

A בס"ד

Intro

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

מה שהניח האב

If someone writes his property over to another person effective upon his death, but retains the right to the produce, the Gemara discusses the produce he leaves over after his death, whether

למקבל מתנה

It belongs to the recipient of the bequest, OR

של יורשין

It is considered part of the estate, and belongs equally to his heirs?

This depends on whether we are discussing

תלוש, detached produce; OR

מחובר, attached produce;

AND whether

בבנו, he gave the gift to his son, OR

באחר, to someone else;

הניח גדולים וקטנים

If someone is survived by adult and young children, the Gemara discusses whether they may use funds from the estate for

פרנסה

Clothing;

נשואין

Wedding expenses; and

מזונות הבנות

Supporting the young daughters;

בעל יורש הוי

או לוקח הוי

Whether a husband is considered an heir or a buyer in his wife's property?

This is relevant regarding:

1.

לוותה ואכלה ועמדה ונשאת

If a woman marries with debts, can her creditor collect from her property, even though it is now beholden to her husband based on the תקנת חכמים of his right to the produce of her נכסי מלוג?

B

2.

אלמנתו נוזנת מנכסיו

A widow's right to support from his estate, even when a daughter inherits and marries.

3.

ממכר חוזר ביובל

Whether a husband's inheritance returns to his wife's family at Yo

A

מה שהניח האב
למקבל מתנה
של יורשין

הניח גדולים וקטנים

בעל יורש הוי
או לוקח הוי

B

לוותה
ואכלה ועמדה
ונשאת

אלמנתו
נזונת מנכסיו

ממכר
חוזר ביובל

1 So let's review...

The Mishnah on דף קל"ו discussed

הכותב נכסיו לבנו
מהיום ולאחר מותו

Someone who writes over his property to his son effective upon his death, and as the Gemara there explains

אקני ליה גופא מהיום
ופירי לאחר מיתה

The property belongs to the son immediately, but the father retains the rights to the produce until his death.

In such a case,
Zugt di Mishnah

האב תולש ומאכיל לכל מי שירצה

The father may harvest the produce and give it to whom-ever he wants. However,

ומה שהניח תלוש

הרי הוא של יורשין

Any detached produce that was in his possession when he died is part of his estate, and divided equally among his heirs.

The Gemara infers however,

תלוש אין
מחובר לא

Attached produce is part of the land and belongs to the son who received the property.

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תלוש אין – מחובר לא

Attached produce is part of the land and belongs to the son who received the property.

2 The Gemara challenges this from a תרי"א:
מכר הבן בחיי האב
ומת האב
If the son sold the property, and the father then died,
שמין את המחוברין ללוקח
We evaluate the attached produce and the buyer must
compensate the heirs; apparently, because we do NOT
consider the attached produce as part of the property?

The Gemara answers

כאן בבנו

כאן באחר

The father included the attached produce as part of the
gifted land to his son, because

הואיל ודעתו של אדם


קרובה אצל בנו

He feels close to him.

However, he did not include the produce regarding a sale
to anyone else.

=====

2



**מכר הבן בחיי האב
ומת האב**
*If the son sold the property, and the father then died,
שמין את המחוברין ללוקח*
*We evaluate the attached produce
and the buyer must compensate the heirs;
apparently, because we do NOT consider
the attached produce as part of the property?*

כאן בבנו – כאן באחר
*The father included the attached produce
as part of the gifted land to his son,
הואיל ודעתו של אדם
קרובה אצל בנו*
He feels close to him.

*However, he did not include the produce
regarding a sale to anyone else.*

3

Zugt di Mishnah

הניח בנים גדולים וקטנים

If someone is survived by adult and young sons;

אין הגדולים מתפרסנין על ידי הקטנים

ולא הקטנים נזונין על הגדולים

The adult sons may not purchase clothing from the estate, nor may the young sons purchase food from the estate.

Rather,

אלא חולקין בשוה

They divide the estate equally and each son supports himself from his portion.

The Gemara explains however,

האי גדול אחי

דלבש ואיכסי מביתא

מאי דעבד עבד

If the eldest son, who manages the estate, purchased fine clothing from the estate, he does not need to reimburse the other brothers, because

איכא הנאה ליתמי

כי מיחסי מלבושים נאים

כי היכי דלישתמעו מיליה

His respectable appearance allows him to represent them properly.

However, our Mishnah refers to

שרכא

An idle person may not purchase clothing from the estate funds, because the estate does not benefit from his appearance.

=====

3

מאריך

הניח בנים גדולים וקטנים

If someone is survived by adult and young sons;

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4 The Mishnah continues

נשאו הגדולים
ישאו הקטנים
As the Gemara explains,
נשאו גדולים לאחר מיתת אביהן
ישאו קטנים לאחר מיתת אביהן

If the adult sons got married after their father's death and took their wedding expenses from the estate, the young sons may do the same.

However,

ואם אמרו קטנים
הרי אנו נושאים כדרך שנשאתם אתם
אין שומעין להם
אלא מה שנתן להם אביהם נתן

This refers to

נשאו גדולים בחיי אביהן
ואמרו קטנים לאחר מיתת אביהן
הרי אנו נושאים כדרך שנשאתם אתם

If the adult sons got married in their father's lifetime and the father paid for their wedding expenses, the young sons cannot take a corresponding amount from the undivided estate. They must each pay for it from their own portion, because the older brothers' expenses were a gift from their father at that time.

4

משנה

נשאו הגדולים
ישאו הקטנים

As the Gemara explains,

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They must each pay for it from their own portion, because the older brothers' expenses were a gift from their father at that time.

5 Similarly,
 הניח בנות גדולות וקטנות
 If someone left no sons and is survived by adult and
 young daughters;
 אין הגדולות מתפרנסות על ידי הקטנות
 ולא הקטנות נוזנות על הגדולות
 The adult daughters may not purchase clothing from the
 estate, nor may the young daughters purchase food from
 the estate. Rather,
 אלא חולקות בשוה
 They divide the estate equally.

נשאו גדולות
 ישאו קטנות
 If the adult daughters got married after their father's death
 and took their wedding expenses from the estate, the
 young daughters may do the same. However,
 ואם אמרו קטנות
 הרי אנו נושאות כדרך שנשאתם אתם
 אין שומעין להן
 If the adult daughters got married in their father's lifetime
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 daughters cannot take a corresponding amount from the
 undivided estate. They must each pay for it from their
 own portion, because the older sisters' expenses were a
 gift from the father at that time.

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The Gemara introduces a שאלה which is relevant to our
 Mishnah:
 לוותה ואכלה ועמדה ונשאת
 If a woman marries with debts, can her creditor collect
 from her property, even though it is now beholden to her
 husband based on the תקנת חכמים of his right to the פירות,
 the produce of her מלוג?
 This depends on whether
 בעל לוקח הוי או יורש הוי
 If בעל יורש הוי,
 The Chachamim made him like an heir;
 Her creditor can collect from her property, because
 מלוה על פה גובה מן היורשין
 Even an undocumented debt can be collected from heirs.
 If בעל לוקח הוי,
 The Chachamim made him like a buyer;
 Her creditor cannot collect from her property, because
 מלוה על פה אינו גובה מן הלקוחות
 An undocumented debt cannot be collected from buyers.

5
הניח בנות גדולות וקטנות
*If someone left no sons
 and is survived by adult and young daughters;*
**אין הגדולות מתפרנסות על ידי הקטנות
 ולא הקטנות נוזנות על הגדולות**
*The adult daughters may not buy clothing from the estate,
 nor may the young daughters buy food from the estate.*

אלא חולקות בשוה
They divide the estate equally.
נשאו גדולות - ישאו קטנות
*If the adult daughters got married after their father's death
 and took their wedding expenses from the estate,
 the young daughters may do the same.*

However,
**ואם אמרו קטנות
 הרי אנו נושאות כדרך שנשאתם אתם
 אין שומעין להן**
*If the adult daughters got married in their father's
 lifetime and the father paid for their wedding expenses,
 the young daughters cannot take a corresponding
 amount from the undivided estate.
 They must each pay for it from their own portion,
 because the older sisters' expenses were a gift
 from the father at that time.*

לוותה ואכלה ועמדה ונשאת
*If a woman marries with debts,
 can her creditor collect from her property,
 even though it is now beholden to her husband
 based on the תקנת חכמים of his right to the פירות,
 the produce of her מלוג?*

This depends on whether
בעל לוקח הוי או יורש הוי
If **בעל לוקח הוי** **If** **בעל יורש הוי**
The Chachamim made him like a buyer; *The Chachamim made him like an heir;*
Her creditor cannot collect from her property, because *Her creditor can collect from her property, because*
מלוה על פה **מלוה על פה**
אינו גובה מן הלקוחות **גובה מן היורשין**
An undocumented debt cannot be collected from buyers. *Even an undocumented debt can be collected from heirs.*

6 Now, regarding our Mishnah's ruling
 נשאו גדולות
 ישאו קטנות
 It would also depend as follows:
 If בעל יורש הוי, we could understand the Mishnah as
 נשאו גדולות לבעל
 ישאו קטנות מבעל
 (ed note; the lamed and mem of לבעל should be underlined
 or larger)
 The younger daughters can collect their wedding
 expenses from the older daughters EVEN if the estate was
 already divided and their property is מושועבד לבעליהם, because
 מלוה על פה גובה מן היורשין
 And the money the older daughters took is no more than a
 מלוה על פה.
 However, if בעל לוקח הוי, we would have to understand the
 Mishnah as
 נשאו גדולות לבעל
 ישאו קטנות לבעל
 The younger daughters can collect their wedding
 expenses from the older daughters ONLY if the estate was
 not yet divided and their property is not מושועבד לבעליהם, because
 מלוה על פה אינו גובה מן הלקוחות

However,
 תני ר' חייא
 נשאו גדולות לבעל
 ישאו קטנות מבעל
 This seems to indicate
 בעל יורש הוי

However, the Gemara answers that even if
 בעל לוקח הוי
 They can collect even from the husbands, because
 שאני פרנסה
 דאית לה קלא
 Their wedding expenses are comparable to a מלוה בשטר, a
 documented debt, which CAN be collected from a buyer,
 because it is well-known.
 =====

6 Regarding our Mishnah's ruling
נשאו גדולות – ישאו קטנות
 It would also depend as follows:

<p>בעל לוקח הוי <i>If</i> We would have to understand the Mishnah as נשאו גדולות לבעל ישאו קטנות לבעל The younger daughters can collect their wedding expenses from the older daughters ONLY if the estate was not yet divided and their property is not מושועבד לבעליהם, because מלוה על פה אינו גובה מן הלקוחות</p>	<p>בעל יורש הוי <i>If</i> We could understand the Mishnah as נשאו גדולות לבעל ישאו קטנות מבעל The younger daughters can collect their wedding expenses from the older daughters EVEN if the estate was already divided and their property is מושועבד לבעליהם, because מלוה על פה גובה מן היורשין And the money the older daughters took is no more than a מלוה על פה.</p>
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 Their wedding expenses are comparable to a מלוה בשטר, a documented debt, which CAN be collected from a buyer, because it is well-known.

7 The Gemara now cites several other sources to determine whether בעל לוקח הוי או יורש הוי

The Gemara first cites two rulings which indicate בעל יורש הוי

1. ruled מי שמת והניח אלמנה ובת אלמנתו נזונת מנכסיו

If someone dies, and left a widow and a daughter, his widow receives support from his estate as stipulated in her כתובה. Furthermore,

נשאת הבת אלמנתו נזונת מנכסיו Even if the daughter married and her inheritance is now beholden to her husband, the widow receives support from the estate. Furthermore,

מתה הבת אלמנתו נזונת מנכסיו Even if the daughter dies and her husband inherits her, the widow still receives support from the estate, because the husband is responsible for his wife's debts.

This ruling indicates that בעל יורש הוי

8 2. Similarly, we know ממכר חוזר ביובל Sold ancestral lands return to their original owner at Yovel. A Mishnah rules אלו הן שאין חוזרין ביובל The following properties do NOT return to their owners at Yovel; among them היורש את אשתו A husband's inheritance of his wife's property; This too indicates that בעל יורש הוי A husband is considered an heir, not a buyer; for if בעל לוקח הוי משעה שנשאת אפילו אחר מיתה לא נפקא מכלל מקח If a husband were considered a buyer of his wife's property, this would not change even after her death, and the land should return to her family.

7 Several other sources to determine whether בעל לוקח הוי – או יורש הוי

1

רבין

מי שמת והניח אלמנה ובת אלמנתו נזונת מנכסיו

If someone dies, and left a widow and a daughter, his widow receives support from his estate as stipulated in her כתובה.

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נשאת הבת

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Even if the daughter married and her inheritance is now beholden to her husband, the widow receives support from the estate.

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8 ממכר חוזר ביובל Sold ancestral lands return to their original owner at Yovel. A Mishnah rules

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אלו הן שאין חוזרין ביובל

The following properties do NOT return to their owners at Yovel; among them

היורש את אשתו

A husband's inheritance of his wife's property;

This too indicates that

בעל יורש הוי

A husband is considered an heir.

If


בעל לוקח הוי משעה שנשאת אפילו אחר מיתה לא נפקא מכלל מקח

If a husband were considered a buyer of his wife's property, this would not change even after her death, and the land should return to her family.

9 On the other hand, the following ruling indicates
בעל לוקח הוי
באושא התקיננו
האשה שמכרה נכסי מלוג בחיי בעלה ומתה
הבעל מוציא מיד הלקחות
The חכמים instituted that after a woman's death, her
husband can claim property that she sold in her lifetime.

Here we see
בעל לוקח הוי
He is considered a buyer, and therefore has first claim
before the subsequent buyer?

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On the other hand, the following ruling indicates
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באושא התקיננו
האשה שמכרה נכסי מלוג בחיי בעלה
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Here we see
בעל לוקח הוי
He is considered a buyer, and therefore
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10 The Gemara reconciles these sources:
בעל
שויוהו רבנן כיוורש
ושויוהו רבנן כלוקח
והיכא דטבא ליה עבדו ליה
The Gemara gave a husband rights as both an heir and a buyer, depending on whichever status is to his benefit.

Therefore,
גבי יובל
שויוהו רבנן כיוורש
משום פסידא דידיה
Regarding Yovel, he is an heir, so that he should not lose the property.

Similarly,
גבי תקנת אושא
שויוהו רבנן כלוקח
משום פסידא דידיה
Regarding another buyer of the property, he is a buyer, in order to give him first rights.

Even though
איכא פסידא ללקוחות
There's also the loss of the other buyer?
The Gemara explains
אינהו אפסידו אנפשייהו
They brought this loss upon themselves, because
כיון דאיכא בעל
לא איבעי להו למיזבן
מאיתתא דיתבא תותי גברא
They should not have bought property from a married woman.

11 However,
גבי דרבין
משום פסידא דאלמנה
שויוהו רבנן כיוורש
Regarding the widow's support, he is considered an heir, in order to protect her needs.

The Gemara does not resolve the original question regarding לוותה ואכלה ועמדה ונשאת
And there is a מחלוקת ראשונים in this matter. See Rashbam.
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The Gemara does not resolve the original question regarding לוותה ואכלה ועמדה ונשאת



12 The Mishnah concludes

זה חומר בבנות מבבנים

Daughters have the following advantage over sons:

שהבנות נזונות על הבנים

ואין נזונות על הבנות

Daughters receive support from male heirs, but young daughters do not receive support from the older daughters when there are no sons.

As the Rashbam explains

דבמקום שהן יורשות כל הנכסים

ליכא תנאי כתובה דמזון בנן נוקבן

When there are sons, they inherit the entire estate and the daughters do not inherit at all. Therefore, the Kesubah obligates the sons to support the daughters.

However, when there are no sons, the daughters inherit the entire estate, and they can each support themselves from their own portions.

הדרן עלך יש נוחלין

We have B"h completed the eighth Perek of בבא מסכת בבא, and in the next Shiur we will begin the ninth Perek, בתרא, and in the next Shiur we will begin the ninth Perek, מי שמת, B'ezras Hashem.

12

נחלין

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Daughters receive support from male heirs, but young daughters do not receive support from the older daughters when there are no sons.

As the Rashbam explains

דבמקום שהן יורשות כל הנכסים

ליכא תנאי כתובה דמזון בנן נוקבן

When there are sons, they inherit the entire estate and the daughters do not inherit at all.

Therefore, the Kesubah obligates the sons to support the daughters.

However, when there are no sons, the daughters inherit the entire estate, and they can each support themselves from their own portions.



הדרן עלך יש נוחלין

