



בס"ד

Intro

Today we will Be"H learn מסכת בבא מציעא of דף ט"ז of מסכת. Some of the topics we will learn about include:

חזר ולקחה מבעלים הראשונים

If someone sold a field that did not belong to him, and then bought it from its true owner,

ניחא ליה דליקו בהמנותיה

We assume that he intended to secure it for the buyer, in order to protect his reputation.

The Gemara discusses whether this applies if: זבנה, אורתה, ויהבה במתנה

He sold it a second time, bequeathed it to his children, or gave it away as a gift, before buying it from the owner; נפלה ליה בירושה

He inherited it:

גבי איהו בחובו

He seized it as payment for a loan; or

יהבה נהליה במתנה

He received it as a gift.

В

The Gemara also discusses

עד אימת

For how long after the sale do we presume that he would purchase the property to secure it for the buyer?

אדם מקנה דבר שלא בא לעולם

Whether one can sell something he does not yet own or that does not yet exist. The Gemara explains that this may depend on whether

סמכא דעתיה

The recipient can rely on this taking place, or if it is not in the seller's control.

מבעלים הראשונים

עמג עים הפתונים

עמג עים הראשונים

עמג עים אורתה,

בירושה

בירושה

בירושה

במתנה









כווצא שטר בשוק

The Gemara discusses several suspicions pertaining to a found document, including:

כתב ללות ולא לוה

The recorded transaction may not have occurred; and חיישינן לפרעון

The loan may have been repaid.

שומא הדר

When one's land is seized as payment for a loan, he may redeem it during the following year, and according to others, he may redeem it forever.









So let's review...

The Gemara earlier cited a ruling of רב:

חזר ולקחה מבעלים הראשונים

If someone sold a field that did not belong to him, and then bought it from its true owner,

מה מכר לו ראשון לשני

כל זכות שתבא לידו

A seller transfers all his rights concerning the property to the buyer.

Therefore, the גזלן cannot act in place of the original owner and seize the field from the buyer, because ניחא ליה דליקו בהמנותיה

We assume that he intended to secure it for the buyer, in order to protect his reputation.

הזר ולקחה מבעלים הראשונים

If someone sold a field that did not belong to him, and then bought it from its true owner

מה מכר לו ראשון לשני

מה מכר לו ראשון לשני

A seller gives all his rights to the buyer

Therefore,

the original owner and seize the field from the buyer,

because

ניתא ליה דליקו בהמכותיה

We assume that he intended to secure it for the buyer,

in order to protect his reputation

The Gemara now adds: However,

זבנה, אורתה, ויהבה במתנה

If after selling the stolen property to the first buyer, the ithen either sold it to someone else, bequeathed it to one of his children, or gave it away as a gift, and only afterwards bought it from the original owner,

לאו לאוקמה קמי לוקח קא בעי

Clearly, he did NOT intend to secure it for the buyer, and so he CAN act in place of the original owner and seize it from the buyer, and then reimburse him for the sale.

Similarly, נפלה ליה בירושה ירושה ממילא היא

ולאו איהו קא טרח אבתרה

If he inherited it from the owner, he can seize the land. Since he didn't exert any effort to get the land, there is no indication that he wants to secure it for the buyer. The Gemara now adds:

However

זבנה, אורתה, ויהבה במתנה

If after selling the stolen property to the first buyer, the גזלן then either sold it to someone else, bequeathed it to one of his children, or gave it away as a gift, and only afterwards bought it from the original owner

לאו לאוקמה קמי לוקח קא בעי

Clearly, he did NOT intend to secure it for the buyer, and so he can act in place of the original owner and seize it from the buyer, and then reimburse him for the sale



נפלה ליה בירושה

ירושה ממילא היא ולאו איהו קא טרת אבתרה

Since he didn't exert any effort to get the land, there is no indication that he wants to secure it for the buyer



Dedicated By: _





3 On the other hand,

גבי איהו בחובו

If the owner owed him money and he seized this land as payment for the debt;

חזינא, it depends:

אי אית ליה ארעא אחריתי

ואמר האי בעינא

לאוקמה קמיה לוקח קא בעי

If he had the choice of several properties and he specifically requested this one, we assume that he was securing it for the buyer.

ואי לא

זוזי הוא דבעי אפרועי

Otherwise, he was merely collecting his debt, and there is no indication that he was securing it for the buyer, and he can seize it.



However,

יהבה נהליה במתנה

If the original owner granted the land to the גזלן as a gift, the Gemara cites a מחלוקת: Either

מתנה כירושה

דהא ממילא

It is comparable to an inheritance because it happens on its own, and so he can seize it; while the other opinion reasons

מתנה כמכר

דאי לאו דטרח וארצי קמיה

לא הוי יהיב ליה מתנה

He only received the gift because he ingratiated himself with the owner, and

להכי טרח וארצי קמיה

כי היכי דליקום בהמנותיה

He did this in order to secure it for the buyer, and so he cannot seize the property.









5

The Gemara cites three opinions regarding עד אימת ניחא ליה

For how long after the sale do we presume that the seller, the ibi, would purchase the property to secure it for the buyer?

1.

עד שעת העמדה בדין

Until the owner seizes the property and the buyer initiates proceedings in court;

2.

עד דמטא אדרכתא לידיה

Until 90 days after בית דין rules against him, at which point they write a document granting the buyer the right to seize his property;

3.

עד שמתחלן יומי אכרזתא

Until the buyer locates property to seize, and בית דין announces the upcoming auction.

However, as Rashi explains, משעמד ברשעו

גלי אדעתיה דלא מהימן הוא

After the time mentioned by each opinion, we do not presume that he was securing the land for the buyer, because he has already tarnished his reputation.

Three opinions regarding...

עד אימת ניחא ליה?

For how long after the sale do we presume that the seller, the גזלן, would purchase the property to secure it for the buyer?



עד שעת העמדה בדין

Until the owner seizes the property and the buyer initiates proceedings in court

2

עד דמטא אדרכתא לידיה

Until 90 days after בית דין rules against him, at which point they write a document granting the buyer the right to seize his property

3

עד שמתחלן יומי אכרזתא

Until the buyer locates property to seize, and בית דין announces the upcoming auction

However, as Rashi explains,
משעמד ברשעו
גלי אדעחיה דלא מהימן הוא

After the time mentioned by each opinion, we do not presume he was securing the land for the buyer, because he has already tarnished his reputation







The Gemara now questions Ray's ruling: האי לוקח במאי קני להאי ארעא האי שטרא חספא בעלמא הוא

The document used for the original sale was worthless, since he didn't own the property at the time. If so, how does the buyer acquire the land when the thief purchases it from the real owner?

The Gemara answers

תהא במאמינו

The buyer expressed his faith that the thief will procure the land for him, and so

בההוא הנאה

דלא קאמר ליה מידי וקא סמיך עליה

טרח ומייתי ליה גמר ומקני ליה

With the gratification he receives by being trusted, he transfers the land to him.

The Gemara challenges this from a ברייתא:

מה שאירש מאבא מכור לך

מה שתעלה מצודתי מכור לך

לא אמר כלום

One cannot sell his future inheritance or his trap's future catch, since he does not own it at the time. Similarly, the buyer should not acquire the land that the thief eventually purchases?



האי לוקח במאי קני להאי ארעא ?האי שטרא חספא בעלמא הוא

The document used for the original sale was worthless since he didn't own the property at the time.

If so, how does the buyer acquire the land en the thief purchases it from the real owner?

תהא במאמינו

The buyer expressed his faith that the thief will procure the land for him

בההוא הנאה דלא קאמר ליה מידי וקא סמיך עליה טרח ומייתי ליה גמר ומקני ליה

With the gratification he receives by being trusted, he transfers the land to him



מה שאירש מאבא מכור ל מה שתעלה מצודתי מכור לך לא אמר כלום

One cannot sell his future inheritance or his trap's future catch, since he does not own it at the time







7

The Gemara brings two opinions:

.

הא גברא והא תיובתא

This is a valid refutation.

2

תיובתא לא קא חזינא

There is no contradiction:

הכא סמכא דעתיה

דאזיל טרח ומייתי ליה

כי היכי דלא נקרייה גזלנא

The buyer relies on him to secure his purchase, to avoid being labelled a thief, and this validates the sale.

However.

הכא לא סמכא דעתיה

He cannot confidently rely on him to inherit or to catch an animal, since it is not in his control, and so the sale is not effective.

======









8

As part of this discussion, the Gemara touches on the topic of

אדם מקנה דבר שלא בא לעולם

Whether one can sell or affect a transaction for something that he does not own or does not yet exist?

אמר רב הונא אמר רב האומר לחברו שדה שאני לוקח כשאקחנה קנויה לך מעכשיו קנה

If someone sells a field that he has yet to buy, the transaction is effective.

holds

אדם מקנה דבר שלא בא לעולם

The Gemara explains that this is actually a מחלוקת תנאים in a case of

האומר לאשה

התקדשי לי לאחר שאתגייר

או לאחר שתתגיירי

If someone says to a woman "You shall be betrothed to me after I convert, or after you convert;"

Or in a similar situation where the קידושין cannot take effect at the time, but only after the situation changes; The תוא קמא says

אינה מקודשת

Because

אין אדם מקנה דבר שלא בא לעולם

רבי מאיר אומר מקודשת Because, he holds אדם מקנה דבר שלא בא לעולם And רב obviously follows the opinion of רב.

This topic is discussed at length in other places in Shas.

The Gemara touches on the topic of...

אדם מקנה דבר שלא בא לעולם

Whether one can sell or affect a transaction for something that he does not own or does not yet exist?



AN THE KILD AT THE

האומר לחברו שדה שאני לוקח כשאקחנה קנויה לך מעכשיו קנה

אדם מקנה דבר שלא בא לעולם

This is actually a איל האוקת תנאים.

האומר לאשה התקדשי לי לאחר שאתגייר או לאחר שתתגיירי

If someone says to a woman "You shall be betrothed to me after I convert, or after you convert,"

71KN 127

מקודשת

Because אדם מקנה דבר שלא בא לעולם KNP KU

אינה מקודשת

Because אין אדם מקנה דבר שלא בא לעולם







The Mishnah on דף י"ב discussed whether one returns a lost document;

The Gemara now returns to this topic:

אמר שמואל

המוציא שטר הקנאה בשוק

יחזירו לבעלים

If someone finds a שטר הקנאה, a document that obligates one to pay regardless of whether the loan actually takes place, he returns it to the creditor, because there is no valid concern:

1.

משום דכתב ללות ולא לוה

הא שעבד נפשיה

There's no concern that he wrote it but did not actually borrow the money, because he committed himself regardless;

2.

לא חיישינין לפרעון

אם איתה דפרעיה

מקרע הוה קע ליה

We assume it is an outstanding debt that is not paid, because a debtor would destroy the document immediately when he receives it upon payment.

However, רבי יוחנן argues המוציא שטר חוב בשוק אע"פ שכתוב בו הנפק לא יחזירו לבעלים לא יחזירו לבעלים Even an authenticated document is not returned to the creditor, because חיישינן לפרעון We suspect that the debt may have been paid. Returning a lost document...

אמר שמואל

המוציא שטר הקנאה בשוק יחזירו לבעלים

If someone finds a document that obligates one to pay regardless of whether the loan actually takes place, he returns it to the creditor

Because there is no valid concern:

לא תיישינין לפרעון אם איתה דפרעיה מקרע הוה קע ליה

We assume it is a debt that is not paid because a debtor would destroy the document immediately when he receives it משום דכתב ללות ולא לוה הא שעבד נפשיה

There's no concern that he wrote it but did not actually borrow the money, because he committed himself regardless

However, רבי יוחכן argues

המוציא שטר חוב בשוק אע״פ שכתוב בו הנפק לא יחזירו לבעלים

Even an authenticated document is not returned to the creditor

Because תיישינן לפרעון

We suspect that the debt may have been paid







The Gemara brings support to שמואל from the Mishnah on ידף כ':

כל מעשה בית דין

הרי זה יחזיר

An authenticated loan document is returned. Apparently, because אא חיישינן לפרעון, we do not suspect that it was paid?

The Gemara answers

מתניתיו

בשטרי חלטאתא ואדרכתא

דלאו בני פרעון נינהו

That Mishnah refers to documents regarding land seizures, where the possibility of payment is not a factor.

Although

שומא הדר

The debtor has the right to redeem the seized land, and so we should be concerned whether he paid the debt and reclaimed his land?

The Gemara differentiates:

The Mishnah can hold

חיישינן לפרעון

Although the document was not destroyed, we do suspect it was paid.

However, regarding seizure documents,

איהו הוא דאפסיד אנפשיה

If he indeed paid the debt, he caused himself this loss, because

דבעידנא דפרעיה

אבעי ליה למקרעיה לשטריה

א"נ למכתב שטרא אחרינא עילויה

He should have destroyed the seizure document, or demanded a new document of sale when redeeming the land.

However, regarding loan documents,

אימור אשתמוטי קא משתמיט ליה

דא"ל למחר יהבנא לך

דהשתא ליתיה גבאי

The creditor might have delayed returning the document, claiming it was not available.

OR,

Dedicated By: ___

אפשיטי דספרא זייר ליה

He may have kept it until the debtor pays the scribe's fee.



כל מעשה בית דין הרי זה יחזיר

An authenticated loan document is returned

Apparently, because לא חיישיכן לפרעון



מתניתין בשטרי חלטאתא ואדרכתא דלאו בני פרעון נינהו

That Mishnah refers to documents regarding land seizures, where the possibility of payment is not a factor



Although **שומא <u>הדר</u>**

The debtor has the right to redeem the seized land, and so we should be concerned whether he paid the debt and reclaimed his land?

The Gemara differentiates the Mishnah can hold אינין און איניאן איני

Regarding seizure documents, איהו הוא

דאפסיד אנפשיה <u>דאפ</u>סיד

If he indeed paid the debt he caused himself this loss

Because

דבעידנא דפרעיה אבעי ליה למקרעיה לשטריה א"נ למכתב שטרא אחרינא עילויה Regarding loan documents, אימור אשתמוטי קא משתמיט ליה דא"ל למחר יהבנא לך דהשתא ליתיה גבאי

The creditor might have delayed returning it, claiming it wasn't available

OR,

אפשיטי דספרא זייר ליה

He may have kept it until the debtor pays the scribe's fee



