

A בס"ד

Intro

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

The Machlokes הלל ובית שמאי in the case of נפל הבית עליו ועל אשתו
If a house collapsed upon a husband and wife and they both died and had no children, but it was not known which one died first, whose heirs inherit the wife's assets?

The בית שמאי say יורשי הבעל and the יורשי האשה
We divide the assets between the 2 sides, the יורשי הבעל and the יורשי האשה.

The הלל make a distinction between נכסי מלוג
The wife's heirs inherit her properties which are NOT assessed and written into the כתובה, because they remain in her possession, and the husband merely has the rights to its produce or profits. Therefore, in the event of divorce or the husband's death, these properties are returned to her at their current value at the time of the divorce. Any increase or decrease in value accrues to her.

The Machlokes in הלל's opinion regarding נכסי צאן ברזל
Which heirs inherit the properties which are assessed and written into the כתובה?
The husband acquires all rights to them during the marriage. Therefore, in the event of divorce or the husband's death, these properties, or their value, must be returned to her at their assessed value at the time of the marriage. Any increase or decrease in value accrues to him.

The Machlokes in the next Mishnah's case of נפל הבית עליו ועל אמו
If a house collapsed upon a widow and her son, and they both died and the son had no children, and it was not known who died first, regarding the mother's assets there is a ספק as to who inherits her assets.

The תנא קמא holds אלו ואלו מודין שיחלוקו
In this case the הלל agree with the בית שמאי that we divide the mother's assets between the 2 sides, the יורשי הבן and the יורשי האם,

While רבי עקיבא holds מודה אני בזו שהנכסים בחזקתן
Even in this case the הלל disagree with the בית שמאי and hold as before that we leave the assets with those who had it in their possession, and the Gemara cites a Machlokes as to which heirs are considered מוחזק.

A

נפל הבית עליו ועל אשתו

בית רא"ל אומרין יחלוקו
בית שמאי אומרין נכסים בחזקתן

נכסי מלוג

נכסי צאן ברזל

נפל הבית עליו ועל אמו

רבי עקיבא מודה אני בזו שהנכסים בחזקתן
תנא קמא אלו ואלו מודין שיחלוקו

1 So let's review ...

Zugt Di Mishnah

נפל הבית עליו ועל אשתו

If a house collapsed upon a husband and wife and they both died and had no children, but it was not known which one died first;

Now, the husband's heirs certainly inherit the husband's assets.

However, regarding the wife's assets that she brought into marriage there is a ספק as to who inherits her assets:

יורשי הבעל אומרים

אשה מתה ראשון

ואחר כך מות הבעל

The husband's heirs claim that they inherit her assets, because the wife died first and her husband inherited her assets, and then he died, and now as his heirs, they inherit these assets?

On the other hand;

יורשי אשה אומרים

בעל מת ראשון

ואחר כך מתה אשה

The wife's heirs claim that they inherit her assets, because the husband died first and the wife maintained ownership of her assets, and then she died, and now as her heirs they inherit these assets.

בית שמאי אומרים

יחלקו

We divide the assets between the 2 sides, the יורשי הבעל and the יורשי האשה, because as the Rashbam explains

שהרי ממון מוטל בספק הוא

Since we have a ספק who died first, we divide the assets between both parties. ®

בית הלל אומרים

נכסים בחזקתן

Since we have a ספק in who died first, we leave the assets with those who had it in their possession. Therefore, the Mishnah continues;

כתובה

בחזקת יורשי הבעל

The husband's heirs inherit the Kesubah amount of 200

Zuz that the wife would normally collect upon her husband's death, because this money was originally in the husband's possession.

נכסים הנכנסין והיוצאין עמה

בחזקת יורשי האב

The wife's heirs inherit the נכסי מלוג, her properties that were NOT assessed and written into the כתובה, because since the wife maintains liability for these assets, she is considered the possessor of these assets.

1

מלך

נפל הבית עליו ועל אשתו

If a house collapsed upon a husband and wife and they both died and had no children, but it was not known which one died first;

Now, the husband's heirs

certainly inherit the husband's assets.

However, regarding the wife's assets that she brought into marriage there is a ספק as to who inherits her assets:

יורשי אשה אומרים
בעל מת ראשון
ואחר כך מתה אשה

The wife's heirs claim that they inherit her assets, because the husband died first and the wife maintained ownership of her assets, and then she died, and now as her heirs they inherit these assets.

יורשי הבעל אומרים
אשה מתה ראשון
ואחר כך מת הבעל

The husband's heirs claim that they inherit her assets, because the wife died first and her husband inherited her assets, and then he died, and now as his heirs, they inherit these assets?

בית ראשון אומרים

נכסים בחזקתן

Since we have a ספק who died first, we leave the assets with those who had it in their possession.

בית שמאי אומרים

יחלקו

We divide the assets between the יורשי הבעל and יורשי האשה, שהרי ממון מוטל בספק הוא

Therefore, the Mishnah continues;

כתובה

בחזקת יורשי הבעל

The husband's heirs inherit the Kesubah the wife would normally collect upon her husband's death, because this money was originally in the husband's possession.

נכסים הנכנסין והיוצאין עמה
בחזקת יורשי האב

The wife's heirs inherit the נכסי מלוג, her properties that were not written into the כתובה, because since the wife maintains liability for these assets, she is considered the possessor of these assets.

2 However, regarding נכסי צאן ברזל
The wife's properties that were assessed and written into the כתובה, the Gemara cites a 3-way Machlokes:

1.
רבי יוחנן אמר
בחזקת יורשי הבעל
The husband's heirs inherit these assets, because as the Rashbam explains
שאם פיתחו פיתחו לו
ואם הותירו הותירו לו
Since the husband is liable for the losses and enjoys the gains of these assets, he is considered the possessor of these assets.

2.
רבי אלעזר אמר
בחזקת יורשי האשה
The wife's heirs inherit these assets, because ®
דהיא הנעלת ליה מבית אביה
Since the wife originally brought these assets into the marriage, she is considered the possessor of these assets.

3.
ורבי שמעון בן לקיש משום בר קפרא אמר
יחלוקו
We divide these assets between the 2 sides, the יורשי הבעל and the יורשי האשה, because
הואיל והללו באין לירש
והללו באין לירש
יחלוקו
Since each party has a legitimate claim, they are each considered the possessor of these assets;
And as the Rashbam explains, accordingly the Mishnah's wording
בית הלל אומרים נכסים בחזקתן
Is understood as
בחזקת שניהן
Both parties have possession of these assets, and therefore יחלוקו.

3 Zugt Di Mishnah
נפל הבית עליו ועל אמו
If a house collapsed upon a widow and her son and they both died and the son had no children, and it is not known who died first;
The son's assets certainly go to his heirs.
However, regarding the mother's assets there is a ספק as to who inherits her assets:
And as in the previous Mishnah, ®
האם יורשי האם, the mother's heirs claim that they inherit her assets, because
הבן מת ראשון ואח"כ אמו
The son died first, and the mother maintained ownership of her assets, and then she died, and now as her heirs they inherit her assets?
On the other hand;
האם יורשי הבן, the son's heirs claim that they inherit her assets, because
האם מת ראשון ואח"כ בנה
The mother died first, and the son inherited his mother's assets, and then he died, and now as his heirs they inherit these assets.

2

However

נכסי צאן ברזל

The wife's properties that were assessed and written into the כתובה;

רבי יוחנן	רבי אלעזר	רבי שמעון בן לקיש
בחזקת יורשי הבעל	בחזקת יורשי האשה	יחלוקו
The husband's heirs inherit these assets, because	The wife's heirs inherit these assets, because	We divide these assets between the 2 sides, because
שאם פיתחו הותירו לו	דהיא הנעלת ליה	הואיל והללו באין לירש
ואם הותירו הותירו לו	מבית אביה	והללו באין לירש
Since the husband is liable for the losses and enjoys the gains of these assets, he is considered the possessor of these assets.	Since the wife originally brought these assets into the marriage, she is the possessor.	They are each considered the possessor of these assets;

And accordingly the Mishnah's wording
בית הלל אומרים נכסים בחזקתן
Is understood as - בחזקת שניהן
Both parties have possession of these assets, therefore יחלוקו.

3

נפל הבית עליו ועל אמו

If a house collapsed upon a widow and her son and they both died and the son had no children, and it is not known who died first;

The son's assets certainly go to his heirs.

However, regarding the mother's assets there is a ספק as to who inherits her assets:

And as in the previous Mishnah,

האם יורשי האם, the mother's heirs claim that they inherit her assets, because	הבן מת ראשון ואח"כ אמו The son died first, and the mother maintained ownership of her assets, and then she died, and now as her heirs they inherit her assets.
האם יורשי הבן, the son's heirs claim that they inherit her assets, because	האם מת ראשון ואח"כ בנה The mother died first, and the son inherited his mother's assets, and then he died, and now as his heirs they inherit these assets.



4 The תנא קמא says
אלו ואלו מודין שיחלוקו
In this case, the הלל בית agree with the בית שמאי that we divide the mother's assets between the 2 sides, the יורשי הבן and the יורשי האם, because as the Rashbam explains שניהם באים מכח טענת ירושת שהוחזקה בהן אשה Both parties are equally considered מוחזק as they both claim ירושה from the mother who was מוחזק in her assets.

The Rashbam explains however, that in the Mishnah in the previous Daf, in the case of נפל הבית עליו ועל אביו והיתה עליו כתובת אשה ובעל חוב If a house fell upon a person and his father and they both died, and the son owned money for a Kesubah or for a debt, and there is a ספק whether the assets go to the יורשי האב or the בעלי חוב;
There the הלל בית hold נכסים בחזקתן All the assets are given to the יורשי האב, but not to the בעלי חוב, because זה בא מכח ירושה וזה בא בטענת שטר חוב Only the יורשי האב who claim ירושה are considered מוחזק, but the בעלי חוב who merely claim a debt are not considered מוחזק.
In our case, however, both parties claim ירושה, and therefore both are considered מוחזק.

And similarly in the previous Mishnah's case of נפל הבית עליו ועל אשתו If a house collapsed upon a husband and wife and they both died, and there is a ספק whether the assets go to the יורשי אשה or the יורשי הבעל;
There the הלל בית hold נכסים בחזקתן We leave the assets with those who had it in their possession, because יש שם נכסים שמוחזק בהן בעלה ויש שם נכסים שמוחזקת האשה The יורשי הבעל are only מוחזק in some of the assets, and the יורשי אשה are also only מוחזק in some of the assets;
While in our case, BOTH parties are מוחזק in ALL the assets.
Therefore, the תנא קמא says אלו ואלו מודין שיחלוקו יחלוקו that בית שמאי בית הלל agree with.

4 אלו ואלו מודין שיחלוקו
In this case, the הלל בית agree with the בית שמאי that we divide the mother's assets between the 2 sides, the יורשי הבן and the יורשי האם,

because as the Rashbam explains שניהם באים מכח טענת ירושת שהוחזקה בהן אשה Both parties are equally considered מוחזק as they both claim ירושה from the mother who was מוחזק in her assets.

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There the הלל בית hold נכסים בחזקתן All the assets are given to the יורשי האב, but not to the בעלי חוב, because זה בא מכח ירושה וזה בא בטענת שטר חוב Only the יורשי האב who claim ירושה are considered מוחזק, but the בעלי חוב who merely claim a debt are not considered מוחזק.
In our case, however, both parties claim ירושה, and therefore both are considered מוחזק.

And similarly in the previous Mishnah's case of נפל הבית עליו ועל אשתו If a house collapsed upon a husband and wife and they both died, and there is a ספק whether the assets go to the יורשי הבעל or the יורשי אשה;

There the הלל בית hold נכסים בחזקתן We leave the assets with those who had it in their possession, because יש שם נכסים שמוחזק בהן בעלה ויש שם נכסים שמוחזקת האשה The יורשי הבעל are only מוחזק in some of the assets, and the יורשי אשה are also only מוחזק in some of the assets;
While in our case, BOTH parties are מוחזק in ALL the assets.

Therefore, the תנא קמא says אלו ואלו מודין שיחלוקו יחלוקו that בית שמאי בית הלל agree with.

5

רבי עקיבא disagrees and says מודה אני בזו שהנכסים בחזקתן בית שמאי בית הלל disagree with the הלל and hold as before that we leave the assets with those who had it in their possession, and the Gemara cites a Machlokes as to which heirs are considered the מוחזק.

רבי אילא אמר בחזקת יורשי האם The יורשי האם get all the assets; הואיל והוחזקה נחלה באותו שבט Because only they are considered מוחזק, since after the husband died the assets belonged solely to the mother who was a member of their Shevet, while the יורשי הבן are members of a different Shevet, as was the son's father;

רבי זירא אמר בחזקת יורשי הבן The יורשי הבן get all the assets, because as the Rashbam explains דמשמת בעלה היה בן ראוי ליורשה קודם לכל קרוביה The son was considered מוחזק, because from when the husband died he was destined to inherit all his mother's assets.

רבי תנא קמא holds like רבי עזאי and he commented to עקיבא על חלוקין אנו מצטערין אלא שבאת לחלק עלינו את השוין We were distressed in the cases where there was a Machlokes and now you wish to add to their Machlokes, where others hold that they agree.

5

רבי עקיבא
מורה אני בזו
שהנכסים בחזקתן

Even in this case the בית הלל disagree with the בית שמאי and hold as before that we leave the assets with those who had it in their possession,

The Gemara cites a Machlokes which heirs are considered the מוחזק.

רבי אילא אמר בחזקת יורשי האם The יורשי האם get all the assets; הואיל והוחזקה נחלה באותו שבט

Only they are considered מוחזק, since after the husband died the assets belonged solely to the mother who was a member of their Shevet, while the יורשי הבן are members of a different Shevet, as was the son's father;

רבי זירא אמר בחזקת יורשי הבן The יורשי הבן get all the assets, because דמשמת בעלה היה בן ראוי ליורשה קודם לכל קרוביה The son was considered a מוחזק, because from when the husband died he was destined to inherit all his mother's assets.

תנא קמא holds like רבי עזאי and he commented to עקיבא על חלוקין אנו מצטערין אלא שבאת לחלק עלינו את השוין We were distressed in the cases where there was a Machlokes and now you wish to add to their Machlokes, where others hold that they agree.