

A

ס"ד
Intro

Today we will learn בע"ה of דף מציעא of ל"ט
Some of the topics we will learn about include.

A continuation in the Machlokes regarding

מורידין קרוב לנכסי שבוי

If a person was captured or was forced to run away, does Bais Din appoint his closest relative to care for the field or not?

Three Halachos of הונא; רב

1.

אין מורידין קטן לנכסי שבוי

If the relative was a minor, Bais Din does not appoint him to care for the field of the שבוי, because

דלמא מפסיד להו

The minor might ruin the field, and therefore Bais Din appoints a stranger instead.

2.

ולא קרוב לנכסי קטן

If the שבוי was a minor, Bais Din does not appoint his relative such as his brother to care for the field, because

כיון דלא מחי

אתי לאחזוקי ביה

The relative might claim that he inherited this field from his father, and since the קטן שבוי is not aware that this was his field, he does not know to make a מחאה, objection, therefore Bais Din appoints a stranger instead.

3.

ולא קרוב מחמת קרוב לנכסי קטן

And even a relative only to the קטן's relative but not to the קטן, such as

באחי מאימא

He and the קרוב were brothers only through their mother, while the קטן and the קרוב were brothers only through their father; Bais Din does not appoint him to care for the field of the שבוי the קטן, because

כיון דלא מחי

אתי לאחזוקי ביה

B

חזקת ג' שנים

When a person purchases a field from someone, the שטר, the sale document, is his proof that he owns the field.

However, the עדים initiated that after three years, if עדים testify that for three years he used the field without the owner's objection, he is considered a מוחזק in the field, and he no longer requires a שטר as a proof, because people generally do not keep a שטר for more than three years, and the owner would not allow him to use the field without objecting.

The Machlokes of רבא and אביי in the incident of

ההיא סבתא דהויא לה תלת בנתא

A woman who was captured with her daughter, and her matured daughter and minor grandchild remained behind.

Whom does Bais Din appoint to care for the woman's assets?

A

מורידין קרוב לנכסי שבוי

אין מורידין קטן
לנכסי שבוי

ולא קרוב
לנכסי קטן

ולא קרוב מחמת קרוב
לנכסי קטן

B

חזקת ג' שנים

ההיא סבתא
דהויא לה תלת בנתא

1 So let's review ...

The Gemara in the previous Daf mentioned a Machlokes in a Braisa regarding

מורידין קרוב לנכסי שבו

If a person was captured or was forced to run away, does Bais Din appoint his closest relative, and apparent heir, to use and care for the field or not?

All agree regarding

שמעו בו שמת

מורידין קרוב לנכסי שבו

If there are reports that the owner died, Bais Din does appoint his heir to care for his fields until the owner returns; and therefore

אפילו שמע שממשמשין ובאין וקדם ותלש ואכל

הרי זה זריז ונשכר

Even if there were reports that the owner is about to return, and the relative quickly cut the fruits, he gets to keep all the fruits.

The Machlokes is merely regarding

לא שמעו בו שמת

If there are no reports that the owner died, otherwise known as נטושים;

The רבנן hold

מוציאין אותו מידו

If the relative took over the field, Bais Din does extract the field from him, because

דלמא מפסיד להו

He might ruin the field by only sowing the field without fertilizing it, to maximize his immediate benefits from the field before the owner returns.

While רבן שמעון בן גמליאל says

שמעתי שהנטושים כשבוין

The Halachah of שבוין applies to נטושים as well, in that, אין מוציאין אותו מידו

Bais Din does not extract the field from him, because לא מפסיד להו

The relative would not ruin the field.

The Gemara however makes a distinction in רשב"ג that regarding שבוין he holds

הרי זה זריז ונשכר

If the owner returns the relative receives ALL the fruits, because as Rashi explains

כיון ששמעו בו שמת

נחת לה אדעתא דכולי פירי

Since the relative assumed that the owner died, his intentions were for all the fruits.

However regarding נטושים he holds

וכולן שמין להם כאריס

If the owner returns the relative receives only the portion of fruits that is paid to a sharecropper, because

לא שמעו בו שמת

לא נחת אדעתא דכולי פירי

Since the relative did not assume that the owner died, his intentions were not for all the fruits.

=====

1

בביתא

מורידין קרוב לנכסי שבו

If a person was captured or was forced to run away, does Bais Din appoint his closest relative, and apparent heir, to use and care for the field or not?

All agree

שמעו בו שמת

מורידין קרוב לנכסי שבו

If there are reports that the owner died, Bais Din does appoint his heir to care for his fields until the owner returns; and therefore

אפילו שמע שממשמשין ובאין

וקדם ותלש ואכל

הרי זה זריז ונשכר

Even if there were reports the owner is about to return, and the relative quickly cut the fruits, he gets to keep all the fruits.

לא שמעו בו שמת

If there are no reports that the owner died, otherwise known as:

נטושים

רלב"ג

Regarding שבוין he holds

הרי זה זריז ונשכר
If the owner returns the relative receives ALL the fruits,

because as Rashi explains

כיון ששמעו בו שמת
נחת לה אדעתא דכולי פירי
Since the relative assumed that the owner died, his intentions were for all the fruits.



However regarding נטושים he holds

וכולן שמין להם כאריס

If the owner returns the relative receives only the portion of fruits that is paid to a sharecropper, because

לא שמעו בו שמת

לא נחת אדעתא דכולי פירי

Since the relative did not assume that the owner died, his intentions were not for all the fruits.

רבנן

מוציאין אותו מידו

If the relative took over the field, Bais Din does extract the field from him, because

דלמא מפסיד להו

He might ruin the field by only sowing the field without fertilizing it, to maximize his immediate benefits from the field before the owner returns.

2 The Gemara continues with three Halachos of רב הונא:

1.

אין מורידין קטן לנכסי שבוי

רב הונא says if the heir was a minor, Bais Din does not appoint him to care for the field of the שבוי, because

דלמא מפסיד להו

The minor might ruin the field.

Bais Din appoints a stranger instead.

2.

ולא קרוב לנכסי קטן

If the שבוי was a minor, Bais Din does not appoint his heir such as his brother to care for the field, because

כיון דלא מחי

אתי לאחזוקי ביה

The relative might claim that he inherited this field from his father, and since the שבוי the קטן is not aware that this was his field, he does not know to make a מחאה, objection.

Therefore, Bais Din appoints a stranger instead.

2

רב הונא

1

אין מורידין קטן לנכסי שבוי

If the heir was a minor,
Bais Din does not appoint him to care for the field of the שבוי,
because

דלמא מפסיד להו

The minor might ruin the field.

Bais Din appoints a stranger instead.

2

ולא קרוב לנכסי קטן

If the שבוי was a minor,
Bais Din does not appoint his heir such as his brother
to care for the field, because

כיון דלא מחי אתי לאחזוקי ביה

The relative might claim

that he inherited this field from his father,
and since the שבוי - the קטן, is not aware that this was his
field, he does not know to make a מחאה.

Therefore, Bais Din appoints a stranger instead.

3

3.

ולא קרוב מחמת קרוב לנכסי קטן

And even a relative only to the קטן's relative but not to the קטן, such as,

באחי מאימא

He and the קרוב were brothers only through their mother, while the קטן and the קרוב were brothers only through their father;

Bais Din does not appoint him to care for the field of the שבוּי the קטן, because

כיון דלא מחי

אתי לאחזוקי ביה

The person might claim that his brother inherited this field, and since the קטן is not aware that this was his field, he does not know to make a מחאה. Therefore, Bais Din appoints a stranger instead.

As רבא explains however there is no concern that the stranger might claim that he bought the field from the קטן's father with a proof of חזקה, that for three years he used the field without the קטן's מחאה, because

אין מחזיקין בנכסי קטן ואפילו הגדיל

A person cannot make a חזקה in the property that a קטן inherited, even after he matured, because as Rashi explains

לא ידע כשהגדיל שהן של אביו

לפיכך לא מיחה

Since as a קטן he was not aware that that this was his field, after he matures he still assumes that it was not his field, and therefore he does not make a מחאה.

3

3

ולא קרוב מחמת קרוב לנכסי קטן

And even a relative only to the קטן's relative but not to the קטן, such as,

באחי מאימא

He and the קרוב were brothers only through their mother, while the קטן and the קרוב were brothers only through their father;

Bais Din does not appoint him

to care for the field of the שבוּי the קטן, because

כיון דלא מחי

אתי לאחזוקי ביה

The person might claim that his brother inherited this field, and since the קטן is not aware that this was his field, he does not know to make a מחאה.

Therefore, Bais Din appoints a stranger instead.

רבא

There is no concern

that the stranger might claim that he bought the field from the קטן's father with a proof of חזקה, that for three years he used the field without the קטן's מחאה, because

אין מחזיקין בנכסי קטן ואפילו הגדיל

A person cannot make a חזקה in the property that a קטן inherited, even after he matured,

Because as Rashi explains

לא ידע כשהגדיל שהן של אביו

לפיכך לא מיחה

Since as a קטן he was not aware that that this was his field, after he matures he still assumes that it was not his, and therefore he does not make a מחאה.

4

Regarding the Halachah of

אין מורידין קרוב לנכסי קטן

The Gemara initially assumes that only

באחי דאבא

אין מורידין

If the relative was an heir of the קטן's father, such as a brother from the same father, Bais Din does not appoint him because there is a concern for

אתי לאחזוקי ביה

However

באחי דאמא

מורידין

If the relative was not an inheritor of the קטן's father, such as a brother from a different father, Bais Din does appoint him because there is no concern for אתי לאחזוקי ביה as this relative cannot claim an inheritance.

AND only

בארעתא

אין מורידין

For the קטן's field, Bais Din does not appoint a קרוב because there is a concern for

אתי לאחזוקי ביה

However

בבתי

מורידין

For the קטן's house, Bais Din does appoint a קרוב and there is no concern for

אתי לאחזוקי ביה

Because as Rashi explains

שהשכנים מעידים עליהם שבאו לחלקו של קטן

The neighbors testify for the קטן that he inherited the house.

AND only

דלא עביד עיטדא

אין מורידין

If Bais Din did not issue a document in how the father's estate was divided between the brothers, Bais Din does not appoint a קרוב because there is a concern for

אתי לאחזוקי ביה

However

עביד עיטדא

מורידין

If there was such a document Bais Din does appoint a קרוב because

קלא אית לה

The word is spread that the fields belongs to the קטן.

4

אין מורידין קרוב לנכסי קטן

באחי דאמא מורידין

If the relative was not an inheritor of the קטן's father, such as a brother from a different father,

Bais Din does appoint him because there is no concern for אתי לאחזוקי ביה as this relative cannot claim an inheritance.

באחי דאבא אין מורידין

If the relative was an heir of the קטן's father, such as a brother from the same father,

Bais Din does not appoint him because there is a concern for אתי לאחזוקי ביה

בבתי מורידין

For the קטן's house, Bais Din does appoint a קרוב and there is no concern for

אתי לאחזוקי ביה

Because as Rashi explains שהשכנים מעידים עליהם

שבאו לחלקו של קטן

The neighbors testify for the קטן that he inherited the house.

בארעתא אין מורידין

For the קטן's field, Bais Din does not appoint a קרוב because there is a concern for

אתי לאחזוקי ביה

עביד עיטדא מורידין

If there was such a document Bais Din does appoint a קרוב because

קלא אית לה

The word is spread that the fields belongs to the קטן.

דלא עביד עיטדא אין מורידין

If Bais Din did not issue a document in how the father's estate was divided between the brothers,

Bais Din does not appoint a קרוב because there is concern for

אתי לאחזוקי ביה

5 The Gemara however concludes that אין מורידין קרוב לנכסי קטן applies in all cases
 לא שנה אחי דאבא ולא שנה אחי דאמא
 Regardless of whether the relative was an inheritor of the קטן's father or not;
 לא שנה ארעתא ולא שנה בתי
 Regardless of whether it was a field or house;
 ולא שנה עביד עיטדא לא שנה לא עביד עיטדא
 Regardless of whether Bais Din issued a document of the division or not;
 =====

5

The Gemara however concludes that אין מורידין קרוב לנכסי קטן applies in all cases. . .

<p>▼</p> <p>ולא שנה עביד עיטדא לא שנה לא עביד עיטדא</p> <p>Regardless of whether Bais Din issued a document of the division or not.</p>	<p>▼</p> <p>לא שנה ארעתא ולא שנה בתי</p> <p>Regardless of whether it was a field or house.</p>	<p>▼</p> <p>לא שנה אחי דאבא ולא שנה אחי דאמא</p> <p>Regardless of whether the relative was an inheritor of the קטן's father or not.</p>
---	--	---

6 The Gemara proceeds with the following incident:
 ההיא סבתא דהויה לה תלת בנתא
 An old woman had three daughters;
 אישתבאי איהי וחדא ברתא
 The woman and one daughter were captured, and there were no reports that they had died.
 אידך תרתי בנתא
 שכיבא חדא מינייהו ושבקה ינוקא
 The second daughter died and left behind a minor child, and the third daughter remained alive.

אבי says, Bais Din cannot appoint the third daughter to care for all the assets, because
 דלמא שכיבא סבתא
 Perhaps the woman did die, and half the assets belong to the minor child, and
 אין מורידין קטן לנכסי קטן

6

ההיא סבתא דהויה לה תלת בנתא
An old woman had three daughters;

אישתבאי איהי וחדא ברתא
The woman and one daughter were captured, and there were no reports that they had died.

אידך תרתי בנתא
שכיבא חדא מינייהו ושבקה ינוקא
The second daughter died and left behind a minor child, and the third daughter remained alive.

אבי

<p>And Bais Din cannot appoint the minor to care for all the assets, because</p> <p>דלמא לא שכיבא סבתא</p> <p>Perhaps the woman did not die, and</p> <p>אין מורידין קטן לנכסי שבוי</p>	<p>Bais Din cannot appoint the third daughter to care for all the assets, because</p> <p>דלמא שכיבא סבתא</p> <p>Perhaps the woman did die, and half the assets belong to the minor child, and</p> <p>אין מורידין קרוב לנכסי קטן</p>
--	---

Therefore...

פלגא יהבינא לה לאחתא
ואידך פלגא מוקמינן ליה אפוטרופא לינוקא
Bais Din appoints the third daughter to care for one half of the woman's estate that she might have inherited, and they appoint a guardian to care for the other half that the minor girl might have inherited.

And Bais Din cannot appoint the minor to care for all the assets, because
 דלמא לא שכיבא סבתא
 Perhaps the woman did not die, and
 אין מורידין קטן לנכסי שבוי

Therefore, אבי ruled
 פלגא יהבינא לה לאחתא
 ואידך פלגא מוקמינן ליה אפוטרופא לינוקא
 Bais Din appoints the third daughter to care for one half of the woman's estate that she might have inherited, and they appoint a guardian to care for the other half that the minor girl might have inherited.

7 מגו disagrees and rules
מגו דמוקמינן אפוטרופא לפלגא
מוקמינן ליה אפוטרופא לאידך פלגא
Once Bais Din appoints a guardian, he cares for all the assets.

לסוף שמעו דשכיבא סבתא
Later on, there were reports that the woman did die, but there no reports regarding the first daughter;

אביי ruled
תילתא יהבינן לה לאחתא
One third of the assets are given to the third daughter for her share in the woman's assets.

ותילתא יהבינן ליה לינוקא
One third is given to minor child, for his share in the assets.

ואידך תילתא יהבינן דנקא לאחתא
ואידך דנקא מוקמינן ליה אפוטרופא לינוקא
The remaining third that belongs to the first daughter is split into two. Bais Din appoints the third daughter to care for one half that she might have inherited, and they appoint a guardian to care for the other half that the minor might have inherited.

מגו disagrees as before and says
מגו דמוקים אפוטרופא לדנקא
מוקמינן נמי אפוטרופא לאידך דנקא
Once Bais Din appoints a guardian, he cares for all the assets of the first daughter.

7 מגו disagrees and rules
מגו דמוקמינן אפוטרופא לפלגא
מוקמינן ליה אפוטרופא לאידך פלגא

Once Bais Din appoints a guardian, he cares for all the assets.

לסוף שמעו דשכיבא סבתא

Later on, there were reports that the woman did die, but there no reports regarding the first daughter;

אביי

ואידך תילתא יהבינן
דנקא לאחתא

ואידך דנקא מוקמינן
ליה אפוטרופא לינוקא
The remaining third that belongs to the first daughter is split into two.

Bais Din appoints the third daughter to care for one half that she might have inherited, and they appoint a guardian to care for the other half that the minor might have inherited.

תילתא יהבינן לה
לאחתא

One third of the assets are given to the third daughter for her share in the woman's assets.

ותילתא יהבינן ליה
לינוקא

One third is given to minor child, for his share in the assets.

מגו disagrees as before and says
מגו דמוקים אפוטרופא לדנקא
מוקמינן נמי אפוטרופא לאידך דנקא

Once Bais Din appoints a guardian, he cares for all the assets of the first daughter.