



בס"ד

#### Intro

Today we will בע"ה learn דף קמ"ח דף קמ בבא בתרא for כסכת בבא בתרא for the topics we will learn about include.

A continuation of the Mishnah's distinction of שכיב מרע שכתב כל נכסיו לאחרים שכיב מרע שכים לאחרים

ושייר קרקע כל שהוא

מתנתו קיימת

If a dying person assigned all his assets to someone but kept for himself a small parcel of land, if he recovers he cannot reclaim the gift. However,

לא שייר קרקע כל שהוא

אין מתנתו קיימת

If he did not keep any land and he recovers, he can reclaim the gift.

### The question of

דקל לאחד ופירותיו לאחר מהו

If a שכיב מרע owned a palm tree, and he first assigned the actual tree to one person and then assigned the rights to the fruits to a second person, does he keep the branches for himself and מתנתו מתנה, or not?

#### The distinction between

אם במחלק

עמד

חוזר בכולן

If a שכיב מרע assigned all his assets to several people over time and he recovers, he can reclaim his assets from both.

#### B However,

אם בנמלך

עמד אינו חוזר אלא באחרון

If he gave away only part of his assets to one person, and he then reconsidered and gave the rest to the second person, he can only reclaim the assets from the last person.

דייתיקי מבטלת דייתיקי

Aשכיב מרע has the ability to retract from the מתנה at any time as long as he's alive.

### The question of

חזרה במקצת

הוי חזרה בכולה

או לא

If a שכיב מרע gave all his assets to one person, and he then retracted and gave part of those assets to a second person, does he retract from the entire מתנה of the first person and there was a מתנה in the מתנה of the second person, or not?

### The questions of

הקדיש כל נכסיו ועמד מהו

הפָקיר כל נכסיו מהו

חילק כל נכסיו לעניים מאי

Whether a שכיב מרע who recovers can reclaim all his assets that he gave to הקדש, or made them all ownerless, or gave them all to the poor?

שכיב מרע שכתב כל נכסיו לאחרים ושייר קרקע כל שהוא מתנתו קיימת



לא שייר קרקע כל שהוא אין מתנתו קיימת



דקל לאחד ופירותיו לאחר מהו



אם במחלק עמד חוזר בכולן

<mark>אם בנמלך</mark> עמד אינו חוזר אלא ב<u>אחרון</u>



דייתיקי מבטלת דייתיקי



חזרה במקצת הוי חזרה בכולה או לא



הקדיש כל נכסיו ועמד מהו הפקיר כל נכסיו מהו חילק כל נכסיו לעניים מאי





В



So let's review ...

The previous Mishnah taught שכיב מרע שכתב כל נכסיו לאחרים ושייר קרקע כל שהוא מתנתו קיימת

If a dying person assigned all his assets to others but kept for himself a small parcel of land, if he recovers he cannot reclaim the gift, because as the Rashbam explains דשלא מדאגת מיתה נתן

Since he kept something for himself, he apparently still hoped to recover, and he gave the gift unconditionally regardless of whether he dies or not.

However

לא שייר קרקע כל שהוא

אין מתנתו קיימת

If he did not keep any land and he recovers, he can reclaim the gift, because

שמחמת מיתה נתן

Since he did not keep anything for himself, he apparently had no hope of recovering, and there is an אומדנא, an assumption, that he gave the gift only on condition if he dies, but not if he recovers.

שכיב מרע שכתב כל נכסיו לאחרים ושייר קרקע כל שהוא מתנתו קיימת

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Since he did not keep anything for himself, he apparently had no hope of recovering, and there is an £17,N/E, an assumption, that he gave the gift only on condition if he dies, but not if he recovers.



Dedicated By: \_





The Gemara inquires

איבעיא להו

דקל לאחד ופירותיו לאחר מהו

What is the Halachah if a שכיב מרע owned a palm tree, and he first assigned the actual tree to one person and then assigned the rights to the fruits to a second person?

Do we say

שייר מקום פירי

ומתנתו מתנה

The שכיב מדע intended to give the first person only the tree but not the branches from where the fruits grow, and to the second person only the actual fruits, but he kept for himself the branches which are considered like קרקע, and therefore, even if he recovers the מתנה is effective?

OR

לא שייר מקום פירי ואין מתנתו מתנה

The שכיב מרע gave the first person the entire tree WITH its branches, and to the second person the actual fruits, but he did not keep anything for himself, and therefore, if he recovers the מתנה is not effective?

And even if we are to assume that

לאחר

לא הוי שיור

If he gave the fruits to a stranger, we assume that he gave the first person the entire tree with its branches, and therefore

אם עמד

אין מתנתו מתנה

What would the Halachah be in the case of לעצמו

If the שכיב מרע kept the fruits for himself, does he also keep the branches for himself, and therefore אם עמד

מתנתו מתנה

OR he gives the branches to the first person along with the tree, and since he did not retain any קרקע for himself, only the fruits, therefore

אם עמד

Dedicated By: \_

אין מתנתו מתנה

# ? איבעיא להו דקל לאחד ופירותיו לאחר מהו

What is the Halachah if a שכיב מרע wned a palm tree, and he first assigned the actual tree to one person and then assigned the rights to the fruits to a second person?

Do we say

# לא שייר מקום פירי ואין מתנתו מתנה

The שכיב מרע gave the first person the tree with its branches, and to the second person the actual fruits, but he did not keep anything for himself, and therefore, if he recovers the מתכה is not effective?

# שייר מקום פירי ומתנתו מתנה

The שכיב מרע intended to give the first person only the tree but not the branches, and to the second person only the actual fruits, but he kept the branches which are like קרקע, and therefore, even if he recovers the מתכה is effective?

And even if we are to assume that

# לאחר לא הוי שיור

If he gave the fruits to a stranger, we assume that he gave the first person the entire tree with its branches, and therefore

אם עמד - אין מתנתו מתנה

What would the Halachah be in the case of לעצמו

If the שכיב מרע kept the fruits for himself,

He gives the branches to the first person along with the tree, and since he did not retain any קרקע for himself, only the fruits, therefore

אם עמד אין מתנתו מתנה Does he also keep the branches for himself, and therefore

אם עמד מתנתו מתנה







The Rashbam mentions yet a second גירסא, a second version to the Gemara's question;

חוץ מפירותיו מהו

If the שכיב מרע added to his initial statement and said; דקל חוץ מפירותיו לאחד

ופירותיו לאחר

מהו

The first person shall get the whole tree except for its fruits and the second person shall get the fruits;

Do we say

לישנא יתירא

לשייר מקום לעצמו

The שכיב מרע's additional words were to imply that he keeps the branches for himself, and therefore

אם עמד

מתנתו מתנה

OR

לא שייר

He did not keep the branches for himself, and therefore

אין מתנתו מתנה

concludes רב נחמן

שייר מקום פירי

He definitely kept the branches for himself, because כל לגבי נפשיה

בעין יפה משייר

Regarding himself, he is more generous. And therefore אם עמד

מתנתו מתנה

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The Gemara continues with several Halachos based on the Mishnah's distinction between שייר and לא שייר.

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אמר רב יוסף בר מניומי אמר רב נחמן שכיב מרע שכתב כל נכסיו לאחרים

If a dying person assigned all his assets to several people over time and he recovers;

רואין

Whether he can reclaim his assets depends on the following:

אם במחלק

עמד

חוזר בכולן

If it appears that his initial intention was to give away all his assets and to leave nothing for himself, he can reclaim his assets from them all, because all the gifts are considered מתנת שכיב מרע, because

לא שייר

At the time of the מתנה he did not keep anything for himself.

אם בנמלך

עמד

אינו חוזר אלא באחרון

If it appears that his initial intention was to give away only part of his assets to some, and then he reconsidered and gave away the rest of his assets, he can only reclaim the assets from the last recipient, because only his gift is considered a מתנת שכיב מרע, because

לא שייר

At the time of his מתנה he did not keep anything. But he cannot reclaim the assets from the earlier recipients, because those gifts are not considered שכיב מרע, because

שייר

At the time of his מתנה to them, he did keep some assets for himself.

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Several Halachos on the distinction between לא שייר and לא.



אתר רב יוסף בר תניותי אתר רב נחתן

## שכיב מרע שכתב כל נכסיו לאחרים

If a dying person assigned all his assets to several people over time - and he recovers;

## רואין

If he can reclaim his assets depends on the following:

אם בנמלך עמד אינו חוזר אלא באחרון

If it appears that his initial intention was to give away only part of his assets to some, and then he reconsidered and gave away the rest of his assets, he can only reclaim the assets from the last recipient, because only his gift is considered a מתנת שכיב מרע, לא שייר, at the time

of his מתנה he did not keep

אם במחלק עמד חוזר בכולן

If it appears that his initial intention was to give away all his assets and to leave nothing for himself, he can reclaim his assets from them all, because all the gifts are considered מתנת שכיב מרע hecause מתנה שייר at the time of the מתנה he did not keep anything for himself.

But he cannot reclaim the assets from the earlier recipients, because those gifts are not considered מתנת מתנת because - שניג מרע, because - שניג - at the time of his מתנה to them, he did keep some assets for himself.







The Gemara proceeds to quote a ruling by Rav Nachman which apparently seems to contradict our Mishnah:

אמר רב אחא בר מניומי אמר רב נחמן

. שכיב מרע שכתב כל נכסיו לאחרים ועמד

אינו חוזר

חיישינן שמא יש לו נכסים במדינה אחרת

If a dying person assigned all his assets to others and then recovered, he cannot reclaim his assets, because we are concerned that he might have assets in another country which he kept for himself.

However, our Mishnah rules

לא שייר קרקע כל שהוא

אין מתנתו קיימת

And

עמד חוזר

If the שכיב מרע kept nothing for himself and he recovers, he CAN reclaim his assets?

The Gemara answers that our Mishnah refers to one the following cases:

1.

Either

באומר כל נכסי

If the שכיב מרע specified "ALL my assets," in which he definitely kept nothing for himself;

OR

במוחזק לן דלית ליה

It is established that the שכיב מרע does not have other assets, and he kept nothing for himself.

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אתר וב אחל בר תניותי אתר וב נחתן

שכיב מרע שכתב כל נכסיו לאחרים ועמד אינו חוזר

תיישינן שמא יש לו נכסים במדינה אחרת

If a dying person assigned all his assets to others and then recovered, he cannot reclaim his assets, because we are concerned that he might have assets in another country which he kept for himself.

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And

עמד חוזר

If the שכיב מרע kept nothing for himself and he recovers, he can reclaim his assets.

Our Mishnah refers to one the following cases:

במוחזק לן דלית ליה

It is established that the שכיב מרע does not have other assets, and he kept nothing for himself. באומר כל נכסי

If the שכיב מרע specified "ALL my assets," in which he definitely kept nothing for himself;



Dedicated By: \_\_





The Gemara continues and inquires;

איבעיא להו

חזרה במקצת

הוי חזרה בכולה או לא

A שכיב מרע מחנת שכים מחנת שכיב מרע at any time as long as he's alive.

Therefore, the Gemara asks;

What is the Halachah if a שכיב מרע gave all his assets to one person, and he then retracted and gave a portion of those assets to a second person?

As the Rashbam explains;

Do we say

הויא חזרה בכל הנכסים שנתן לראשון

The שכיב מרע retracted from all the assets that he gave to the first person, and then gave part of it to the second person and kept the rest for himself.

Therefore, the ראשון, the first person

בין מת בין עמד

לא קנה

He does not acquire any assets regardless of whether the שכיב מרע died or recovered, because

דייתיקי מבטלת דייתיקי

A שכיב מרע has the ability to retract from the מתנה.

While regarding the שני, the second person,

בין מת בין עמד

קנה

He acquires his part of the assets regardless of whether the שכיב מרע died or recovered, because

איכא שיור

At the time of his מכיב מרע kept part of the assets for himself, and the Mishnah taught

שייר קרקע כל שהוא מתנתו קיימת

#### OR

לא הויא חזרה בראשון

The שכיב מרע did not retract from the assets that he left with the first person.

Therefore, regarding both the שני and שני

אם מת

קנה

If he died they each acquire their part of the assets.

אם עמד

לא קנה

If he recovers neither one acquires the assets, because ליכא שיור

The שכיב מרע did not keep anything for himself.



かんとかれ

## חזרה במקצת הוי חזרה בכולה או לא

A שכיב מרע at any time מתנת שכיב מרע at any time as long as he's alive.

Therefore, the Gemara asks; What if a שכיב מרע gave all his assets to one person, and he then retracted and gave a portion of those assets to a second person?

Do we say

הויא חזרה בכל הנכסים שנתן לראשון

The  $\gamma_N \Rightarrow 0$  retracted from all the assets that he gave to the first person, and then gave part of it to the second person and kept the rest for himself.

herefore, the first person) בין מת בין עמד – כא קנה He does not acquire any asset: regardless of whether the

horause

דייתיקי מבטלת דייתיקי

A ym wol has the ability to retract from the synw.

While regarding the yl, בין מת בין עמד – קנה He acquires his part of the assets regardless of whether the אין אין died or recovered

because

איכא שיור

At the time of his אנג אל the ארג אר אפר אפר the assets for himself, and the Mishnah taught שייר קרקע כל שהוא מתנתו קיימת

OR

# לא הויא חזרה בראשון

The שכיב מרע did not retract from the assets that he left with the first person.

Therefore, regarding both the שני and שני

אם עמד לא קנה אם מת קנה

If he recovers neither one acquires the assets,

If he died they each acquire their part of the assets.

because

ליכא שיור

The שכיב מרע did not keep anything for himself.







The Gemara brings proof from a Braisa that

חזרה במקצת הויא חזרה בכולה

The Braisa states

כולן לראשון ומקצתן לשני

שני קנה

ראשון לא קנה

If a שכיב מרע first gave all his assets to the ראשון, and he then retracted and gave some assets to the שני, only the שני acquires the מתנה, but the ראשון does not acquire the מתנה.

However, if vice versa

מקצתו לראשוו וכולו לשני

ראשון קנה

שני לא קנה

If he first gave only some of his assets to the א, and then he gave all the rest of his assets to the שני;

Only the מתנור acquires the מתנה, but the שני does not acquire the מתנה.

The Gemara questions the רישא of the Braisa

כולן לראשון ומקצתן לשני

שני קנה

ראשון לא קנה

אי אמרת חזרה במקצת

לא הויא חזרה בכולה

If we are to assume that the שכיב מרע does not retract from the מתנה to the יראשון;

If the רישא refers to a case of

שכיב מרע died;

Why doesn't the מתנה acquire the מתנה, if there was no חזרה,

And if this is a case of

שכיב מרע the שכיב recovered;

Why does the שני acquire the מתנה if there was no חזרה? והא ליכא שיור

The שכיב מרע did not keep anything for himself?

Therefore, we must say that the Braisa holds חזרה בכולה

The שכיב מרע does retract completely from the מתנה he gave to the מאנה;

Therfore

רישא משכחת לה

בין שמת בין שעמד

The ירישא's ruling is both where he died or recovered, and ראשון לא קנה

Because he retracted

While

שני קנה

Because there was a שיור, since he retracted from the  $\gamma$ ;

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## חזרה במקצת הויא חזרה בכולה

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מקצתן לראשון וכולן לשני <mark>ראשון קנה</mark> שני לא קנה

If he first gave only some of his assets to the ראשון and then he gave the rest of his assets to the שני Only the מתכה the מתכה כולן לראשון ומקצתן לשני <mark>שני קנה</mark> ראשון לא קנה

If a שכיב מרע first gave all his assets to the ראשון, and he then retracted and gave some assets to the עני Only the שנים acquires

the מתנה

ten

כולן לראשון – ומקצתן לשני <mark>שני קנה</mark> ראשון לא קנה



אי אמרת חזרה במקצת לא הויא חזרה בכולה

If we are to assume that the שכיב מרע does not retract from the ראשון;

And if this is a case of

### בשעמד

the שכיב מרע recovered; Why does the שני acquire the התנה if there was no מתנה?

והא ליכא שיור

The שכיב מרע did not keep anything for himself?

If the רישא refers to a case of

#### בשמת

the שכיב מרע died; Why doesn't the ראשון acquire the מתנה, if there was no חזרה?

Therefore, we must say that the Braisa holds

חזרה במקצת הויא חזרה בכולה

The שכיב מרע does retract completely from the מתנה he gave to the ראשון; and

> רישא משכחת לה בין שמת בין שעמד

The רישא's ruling is both where he died or recovered,

While שני קנה

Because there was a שיור, since he retracted from the ראשון; Therefore

ראשון לא קנה

Because he retracted







8 However, the ס'פא of the Braisa מקצתן לראשון וכולן לשני ראשון קנה שני לא קנה

> לא משכחת לה אלא כשעמד

The ס'פיפא's ruling can only be where he recovered, and

Because there was a שיור

While

שני לא קנה

Because there was no שיור;

However, כשמת, if he died, ראשון ושני קנה Because he was not חוזר;





