

A ט"ד

Intro

Today we will Be"H learn ס"ז of מציעא דף סז.
Some of the topics we will learn about include:

מחילה בטעות

Rights that are inadvertently waived;

רבית קצוצה

יוצאה בדיינין

Pre-arranged interest, which is forbidden מן התורה, can be recovered in Bais Din;

אבק רבית

אינה יוצאה בדיינין

Secondary forms of interest, which are only forbidden מדרבנן, cannot be recovered in Bais Din.

משכנתא

The Gemara discusses the issue of interest regarding the lender eating the produce of a field pledged as security for a loan, and suggests several permissible methods for this arrangement, including:

B נכיתא

If the loan is decreased by a set amount each year;

קיצותא

If the loan is decreased by a set amount for a certain number each year, after which the produce is paid for in full; and

משכנתא דסורא

If the property is returned after a certain number of years;

The Gemara also references several other Halachos, including:

אין בעל חוב גובה מטלטלין מיתמי

A creditor cannot seize movable property from heirs;

A

מחילה בטעות

רבית קצוצה
יוצאה בדיינין

אבק רבית
אינה יוצאה בדיינין

משכנתא

B

נכיתא

קיצותא

משכנתא דסורא

אין בעל חוב גובה
מטלטלין מיתמי

C אין בכור נוטל פי שנים בראוי
A firstborn does not receive a double portion in the estate's future assets.

C



אין בכור
נוטל פי שנים
בראוי

1 So let's review...

The Gemara relates an incident involving interest:

ההיא איתתא דאמרה לההוא גברא
זבין לי ארעא מקריביי
אזל זבן לה

A woman named נוולא asked someone to purchase property on her behalf from one of her relatives, which he did;

א"ל אי הווי זוזי מהדרת לה ניהלי
The seller requested the right to buy back the field when he would have the funds available, and the agent replied;

את ונוולא אחי
You and Navla are relatives.

Rashi explains, it means

תתרוצו ביניהם

You will surely come to an agreement.

In this case, רבה בר רב הונא ruled

סמכא דעתיה

ולא גמור ומקני

He relied on this assurance, and the stipulation is binding.

Therefore, the Gemara says

ארעא הדרה

He certainly retains the right to buy back the field.

However,

פירי מאי?

This question is based on that which the ת"ח בריתא ruled;

מכר לי שדה

לכשיהיו לי מעות החוזרים לי

אסור

A transaction where the seller reserves the right to buy back the field is forbidden, because if he indeed buys it back, it takes effect retroactively, and the payment is considered a loan and the produce eaten in the interim is considered interest.

Therefore, the Gemara inquires

פירי מאי?

Does the buyer also return the produce he ate in the interim?

רבית קצוצה הווי

ויוצאין בדיינין

Perhaps this is considered pre-arranged interest which is אסור מדאורייתא, and Bais Din compels him to return it, OR

כי אבק רבית הווי

ואין יוצאין

It is only אסור מדרבנן, and Bais Din does not compel him to return it?

The Gemara rules

אבק רבית הווי

It is only considered אבק רבית, and cannot be recovered.

1

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אזל זבן לה

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He relied on this assurance, and the stipulation is binding.

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He certainly retains the right to buy back the field.

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Does the buyer also return the produce he ate?

כי אבק רבית הווי
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It is only
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רבית קצוצה הווי
ויוצאין בדיינין

Is this considered
pre-arranged interest
which is אסור מדאורייתא,
and Bais Din compels him
to return it?

2 However, the Gemara inquires as to the reason it's considered רבית: Is it משום דלא קץ ליה
Is it only categorized as רבית because the produce was not specifically designated as interest? And if so, משכנתא נמי לא קץ ליה
If a field was used as collateral for a loan and the lender ate the produce before the debtor redeemed it, the produce cannot be recovered in Bais Din, because it was not specifically designated as interest.
OR
התם זביני
הכא הלואה
The produce of a sale is always categorized as רבית, and not as רבית קצוצה, but in the case of a loan it is considered רבית קצוצה, and CAN be recovered?
The Gemara rules
משום דלא קץ ליה
Any payment not specifically designated as interest cannot be recovered in court.

However,
עבד רבינא עובדא
וחשיב ואפיק פירי
Ravina did compel a buyer to return the produce as well.
Tosfos explains
דהויא מחילה בטעות
The seller waived his rights to the produce under the mistaken assumption that the sale was final. Therefore, he compelled the buyer to return the produce.
=====

2

אבק רבית הוה
and cannot be recovered.

?

<p>התם זביני הכא הלואה <i>The produce of a sale is always categorized as רבית, and not as רבית קצוצה, but in the case of a loan it is considered רבית קצוצה, and can be recovered?</i></p>	<p>משום דלא קץ ליה <i>Because the produce was not specifically designated as interest?</i> And if so, משכנתא נמי לא קץ ליה <i>A field was used as collateral for a loan was also not specifically designated as interest.</i></p>
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3 The Gemara discusses several other Halachos regarding produce of a

משכנתא

A field that is pledged as security for a loan; It depends on the following;

באתרא דלא מסלקי

Where the custom is that the debtor cannot redeem the field before the loan is due;

As Rashi explains, this is because,

כל אותן השנים כמכר הוא אצלו

It is considered sold to the lender during the term of the loan, and when the debtor repays the loan, he's considered to have bought it back. Therefore,

אכל שיעור זוזי

לא מסלקינן ליה

Even if the lender consumed produce worth more than the loan, we do not remove him from the field, because it's his field from which he may eat all the produce.

However,

באתרא דמסלקי

Where the custom is to allow the debtor to redeem his property even before the loan is due; and this is because, as Rashi explains later

מלוא בעלמא הוא

שאין השדה לפניו אלא לשעבוד פירות

It's not considered sold to the lender; it is merely in his possession as security, but belongs to the borrower.

Therefore,

אכל שיעור זוזי

מסלקינן ליה

Once the lender consumed produce equal to the value of the loan, the debt is repaid and he's removed from the field. However,

אכל טפי לא מפקינן מיניה

ולא מחשבינן משטרא לשטרא

If he consumed more than the value of the loan, although it's אסור, it cannot be recovered in Bais Din, because it is only אבק רבית. Additionally, the borrower cannot apply it toward another outstanding debt.

3

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באתרא דלא מסלקי

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Additionally, the borrower cannot apply it toward another outstanding debt.



4 The Gemara cites an opposing opinion:

Just as

אכל טפי לא מפקינן מיניה

He cannot recover the additional produce, because it is merely אבק רבית,

אכל שיעור זוזי

נמי לא מסלקינן ליה בלא זוזי

He does not recover the field after the lender eats produce equivalent to the value of the loan, because

הוי אבק רבית

ואינה יוצא בדיינין

Since he did not stipulate that the produce is payment on the loan, the lender can claim that he was taking the produce as interest; and although it's forbidden, nevertheless, after the fact, אבק רבית cannot be recovered in Bais Din. Therefore, he still owes the principal, and the lender cannot be removed from the field.

The Gemara proceeds to suggest arrangements in which it's מותר for the מלוה to eat the produce דמסלקי, even though the field belongs to the לווה:

האי משכנתא באתרא דמסלקי

לא ניכול אלא בנכייטא

The lender may eat the produce if they agree to decrease the loan by a set amount each year.

As Rashi explains, although the produce is worth more than the deduction;

לאו רבית היא

The produce is not considered interest, because

נראה כמוכרו לו

דאפילו תלקה ולא יהו בה פירות

ינכה לו אותה קצבה

It resembles a sale, because the agreed amount is deducted from the loan even if the crop is ruined that year.

4

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He cannot recover the additional produce, because it is merely אבק רבית,

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It resembles a sale, because the agreed amount is deducted from the loan even if the crop is ruined that year.

5 However,
 וצורבא מדרבנן
 אפילו בנכייתא לא ניכול
 A Talmid Chacham should not utilize this arrangement,
 as Rashi explains,
 צריך לישר דרכיו ולהתקדש אף במוותר לו
 פן ילמדו ממנו לזלזל באיסורין
 He has to set an example for others and stay away from
 any hint of איסור.

Therefore, he may only eat the produce in one of the following three ways, which are all progressively more removed from, and less similar to רבית.

1.
 בקיצותא
 By setting a limit to his share; namely
 עד חמש שנים אכילנא לה בלא נכייתא
 מכאן ואילך שיימנא לך כולהו פירי
 The first five years he eats with no deduction at all, and
 from then on, he deducts the full value of the produce
 from the loan.

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 The first five years he eats with no deduction at all,
 and from then on, he deducts the full value
 of the produce from the loan.

6 However, others maintain
 כל בלא נכייתא אסור
 It is never permitted to eat without deducting.
 Therefore, they explain
 2.
 עד חמש שנים אכילנא בנכייתא
 מכאן ואילך שיימנא לך כולהו פירי
 The first five years he eats the produce by deducting a
 less, but set amount from the loan, and from then on, he
 deducts the full value of the produce from the loan.

6 However, others maintain
כל בלא נכייתא אסור
 It is never permitted to eat without deducting.

2

עד חמש שנים אכילנא בנכייתא

מכאן ואילך שיימנא לך כולהו פירי
 The first five years he eats the produce by deducting a less,
 but set amount from the loan, and from then on,
 he deducts the full value of the produce from the loan.



7 However, the Gemara brings an opinion
 קיצותא אסירא
 All such arrangements are forbidden.
 Therefore, they explain
 3.
 שרי כי משכנתא דסורא
 He must utilize the arrangement customary in Sura, where
 they wrote
 במשלם שניא אילין
 תיפוק ארעא דא בלא כסף
 After a set amount of years, the loan is entirely repaid.
 Therefore, although the value of the produce exceeds the
 loan, it is permitted, as Rashi explains
 מיוחד כלוקח הימנו
 פירות השנים האלו במעות הללו
 It resembles a sale for a limited number of years.
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However, the Gemara brings an opinion
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שרי כי משכנתא דסורא
He must utilize the arrangement customary in Sura,
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פירות השנים האלו במעות הללו
It resembles a sale
for a limited number of years.



8 The Gemara discusses additional Halachos regarding משכנתא:

1. באתרא דמסלקי
Where the debtor retains the right to redeem the field before the loan is due; and Rashi explains מלוה בעלמא הוא שאין השדה לפניו אלא לשעבוד פירות
The lender does not own the property, but merely has the rights to its produce. Therefore, אין בעל חוב גובה הימנה
The lender's creditor cannot seize it for his debt after his death, because his rights are considered מטלטלין, movable property; ואין הבכור נוטל בה פי שנים
The firstborn does not inherit a double portion, because his rights are considered ראוי, future assets; ושביעית משמטתה
The loan is cancelled during שמיטה, because it is not considered paid.
However, באתרא דלא מסלקי
Where the debtor does not have the right to redeem the field before the loan is due; מכר הוא אצלו
The lender is considered the real owner.

8 Additional Halachos regarding משכנתא

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באתרא דמסלקי
Where the debtor retains the right to redeem the field before the loan is due

And Rashi explains
מלוה בעלמא הוא
שאין השדה לפניו אלא לשעבוד פירות
The lender does not own the property, but merely has the rights to its produce.

Therefore...

<p>▼</p> <p>ושביעית משמטתה The loan is cancelled during שמיטה, because it is not considered paid.</p>	<p>▼</p> <p>ואין הבכור נוטל בה פי שנים The firstborn does not inherit a double portion, because his rights are considered ראוי, future assets;</p>	<p>▼</p> <p>אין בעל חוב גובה הימנה The lender's creditor cannot seize it for his debt after his death, because his rights are considered מטלטלין,</p>
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9 Therefore, בעל חוב גובה הימנה
His creditor can seize this property; ובכור נוטל בו פי שנים
The firstborn does take a double portion; ואין שביעית משמטתה
The loan is not cancelled during שמיטה, because it is considered paid.

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However,

באתרא דלא מסלקי
Where the debtor does not have the right to redeem the field before the loan is due;

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<p>▼</p> <p>ואין שביעית משמטתה The loan is not cancelled during שמיטה, because it is considered paid.</p>	<p>▼</p> <p>ובכור נוטל בו פי שנים The firstborn does take a double portion;</p>	<p>▼</p> <p>בעל חוב גובה הימנה His creditor can seize this property;</p>
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10 2.
 באתרא דמסלקי
 מסלקי ליה
 ואפילו מתמרי דאבודיא
 If the debtor retains the right to pay his debt early, he
 seizes the field immediately upon payment, even the dates
 that previously fell from the trees onto the mats placed
 there by the creditor.
 However,
 ואי אגבהנהו בסיסני
 קננהו
 If the lender already took possession of them and placed
 them in his baskets, he does not need to return them.
 Additionally, according to the opinion
 כליו של לוקח ברשות מוכר קנה לוקח
 One's utensils acquire for him, even in the seller's
 property,
 אפילו דלא אגבהנהו בסיסני
 קננהו
 The mats acquired the dates for the lender, and they are
 never returned.

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**באתרא דמסלקי
 מסלקי ליה
 ואפילו מתמרי דאבודיא**
*If the debtor retains the right to pay his debt early,
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 onto the mats placed there by the creditor.*

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 קננהו**
*The mats acquired the dates for the lender,
 and they are never returned.*

11 3.
 באתרא דמסלקי
 ואמר לא מסתלקנא
 הא קאמר דלא מסתלקנא
 If the lender explicitly stipulated that he does not agree to
 the borrower having the right to redeem the field early, it
 is binding, because he only loaned the money on this
 condition.
 However,
 באתרא דלא מסלקי
 ואמר מסתלקנא
 Where he does not have this right, but the lender later
 agrees that he may redeem it early;
 צריך למקנא מיניה
 He must finalize this agreement with a קנין.

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**באתרא דמסלקי
 ואמר לא מסתלקנא
 הא קאמר דלא מסתלקנא**
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12

4.

אמר איזיל ואייתי זוזי
לא אכיל

As soon as he says he is bringing the money, the lender
may no longer eat the produce.

Furthermore,

איזיל ואטרח ואייתי זוזי
לא אכיל

Even if he says he is going to raise the money, the lender
may no longer eat the produce.

This discussion continues into the next Daf.

12

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