A

בס"ד

Intro
Today we will בע"ה learn מסכת בבא בתרא דף קנ"ז of
Some of the topics we will learn about include.

The Machlokes in the Mishnah regarding
נפל הבית עליו ועל אביו
או עליו ועל מורישיו
והיתה עליו כתובת אשה ובעל חוב
If a house fell upon a person and his father or upon the person and a relative from whom he is in line to inherit, and they both died, and the son owned money for a Kesubah or for a debt;
The בית שמאי hold
יחלוקו
The father's estate is divided between the יורשי האב, the heirs of the father, and the בעלי חוב, the son's creditors.

While the בית הלל hold
נכסים בחזקתן
All the assets are given to the יורשי האב, but not to the בעלי חוב.

And the Machlokes is based on whether we can apply the well known concept of
אין ספק מוציא מידי ודאי
The entire estate is considered in the possession of the יורשי האב, because they have a טענת ודאי, a certain claim, as they are eligible to inherit from both, the father and son;
While the בעלי חוב have only a טענת ספק, an uncertain claim, as they can only collect from the son but not from the father.
And a ספק cannot extract from a ודאי.

The question in the Halachah of
המלוה את חבירו בשטר
גובה מנכסים משועבדים
If a person loaned someone money and it was recorded in a שטר, the מלוה can collect from the לוה's properties that he owned at the time of the loan, even though the properties were later sold to others and are not in the לוה's possession at the time of collection.

B

דאיקני קנה ומכר
דאיקני קנה והוריש
מאי
Can the מלוה collect from the לוה's properties that he bought after the loan, and then sold or bequeathed them to others, and now the properties are not in the לוה's possession?

The Machlokes רבי מאיר וחכמים regarding
אדם מקנה דבר שלא בא לעולם
Whether one can make a transaction now, to take effect later, for something that it cannot take effect now, because it is as of yet non-existent, as in the case of
המוכר פירות דקל לחבירו
A person who sells the fruit which his date tree will produce later;

The question of
לוה ולוה
וחזר וקנה
מהו
What is the Halachah if a person borrowed money from two different people and subordinated all his properties to both, and then he bought properties and sold them, which מלוה has the rights to these properties, the first מלוה or the second מלוה?

A

נפל הבית עליו ועל אביו
או עליו ועל מורישיו
והיתה עליו כתובת אשה ובעל חוב

בית שמאי
יחלוקו

בית הלל
נכסים בחזקתן

אין ספק מוציא מידי ודאי

המלוה את חבירו בשטר
גובה מנכסים משועבדים

B

דאיקני קנה ומכר
דאיקני קנה והוריש
מאי

רבי מאיר - חכמים
אדם מקנה דבר שלא בא לעולם
המוכר פירות דקל לחבירו

לוה ולוה
וחזר וקנה
מהו

1 So let's review ...

Zugt Di Mishnah:
נפל הבית עליו ועל אביו
או עליו ועל מורישיו
והיתה עליו כתובת אשה ובעל חוב
If a house fell upon a person and his father or upon the person and a relative from whom he in line to inherit, and they both died, and the son owned money for a Kesubah or for a debt;
It depends:
If the son died first, he does not inherit his father's estate and there's NO money from which to collect his debts - assuming he has no other assets;
If the father died first, the son does inherit his father's estate, and there IS money from which to collect his debts;
Now;
יורשי האב אומרים
הבן מת ראשון ואח"כ מת האב
The heirs of the father claim that the son died first, and therefore, they inherit the estate of the father;
ובעלי החוב אומרים
האב מת ראשון ואח"כ מת הבן
While his wife and creditors claim that the father died first, and therefore, the son inherited from him, and they can now collect from the son's estate.
There's a Machlokes:
אומרים בית שמאי
יחלוקו
We divide the assets between the 2 sides, the יורשי האב and the בעלי חוב.
While the בית הלל say
נכסים בחזקתן
All the assets are given to the יורשי האב, but not to the בעלי חוב.

And the Rashbam explains the Machlokes as follows:
In this situation we ought to apply the well-known the concept of
אין ספק מוציא מידי ודאי
The entire estate is considered in the possession of the יורשי האב, because they have a טענת ודאי, a certain claim, since they are eligible to inherit from both, the father and son;
While the בעלי חוב have only a טענת ספק, an uncertain claim, since they can only collect from the son but not from the father;
And a ספק cannot extract from a ודאי.

1

משנה

נפל הבית עליו ועל אביו
או עליו ועל מורישיו
והיתה עליו כתובת אשה ובעל חוב
If a house fell upon a person and his father
or on the person and a relative whom he is in line to inherit,
and they both died,
and the son owned money for a Kesubah or for a debt;
It depends:

If the father died first, the son does inherit his father's estate, and there is money from which to collect his debts;

If the son died first, he does not inherit his father's estate and there's no money from which to collect his debts.

יורשי האב אומרים
הבן מת ראשון
ואח"כ מת האב
The heirs of the father claim that the son died first.

ובעלי החוב אומרים
האב מת ראשון
ואח"כ מת הבן
While his wife and creditors claim that the father died first.

בית שמאי
יחלוקו
We divide the assets between the 2 sides, the יורשי האב and the בעלי חוב.

בית הלל
נכסים בחזקתן
All the assets are given to the יורשי האב, but not to the בעלי חוב.

In this situation we ought to apply the well-known the concept of
אין ספק מוציא מידי ודאי
The entire estate is considered in the possession of the יורשי האב, because they have a טענת ודאי, since they are eligible to inherit from both, the father and son;
While the בעלי חוב have only a טענת ספק, since they can only collect from the son but not from the father;
And a ספק cannot extract from a ודאי.

2

However, even so the בית שמאי rule
יחלוקו
We divide the estate between the 2 sides, because they hold
שטר העומד לגבות
כגבוי דמי
A שטר to collect money is as if the money is already collected and in the possession of the one it's owed to.
Therefore, the כתובה and שטר חוב are considered to be ודאי in the possession of the בעלי חוב;
And since both the בעלי חוב and the יורשי האב are equally considered ודאי, we say
יחלוקו

While the בית הלל say
נכסים בחזקתן
The entire estate remains with the יורשי האב, because they hold
שטר העומד לגבות
לאו כגבוי דמי
A שטר to collect money is not as if the money is already collected and in the possession of the one it's owed to.
Therefore, since the בעלי חוב are considered ספק, while the יורשי האב are considered ודאי
אין ספק מוציא מידי ודאי
The יורשי האב who are ודאי have a stronger claim, and they inherit the entire estate.

2

בית שמאי
יחלוקו

because they hold

שטר העומד לגבות
כגבוי דמי

A שטר to collect money
is as if the money is already collected
and in the possession of the one it's owed to.

Therefore, the כתובה and שטר חוב are considered
to be ודאי in the possession of the בעלי חוב;

And since both the בעלי חוב and the יורשי האב
are equally considered ודאי, we say - יחלוקו

בית הלל
נכסים בחזקתן

because they hold

שטר העומד לגבות
לאו כגבוי דמי

A שטר to collect money is not
as if the money is already collected
and in the possession of the one it's owed to.

Therefore, since the בעלי חוב are considered ספק,
while the יורשי האב are considered ודאי
אין ספק מוציא מידי ודאי

The יורשי האב who are ודאי have a stronger claim,
and they inherit the entire estate.

3

The Gemara proceeds with a question regarding a later Mishnah in דף קע"ה:
תנן התם
המלוה את חבירו בשטר
גובה מנכסים משועבדים
If a person loaned someone money and it was recorded in a שטר, the מלוה can collect from the לוה's properties that he owned at the time of the loan, even though the properties were later sold to others, and are not in the לוה's possession at the time of collection.

There is no question regarding
קנה ולא מכר
משתעבד
The מלוה can certainly collect the לוה's properties that he bought even after the loan and are still in his possession and were not given to others, because all the לוה's possessions are mortgaged to the debt.

The questions is merely regarding
דאיקני, קנה, ומכר
דאיקני, קנה, והוריש
מאי
If the לוה wrote in the שטר that he is subordinationg even property that he will buy after the loan and he did buy property but then sold it or bequeathed it, and they're not in his possession at the time of collection;
Can the מלוה collect from these properties?

As the Gemara explains there is no question according to רבי מאיר who holds
אדם מקנה דבר שלא בא לעולם
One can make a transaction now, to take effect later, for something that it cannot take effect now because it is as of yet non-existent, as in the case of
המוכר פירות דקל לחבירו
A person who sells the fruits that his date tree will produce later;
And we certainly say
דאיקני קנה ומכר דאיקני קנה והוריש
משתעבד
The מלוה can collect the properties that the לוה bought and sold afterward, because if one can make a קנין even for something that was not at all existent, then certainly he can make a שיעבוד on something that was existent at the time of the loan, but was only not in the his possession.

3

תנן התם
המלוה את חבירו בשטר גובה מנכסים משועבדים
If a person loaned money and recorded it in a שטר, the מלוה can collect from the לוה's properties that he owned at the time of the loan, even though the properties were later sold to others, and are not in the לוה's possession at the time of collection.

קנה ולא מכר משתעבד
The מלוה can certainly collect the לוה's properties that he bought even after the loan and are still in his possession and were not given to others, because all the לוה's possessions are mortgaged to the debt.

דאיקני, קנה, ומכר דאיקני, קנה, והוריש מאי
If the לוה wrote in the שטר that he is subordinationg even property that he will buy after the loan and he did buy property but then sold it or bequeathed it, and they're not in his possession at the time of collection; Can the מלוה collect from these properties?

There is no question according to רבי מאיר
אדם מקנה דבר שלא בא לעולם
One can make a transaction now, to take effect later, for something that it cannot take effect now because it is as of yet non-existent,

As in the case of
המוכר פירות דקל לחבירו
Selling the fruits that his date tree will produce later;

We certainly say
דאיקני קנה ומכר דאיקני קנה והוריש משתעבד
The מלוה can collect the properties that the לוה bought and sold afterward, because if one can make a קנין even for something that was not at all existent, then certainly he can make a שיעבוד on something that was existent at the time of the loan, but was only not in the his possession.

4

The question is only according to the חכמים who hold
אין אדם מקנה דבר שלא בא לעולם
One cannot make a קנין now, to take effect later, for something that it cannot take effect now because it is as of yet non-existent;
Perhaps
דאיקני קנה ומכר וכו'
משתעבד
A שיעבוד can take effect on properties that were bought and sold after the loan, because they were already בעולם at the time of the loan.
OR
דאיקני קנה ומכר וכו'
לא משתעבד
A שיעבוד cannot take effect on properties that were bought and sold after the loan, because they were not in the לוה's possession at the time of the loan and are therefore considered לא בא לעולם?

The Gemara attempts several proofs, one from our Mishnah;
נפל הבית עליו ועל אביו וכו'
והיתה עליו כתובת אשה ובעל חוב
If a house fell upon a son and his father, and the son owned money for a Kesubah or for a debt;
בעלי החוב אומרים
האב מת ראשון ואח"כ מת הבן
If it was confirmed that the father died first, the son inherits him, and they can collect from the, now, son's estate.

The Gemara asks if we are to assume
דאיקני קנה ומכר דאיקני קנה והוריש
לא משתעבד
A שיעבוד cannot take effect on assets that were acquired afterward, why does the מלוה have a claim to the son's estate?
נהי נמי דאב מית ברישא
דאיקני הוא
Even if the father did die first, the son did not own the estate at the time of the loan, but rather he acquired them only after his father died?
Apparently, this proves that
דאיקני קנה ומכר דאיקני קנה והוריש
משתעבד

4

The question is only according to the חכמים

אין אדם מקנה דבר שלא בא לעולם

One cannot make a קנין now, to take effect later, for something that it cannot take effect now because it is as of yet non-existent;

Perhaps...

דאיקני קנה ומכר וכו משתעבד

A שיעבוד can take effect on properties that were bought and sold after the loan, because they were already בעולם at the time of the loan.

דאיקני קנה ומכר וכו לא משתעבד

A שיעבוד cannot take effect on properties that were bought and sold after the loan, because they were not in the לוה's possession at the time of the loan and are therefore considered לא בא לעולם?

נפל הבית עליו ועל אביו וכו'
והיתה עליו כתובת אשה ובעל חוב

If a house fell upon a son and his father, and the son owned money for a Kesubah or for a debt;

בעלי החוב אומרים
האב מת ראשון ואח"כ מת הבן

If it was confirmed that the father died first, the son inherits him, and they can collect from the, now, son's estate.

If we are to assume

דאיקני קנה ומכר
דאיקני קנה והוריש
לא משתעבד

a שיעבוד cannot take effect on assets acquired afterward, why does the מלוה have a claim to the son's estate?

נהי נמי דאב מית ברישא
דאיקני הוא

Even if the father did die first, the son did not own the estate at the time of the loan, but rather he acquired them only after his father died?

Apparently, this proves that

דאיקני קנה ומכר
דאיקני קנה והוריש
משתעבד

5 The Gemara answers that this is not necessarily so; perhaps
דאיקני קנה ומכר דאיקני קנה והוריש
לא משתעבד
But they can collect, because
מצוה על היתומים
לפרוע חובת אביהן
The son's heirs have an obligation to pay up his debts from his estate, even though there is no שיעבוד on the assets that he inherited from his father.

However, the Gemara however rejects this explanation, because the Mishnah refers to even a
מלוה על פה
A verbal loan that was not recorded in a שטר, and
ורב ושמואל דאמרי תרוייהו
מלוה על פה
אינו גובה לא מן היורשין
The לוה's heirs are not obligated to pay up a verbal loan.

Therefore, the Gemara explains
הא מני רבי מאיר היא
דאמר אדם מקנה דבר שלא בא לעולם
The Mishnah follows רבי מאיר's opinion that one CAN make a קנין for something that is not existent, and certainly he can make a שיעבוד for potential properties.
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5

The Gemara answers that this is not necessarily so;
Perhaps
דאיקני קנה ומכר
דאיקני קנה והוריש
לא משתעבד
But they can collect, because
מצוה על היתומים
לפרוע חובת אביהן
The son's heirs have an obligation to pay up his debts from his estate, even though there is no שיעבוד on the assets that he inherited.

The Gemara however rejects this explanation,
The Mishnah refers to even a
מלוה על פה
A verbal loan that was not recorded in a שטר, and
ורב ושמואל דאמרי תרוייהו
מלוה על פה
אינו גובה לא מן היורשין
The לוה's heirs are not obligated to pay up a verbal loan.

הא מני רבי מאיר היא
דאמר
אדם מקנה דבר שלא בא לעולם
The Mishnah follows רבי מאיר's opinion that one can make a קנין for something that is not existent, and certainly he can make a שיעבוד for potential properties.

6 The Gemara proceeds with the following question

If we are to assume
דאיקני קנה ומכר דאיקני קנה והוריש
משתעבד
A שיעבוד can take effect on properties that were bought and sold after the loan;
לוה ולוה
וחזר וקנה
מהו
What is the Halachah if a person borrowed money from two different people at two different times and he subordinated all his properties to each מלוה, and then he bought properties and sold them, which מלוה has the rights to these properties?

Do we say
לקמא משתעבד
Only the first מלוה has the rights to these properties, because as the Rashbam explains
שהרי כתוב בשטר מוקדם
His שטר was written first. Therefore, his שיעבוד takes effect before the second מלוה. ®
OR
לבתרא משתעבד
Only the second מלוה has the rights to these properties, because
דלא אלים דאיקני לתפוס
עד שיבואו הנכסים בעולם
וכי קנה הני נכסים
הא הדר ביה מקמא
The שיעבוד only takes effect later when the לוה bought these properties, and at that time the לוה had already assigned all his assets to the second מלוה, and retracted this שיעבוד from the first מלוה.

The Gemara concludes with a third opinion
והלכתא יחלוקו
The properties are divided between both lenders, because as the Rashbam explains
דבבת אחת נשתעבדו להם
ואין קדימה לאחד מהן
The שיעבוד takes effect for both when the לוה buys these properties, and one has no precedence over the other.

6

If we are to assume
דאיקני קנה ומכר
דאיקני קנה והוריש
משתעבד
A שיעבוד can take effect on properties that were bought and sold after the loan;
לוה ולוה
וחזר וקנה
מהו
What is the Halachah if a person borrowed money from two different people at two different times and he subordinated all his properties to each מלוה, and then he bought properties and sold them, which מלוה has the rights to these properties?

?

Do we say
לקמא משתעבד
Only the first מלוה has the rights to these properties, because
שהרי כתוב בשטר מוקדם
His שטר was written first. Therefore, his שיעבוד takes effect before the second מלוה.

Or do we say
לבתרא משתעבד
Only the second מלוה has the rights to these properties, because
דלא אלים דאיקני לתפוס
עד שיבואו הנכסים בעולם
וכי קנה הני נכסים
הא הדר ביה מקמא
The שיעבוד only takes effect later when the לוה bought these properties, and at that time the לוה had already assigned all his assets to the second מלוה, and retracted this שיעבוד from the first מלוה.

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ואין קדימה לאחד מהן
The שיעבוד takes effect for both when the לוה buys these properties, and one has no precedence over the other.