

A ט"ד

Intro

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

פטומי מילי בעלמא

When the relevant party does not demand certain commitments, but the other party voluntarily assures him that he will honor them, we assume that he was not sincere, and the agreement is not binding.

אסמכתא קניא

או אסמכתא לא קניא

The מחלוקת whether a commitment made to guarantee one's reliability is binding, because we assume that he was sincere;

Or, we assume that he was not sincere, because he thought that it would never come to pass.

Specifically, in a case of

הלוהו על שדהו

If someone pledged his field as security on a loan, even though it was worth more than the value of the loan;

The Gemara discusses many aspects of this question, including:

אשכחיה בגו זמניה

וא"ל קני

If the debtor meets the lender before the debt is due and says he does not plan to pay;

B

אשכחיה דקא שתי שכרא

If the debtor was drinking beer on the day the debt was due, instead of trying to raise funds;

אי קפיד בדמי

If he is selling his assets to raise the funds, but refuses to lower the price;

אי קפיד בארעא

If he retains property for himself, and refuses to sell them even for a fair price; and

אפותיקי הויא למיגבא מינה

If he also committed a portion of the property for payment as collateral, the property remains אפותיקי, and he can collect the value of the loan from it.

אי לא פרענא לך ליום פלוני

גבי מהאי חמרא

Whether a commitment regarding movable property, such as wine, is taken binding?

A

פטומי
מילי בעלמא

אסמכתא קניא
או אסמכתא לא קניא

הלוהו על שדהו

אשכחיה בגו זמניה
וא"ל קני

B

אשכחיה
דקא שתי שכרא

אפותיקי
הויא למיגבא מינה

אי לא פרענא לך ליום פלוני
גבי מהאי חמרא



1 So let's review...

The Mishnah on ס"ה דף continues;
 הלוהו על שדהו
 If someone put up his field as security for a loan, and
 ואמר לו
 אם אי אתה נותן לי
 מכאן ועד שלש שנים
 הרי היא שלי
 And they agreed that the lender shall acquire the field
 after three years if the debt is not yet repaid;
 הרי היא שלו
 He acquires the field, even though its value exceeds the
 amount of the loan,
 וכך היה ביתוס בן זונין עושה ע"פ חכמים
 And used to lend money under these terms
 with the approval of the Chachamim.

1

מלפני:

הלוהו על שדהו
If someone put up his field as security for a loan

ואמר לו
אם אי אתה נותן לי מכאן ועד שלש שנים
הרי היא שלי
And they agreed that the lender shall acquire the field
after three years if the debt is not yet repaid

▼

הרי היא שלו
Even though its value exceeds
the amount of the loan

וכך היה ביתוס בן זונין עושה ע"פ חכמים
And used to lend money under these terms
with the approval of the Chachamim

2

As per Tosfos, the Gemara explains the Mishnah as follows:
 מסכת בבא where רבי יוסי סבר אסמכתא קניא
 A commitment made to guarantee one's reliability is binding, because we assume that he was sincere;
 ורבי יהודה סבר אסמכתא לא קניא
 We assume that he was not sincere, because he thought that it would never come to pass.

Now, in our Mishnah's case, the borrower forfeits the property if he does not make the payment. Apparently, אסמכתא קניא
 This reflects the opinion of רבי יוסי.

2

As per Tosfos,
the Gemara explains the Mishnah...

▼

קבא בתרא:
אסמכתא קניא **אסמכתא לא קניא**
We assume he was sincere *We assume he was not sincere*

Now, in our Mishnah's case,
 the borrower forfeits the property
 if he does not make the payment.
אסמכתא קניא



3 However, רב הונא seeks to reconcile our Mishnah with the opinion of רבי יהודה that אסמכתא לא קניא. Therefore, אמר רב הונא בשעת מתן מעות קנה הכל. If the stipulation was made at the time of the loan, the entire property is acquired by the lender, even if its value exceeds the value of the loan, because, as Tosfos explains; על דעת כן מלוהו מעותיו שתהא השדה משוקעת בידו אם לא יתן לו עד שלש שנים. He only loaned him the money based of this guarantee, and so גומר בדעתו להקנות לו. The borrower sincerely commits to their agreement, and this is not considered a case of אסמכתא.

However, רב הונא continues, לאחר מתן מעות לא קנה אלא כנגד מעותיו. And as Tosfos explains, לא קנה אלא אם התנה עמו קני לגוביינא. After finalizing the loan, his commitment is only binding if he pledged as collateral only a portion of the field equal to the value of the loan. However, he cannot take the entire field, because that is אסמכתא.

3 *רב הונא seeks to reconcile our Mishnah with the opinion of רבי יהודה that אסמכתא לא קניא*

**אמר רב הונא
בשעת מתן מעות
קנה הכל**

If the stipulation was made at the time of the loan, the entire property is acquired by the lender, even if its value exceeds the value of the loan

על דעת כן מלוהו מעותיו שתהא השדה משוקעת בידו אם לא יתן לו עד שלש שנים

He only loaned him the money based of this guarantee, and so גומר בדעתו להקנות לו

**לאחר מתן מעות
לא קנה אלא כנגד מעותיו**

לא קנה אלא אם התנה עמו קני לגוביינא

After finalizing the loan, his commitment is only binding if he pledged as collateral only a portion of the field equal to the value of the loan. However, he cannot take the entire field, because that is אסמכתא

4

2.
 רב נחמן אמר
 אפילו בשעת מתן מעות
 לא קנה ולא כלום
 רב נחמן disagrees with רב הונא and says that even if the stipulation was made at the time of the loan, the agreement is completely ineffective, because, as Rashi explains, אסמכתא לא קניא
 Such an agreement is not binding, because הבטחה בעלמא היא
 He was simply reassuring the lender, and was not seriously committing to forfeit his property. (e.r.)

According to רב נחמן, our Mishnah which rules הרי היא שלו

He acquires the field, even though its value exceeds the value of the loan;

Can be explained two ways

1.
 Either, that the Mishnah must be following the opinion of רבי יוסי that אסמכתא קניא

2.
 Or, it can be reconciled with the opinion of רבי יהודה, who indeed holds

אסמכתא לא קניא

Because

אמר ליה קני מעכשיו

He stipulated that if he is not repaid after three years, the field is his retroactively. Therefore, as Rashi explains,

לאו אסמכתא היא

אלא קנין גמור

ואזולי אוזיל גביה

This is not a pledge, but a regular sale effective immediately, and he receives the land at a discounted price, and זה קיבל עליו

שאם יחזיר לו מעותיו עד שלש שנים

יקבלם

The borrower retained the right to redeem the field within three years. (e.r.)

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4

**רב נחמן אמר
 אפילו בשעת מתן מעות
 לא קנה ולא כלום**

Even if the stipulation was made at the time of the loan, the agreement is completely ineffective

Because, as Rashi explains,

*אסמכתא לא קניא
 because*

הבטחה בעלמא היא

According to רב נחמן, our Mishnah

הרי היא שלו - even though its value exceeds the value of the loan

can be explained two ways:

1

The Mishnah must be the opinion of רבי יוסי:

**אסמכתא
 קניא**

2

Or, it can be reconciled with the opinion of רבי יהודה:

**אסמכתא
 לא קניא**

Because

**אמר ליה
 קני מעכשיו**

He stipulated that if he is not repaid after 3 years, the field is his retroactively

Therefore,

לאו אסמכתא היא

אלא קנין גמור

ואזולי אוזיל גביה

זה קיבל עליו

שאם יחזיר לו מעותיו

עד שלש שנים יקבלם

5 The Gemara proceeds with additional exceptions to the general rule of אסמכתא לא קניא

1.
At first, the Gemara rules
אשכחיה בגו זמניה
וא"ל קני
קני
If the לווה meets the מלוה before the debt is due, and tells him to take the field as payment, he immediately acquires the field, because otherwise
למה ליה למימר ליה
הלא אין יכול עכשיו לתובעו
He was certainly sincere, since the debt was not even due yet.
However,
בתר זמניה
ואמר ליה קני
לא קני
If he לווה says this after the debt is due, they מלוה does NOT acquire the field, because
מחמת כיסופא הוא דקאמר ליה
He was not sincere, and only said this because he was embarrassed that he could not pay yet.

However, the Gemara retracts, and says
אפילו בגו זמניה נמי לא קני
Even if the לווה says this before the debt is due, the מלוה does not acquire the field, because
האי דקאמר ליה קני
קא סבר כי מטי זמניה
לא ליתי ליטרדן
He was not sincere, and he only said this so that he would not bother him when the payment is due.
=====

5 Additional exceptions to אסמכתא לא קניא...

1

At first, the Gemara rules
אשכחיה בגו זמניה – וא"ל קני קני
If the לווה meets the מלוה before the debt is due, and tells him to take the field as payment, he immediately acquires the field

Because otherwise
אמר ליה קני ואלא איך יוכל עכשיו לתובעו
He was certainly sincere, since the debt was not even due yet

בתר זמניה – ואמר ליה קני לא קני
If he לווה says this after the debt is due, they מלוה does NOT acquire the field

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Because
האי דקאמר ליה קני
קא סבר כי מטי זמניה לא ליתי ליטרדן
He was not sincere, and he only said this so that he would not bother him when the payment is due

5

2.

אמר רב פפא

אשכחיה דקא שתי שכרא קני

If the debtor was drinking beer on the day the debt was due, instead of trying to raise funds, the creditor acquires the field, because the debtor is clearly unconcerned, and does not plan on paying. However, if

דקא מהפך אזוזי

לא קני

If the debtor is busy trying to raise the funds, the creditor does not acquire the field, because

אסמכתא לא קניא

However, the Gemara challenges this reasoning;

דלמא לפכוחי פחדיה קא שתי

Perhaps he was drinking to alleviate his anxiety, but does not want to forfeit his field?

Alternately,

איניש אחרינא אסמכיה אזוזי

Perhaps he was unconcerned because someone guaranteed to cover his debts?

Therefore, the Gemara explains that אמר רב פפא rule as follows;

אי קפיד בארעא

ודאי קני

ואי לא

לא קני

If he is particular to retain all his property and refuses to sell some of them even for a fair price, he is clearly not committed to raising the funds, and the creditor acquires the field.

If he is not so particular and is seeking to sell some property to raise funds, the creditor does not acquire the field.

=====

5

2

אמר רב פפא

אשכחיה דקא שתי שכרא קני

If the debtor was drinking beer on the day the debt was due, instead of trying to raise funds, the creditor acquires the field, because the debtor is clearly unconcerned, and does not plan on paying.

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X

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Therefore, the Gemara explains that אמר רב פפא rule as follows;

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ואי לא – לא קני

If he is particular to retain all his property and refuses to sell some of them even for a fair price, he is clearly not committed to raising the funds, and the creditor acquires the field.

If he is not so particular and is seeking to sell some property to raise funds, the creditor does not acquire the field.

6 2.
 אמר רב פפא
 אשכחיה דקא שתי שכרא קני
 If the debtor was drinking beer on the day the debt was due, instead of trying to raise funds, the creditor acquires the field, because the debtor is clearly unconcerned, and does not plan on paying. However, if
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 לא קני
 If the debtor is busy trying to raise the funds, the creditor does not acquire the field, because
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However, the Gemara challenges this reasoning:
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 Alternately,
 איניש אחרינא אסמכיה אזוזי
 Perhaps he was unconcerned because someone guaranteed to cover his debts?

Therefore, the Gemara explains that פפא רב rule as follows;
 אי קפיד בארעא
 ודאי קני
 ואי לא
 לא קני
 If he is particular to retain all his property and refuses to sell some of them even for a fair price, he is clearly not committed to raising the funds, and the creditor acquires the field.
 If he is not so particular and is seeking to sell some property to raise funds, the creditor does not acquire the field.

=====

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 אמר רב פפא
אשכחיה דקא שתי שכרא קני
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However, if
דקא מהפך אזוזי
לא קני
 If the debtor is busy trying to raise the funds, the creditor does not acquire the field, because
אסמכתא לא קניא

דלמא לפכוחי פחדיה קא שתי
 Perhaps he was drinking to alleviate his anxiety, but does not want to forfeit his field?
 Alternately,
איניש אחרינא אסמכיה אזוזי
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Therefore, the Gemara explains פפא רב rule as follows;

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ואי לא – לא קני

If he is particular to retain all his property and refuses to sell some of them even for a fair price, he is clearly not committed to raising the funds, and the creditor acquires the field.

If he is not so particular and is seeking to sell some property to raise funds, the creditor does not acquire the field.

7

3.

אף על גב דאמור רבנן
אסמכתא לא קניא
אפותיקי הויא למיגבא מינה

Even though אסמכתא is not effective, and he does not acquire the field outright, it does act as committed collateral. Therefore, after three years, the creditor acquires a portion equal to the loan, and the debtor can no longer pay him and claim the field.

However, the Gemara challenges

סוף סוף אסמכתא היא
ולא קניא

Ultimately, he only gave him rights to the field IF he does not repay the loan, and so this is אסמכתא, and should not be effective?

The Gemara answers

דאמר ליה

לא יהא לך פרעון אלא מזו

referred to a case where besides for offering the entire field as security, he committed a portion of the property for payment even within the three years.

Therefore, even though the אסמכתא is not effective regarding the excess value of the field, the property remains אפותיקי, and he can collect the value of the loan from it.

7

3

אף על גב דאמור רבנן
אסמכתא לא קניא
אפותיקי הויא למיגבא מינה

Even though אסמכתא is not effective, and he does not acquire the field outright, it does act as committed collateral.

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X

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Ultimately, he only gave him rights to the field if he does not repay the loan, and so this is אסמכתא, and should not be effective?

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Therefore, even though the אסמכתא is not effective regarding the excess value of the field, the property remains אפותיקי, and he can collect the value of the loan from it.

8

4.

אי לא פרענא לך ליום פלוני
גבי מהאי חמרא

If someone commits to paying his debt with wine and the value of the wine subsequently increased;

At first, the Gemara rules

הני מילי בארעא

דלאו לזבוני קיימא

אבל חמרא כיון דלזבוני קאי

כזוזי דמי

An **אסמכתא** involving land is not taken seriously, since the owner does not usually want to sell it. However, an **אסמכתא** involving movable property, such as wine, is taken seriously, because they are usually for sale.

However, the Gemara cites a ruling from רבא:

כל דאי

לא קני

Any commitment for additional payment depending on a possible outcome is **אסמכתא** and not effective.

The Gemara concludes

אסמכתא לא קניא

Therefore,

הדר ארעא והדרי פירי

The creditor must return both the land and any produce he ate.

Although

מחילה בטעות הויא מחילה

The debtor's permission to eat the produce, although mistaken, should be binding;

הכא הלואה

ומיחזי רבית

The produce resembles interest on a loan and must therefore be returned.

8

4

אי לא פרענא לך ליום פלוני
גבי מהאי חמרא

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