A

בס"ד

Intro

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

כל דאלים גבר
If two people claim a property without supplying evidence to their claims, בית דין does not get involved and leaves them to resolve it themselves, and the stronger party prevails, either by strength or with proofs.

The Gemara differentiates from several other cases:
1.
שני שטרות היוצאין ביום אחד
If someone gifted the same property to two different individuals on the same day, we either rule
יחלוקו
They divide the property between them, OR
שודא דדייני
The court determines the intended recipient, and the Gemara explains
אי איכא למיקם עלה דמילתא
This depends on whether it is possible to resolve the matter.

B

2.
המחליף פרה בחמור וילדה
וכן המוכר שפחתו וילדה
If it is unclear if a cow or slave woman gave birth before or after being purchased,
יחלוקו
The buyer and the seller divide the child between them, and the Gemara explains
אי איכא דרא דממונא
This depends on whether they each have a valid claim.

The Gemara also discusses
בא אחד מן השוק והחזיק בה
If a third party comes along and seizes the property, whether we compel him to return it?

C

איבעי ליה למחויי
If one does not protest during the three years of חזקה, he is no longer believed that the occupant was a sharecropper, or was using the field as collateral.

ישראל הבא מחמת עכו"ם
הרי הוא כעכו"ם
If a Jew buys property from a non-Jew that was previously owned by another Jew, he shares in the non-Jew's limitations and cannot use חזקת שלש שנים to establish ownership.

C

איבעי ליה למחויי

ישראל הבא מחמת עכו"ם
הרי הוא כעכו"ם

1 So let's review...

The Gemara earlier mentioned the concept of
כל דאלים גבר
The stronger party prevails.
Upon which the Gemara now elaborates;

זה אומר של אבותי
וזה אומר של אבותי
If two parties claim to have inherited property, and as the Rashbam explains
בין קרקע בין ספינה
Whether real or movable property;
ואין עדות וחזקה לזה יותר מזה
And neither has compelling evidence to support his claim;
רב נחמן rules
כל דאלים גבר
The stronger party prevails.
As the Rashbam later explains
אין בית דין נזקקין להם
אלא מניחים אותן
בית דין does not get involved and leaves them to resolve it themselves, and the stronger one prevails;
בין בראיות בין בכח
Either by strength or with proofs;

1

כל דאלים גבר
The stronger party prevails.

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וזה אומר של אבותי
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כל דאלים גבר
The stronger party prevails.

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אין בית דין נזקקין להם
אלא מניחים אותן
בית דין does not get involved and leaves them to resolve it themselves, and the stronger one prevails;
בין בראיות בין בכח
Either by strength or with proofs

2 The Gemara contrasts this ruling with several similar cases:
1.
שני שטרות היוצאין ביום אחד
If someone wrote two documents on the same day, gifting the same property to two different individuals; there's a Machlokes:
רב אמר
יחלוקו
They divide the property between them, since they have equal claims.
שמואל אמר
שודא דדייני
The court determines which one is probably the intended recipient, based on their relationship with the owner.

Thus, the Gemara asks, as the Rashbam explains; ®
נימא רב נחמן חלוקה או שודא
ואמאי אמר כל דאלים גבר
If there are these two possible rulings, why does רב נחמן offer a third ruling כל דאלים גבר?

The Gemara differentiates as follows:
התם ליכא למיקם עלה דמילתא
הכא איכא למיקם עלה דמילתא
In that case, the two documents are identical, and so it's impossible to resolve this issue. Therefore, בית דין does their best, and either divides it equally or attempts to identify the intended recipient.
However, in our case, it is possible to later verify who inherited the property, and so בית דין does not issue a ruling based on the current evidence, because it might have to be overturned later based on new evidence. Rather, it does not get involved.
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2

1

שני שטרות היוצאין ביום אחד

If someone wrote two documents on the same day, gifting the same property to two different individuals

רב אמר
יחלוקו
They divide the property between them, since they have equal claims

שמואל אמר
שודא דדייני
The court determines which one is probably the intended recipient, based on their relationship with the owner.

?

נימא רב נחמן חלוקה או שודא ואמאי אמר כל דאלים גבר

If there are these two possible rulings, why does רב נחמן offer a third ruling כל דאלים גבר?

התם
ליכא למיקם עלה דמילתא
In that case, the two documents are identical, and so it's impossible to resolve this issue. Therefore, בית דין does their best, and either divides it equally or attempts to identify the intended recipient.

הכא
איכא למיקם עלה דמילתא
However, in our case, it is possible to later verify who inherited the property, and so בית דין does not issue a ruling based on the current evidence, because it might have to be overturned later based on new evidence. Rather, it does not get involved.

3

2.
The Gemara cites a Mishnah in מסכת בבא מציעא
המחליף פרה בחמור וילדה
וכן המוכר שפחתו וילדה
Someone performed a קנין to acquire another's pregnant cow or slave woman. Subsequently, it was discovered that they had given birth, but we do not know whether they gave birth before or after the sale was finalized.
זה אומר עד שלא מכרתי ילדה
וזה אומר משלקחתי ילדה
The seller claims she gave birth before the sale was finalized, and so he owns the child, and the buyer claims she gave birth after the sale was finalized, and he owns the child;
The Mishnah rules;
יחלוקו
They divide the child between them.
And the Rashbam points out
איכא למיקם עלה דמלתא
אם יבאו עדים
ויעידו ברשות מי ילדה
In this case, it IS possible to verify through witnesses the exact time when the birth took place, and yet we do not rule כל דאלים גבר?

The Gemara differentiates as follows:
התם להאי אית ליה דררא דממונא
ולההוא אית ליה דררא דממונא
They each have a legitimate claim to the child. Therefore, בית דין cannot ignore it and rule כל דאלים גבר. Furthermore, the Rashbam adds,
שודא דדינא ליכא למימר הכא
There is nothing for בית דין to determine, and so the only possible ruling is יחלוקו. However,
הכא אי דמר לא דמר
ואי דמר לא דמר
One party is the true heir of the property, and the other has no claim. Therefore, בית דין does not get involved and rule כל דאלים גבר.
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3

2

המחליף פרה בחמור וילדה וכן המוכר שפחתו וילדה

Someone performed a קנין to acquire another's pregnant cow or slave woman. Subsequently, it was discovered that they had given birth, but we do not know whether they gave birth before or after the sale was finalized.

זה אומר עד שלא מכרתי ילדה

The seller claims she gave birth before the sale was finalized, and so he owns the child.

וזה אומר משלקחתי ילדה

The buyer claims she gave birth after the sale was finalized, and he owns the child.

יחלוקו

They divide the child between them.

And the Rashbam points out
איכא למיקם עלה דמלתא
אם יבאו עדים ויעידו ברשות מי ילדה
In this case, it is possible to verify through witnesses the exact time when the birth took place, and yet we do not rule כל דאלים גבר

?

התם להאי אית ליה דררא דממונא ולההוא אית ליה דררא דממונא

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הכא אי דמר לא דמר ואי דמר לא דמר

One party is the true heir of the property, and the other has no claim. Therefore, בית דין does not get involved and rule כל דאלים גבר.

4 The Gemara elaborates on the ruling of כל דאלים גבר:
אמרי נהרדעי
אם בא אחד מן השוק והחזיק בה
אין מוציאין אותה מידו
If a third party comes along and seizes the property without submitting a claim, we do not compel him to return it, since we have no proof that it belongs to either one of the first two litigants.
The נהרדעי bring support for this ruling from רבי חייא, who said:
גזלן של רבים
לאו שמיה גזלן
One who steals from the public, which in this case, as the Rashbam explains, refers to an item whose ownership is unclear, is not considered a thief and we do not compel him to return it.

However, רב אשי disagrees and explains:
לעולם שמיה גזלן
He is considered a thief, since he did not submit a claim, and we assume it belongs to one of the two claimants, and we do compel him to return it. And, רבי חייא only meant
לא שמיה גזלן
שלא ניתן להשבון
He cannot repent and return the stolen item to its proper owner, since he does know to whom it belongs. He can only return it to the status of כל דאלים גבר, but he has not fulfilled the Mitzvah of והשיב את הגזילה.
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4

אמרי נהרדעי
אם בא אחד מן השוק והחזיק בה
אין מוציאין אותה מידו
If a third party comes along and seizes the property without submitting a claim, we do not compel him to return it, since we have no proof that it belongs to either one of the first two litigants. The נהרדעי bring support for this ruling from

רבי חייא
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One who steals from the public, which in this case, refers to an item whose ownership is unclear, is not considered a thief and we do not compel him to return it.

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5 The Mishnah stated
חזקתן שלש שנים מיום ליום
חזקה for real property is established by normal usage for a period of three full years.

The Gemara cites an exception:
אי דלי ליה איהו גופיה צנא דפירי
לאלתר הוי חזקה
If the previous owner assisted the occupant in taking the produce, this constitutes an immediate חזקה, because ®
לא היה לו לסייעו
אלא היה לו למחות
וכמודה שמכר לו דמי
If he didn't sell the property, he should be protesting his occupancy, not helping him! Therefore, it is as if he admitted that he sold it to him.

However, the Gemara adds,
אם טען ואמר בתוך שלש
לפירות הורדתיו
נאמן
During the first three years of חזקה, he is believed to say that the occupant was merely a sharecropper, and that is why he was helping him. But
לאחר שלש
לא
After the occupant established three years of חזקה, the previous owner cannot claim that the occupant was a sharecropper, because
איבעי ליה למחויי
He should have protested earlier and publicized that the occupant was merely a sharecropper.

5

חזקתן שלש שנים מיום ליום

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The Gemara proves this principle from the following well-known arrangement:

6 The Gemara proves this principle from the following well-known arrangement:
הני משכנתא דסורא
Regarding the collateral agreements practiced in Sura, where they would write
במשלם שניא אלין
תיפוק ארעא דא בלא כסף
The lender consumes the produce of a field of collateral for a certain period of time as payment of the loan, after which it automatically reverts to the original owner.
Now,
אי כביש ליה לשטר משכנתא גביה
ואמר לקוחה היא בידי
הכי נמי דמהימן?
Can the lender simply hide the document and claim to have bought the field based on a חזקה?
Certainly not, because
מתקני רבנן מידי דאתי ביה לידי פסידא?
Would the רבנן enact a practice that could so easily be abused?
Apparently, they relied on the fact that this can be prevented by
איבעי ליה למחויי
The owner should protest and publicize their agreement during those years, so that it shall be known that the field is not sold to the lender.
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6

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The lender consumes the produce of a field of collateral for a certain period of time as payment of the loan, after which it automatically reverts to the original owner.

אי כביש ליה לשטר משכנתא גביה ואמר לקוחה היא בידי הכי נמי דמהימן
Can the lender simply hide the document and claim to have bought the field based on a חזקה?

Certainly not, because
מתקני רבנן מידי דאתי ביה לידי פסידא
Would the רבנן enact a practice that could so easily be abused?

Apparently, they relied on the fact that this can be prevented by
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The owner should protest and publicize their agreement during those years, so that it shall be known that the field is not sold to the lender.

7 The Gemara next discusses
ישראל הבא מחמת עכו"ם
הרי הוא כעכו"ם
If a Jew buys property from a non-Jew, he shares in his limitations:
מה עכו"ם אין לו חזקה אלא בשטר
אף ישראל הבא מחמת עכו"ם
אין לו חזקה אלא בשטר
If a Jew buys property from a non-Jew who claims to have bought it from another Jew, even if the non-Jew, or the Jewish buyer, had it for three years, they have not established a חזקה.
Because as the Rashbam explains:
סתם עכו"ם גזלנים הם
וישראל ירא למחות
Most non-Jews are suspected of stealing property, and a Jew is afraid to protest publically, and so
לא תקנו בהם חזקה
The רבנן did not allow non-Jews to establish ownership through חזקה. Therefore, the Jew who bought it from the non-Jew cannot establish ownership through חזקה either, because
חזקה שאין עמה טענה היא
His חזקה does not support a valid claim, since he does not know if the non-Jew actually bought the property from the previous Jewish owner, and so
איהו דאפסיד אנפשיה
He deserves to sustain this loss, because
לא הוי ליה למזבן ארעא דישראל מעכו"ם
עד דלימא ליה
הב לי שטר זביני דזבנת לה מישראל
He should not have bought a Jew's property from a non-Jew unless the non-Jew shows him proof that he indeed bought it from the previous Jewish owner.

7
ישראל הבא מחמת עכו"ם
הרי הוא כעכו"ם
If a Jew buys property from a non-Jew,
he shares in his limitations:
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If a Jew buys property from a non-Jew
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He should not have bought a Jew's property from a non-Jew unless the non-Jew shows him proof that he indeed bought it from the previous Jewish owner.

8 The Gemara adds
אי אמר ישראל
קמי דידי זבנה עכו"ם מינך
וזבנה ניהלי
מהימן
The Jew is believed to say that he witnessed the non-Jew purchase the property from the previous Jewish owner, because
מיגו דאי בעי א"ל
אנא זבינתה מינך
He could have used his חזקה to claim that he bought it directly from the previous Jewish owner. Therefore, he is obviously telling the truth, and witnessed the original purchase.

8

אי אמר ישראל
קמי דידי זבנה עכו"ם מינך
וזבנה ניהלי
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The Jew is believed to say that he witnessed the non-Jew purchase the property from the previous Jewish owner, because

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He could have used his חזקה to claim that he bought it directly from the previous Jewish owner. Therefore, he is obviously telling the truth, and witnessed the original purchase.