



т"оэ

Intro

Today we will Be"H learn מטכת בבא קמא of אף פ"ט. Some of the topics we will learn about include:

תקנת אושא

The חכמים strengthened a husband rights to נכסי מלוג his wife's property, and did not allow her to sell them permanently.

טובת הנאת כתובתה

A woman can sell the rights to her כתובה in her husband's lifetime.

For the buyer, however, this is a gamble, because the buyer collects only it the husband dies or they get divorced; but if she dies first, her husband inherits her rights to the כתובה and the buyer gets nothing. Therefore, the אובר הנאה, its present worth, is considerably less than its face value.

A husband has certain rights to his wife's property. There are two categories of property:

גכסי מלוג, where she retains full ownership and responsibility, but he is entitled to the produce and profits generated by the property; and

נכסי צאן ברזל, where he accepts responsibility for the property.

The Gemara also discusses

עבדי נכסי מלוג

Slaves owned by a married woman, and brings a מחלוקת whether

יוצאין בשן ועין

They are set free if she blinded them or knocked out their teeth.

B 2

מוחל שטר חוב

שמואל maintains that a creditor can forgive a debt even after selling the rights to collect it.

כתובה דאורייתא

The set, minimum amount of a כתובה is 100 זוז. It is also possible for the husband to promise her חוספת, any extra amount.

קנין פירות כקנין הגוף דמי או לא

The Gemara discusses whether the right to the produce is considered the primary ownership in the property or not.











So let's review:

The Gemara in the previous Daf cited תקנת אושא: האשה שמכרה בנכסי מלוג בחיי בעלה ומתה הבעל מוציא מיד הלקוחות

If a woman sold גנסי מלוג, and subsequently died in her husband's lifetime, the חכמים gave him the right to claim the property from the buyer.

תקנת אושא

האשה שמכרה בנכסי מלוג בחיי בעלה ומתה הבעל מוציא מיד הלקוחות

A woman sold גכסי מלוג, and then died. The חכמים gave her surviving husband the right to claim the property from the buyer.

The Gemara brings several ברייתות in support of this decree:

1.

מעידים אנו באיש פלוני

שגירש את אשתו ונתן כתובתה

If witnesses testify that someone divorced his wife and paid her כתובה;

והרי היא תחתיו ומשמשתו

ונמצאו זוממין

While they actually are still married;

And the witnesses are found to be ווממין, and so they must pay the value of the כתובה, which they tried to take away from her.

Several הכייתות in support of this decree



If witnesses testify that someone divorced his wife and paid her כתובה;

והרי היא תחתיו ומשמשתו ונמצאו זוממין

While they actually are still married; And the witnesses are found to be ממפין, they must pay the value of the כתובה which they tried to take away from her.







3 However,

אין אומרים ישלמו כל כתובתה אלא טובת הנאת כתובתה

They do not pay the full amount of the כתובה, because she may die before him and never collect the כתובה; rather, they pay the present value of her כתובה, namely,

אומדין כמה אדם רוצה ליתן בכתובה של זו

We assess how much one would pay to buy the rights to her כתובה. For the buyer, this is a gamble, because he only collects if

שאם נתארמלה או נתגרשה

If the husband dies or they get divorced; however, ואם מתה "ירשנה בעלה

If she dies first, her husband inherits her rights to the כתובה and the buyer collects nothing.

Therefore, the טובת הנאה, its present worth, is considerably less than its face value.

Now, the Gemara asks

תזבין כתובתה לגמרי

If her sale is final, the buyer gets to keep the properties, and the husband would not inherit them, if she dies first? Clearly,

איתא לתקנת אושא

The חכמים indeed restricted her rights to sell the נכסי מלוג.

אין אומרים ישלמו כל כתובתה אלא טובת הנאת כתובתה

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שאם נתארמלה או נתגרשה

If the husband dies or they get divorced;

ואם מתה יירשנה בעלה

If she dies first, her husband inherits her rights to the מתובה and the buyer collects nothing.

Therefore, the **טובת הנאה** - its present worth, is considerably less than its face value.



תזבין כתובתה לגמרי

If her sale is final, the buyer gets to keep the properties and the husband would not inherit them, if she dies first.



איתא לתקנת אושא

The חכמים indeed restricted her rights to sell the גכסי מלוג.

4 However, the Gemara rejects this proof, because, אם אמרו בנכסי מלוג יאמרו בנכסי צאן ברזל

Even without תקנת אושא, she can only sell נכסי מלוג, but she cannot sell נכסי צאן ברזל, property for which he is personally responsible; which he would inherit if she dies first.



אם אמרו בנכסי מלוג יאמרו בנכסי צאן ברזל

Even without תקנת אושא, she can only sell נכסי מלוג, but she cannot sell בכסי צאן ברזל, property for which he is personally responsible; which he would inherit if she dies first.







The Gemara also tries to prove from this ברייתא טובת הנאה לאשה

The wife keeps the proceeds if she sells the טובת הנאה of her הנאה, because otherwise

לימרו ליה עדים

מאי אפסדינך

The witnesses can argue that they didn't cause her a loss, because

אי הות מזבנת לה לטובת הנאה בעל הוה שקיל מינך

Her husband would anyway receive these proceeds?

The Gemara rejects this proof as well, because, דאיכא רווח ביתא

A wife also benefits if her husband's income increases.

Nevertheless, the Gemara rules

טובת הנאה לאשה

ואין הבעל אוכל פירות

She keeps the proceeds of the sale, and her husband is not even entitled to the profits generated by that money,

because

פירא תקינו ליה רבנן

פירא דפירא לא תקינו ליה רבנן

He is not entitled to any secondary profit generated by her property.



טובת הנאה לאשה

The wife keeps the proceeds if she sells the מובת הנאה of her כתובה, because otherwise...

לימרו ליה עדים – מאי אפסדינך

The witnesses can argue that they didn't cause her a loss, because

אי הות מזבנת לה לטובת הנאה בעל הוה שקיל מינך

Her husband would anyway receive these proceeds?



דאיכא רווח ביתא

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He is not entitled to any secondary profit generated by her property.



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6

The Gemara now brings a second proof for תקנת אושא: Our Mishnah said

העבד והאשה פגיעתן רעה

החובל בהם חייב

והם שחבלו באחרים פטורין

An encounter involving injury with a woman or slave is always to one's detriment, because one is liable for damaging them, while they are not liable for damaging others, because her property is beholden to her husband.

Now, the Gemara asks

תזבין נכסי מלוג

ותתן ליה

She should sell her נכסי, and pay for the damages? Clearly,

איתא לתקנת אושא

The sale is not effective.

However, the Gemara rejects this proof, because, תזבין לנכסי מלוג בטובת הנאה ותתן ליה Even after תקנת אושא, she should be obligated to sell the כתובה of her טובת הנאה?



Dedicated By: _







Rather, we must answer, that according to שמואל's opinion's opinion המוכר שטר חוב לחבירו

וחזר ומחלו מחול

A creditor can sell the rights to collect a loan and subsequently forgive the debt. Therefore, there is no point in forcing her to sell her כתובה, because

כל לגבי בעל ודאי מחלה ליה

ואפסדיניה לההוא זבינא בידים

לא אפסדינהו

She will certainly forgive her husband, and so we cannot participate in a transaction where the buyer will certainly lose out.

Furthermore, we do not require זבינא ניהליה לההוא דחבלה ביה בטובת הנאה For her to transfer the rights to her כתובה to the victim, who has nothing to lose, because סוף סוף כל לגבי בעל ודאי מחלה ואטרוחי בי דינא בכדי לא מטרחינן Since she will certainly forgive her husband, it is merely a

Furthermore.

היא שחבלה בבעלה

Even if she injures her husband, we do not say

תזבנינה ניהליה לכתובתה לבעלה

waste of time for בית דין.

בטובת הנאה בהא חבלה

She should forgive her כתובה in exchange for the damages,

because רבי מאיר holds

אסור לו לאדם

שישהא את אשתו אפילו שעה אחת

בלא כתובה

כדי שלא תהא קלה בעיניו להוציאה

It is forbidden to remain married without a כתובה, so that he should hesitate before divorcing her, and in this case מנרש לה

וגבי ליה בחבליה מינה

He would easily divorce her, since he would retain her מרובה as payment for his injuries.

Rather, we must say, that according to שמואל's opinion

המוכר שטר חוב לחבירו וחזר ומחלו מחול

A creditor can sell the rights to collect a loan and subsequently forgive the debt.

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She will certainly forgive her husband, and so we cannot participate in a transaction where the buyer will certainly lose out.

Furthermore, we do not require

זבינא ניהליה לההוא דתבלה ביה בטובת הנאה

For her to transfer the rights to her כתובה to the victim, who has nothing to lose,

Because since she will certainly forgive her husband, it is merely a waste of time for בית דין. Furthermore, even if she injures her husband, we do not say

תזבנינה ניהליה לכתובתה לבעלה בטובת הנאה בהא תבלה

She should forgive her כתובה in exchange for the damages, because רבי מאיר holds אסור לו לאדם שישהא את אשתו אפילו שעה אתת בלא כתובה כדי שלא תהא

קלה בעיניו להוציאה

and in this case מגרש לה וגבי ליה בחבליה מינה He would easily divorce her, since he would retain her כתובה payment for his injuries.







However, now that she retains her Kesubah, we are not concerned that

מגרש לה

וגבי ליה בחבליה מיניה

He will divorce her just to force her to pay him for the injury?

Because he would not do that, since he would still need to pay a large sum for the Kesubah compared to the smaller amount of the injury; for example, if

הוי חבליה ארבעה זוזי

דמשום ארבעה זוזי לא מפסיד עשרים וחמשה

The injury was only worth 4 זוז, and if he divorces her he will have to pay a כתובה of 25 זוז.

However, if

נפיש כתובתה מכתובה דאורייתא

Her כתובה was greater than the mandated 25 זוז; נוקכוה אכתובה דאורייתא

ואידך תזבנה ניהליה כחבליה

We obligate her to sell the extra portion to her husband in exchange for the injury.

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However, now that she retains her Kesubah, we are not concerned that

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> נוקמה אכתובה דאורייתא ואידך תזבנה ניהליה כחבליה

We obligate her to sell the extra portion to her husband in exchange for the injury.







The Gemara now seeks to show that תקנת אושא is a מחלוקת is a תקנת אושא

A slave who is permanently maimed by his owner is set free.

Now, one ברייתא says עבדי מלוג יוצאין בשן ועין לאשה אבל לא לאיש

If a married woman blinds her slave, he is set free, but if her husband, who only owns the rights to work the slave, blinds him, he does not go free.

While another ברייתא says אין עבדי מלוג יוצאין בשן ועין לא לאשה

He does not go free even if the woman blinds him?

Now, the **G**emara assumes that everyone agrees that קנין פירות לאו כקנין הגוף דמי

The husband's right to the produce is not considered primary ownership. Therefore, both Braisos rule that the slave does not go free if the husband blinds him, because he does not belong to him.

If so, the מחלוקת regarding the woman must be about תקנת אושא:

The first ברייתא rules that if she blinds him he goes free, because

לית ליה תקנת אושא

It does not agree with תקנת אושא, and so the woman is considered his primary owner.

And the second ברייתא rules that he does not go free, because

אית ליה תקנת אושא

Since the חכמים decreed that her rights are restricted, she is not considered his owner.

The Gemara now seeks to show that klik njpn is a pikyn npilny:

A slave who is permanently maimed by his owner is set free.

Knin

אין עבדי מלוג יוצאין בשן ועין לא לאיש ולא לאשה

He does not go free even if the woman blinds him. עבדי מלוג יוצאין בשן ועין – לאשה אבל לא לאיש

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10

However, the Gemara suggests several alternate interpretations:

1.

כו"ע אית להו תקנת אושא

Everyone agrees with the תקנה; rather,

כאן קודם תקנה

כאן לאחר תקנה

The first ברייתא was said before the חקנה, and so she has full ownership, while the second ברייתא was said after the תקנה was enacted, and so she does not have full ownership.

2.

לאחר תקנה

ואית להו

Both תקנה agree with the תקנה, and were said after it was enacted. Nevertheless,

The first ברייתא holds that the slave goes free because of 'rce's principle

הקדש חמץ ושחרור מפקיעין מידי שיעבוד

Emancipation is one of three processes that supersede a lien on a property.

Therefore, if she blinds him, this overrides the husband's rights.

While the second ברייתא holds

אלמוה רבנן לשיעבודא דבעל

The חכמים treated the husband's rights more stringently than all other liens.

Therefore, this does not override the husband's rights.

3.

לית להו תקנת אושא

Both בר"תות do not agree with the תקנה. However,

The first ברייתא holds

קנין פירות לאו כקנין הגוף דמי

And so she is the sole owner.

While the second ברייתא holds

קנין פירות כקנין הגוף דמי

And she is not the full owner of the slave.

The Gemara continues this discussion in the next Daf.

Several alternate interpretations



כו"ע אית להו תקנת אושא

Everyone agrees with the תקנה; rather,

כאן קודם תקנה – כאן לאחר תקנה

The first ברייתא was said before the תקנה, and so she has full ownership,

The second ברייתא was said after the תקנה was enacted, and so she does not have full ownership.



לאחר תקנה – ואית להו תקנת אושא

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And she is not the full owner of the slave.

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קנין פירות לאו כקנין הגוף בייי

דמי

And so she is the sole owner.



