of two Braisos:

A second ברייתא says

יחזרו
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The property reverts to the original owner's heirs, because

קנין פירות לאו
כקנין הגוף

Therefore, the first recipient has no rights to the גוף, and it remains with the original owner's heirs.

One ברייתא says

יחזרו נכסים
ליורשי ראשון

Because

לא זיכה לשלישי
אלא מכח השני

The third person only has the rights to inherit the property from the second recipient. Therefore, since the third person does not receive the property, it reverts to the first recipient's heirs, even though he only had the פירות.

Apparently, because

קנין פירות כקנין הגוף

The first recipient's right to the פירות is the primary ownership.

This is the same מחלוקת as רבי יוחנן וריש לקיש

9 However, the Gemara proceeds to explain these ברייתות according to both ריש לקיש and רבי יוחנן: ריש לקיש says that both ברייתות agree with his opinion that קנין פירות לאו כקנין הגוף. However, their Machlokes is in whether אחריו is an exception: The first ברייתא holds אחריו שאני. Since he gave it to several people successively, he intends to give them each the property completely, even the גוף, but with the condition that it passes on. Therefore, since the third person does not get it, it remains with the first recipient.

However, the second ברייתא does not make this distinction, and even in the case of אחריו the first recipient gets only פירות. Therefore, since the third person does not get it, it reverts to the original owner's heirs, and not to the first recipient's heirs, because קנין פירות לאו כקנין הגוף.

However, רבי יוחנן explains תנאי היא

It is indeed a מחלוקת.

The first ברייתא holds

קנין פירות כקנין הגוף דמי

The second ברייתא holds

קנין פירות לאו כקנין הגוף דמי

And ברייתא רבי יוחנן rules like the first ברייתא.

9

The Gemara proceeds to explain these ברייתות according to both ריש לקיש and רבי יוחנן

ריש לקיש says
Both ברייתות agree with his opinion that

קנין פירות לאו כקנין הגוף
However, their Machlokes is in whether אחריו is an exception:

<p><i>The first ברייתא holds</i></p> <p>אחריו שאני</p> <p><i>Since he gave it to several people successively, he intends to give them each the property completely, even the גוף, but with the condition that it passes on. And since the third person does not get it, it remains with the first recipient.</i></p>	<p><i>The second ברייתא does not make this distinction, and even in the case of אחריו the first recipient gets only פירות. Therefore, since the third person does not get it, it reverts to the original owner's heirs, and not to the first recipient's heirs..</i></p>
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However, רבי יוחנן explains

תנאי היא
It is indeed a מחלוקת.

<p><i>The second ברייתא holds</i></p> <p>קנין פירות לאו כקנין הגוף דמי</p>	<p><i>The first ברייתא holds</i></p> <p>קנין פירות כקנין הגוף דמי</p>
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And ברייתא רבי יוחנן rules like the first ברייתא.