

A בס"ד

Intro

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

The Braisa's Halachah of

אין מקבלין פקדונות
לא מן הנשים ולא מן העבדים ולא מן התינוקות
One may not accept an item for safeguarding from a woman, a slave, or child, because as the רשב"ם explains דאיכא למימר גנבום

וכשלא יקבלו מהם יחזירו למקום שגנבו משם
It is possible that they stole the item from their master, and if no one accepts it from them, they will be compelled to return the item to its place.

The previous Mishnah's Halachah of

ולא לאב חזקה בנכסי הבן
ולא לבן חזקה בנכסי האב
If a father ate the produce of his son's field, or a son ate the produce of his father's field for three years, this is not proof that he bought the field, because דלא קפדי אהדדי

One does not mind the other, and therefore did not make a מחאה.

The Machlokes regarding

חלקו
If the son separated from his father in that no longer receives support from his father, can he establish a חזקה in his father's field or not?

B The Machlokes רב ושמואל regarding the case of

אחד מן האחין שהיה נושא ונותן בתוך הבית והיו אונות ושטרות יוצאין על שמו
A family whose father died and one of the brothers managed the estate for all the other brothers, and there were sale and loan documents written out to his name, and he claims that this was done with his own money;

רב holds עליו להביא ראיה
This brother must prove that these transactions were accomplished with his own money.

And שמואל holds; על האחין להביא ראיה
The other brothers must prove that these transactions were accomplished with their father's money.

The Machlokes in רב's opinion, whether

ראיה בעדים
This brother requires a proof of witnesses that these transactions were done with his own money.

OR
ראיה בקיום השטר
He does not require עדים, and it is sufficient if Bais Din confirms the signatures and validates the sale and loan documents as written.

A

אין מקבלין פקדונות
לא מן הנשים ולא מן העבדים
ולא מן התינוקות

ולא לאב חזקה בנכסי הבן
ולא לבן חזקה בנכסי האב

דלא קפדי אהדדי
One does not mind the other,
and therefore did not make a מחאה

חלקו

If the son separated from the father
in that he now supports himself
and no longer receives support from his father

B

אחד מן האחין
שהיה נושא ונותן בתוך הבית
היו אונות ושטרות
יוצאין על שמו

על האחין להביא ראיה
עליו להביא ראיה

Regarding רב's opinion of
זאין אפיקא ראיב

על האחין להביא ראיה
עליו להביא ראיה
ראיה בעדים
ראיה בקיום השטר

1 So let's review ...

The Gemara cites a Braisa;

ת"ר אין מקבלין פקדונות

לא מן הנשים ולא מן העבדים ולא מן התינוקות

One may not accept an item for safeguarding from a woman, slave, or child, because as the רשב"ם explains

דאיכא למימר גנבום

וכשלא יקבלו מהם יחזירו למקום שגנבו משם

It is possible that they stole the item from their master, and if no one accepts it, they will be compelled to return the item to its place.

קבל מן האשה

יחזיר לאשה

If one did accept a פקדון from a woman he returns it to her, because there is no proof that she stole it. However,

ואם מתה יחזיר לבעלה

If she died he returns it to her husband, because as the Rashbam explains

דממה נפשך עכשיו הרי הוא של בעלה

Either way it is her husband's property:

If she took it from him, it's certainly his;

And if it was her own money;

הבעל יורש את אשתו

The husband inherits his wife's estate.

Similarly

קבל מן העבד

יחזיר לעבד

ואם מת יחזיר לרבו

If one did accept a פקדון from a slave, the נפקד returns it to him, but if he died, the נפקד returns it to his master, because

כל מה שקנה עבד קנה רבו

Either way, the master owns all his servant's belongings.

1

מן יבא...

אין מקבלין פקדונות
לא מן הנשים ולא מן העבדים
ולא מן התינוקות

One may not accept an item for safeguarding
from a woman, slave, or child

דאיכא למימר גנבום

וכשלא יקבלו מהם יחזירו למקום שגנבו משם

קבל מן האשה
יחזיר לאשה

Because there is no proof
that she stole it

ואם מתה
יחזיר לבעלה

דממה נפשך
עכשיו הרי הוא של בעלה

קבל מן העבד
יחזיר לעבד

ואם מת
יחזיר לרבו

כל מה שקנה עבד קנה רבו

2

However

קבל מן הקטן
יעשה לו סגולה

If one did accept a פקדון from a child, he does not return it to him, because a child cannot care for it properly. Rather he establishes a trust for him, as the Gemara explains, by purchasing either a ספר תורה

OR

דיקלא דאכל מיניה תמרי

A palm tree that bears fruit;

The principal is thereby secure, and he can benefit from it in the interim.

ואם מת יחזיר ליורשיו

If the child died, he returns the פקדון to his heirs.

The Braisa concludes;

וכולן שאמרו בשעת מיתתן של פלוני הן

יעשה כפירושן

If they specified before their passing that the פקדון belongs to so and so, the נפקד returns the פקדון to פלוני, as per their actual instructions.

ואם לאו

יעשה פירוש לפירושן

And if the נפקד has reason not to believe them, he interprets their instructions that he should return the פקדון to their master and not to פלוני, because as the רשב"ם explains

מתוך הבושה אינם רוצים לומר שהוא של בעלים

They are embarrassed to admit that they stole it from their master.

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2

קבל מן הקטן
יעשה לו סגולה

*He does not return it to him,
because a child cannot care for it properly*

*He establishes a trust for him
by purchasing either a*

ספר תורה

OR

דיקלא דאכל מיניה תמרי

A palm tree that bears fruit

*The principal is thereby secure,
and he can benefit from it in the interim*

ואם מת

יחזיר ליורשיו

וכולן שאמרו בשעת מיתתן
של פלוני הן
יעשה כפירושן

*If they specified before their passing
that the פקדון belongs to so and so,
the נפקד returns the פקדון to פלוני,
as per their actual instructions*

מתוך הבושה

אינם רוצים לומר שהוא של בעלים

3 The Gemara now proceeds with the Mishnah on מב דף
 ולא לאב חזקה בנכסי הבן
 ולא לבן חזקה בנכסי האב
 If a father ate the produce of his son's field, or a son ate the
 produce of his father's field for three years, this is not
 proof that he bought the field, because
 דלא קפדי אהדדי
 One does not mind the other, and therefore did not make a
 מחאה.

The Gemara cites a Machlokes in the case of
 חלקו
 If the son separated from the father in that he now
 supports himself and no longer receives support from his
 father;
 רב יוסף says
 אפילו חלקו
 The above still applies, and
 אין לבן חזקה
 The son still cannot establish a חזקה in his father's field,
 because
 דלא קפדי אהדדי
 While רבא holds
 חלקו
 לא
 The above does not apply; rather
 יש לבן חזקה
 He can establish a חזקה in his father's field, because
 קפדי אהדדי
 They do mind each other, and the father should have made
 a מחאה.

The Gemara concludes
 והלכתא חלקו לא
 As the Braisa says
 בן שחלק
 ואשתו שנתגרשה
 הרי הן כשאר כל אדם
 A son who no longer receives support, and a woman who
 was divorced, are considered like ordinary people in that
 they CAN establish a חזקה in their father's or husband's
 property.
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3 Mishnah on מב דף...
ולא לאב חזקה בנכסי הבן
ולא לבן חזקה בנכסי האב
 If a father ate the produce of his son's field,
 or a son ate the produce of his father's field for 3 years,
 this is not proof that he bought the field

דלא קפדי אהדדי
 One does not mind the other,
 and therefore did not make a מחאה

The Gemara cites a Machlokes...

חלקו

If the son separated from the father
 in that he now supports himself
 and no longer receives support from his father

רבא
חלקו לא
 The above does not apply
 יש לבן חזקה

רב יוסף
אפילו חלקו
 The above still applies
 אין לבן חזקה

קפדי אהדדי

דלא קפדי אהדדי

והלכתא חלקו לא

As the Braisa says
בן שחלק
ואשתו שנתגרשה
הרי הן כשאר כל אדם

4 The Gemara proceeds with a Machlokes regarding a case of

אחד מן האחין
שהיה נושא ונותן בתוך הבית
והיו אונות ושטרות יוצאין על שמו

A family whose father died and one of the brothers managed the estate for all the other brothers, and there were sale and loan documents written out to his name; He claims

שלי הם

שנפלו לי מבית אבי אמא

These belong only to him, because he used his own money that he inherited from his maternal grandfather to buy the field, and loan the money;

While the other brothers claim that these belong also to them, because he used their father's money to buy the field, etc.

רב says

עליו להביא ראיה

He must bring proof that these transactions were accomplished with his own money, because as the רשב"ם explains

דכיון לא נודע מעולם

מאיזה צד יבא לו כמון בלא אחיו

אין לתלות השטרות אלא בממון האב

Since this brother was not known to have any money of his own, we assume that these transactions were done with the father's money.

שמואל says

על האחין להביא ראיה

The other brothers must bring proof that these transactions were accomplished with their father's money, because

דאמאי דכתב בשטר סמכין

והרי על שמו נכתב

We go by what is written in the שטר that these transactions were only with this brother but not with the others.

שמואל then adds

מודה לי אבא

שאם מת

על האחין להביא ראיה

Even רב would agree that if this brother died and his sons inherited these שטרות, the other brothers must now bring proof, because as the רשב"ם explains

דיתמי לאו בני אתווי ראיה נינהו

The heirs do not know about their father's dealings and are unable to show any proof. Therefore,

טענינן ליורש

Bais Din argues on behalf of the heirs that the transactions were with their father's own money.

However, regarding

כשאח עצמו קיים

היה מטיל רב עליו להביא ראיה

While this brother is still alive, רב holds that HE must bring the proof, because

יכול לחפוש ולמצוא ראיה

ואם לא ימצא ראיה הפסיד

He is able to show proof in how he paid for these transactions, and if he cannot, he suffers the loss. ®

4

אחד מן האחין שהיה נושא ונותן בתוך הבית והיו אונות ושטרות יוצאין על שמו

A family whose father died and one of the brothers managed the estate for all the other brothers, and there were sale and loan documents written out to his name

He claims

שלי הם

שנפלו לי מבית אבי אמא

These belong only to him, because he used his own money that he inherited from his maternal grandfather to buy the field, and loan the money

While the other brothers claim

These belong also to them, because he used their father's money

לרבי says

על האחין
להביא ראיה

דאמאי דכתב בשטר

סמכין

והרי על שמו נכתב

We go by

what is written in the שטר that these transactions were only with this brother but not with the others

רב says

עליו
להביא ראיה

דכיון לא נודע מעולם מאיזה צד

יבא לו כמון בלא אחיו

אין לתלות השטרות

אלא בממון האב

Since this brother

was not known to have

any money of his own,

we assume they were done

with the father's money

לרבי then adds

מודה לי אבא

שאם מת

על האחין להביא ראיה

Even רב would agree that if this brother died and his sons inherited these שטרות, the other brothers must now bring proof

דיתמי לאו בני אתווי ראיה נינהו

Therefore, טענינן ליורש

However, regarding

כשאח עצמו קיים

היה מטיל רב עליו להביא ראיה

because

יכול לחפוש ולמצוא ראיה

ואם לא ימצא ראיה הפסיד

5 רב however disagrees and holds that according to רב
אם מת
על היורשין להביא ראיה
If this brother died, his heirs must bring proof, because
כלום טענינן להו ליתמי
מידי דלא טען להו אבוהון
Bais Din argues for the heirs only a claim that their father,
while alive, could have claimed successfully. But their
father could not have claimed without proof that this was
done with his own money.
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5

*רב however disagrees and holds
that according to רב*

אם מת
על היורשין להביא ראיה
because
כלום טענינן להו ליתמי
מידי דלא טען להו אבוהון
*Bais Din argues for the heirs only a claim
that their father, while alive,
could have claimed successfully*
*But their father
could not have claimed without proof
that this was done with his own money*

6 רב makes the following distinction according to רב
 לא שנו אלא דאין חלוקין בעיסתן
 Only if the brothers did not divide anything yet and even
 their food is kept together, רב holds
 עליו להביא ראיה
 Because
 מאין לו לזה כלום בלא אחיו
 This brother had no known money of his own.
 אבל חלוקים בעיסתן
 If the brothers did divide their food amongst themselves,
 even רב would agree that
 על האחין להביא ראיה
 Because
 אימור מעיסתו קימץ
 Perhaps this brother skimped from his portions until he
 collected a substantial amount and was able to accom-
 plish these transactions with his own money.
 =====

6

רב makes the following distinction according to רב

<p>אבל חלוקים בעיסתן</p> <p><i>If the brothers did divide their food amongst themselves</i></p> <p><i>על האחין להביא ראיה</i> <i>because</i></p> <p>אימור מעיסתו קימץ</p> <p><i>Perhaps this brother skimped from his portions until he collected a substantial amount and was able to accomplish these transactions with his own money</i></p>	<p>לא שנו אלא דאין חלוקין בעיסתן</p> <p><i>Only if the brothers did not divide anything yet and even their food is kept together</i></p> <p><i>עליו להביא ראיה</i> <i>because</i></p> <p>מאין לו לזה כלום בלא אחיו</p> <p><i>This brother had no known money of his own</i></p>
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7 Regarding רב's opinion of
 עליו להביא ראיה
 There's a Machlokes regarding
 ראיה במאי
 What type of proof must he provide?
 רבה says
 ראיה בעדים
 This brother must bring a proof of witnesses that these
 transactions were done with his own money.
 רב says
 ראיה בקיום השטר
 He does not require עדים. It's sufficient if Bais Din
 confirms the signatures and validates the sale and loan
 documents, because ®
 כיון דקיימוהו בית דין
 בדקו השטר וחקרו ועמדו על אמיתת הדבר
 שכל הכתוב בשטר אמת הוא
 During the process of שטרות the Bais Din investigates
 all the details of the שטר and confirms that these transac-
 tions were only to him as written.

7

Regarding רב's opinion of
עליו להביא ראיה

ראיה במאי?
What type of proof must he provide?

<p><i>רב says</i> ראיה בקיום השטר</p> <p><i>Confirms the signatures and validates the sale and loan documents</i></p> <p><i>Because</i> <i>כיון דקיימוהו בית דין</i> <i>בדקו השטר וחקרו</i> <i>ועמדו על אמיתת הדבר</i> <i>שכל הכתוב בשטר אמת הוא</i></p>	<p><i>רבה says</i> ראיה בעדים</p> <p><i>Witnesses these transactions were done with his own money</i></p>
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