

**A** בס"ד

Intro

Today we will Be"H learn דף קע"ה בתרא of דף קעה. מסכת בבא בתרא. Some of the topics we will learn about include:

The Gemara discusses several laws regarding a שכיב מרע, a mortally ill person:

1.  
מנה לפלוני בידי  
If he is believed to say, "I have a מנה belonging to פלוני in my possession," depriving his sons of their rightful inheritance, OR if

הקדיש כל נכסיו  
He consecrated all his possessions, whether הקדש must pay פלוני.

2.  
אמרו יתומין פרענו  
Whether the orphans are believed to say they already gave the מנה, if he said

תנו מנה לפלוני  
Give a מנה, OR if he said  
מנה לפלוני בידי  
I have a מנה belonging to פלוני in my possession.

3.  
אמרו יתומין  
חזר ואמר לנו אבא פרעתי  
Whether the orphans are believed to say he later told them that he himself already returned it, whether he said

מנה לפלוני בידי  
I have a מנה belonging to פלוני in my possession, OR if he said  
תנו מנה לפלוני  
Give a מנה to פלוני.

**B** 4.

שכיב מרע שהודה  
If someone claims a debt from a שכיב מרע, and he admits to the loan, whether

צריך לומר אתם עדי וצריך שיאמר כתובו  
Whether he must say, "You are my witnesses," and otherwise he may later claim that he was not sincere, and whether he must instruct them to commit his admission to writing, or not?

גובה מנכסים משועבדים  
Whether loans can be collected from mortgaged property, whether

מלוח על פה, undocumented loans, or מלוח בשטר, documented loans.

This may be either because שיעבודא דאורייתא  
The Torah recognizes the power of a lien on a property, OR

משום פסידא דלקוחות  
A משום פסידא דלקוחות to protect buyers;

**A**

מנה לפלוני בידי

הקדיש כל נכסיו

אמרו יתומין פרענו

תנו מנה לפלוני

מנה לפלוני בידי

אמרו יתומין

חזר ואמר לנו אבא פרעתי

**B**

שכיב מרע שהודה

צריך לומר אתם עדי וצריך שיאמר כתובו

גובה מנכסים משועבדים

שיעבודא דאורייתא

משום פסידא דלקוחות

1 So let's review...

The Gemara discusses several Halachos regarding a שכיב מרע, a mortally ill person:

1.

אמר רב הונא  
שכיב מרע שהקדיש כל נכסיו  
ואמר מנה לפלוני בידי  
נאמן

If a שכיב מרע consecrated all his possessions, and later says, "I have a מנה belonging to a certain person in my possession," he is believed, because

חזקה

אין אדם עושה קנוניא על הקדש

A person would not defraud הקדש.

However, רב נחמן asks

רב ושמואל דאמרי תרוייהו

שכיב מרע שאמר מנה לפלוני בידי

If a שכיב מרע said, "I have a מנה belonging to פלוני in my possession,"

אמר תנו, נותנין

לא אמר תנו, אין נותנין

If he said, "Give it to פלוני," we give him the מנה, but if he did not say, "Give it to פלוני," he is not believed to deprive his sons of their rightful inheritance.

Therefore, רב נחמן asks

וכי אדם עושה קנוניא על בניו

A person would not deprive his children either! If so, why is he not believed? Clearly, we must explain,

אדם עשוי שלא להשביע את בניו

We assume he merely intended to dispel the impression that his children are wealthy;

Similarly, we should assume

אדם עשוי שלא להשביע את עצמו

He may have claimed to possess money of others to dispel the impression that he is wealthy, and the recipient should not receive the מנה?

1

Several Halachos regarding a שכיב מרע

1

אמר רב הונא

**שכיב מרע שהקדיש כל נכסיו  
ואמר מנה לפלוני בידי  
נאמן**

If a שכיב מרע consecrated all his possessions,  
and later says,

"I have a מנה belonging to someone in my possession,"  
he is believed, because

חזקה

**אין אדם עושה קנוניא על הקדש**  
A person would not defraud הקדש.

רב נחמן

?

רב ושמואל דאמרי תרוייהו

**שכיב מרע שאמר מנה לפלוני בידי**

If a שכיב מרע said,

"I have a מנה belonging to פלוני in my possession,"

**אמר תנו, נותנין**

**לא אמר תנו, אין נותנין**

He is not believed to deprive his sons  
of their rightful inheritance.

**וכי אדם עושה קנוניא על בניו**

A person would not deprive his children either!

If so, why is he not believed?

Clearly, we must explain,

**אדם עשוי שלא להשביע את בניו**

We assume he merely intended to dispel the impression  
that his children are wealthy;

Similarly, we should assume

**אדם עשוי שלא להשביע את עצמו**

He may have claimed to possess money of others

to dispel the impression that he is wealthy,  
and the recipient should not receive the מנה?



2 The Gemara concedes the point, and explains  
 אידי ואידי דנקיט שטרא  
 In both cases, we are discussing a case where there is a document attesting to his claim. However,  
 הא דמקויים  
 הא דלא מקויים  
 רב הונא discusses a document whose signatures were authenticated, and so הקדש must pay the מנה, while רב  
 ושמאל discussed a document that was not authenticated, and so  
 אמר תנו  
 קיימיה לשטריה  
 לא אמר תנו  
 לא קיימיה לשטריה  
 If he says, "Give him," this is tantamount to authenticating the document, but if he does not say this, it remains a non-authenticated document, and we do not give that person the מנה, because we assume he was not sincere.

2

**אידי ואידי דנקיט שטרא**  
*In both cases, we are discussing a case where there is a document attesting to his claim.*

*However,*  
**הא דמקויים**  
**הא דלא מקויים**  
*רב הונא discusses a document whose signatures were authenticated, and so הקדש must pay the מנה,*  
*While רב שמאל discussed a document that was not authenticated, and so*  
**אמר תנו**  
**קיימיה לשטריה**  
**לא אמר תנו**  
**לא קיימיה לשטריה**  
*If he says, "Give him,"*  
*this is tantamount to authenticating the document.*  
*But if he does not say this,*  
*it remains a non-authenticated document,*  
*and we do not give that person the מנה,*  
*because we assume he was not sincere.*

3

2.

Another Halachah regarding a מרע שכיב מנה לפלוני

שכיב מרע שאמר תנו מנה לפלוני

ואמרו יתומין פרענו

נאמנין

If a מרע שכיב said, "Give a מנה to מנה," and the orphans now claim they already gave him the מנה, they are believed, because

כיון דפסקה אבוהון למילתא

איכא למימר דפרעיה

Since he explicitly ordered them to give the מנה, we assume that they obeyed.

On the other hand,

שכיב מרע שאמר מנה לפלוני בידי

ואמרו יתומין פרענו

אין נאמנין

If he said, "I have a מנה belonging to מנה in my possession," the orphans are not believed to say that they already returned the מנה, because

כיון דלא פסק אבוהון למילתא

איכא למימר דלא פרעיה

Since he did not explicitly order them to pay, we do not assume they already returned it.

3

2

**שכיב מרע שאמר תנו מנה לפלוני  
ואמרו יתומין פרענו  
נאמנין**

If a מרע שכיב said, "Give a מנה to מנה,"  
and the orphans now claim they already gave him the מנה,  
they are believed,  
because

**כיון דפסקה אבוהון למילתא  
איכא למימר דפרעיה**

Since he explicitly ordered them to give the מנה,  
we assume that they obeyed.

On the other hand,

**שכיב מרע שאמר מנה לפלוני בידי  
ואמרו יתומין פרענו  
אין נאמנין**

If he said, "I have a מנה belonging to מנה in my possession,"  
the orphans are not believed to say that  
they already returned the מנה,  
because

**כיון דלא פסק אבוהון למילתא  
איכא למימר דלא פרעיה**

Since he did not explicitly order them to pay,  
we do not assume they already returned it.

4

3. Another Halachah;

שכיב מרע שאמר מנה לפלוני בידי

ואמרו יתומין

חזר ואמר לנו אבא פרעתי

נאמנין

If a שכיב מרע said, "I have a מנה belonging to פלוני in my possession," and the orphans claim he later told them he himself already paid it, they are believed, because

אדכורי מידכר

It is plausible that he later remembered returning it.

However,

תנו מנה לפלוני

ואמרו יתומין

חזר ואמר אבא פרעתי

אין נאמנין

If he said, "Give a מנה to פלוני," and the orphans claim he later told them he already paid it, they are not believed, because

אם איתא דפרעיה

לא הוה אמר תנו

If he had already paid, he would not have instructed them to give it in the first place.

=====

4

3

**שכיב מרע שאמר מנה לפלוני בידי  
ואמרו יתומין  
חזר ואמר לנו אבא פרעתי  
נאמנין**

*If a שכיב מרע said,  
"I have a מנה belonging to פלוני in my possession,"  
and the orphans claim  
he later told them he himself already paid it,  
they are believed,  
because*

**אדכורי מידכר**

*It is plausible that he later remembered returning it.*

*However,*

**תנו מנה לפלוני  
ואמרו יתומין  
חזר ואמר אבא פרעתי  
אין נאמנין**

*If he said, "Give a מנה to פלוני," and the orphans claim  
he later told them he already paid it,  
they are not believed,  
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**אם איתא דפרעיה  
לא הוה אמר תנו**

*If he had already paid, he would not have instructed  
them to give it in the first place.*



5 The Gemara inquires:

שכיב מרע שהודה  
If someone claims a debt from a מרע, and he admits to it; do we say,  
אדם משטה בשעת מיתה  
Perhaps a person would make insincere comments on his deathbed, and so

צריך לומר אתם עדי  
וצריך שיאמר כתובו  
He must say, "You are my witnesses," and he must instruct them to commit his admission to writing;

Otherwise, he can later claim that he was not sincere?  
OR

אין אדם משטה בשעת מיתה  
A person does not make insincere comments on his deathbed, and so

אין צריך לומר אתם עדי  
ואין צריך לומר כתובו  
His word alone is binding even if he does not say, "You are my witnesses," and he does not need to instruct them to commit his admission to writing?

The Gemara rules

אין אדם משטה בשעת מיתה  
ודברי שכ"מ ככתובין וכמסורין דמו  
A מרע would not make insincere comments, and so his word alone is fully binding.

=====

5

### שכיב מרע שהודה

If someone claims a debt from a מרע, and he admits to it - Do we say..

#### אין אדם משטה בשעת מיתה

A person does not make insincere comments on his deathbed, and so

אין צריך לומר אתם עדי  
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His word alone is binding even if he does not say, "You are my witnesses," and he does not need to instruct them to commit his admission to writing?

#### אדם משטה בשעת מיתה

Perhaps a person would make insincere comments on his deathbed, and so

צריך לומר אתם עדי  
וצריך שיאמר כתובו  
He must say, "You are my witnesses," and he must instruct them to commit his admission to writing; Otherwise, he can later claim that he was not sincere?

#### אין אדם משטה בשעת מיתה ודברי שכ"מ ככתובין וכמסורין דמו

A מרע would not make insincere comments, and so his word alone is fully binding.

**6** Zugt di Mishnah  
 המלוה את חבירו בשטר  
 גובה מנכסים משועבדים  
 If someone lends money with a loan document, he can collect his debt even from encumbered property, i.e. from property that is now sold but was owned by the borrower at the time of the loan.

As the Rashbam explains

כיון דאיכא תרתי

שטר ועדים

מפקי ליה לקלא

ולקוחות הוא דאפסידו אנפשייהו

Since there exists both witnesses and a document, word of the loan definitely spread, and the buyers had the opportunity to do proper research and decide whether to buy these mortgaged properties.

The Rashbam adds

אפילו בלי אחריות

דאחריות טעות סופר

The document does not need to stipulate so explicitly, because the guarantee is always the default assumption.

However, the Mishnah continues,

על ידי עדים

גובה מנכסים בני חורין

If he did not record the loan in writing, but merely gave him the money in front of witnesses, he can collect only from unencumbered property, i.e. property still in the borrower's possession, since there is no קול and the word did not spread, the buyers would not have known.

The Mishnah continues

הוציא עליו כתב ידו שהוא חייב לו

גובה מנכסים בני חורין

If the creditor has a promissory note in the borrower's handwriting, he can only collect from free property, because it is not a real document, and there is no קול.

**6**  
 המלוה את חבירו בשטר  
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 If someone lends money with a loan document, he can collect his debt even from encumbered property, i.e. from property that is now sold but was owned by the borrower at the time of the loan.

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הוציא עליו כתב ידו שהוא חייב לו

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If the creditor has a promissory note in the borrower's handwriting, he can only collect from free property, because it is not a real document, and there is no קול.

7 The Gemara debates the source for the lien on the property to the extent that the creditor can confiscate it from someone who purchased property from the borrower after the loan took place:

עולא holds

דבר תורה

אחד מלוה בשטר

ואחד מלוה ע"פ

גובה מנכסים משועבדים

According to Torah law, both documented and undocumented loans can be collected from sold property, because

שעבודא דאורייתא

The Torah recognizes the power of a lien on a property, as the Pasuk says

יוציא אליך העבוט

Referring to one's possessions serving as collateral, and this includes real property.

However, the חכמים instituted that an undocumented loan cannot be collected from such properties, because of פסידא דלקוחות

In order to protect buyers;

However, were not concerned about the buyers of property mortgaged to a documented loan, because אינהו נינהו דאפסידו אנפשייהו

They caused their own loss, because word definitely spread, and the buyers had the opportunity to do proper research and decide whether to buy such a property.

7 The Gemara debates the source for the lien on the property to the extent that the creditor can confiscate it from someone who purchased property from the borrower after the loan took place:

ע"פ

דבר תורה

אחד מלוה בשטר – ואחד מלוה ע"פ  
גובה מנכסים משועבדים

According to Torah law,  
both documented & undocumented loans  
can be collected from sold property,  
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The Torah recognizes the power of a lien on a property,  
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Referring to one's possessions serving as collateral,  
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In order to protect buyers;

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They caused their own loss,  
because word definitely spread, and the buyers  
had the opportunity to do proper research  
and decide whether to buy such a property.



8 holds רבה  
 דבר תורה  
 אחד מלוה בשטר  
 ואחד מלוה על פה  
 אינו גובה אלא מנכסים בני חורין  
 According to Torah law, both documented and undocu-  
 mented loans cannot be collected from sold property,

because  
 שעבודא לאו דאורייתא  
 The Torah does not recognizes the power of a lien on a  
 property,

because  
 קרא  
 במשכוננו שלא בשעת הלואתו  
 This Pasuk is only discussing collateral taken at the time  
 the loan is due.

However, the חכמים instituted that a documented loan can  
 be collected from such properties,  
 כדי שלא תנעול דלת בפני לוי  
 So that creditors should not refrain from granting loans.  
 However, they did not allow this regarding undocumen-  
 ted loans, because  
 התם לית ליה קלא  
 Word of such loans does not spread, and the buyers are  
 unable to protect themselves.

The Gemara concludes with the following distinction:  
 אמר רב פפא  
 הלכתא  
 מלוה על פה  
 גובה מן היורשין  
 כדי שלא תנעול דלת בפני לוי  
 The creditor of an undocumented loan can collect from  
 heirs, in order not to discourage them from giving loans;  
 and the heirs do not suffer an out of pocket loss, since they  
 did not pay for the property.  
 However,  
 ואינו גובה מן הלקוחות  
 דלית ליה קלא  
 He cannot collect from buyers, since they didn't have the  
 opportunity to protect themselves and they will suffer a  
 loss.

8  
**דבר תורה**  
**אחד מלוה בשטר – ואחד מלוה ע"פ**  
**אינו גובה אלא מנכסים בני חורין**

According to Torah law,  
 both documented and undocumented loans  
 cannot be collected from sold property,  
 because  
**שעבודא לאו דאורייתא**  
 The Torah does not recognizes the power of a lien on a property,

because  
**קרא**  
**במשכוננו שלא בשעת הלואתו**  
 This Pasuk is only discussing  
 collateral taken at the time the loan is due.

However, the חכמים instituted that a documented loan  
 can be collected from such properties,  
**כדי שלא תנעול דלת בפני לוי**  
 So that creditors should not refrain  
 from granting loans.

However, they did not allow this regarding  
 undocumented loans, because  
**התם לית ליה קלא**  
 Word of such loans does not spread,  
 and the buyers are unable to protect themselves.

**אמר רב פפא**  
**הלכתא**  
**מלוה על פה**  
**גובה מן היורשין**  
**כדי שלא תנעול דלת בפני לוי**

The creditor of an undocumented loan  
 can collect from heirs, in order not to discourage them  
 from giving loans; and the heirs do not suffer an out of  
 pocket loss, since they did not pay for the property.

However,  
**ואינו גובה מן הלקוחות**  
**דלית ליה קלא**  
 He cannot collect from buyers,  
 since they didn't have the opportunity to protect  
 themselves and they will suffer a loss.