



בס"ד

Intro

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

חוץ מחרוב או סדן פלוני חוץ מחרוב או סדן פלוני If the seller specifically excluded a particular carob or sycamore tree, or part of a particular tree, whether the other carob and sycamore trees are included in the sale?

המפקיד אצל חבירו בשטר ואמר לו החזרתים לך

If one entrusts someone with an item for safekeeping and documents the deposit, can the guardian claim he returned the פקדון when the owner presents the document?



א B

עיסקא

פלגא מלוה ופלגא פקדון

In a business arrangement where one person invests money with another, half the amount is considered a loan, and the other half a deposit. Therefore, they share equally in the profit or loss.

שטר כיס היוצא על היתומים

Whether one can collect the full investment of an עיסקא from the orphans?









So let's review...

The Mishnah earlier ruled

המוכר את השדה

לא מכר

לא את החרוב המורכב

ולא את סדן השקמה

One who sells a field does not include mature carob or sycamore trees, even if he did not specifically exclude them. As the Rashbam explains, because

חשיבי

ואינן בכלל שדה

They are significant entities of their own, and not a subsidiary of the field.

The Gemara cites two versions of an inquiry regarding these trees:

1.

חוץ מחרוב פלוני

. חוץ מסדן פלוני

If he specifically excluded a particular carob or sycamore tree, what is the Halachah regarding the other carob and sycamore trees? Perhaps

אותו חרוב הוא דלא קני

הא שאר חרובים קני

Since he specifically excluded that tree, he is implying that he IS including all the other trees, OR שאר חרובין נמי לא קני

Perhaps the other trees are also excluded, as the Rashbam explains,

בההוא חרוב היה חפץ יותר

ואיכוין לשופרא דשטרא

He was especially concerned to keep this tree, and so he mentioned it to preclude any future dispute. However, he retains his rights to the other trees as well based on the original Halachah.



One who sells a field does not include mature carob or sycamore trees, even if he did not specifically exclude them,

because

חשיבי – ואינן בכלל שדה



## חוץ מחרוב פלוני חוץ מסדן פלוני

If he specifically excluded a particular carob or sycamore tree, what is the Halachah regarding the other carob and sycamore trees?

אותו חרוב הוא דלא קני...

שאר חרובין נמי לא קני

Perhaps the other trees

are also excluded

OR

הא שאר תרובים קני

Since he specifically excluded that tree, he is implying that he IS including all the other trees,

As the Rashbam explains, בההוא חרוב היה חפץ יותר ואיכוין לשופרא דשטרא

He was especially concerned to keep this tree, and so he mentioned it to preclude any future dispute. However, he retains his rights to the other trees as well based on the original Halachah.



Dedicated By: \_





2

2.

חוץ מחצי חרוב פלוני חוץ מחצי סדן פלוני

If he specifically excluded PART of a particular carob or sycamore tree, what is the Halachah regarding the other part of this carob and sycamore tree?

שאר חרובין ודאי לא קני

The other trees are certainly excluded based on the original Halachah. However, the Gemara inquires, מה ששייר באותו חרוב קני

Perhaps this implies that he IS selling the other part of this particular tree, OR

אפילו מה ששייר באותו חרוב

נמי לא קני

He retains his rights to the other part of this particular tree, as well?









In both cases, the Gemara rules לא קנה

He has not sold any of these trees.

And the Gemara offers an analogy:

דאילו א"ל שדי מכורה לך

חוץ משדה פלונית

לא קנה

If one sells a field, and mentions that a certain other field of his is not included in the sale, this does not imply that all his other fields are included in the sale! As the Rashbam explains,

בשביל שאמר שטות זה

אין לנו לומר

שמכר מה שלא רצה למכור

He does not forfeit his property because he added a foolish and unnecessary clause to the contract. Similarly, the Gemara concludes,

ה"נ לא קנה

Here, too, he does not lose his rights, as the Rashbam explains

חרוב וסדן

חשיבי שדה בפני עצמן

These trees are considered separate property, and are not acquired with the field.

=====

In both cases, the Gemara rules לא קנה

# דאילו א"ל שדי מכורה לך תוץ משדה פלונית לא קנה

If one sells a field, and mentions that a certain other field of his is not included in the sale, this does not imply that all his other fields are included in the sale!

As the Rashbam explains, בשביל שאמר שטות זה אין לנו לומר שמכר מה שלא רצה למכור

He does not forfeit his property because he added a foolish and unnecessary clause to the contract.

Similarly, the Gemara concludes,

ה"נ לא קנה

Here, too, he does not lose his rights,

חרוב וסדן חשיבי שדה בפני עלמן

These trees are considered separate property and are not acquired with the field.



Dedicated By: \_





The Gemara digresses to discuss an unrelated inquiry: המפקיד אצל חבירו בשטר

ואמר לו החזרתים לך

If one entrusts someone with an item for safekeeping and documents the deposit, can the guardian later claim that he returned the פקדון when the owner presents the document?

On the one hand,

מיגו דאי בעי אמר נאנסו מהימן

השתא נמי מהימן

He could have lied and sworn that the item suffered an unavoidable mishap and he would be believed and exempt. Therefore, he should be believed to swear that he returned it. And the Rashbam adds

אהני ליה האי שטרא

דלא מצי טעין נפקד להד"מ

If so, the purpose of the document is merely to prevent the guardian from denying the deposit completely.

On the other hand, perhaps

אמר ליה

שטרך בידי מאי בעי

The fact that the owner still has the document is proof that the guardian did not return it?

רב חסדא ruled נאמן בשבועה He is believed with an oath, because כי א"ל נאנסו מי מצי א"ל

שטרך בידי מאי בעי

He can claim a אונס despite the document. Similarly, he can claim that he returned it even though the owner still has the document, because, the Rashbam explains, נפקד לא הוי חייש לשטרא

דהוי מצי למיפטר נפשיה בטענת אונס

He was not concerned to take back the document, since he could always claim an אונס.

המפקיד אצל חבירו בשטר ואמר לו החזרתים לך

If one entrusts someone with an item for safekeeping and documents the deposit, can the guardian later claim that he returned the פקדון when the owner presents the document?

On the other hand,

אמר ליה

שטרך בידי

מאי בעי

The fact that the owner still has the document is

proof that the guardian

did not return it?

On the one hand,

מיגו דאי בעי אמר נאנסו – מהימן השתא נמי – מהימן

He could have lied and sworn that the item suffered an unavoidable mishap and he would be believed and exempt.

Therefore, he should be believed to swear that he returned it.

And the Rashbam adds...

אהני ליה האי שטרא דלא מלי טעין נפקד להד"מ

If so, the purpose of the document is merely to prevent the guardian from denying the deposit completely.

K301 27

נאמן בשבועה

He is believed with an oath, because

כי א"ל נאנסו מי מצי א"ל שטרך בידי מאי בעי

He can claim a אוכם despite the document.

Similarly, he can claim that he returned it even though the owner still has the document, because...

נפקד לא הוי חייץ לשטרא דהוי מלי למיפטר נפשיה בטענת אונס He was not concerned to take back the document, since he could always claim an סוג.



Dedicated By: \_





5

The Gemara cites a related ברייתא regarding עיסקא

דיהיב איניש לחבריה

למחצית שכר

A business arrangement whereby one person invests money with another, and they divide the profits;

Now. נהרדעי rule

האי עיסקא

פלגא מלוה ופלגא פקדון

Half the sum is considered a loan, and the other half a deposit.

Therefore, they share equally in the profit or loss.

The ברייתא savs

שטר כיס היוצא על היתומים

Someone produced such a document upon orphans, claiming that he invested money with their deceased father and demanded that they repay the money. Now, as the Rashbam explains,

במלוה בעלמא

נשבע ראובן וגובה כל השטר

Regarding ordinary loans, the creditor could swear to his claim and collect the entire sum from the orphans.

However, since half is a deposit, it is a מחלוקת:

דייני גולה אמרי

נשבע וגובה כולו

He can collect the full amount,

ודייני ארץ ישראל אמרי

נשבע וגובה מחצה

He can only collect half the amount.

At first, the Gemara relates this מחלוקת to the previous discussion:

מר סבר

מצי א"ל שטרך בידי מאי בעי

מריני א"י agree with רב חסדא and the orphans can claim that their father returned the deposit. Therefore, he can only claim the loan, not the deposit.

מר סבר

לא אמרי

דייני גולה do not agree with רב חסדא, and one cannot claim he returned a deposit if the owner has a document.

Therefore, he can collect the entire amount.



בחיתא

### עיסקא דיהיב איניש לחבריה למחצית שכר

A business arrangement whereby one person invests money with another, and they divide the profits;

rule נהרדעי

## האי עיסקא פלגא מלוה ופלגא פקדון

Half the sum is considered a loan, and the other half a deposit. Therefore, they share equally in the profit or loss.

The ברייתא says

#### שטר כיס היוצא על היתומים

Someone produced such a document upon orphans, claiming that he invested money with their deceased father and demanded that they repay the money.

Mow, as the Rashbam explains, במלוה בעלמא נשבע ראובן וגובה כל השטר

Regarding ordinary loans, the creditor could swear to his claim and collect the entire sum from the orphans.

However, since half is a deposit, it is a מחלוקת:

ודייני ארץ ישראל אמרי נשבע וגובה מחצה

He can only collect half the amount.

דייני גולה אמרי נשבע וגובה כולו

He can collect the full amount.



מצי א״ל שטרך בידי מאי בעי

רב חסדא agree with דרכ חסדא and the orphans can claim that their father returned the deposit. Therefore, he can only claim the loan, not the deposit.



לא אמרי

דייני גולה with דייני גולה, רב חסדא, מודא, and one cannot claim he returned a deposit if the owner has a document.
Therefore, he can collect the entire amount.







6 Howe

However, the **G**emara offers an alternative interpretation: דכולי עלמא אית להו דרב חסדא

All agree that the guardian could have claimed he returned the deposit.

However, in this case

מר סבר

אם איתא דפרעיה

מימר הוה אמר

We cannot submit such a claim for the orphans, since the father did not tell the orphans about it before he died.

מר סבר

אימור

מלאך המות הוא דאנסיה

Perhaps he died suddenly and did not have a chance to tell them.

The Gemara brings proof to this explanation:

ruled רב הונא בר אבין

המפקיד אצל חבירו בשטר

ואמר לו החזרתיו לך

נאמן

One can claim he returned a documented deposit. He also ruled

שטר כיס היוצא על היתומיו

נשבע וגובה כולו

The creditor can claim the full amount from the orphans.



## דכולי עלמא אית להו דרב חסדא

All agree that the guardian could have claimed he returned the deposit.

However, in this case..

ןדייני

ארץ ישראל אמרי נשבע וגובה מחצה

He can only collect half the amount.



720 7N

אימור מלאך המות הוא דאנסיה

Perhaps he died suddenly and did not have a chance to tell them. Therefore, he can only claim the loan. דייני גולה אמרי

נשבע וגובה כולו He can collect the full amount.



720 7N

אם איתא דפרעיה מימר הוה אמר

We cannot submit such a claim for the orphans, since the father did not tell the orphans about it before he died. Therefore, he can collect the entire amount.

וה פונא הו אהיי

המפקיד אצל חבירו בשטר ואמר לו החזרתיו לך נאמן

One can claim he returned a documented deposit.

Also...

שטר כיס היוצא על היתומין נשבע וגובה כולו

The creditor can claim the full amount from the orphans.









#### The Gemara asks

תרת

According to our first explanation, these are contradictory rulings!

Rather, we must conclude שאני התם דאם איתא דפרעיה מימר הוה אמר

Although the guardian could have claimed to have returned it, we do not make this claim on behalf of the orphans, because we assume the father would have told them.

However, נשביר גידיעופא נשבע וגובה מחצה He can only collect half the amount, because אימור מלאך המות הוא דאנטיה Perhaps he died suddenly and did not have a chance to tell





Dedicated By: \_\_

