

A בס"ד

Intro

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

A continuation in the Mishnah's Halachah of האומר זה אחי אינו נאמן

If a person states that פלוני, so and so is my brother, he is not believed and פלוני does not inherit a portion on his own right in all the father's assets.

The distinction in whether the other brothers admit or deny that פלוני is their brother.

Generally, a property can be sold or bequeathed only through a proper קנין between the seller and the recipient, therefore אין שטר לאחר מיתה

A property cannot be sold or bequeathed after the owners death through a שטר

However the חכמים initiated that דברי שכיב מרע

ככתובים וכמסורין דמו

A dying person's instructions alone are considered a קנין, and no further קנין is required, because שמא תטרף דעתו

They were concerned that his situation might worsen, and he will be unable to perform a קנין.

B The Mishnah's Halachah of

מי שמת ונמצאת דייתיקי קשורה על ירכו הר"י זו אינה כלום

If a שכיב מרע died, and a written will was found tied to his leg, the שטר has no significance and the intended recipient does not acquire the assets, because אין שטר לאחר מיתה

However זיכה בה לאחר דבריו קיימין

If while the שכיב מרע was alive, he gave someone a list of his assets, and he told him נכסים, I give you all the assets recorded in this document, the recipient acquires the assets, because דברי שכיב מרע ככתובים וכמסורין דמו

The Halachah of שכיב מרע שאמר כתבו ותנו מנה לפלוני ומת אין כותבין ונותנין

If a dying person gave instructions that they shall WRITE and GIVE one מנה to so and so, and then he died, his instructions are not fulfilled, however אם כמיפה את כחו כותבין

If the שכיב מרע's wording was merely to strengthen the recipient's power with a שטר, but he also wants him to acquire through a צוואה, then his instructions are fulfilled

A

האומר זה אחי אינו נאמן

The distinction in whether the other brothers admit or deny that פלוני is their brother

אין שטר לאחר מיתה

דברי שכיב מרע ככתובים וכמסורין דמו

שמא תטרף דעתו

B

מי שמת ונמצאת דייתיקי קשורה על ירכו הר"י זו אינה כלום

זיכה בה לאחר דבריו קיימין

שכיב מרע שאמר כתבו ותנו מנה לפלוני ומת אין כותבין ונותנין

אם כמיפה את כחו כותבין

1 So let's review ...

The previous Mishnah taught

האומר זה אחי
אינו נאמן

If a person states that פלוני, so and so, is my brother, he is not believed, and פלוני does not inherit - in his own right - a share in the father's assets, because as the Gemara explains, the Mishnah is a case of

דקא אמרי אין אנו יודעין

The other brothers claim that they do not know whether or not פלוני is their brother. Therefore, they don't have to contribute a part of their share to פלוני, because they are

מוחזק. However,

ויטול עמו בחלקו

This brother must give פלוני part of his own share in the father's ירושה, because he admitted that פלוני is his brother.

מת

יחזרו נכסים למקומן

If פלוני died and left no children to inherit him, this brother takes back the complete portion that he gave פלוני, but the other brothers do not get anything, because this brother claims to the other brothers

הרי החזקתם בנחלה הראויה לו לספק מאבינו

You already took פלוני's portion in our father's assets, because you never gave it to him.

However

נפלו לו נכסים ממקום אחר

יירשו אחיו עמו

If פלוני had assets from other sources and died, all the brothers inherit a share in those assets, and this brother does not get all those assets, because through his admission all the brothers are entitled to a share in פלוני's assets.

The Gemara explains however, in a case of

דקא אמרי לאו אחינו הוא

If the other brothers claimed with certainty that פלוני is NOT their brother, then they do not inherit a share in פלוני's assets.

And in a case of

דקאמרי אחונא הוא

If the other brothers claimed with certainty that פלוני IS their brother, then they must also contribute to פלוני a part of their share in the father's assets.

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1

האומר זה אחי

אינו נאמן

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If the other brothers claimed with certainty that פלוני IS their brother, then they must also contribute to פלוני a part of their share in the father's assets.

דקא אמרי

לאו אחינו הוא

If the other brothers claimed with certainty that פלוני is NOT their brother, then they do not inherit a share in פלוני's assets.



2

Regarding the Halachah of

מת יחזרו נכסים למקומן

The Gemara inquires

בעי רבא

שבח ששבחו נכסים מאליהם מהו

What is the Halachah regarding the produce that grew in on their own from the portion that this brother gave to פלוני?

Does this שבח go to the other brothers as well, because it came about while in פלוני's possession and it was not a part of the original assets of the father?

OR

The שבח goes only to this brother but not to the other brother's, because it is considered a part of the original assets of the father, and only this brother gave פלוני a portion in their father's assets, but the other brothers kept פלוני's portion in the father's assets?

תיקו

This question remains unresolved.

However, there is no question regarding

בשבח המגיע לכתפים

דכי נפלו לו נכסים ממוקום אחר דמי

The produce that grew in only through the efforts of פלוני, this שבח does go to the other brothers as well, because this שבח was definitely not a part of the original assets of the father.

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2

מת יחזרו נכסים למקומן

ק"י רבא

שבח ששבחו נכסים מאליהם

מהו

What is the Halachah regarding the produce that grew in on their own from the portion that this brother gave to פלוני?

Does this שבח go to the other brothers as well, because it came about while in פלוני's possession and it was not a part of the original assets of the father?

The שבח goes only to this brother but not to the other brother's, because it is considered a part of the original assets of the father, and only this brother gave פלוני a portion in their father's assets, but the other brothers kept פלוני's portion in the father's assets?

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3 Zug Di Mishnah

מי שמת ונמצאת דייתיקי קשורה על יריכו
הרי זו אינה כלום

If a שטר died and a written will was found tied to his leg, this שטר has no validity and the intended recipient does not acquire the assets, because as the Rashbam explains

לא גמר להקנותו אלא בקבלת שטר ואין שטר לאחר מיתה

We assume that the שטר intended to bequeath his assets only through the שטר, not through a צוואה, his verbal instructions, and a שטר can acquire only if the owner transferred it while he was alive, but not after his death.

זיכה בה לאחר

בין מן היורשין בין שאינן מן היורשין
דבריו קיימין

If while the שטר was alive, he gave someone a list of his assets, and he told him ®

נכסים הכתובים בשטר זה אני מקנה לך

I give you all the assets recorded in this document; ®
דבריו קיימין

The recipient acquires the assets regardless of whether he was an eligible heir or not, and even though his name was not mentioned in the שטר, because this is no less than a שטר's verbal instructions, and ®

דברי שטר

ככתובים וכמסורין דמו

The חכמים initiated that a dying person's verbal instructions alone are considered like a קנין through which the recipient acquires the assets after his death, and no further קנין is required.

The חכמים did this because

שמה תטרף דעתו

They were concerned that the שטר's situation might worsen, and he will be unable to perform a קנין.

3

משנה

מי שמת
ונמצאת דייתיקי קשורה על יריכו
הרי זו אינה כלום

If a שטר died
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this שטר has no validity and the intended recipient
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ואין שטר לאחר מיתה

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I give you all the assets recorded in this document;

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The recipient acquires the assets
regardless of whether he was an eligible heir or not,
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ככתובים וכמסורין דמו

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The חכמים did this because

שמה תטרף דעתו

They were concerned that the שטר's situation might
worsen, and he will be unable to perform a קנין.

4 The Gemara elaborates and cites a Braisa
 תנו רבנן איזה היא דייתיקי
 The will of a מרע שכיב is written as follows, and as alluded
 to in the word דייתיקי;
 כל שכתוב בה דא תהא למיקם ולהיות
 All that is written here shall take effect after my passing.
 And
 איזו היא מתנת בריא
 שהיא כמתנת שכיב מרע
 דלא קני אלא לאחר מיתה
 The will of a healthy person that takes affect like a שכיב
 מרע, after his passing, is written as follows;
 כל שכתוב בה מוהיום ולאחר מיתה
 Which is interpreted as the Rashbam explains;
 גופא קני מהיום
 ופירי לאחר מיתה
 The recipient acquires the actual field today, but he gets
 the fruits only after the owner dies.
 However, the Rashbam explains further that if he wrote
 only לאחר מיתה but did not write מהיום,
 אינו קונה
 דאין מתנה לאחר מיתה
 The recipient does not acquire the field, because a מתנה
 cannot take effect after the death of the owner.
 And if he wrote only מהיום but he did not write לאחר מיתה,
 הוי מתנה גמורה מעכשיו
 The recipient acquires both the actual field and the fruits
 from today.
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4

בריתא

מן רבנן

איזה היא דייתיקי
 The will of a מרע שכיב is written as follows,
 and as alluded to in the word דייתיקי;
כל שכתוב בה
דא תהא למיקם ולהיות
 All that is written here
 shall take effect after my passing.

איזו היא מתנת בריא
שהיא כמתנת שכיב מרע
דלא קני אלא לאחר מיתה
 The will of a healthy person that takes affect like a מרע,
 after his passing, is written as follows;
כל שכתוב בה מוהיום ולאחר מיתה

As the Rashbam explains;
גופא קני מהיום
ופירי לאחר מיתה
 The recipient acquires the actual field today,
 but only gets the fruits after the owner dies.

מהיום ולאחר מיתה

<p><i>However, if he wrote only לאחר מיתה אינו קונה דאין מתנה לאחר מיתה The recipient does not acquire the field, because a מתנה cannot take effect after the death of the owner.</i></p>	<p><i>And if he wrote only מהיום הוי מתנה גמורה מעכשיו The recipient acquires both the actual field and the fruits from today.</i></p>
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The Gemara continues

שכיב מרע שאמר כתבו ותנו מנה לפלוני ומת

אין כותבין ונותנין

If a dying person gave instructions that they shall WRITE and GIVE a מנה to so and so and then he died, his instructions are not fulfilled, because

שמא לא גמר להקנותו אלא בשטר

Perhaps his intentions were to give the מנה only through a שטר, not through his verbal instructions, and

ואין שטר לאחר מיתה

ורבי יוחנן אמר

תיבדק

רבי יוחנן qualifies that it depends on the context of the שכיב מרע's statement:

רואין אם כמיפה את כחו

כותבין

If the שכיב מרע's wording indicates that he merely meant to strengthen the recipient's power with a שטר, but he also wants him to acquire through a צוואה, such as if he said

דאמר אף כתובו וחתמו והבו ליה

You shall ALSO write and give him the מנה;

כותבין

Then his instructions are fulfilled and the recipient acquires the מנה through the verbal instructions of מתנת שכיב מרע

ואם לאו

אין כותבין

If the שכיב מרע intentions were for the recipient to acquire only though a שטר, not through a צוואה, his instructions are not fulfilled, because

אין שטר לאחר מיתה

5

**שכיב מרע שאמר
כתבו ותנו מנה לפלוני ומת
אין כותבין ונותנין**

If a dying person gave instructions that they shall WRITE and GIVE a מנה to so and so and then he died,

his instructions are not fulfilled, because

שמא לא גמר להקנותו אלא בשטר

Perhaps his intentions were to give the מנה only through a שטר, not through his verbal instructions, and

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It depends on the context of the שכיב מרע's statement:

רואין אם כמיפה את כחו

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If the שכיב מרע's wording indicates that he merely meant to strengthen the recipient's power with a שטר, but he also wants him to acquire through a צוואה,

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You shall ALSO write and give him the מנה;

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Then his instructions are fulfilled and the recipient acquires the מנה through the verbal instructions of מתנת שכיב מרע

ואם לאו - אין כותבין

If the שכיב מרע intentions were for the recipient to acquire only though a שטר, not through a צוואה, his instructions are not fulfilled, because

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