

A בס"ד
Intro

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

The discussion in the Mishnah's statement
לא לאיש חזקה בנכסי אשתו
If a husband ate the produce of his wife's field for three years, this is not proof of ownership.
הא ראייה יש
However, the Mishnah implies that a שטר, a sale document, is a valid proof that his wife sold him her field.

And the Mishnah refers to
נכסי מלוג
If it was HER field that was not assessed and written into the Kesubah which remains in her possession, and the husband merely has the rights to its פירות, the שטר is a proof, because the wife cannot claim
נחת רוח עשיתי לבעלי
She only agreed to it to please her husband, but in reality she did not agree to the sale, because in נכסי מלוג, which belongs to her, she is not afraid to object.

A

לא לאיש חזקה
בנכסי אשתו
הא ראייה יש
נכסי מלוג
נחת רוח עשיתי לבעלי

B The distinction between our Mishnah and אמרימר's Halachah of
איש ואשה שמכרו בנכסי מלוג
לא עשו ולא כלום

If either the husband or wife sold the נכסי מלוג the sale is not effective.

The Machlokes of
קנין פירות כקנין הגוף דמי או לא
Whether the right to the produce is considered true ownership of a property or not?

יום או יומים
One is not liable for killing his slave if the slave survived at least 24 hours after sustaining his injuries.

The discussion in רב's Halachah of
אשת איש צריכה למחות
A married woman must make a מחאה to one who occupies her field.

B

איש ואשה
שמכרו בנכסי מלוג
לא עשו ולא כלום

קנין פירות
כקנין הגוף דמי
או לא

יום או יומים

אשת איש
צריכה למחות

C This may refer either to
 בבעל
 שחפר בה בורות שיחין ומערות
 Her husband who transformed the land by digging pits
 and caves;
 OR
 באחר
 שאכלה מקצת חזקה בחיי הבעל
 ושלוש לאחר מיתת הבעל
 A stranger who began to take all the produce in the field
 while the husband was alive and also for three years after
 the husband died.

C

בבעל
 שחפר בה בורות
 שיחין ומערות

באחר
 שאכלה מקצת חזקה
 בחיי הבעל
 ושלוש
 לאחר מיתת הבעל

1 So let's review ...

The Gemara in the previous Daf discussed the Mishnah's statement

לא לאיש חזקה בנכסי אשתו

If a husband ate all the produce of his wife's field for three years, this is not a proof that he bought the field from her, because as the Gemara earlier explains

אין אשתו מקפדת אם יאכל הפירות שלא כדן

A wife generally does not object to her husband eating her produce, even those that he is not entitled to.

The Gemara however, points out that the Mishnah's wording implies,

לא לאיש חזקה

הא ראייה יש

That only a חזקה is not proof of ownership, but a שטר, a sale document is valid proof that his wife sold him her field.

And the Gemara asks:

Why is a שטר valid proof of ownership?

תימא נחת רוח עשיתי לבעלי

The wife can claim, she only agreed to it to please her husband, but in reality she did not agree to the sale?

As we find this reasoning in a Mishnah in

מסכת גיטין in a Mishnah in

לקח מן האשה

מקחו בטל

If a person bought a field that was designated for her Kesubah, from the husband, and afterward he bought it from the wife, the sale is NOT effective to remove her lien from this field.

Apparently, because

דאמרה נחת רוח עשיתי לבעלי

The wife claims that she only agreed to it to please her husband, but in reality she did not agree to the sale.

If so, here too,

תימא נחת רוח עשיתי לבעלי

1

From the previous Daf ...

לא לאיש חזקה בנכסי אשתו

If a husband ate all the produce of his wife's field for three years, this is not a proof that he bought the field from her.

As the Gemara earlier explains

**אין אשתו מקפדת
אם יאכל הפירות שלא כדן**

A wife generally does not object to her husband eating her produce, even those that he is not entitled to.

לא לאיש חזקה בנכסי אשתו

כא ראייה יש

But a שטר is valid proof!

תימא

נחת רוח עשיתי לבעלי

The wife can claim

she only agreed to it to please her husband, but in reality she did not agree to the sale?

We find this reasoning in a Mishnah in

לקח מן האיש

וחזר ולקח מן האשה

מקחו בטל

If a person bought a field designated for her Kesubah, from the husband, and afterward he bought it from the wife, the sale is NOT effective to remove her lien.

Apparently, because

דאמרה נחת רוח עשיתי לבעלי

The wife claims that she only agreed to it to please her husband, but in reality she did not agree to the sale.

If so, here too,

תימא נחת רוח עשיתי לבעלי

2 The Gemara answers that it all depends on what kind of field was sold, as follows:

באותן ג' שדות

If the field was one of those three fields that are specifically designated for her Kesubah, such as

1.

אחת שכתב לה בכתובתה

It was HIS field that he specifically wrote into the Kesubah.

OR

2.

ואחת שיחד לה בכתובתה

It was HIS field that he designated in the presence of עדים for HER to collect the Kesubah.

OR

3.

ואחת שהכניסה לו שום משלה

It was HER field that was assessed and written into the Kesubah, and her husband acquires all rights to them while they are married, and if he dies or divorces the field must be returned to her.

In these three fields, the husband's ראייה is not valid proof of ownership; and in these three fields, if a third person

לקח מן האיש וחזר ולקח מן האשה
מקחו בטל

Because as the רשב"ם explains

דעתה סמכה עליהו טפי

She primarily depends on these fields for her Kesubah above all his other fields, and therefore

ודאי לא גמרה ואקנייה

She certainly did not consent to the sale;

And even though she did write a שטר, we assume

נחת רוח עשיתי לבעלי

2

It depends on what kind of field was sold...

באותן ג' שדות

If the field was one of those three fields specifically designated for her Kesubah...

3

ואחת

שהכניסה לו שום משלה

The field's assessed and written into the Kesubah, and her husband acquires all rights to them, and if he dies or divorces the field must be returned to her.

2

ואחת

שיחד לה בכתובתה

It was HIS field that he designated in the presence of עדים for HER to collect the Kesubah.

1

אחת

שכתב לה בכתובתה

It was HIS field that he specifically wrote into the Kesubah.

In these three fields, the husband's ראייה is not valid proof; and in these three fields, if a third person

לקח מן האיש וחזר ולקח מן האשה מקחו בטל

Because as the רשב"ם explains

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She primarily depends on these fields for her Kesubah above all his other fields, and therefore

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She certainly did not consent to the sale;

And even though she did write a שטר, we assume

נחת רוח עשיתי לבעלי

3

And regarding

שאר נכסים

The husband's other fields, we also say

מקחו בטל

Because

כל שכן דהויא ליה איבה

דאמר לה עיניך נתת בגירושין ובמיתה

Since all his fields are mortgaged for her Kesubah, if she would refuse the sale this would cause animosity between them, as he assumes that she is waiting for him to either die or divorce her so that she can acquire these fields.

Therefore, even though she did write a שטר, we assume that

נחת רוח עשיתי לבעלי

However, regarding

נכסי מלוג

If it was HER field that was not assessed and written into the Kesubah and which remains in her possession, and the husband merely has the rights to its פירות, here our Mishnah holds that the husband's ראייה of a שטר IS valid proof of ownership.

And in these fields, if a third person

לקח מן האיש וחזר ולקח מן האשה

מקחו קיים

The sale is effective, because

כיון דשלה הן אינה יגורה מבעלה

ויכולה למחות לבעלה שלא תמכור

Since these fields belong completely to her, she is not afraid of her husband, and she would certainly have objected if she did not agree to the sale.

=====

3

And regarding

שאר נכסים

מקחו בטל

Because

כל שכן דהויא ליה איבה

דאמר לה עיניך נתת בגירושין ובמיתה

Since all his fields are mortgaged for her Kesubah, if she would refuse the sale this would cause animosity between them,

as he assumes that she is waiting for him

to either die or divorce her so she can acquire these fields.

Therefore, even though she did write a שטר,

we assume that

נחת רוח עשיתי לבעלי

However, regarding

נכסי מלוג

If it was HER field that was not assessed

and written into the Kesubah

and which remains in her possession,

and the husband merely has the rights to its פירות,

The husband's ראייה of a שטר IS valid proof of ownership.

In these fields, if a third person

לקח מן האיש

וחזר ולקח מן האשה

מקחו קיים

The sale is effective.

because

כיון דשלה הן אינה יגורה מבעלה

ויכולה למחות לבעלה שלא תמכור

Since these fields belong completely to her, she is not afraid of her husband, and she would certainly have objected if she did not agree to the sale.

4 The Gemara now proceeds with a discussion regarding מלוג and asks as follows:
 Our Mishnah implies that regarding מכסו מלוג
 היא ראייה
 יש לאיש בנכסי אשתו
 If the husband has the proof of a שטר that his wife sold him her field, this IS valid proof of ownership, and the sale was effective.

Whereas אמרימר says
 איש ואשה שמכרו בנכסי מלוג
 לא עשו ולא כלום
 If either the husband or wife sold the מכסו מלוג the sale is not effective?

The Gemara offers two explanations;

1.
 אמרימר refers to where only one of them sold the field:
 Either,
 דזבין איהו ומיתא
 אתיא איהו ומפקא
 The husband sold his rights to the produce of the field to someone else without his wife's permission. If he dies before his wife, she can extract the field from the buyer, because it belongs to her.
 OR
 זבנה איהו ומתה
 אתא איהו ומפיק בתקנתא דרבנן
 The wife sold the field to someone else without her husband's permission. If she dies before her husband, he can extract the field from the buyer, based on a תקנתא אושא.

In both these cases
 לא עשו ולא כלום
 Each can extract the field from the buyer, because the field was sold without the other's permission.

4 Our Mishnah implies that regarding מכסו מלוג
הא ראייה
יש לאיש בנכסי אשתו
 If the husband has the proof of a שטר
 that his wife sold him her field, this IS proof of ownership,
 and the sale was effective.

איש ואשה שמכרו בנכסי מלוג
לא עשו ולא כלום

If either the husband or wife sold the מכסו מלוג
 the sale is not effective?

1

אמרימר refers to where only one of them sold the field:

OR

Either,

זבנה איהו ומתה
אתא איהו ומפיק
בתקנתא דרבנן

The wife sold the field
 to someone else without
 her husband's permission.

If she dies before her husband,
 he can extract the field
 from the buyer, based on
 תקנתא אושא.

דזבין איהו ומיתא
אתיא איהו ומפקא

The husband sold his rights
 to the produce of the field
 to someone else without
 his wife's permission.

If he dies before his wife,
 she can extract the field
 from the buyer, because
 it belongs to her.

In both these cases

לא עשו ולא כלום

Each can extract the field from the buyer,
 because the field was sold without the other's permission.

However...

דזבינו תרוייהו לעלמא

If the husband and wife
 jointly sold the field to someone else;

OR, as in our Mishnah's case,

זבנה איהו לדידה

The wife sold the field to the husband;

זבנה זבני

The sale is effective,
 because the field was sold with the permission of both.

5

2.
 In the second explanation the Gemara explains that אמימר may refer even to דזבינו תרוייהו לעלמא
 OR
 זבנה איהי לדידיה
 And this is actually a Machlokes:
 Our Mishnah holds
 זבינה זביני
 Because the field was sold with the permission of both;
 While אמימר holds
 לא עשו ולא כלום
 Because as the רשב"ם explains
 כיון שאינו מיוחד לא לאיש ולא לאשה
 אינו קרוי שדה האיש ולא שדה האשה
 Since each one has only partial ownership in the field, the wife only owns הגוף, the actual field, while the husband only owns פירות, the rights to the produce, they are not considered owners of the field, and therefore cannot sell it even together.

And אמימר bases his opinion on רבי אלעזר's opinion in a Braisa regarding a case of המוכר את עבדו
 ופסק עמו שימשנו שלשים יום
 If someone sold his slave and stipulated that he must continue to work for him for 30 days;
 The לוקח has the הגוף, he owns the actual slave; and the מוכר has the פירות, he owns the rights to all benefits of the slave.

Now, the Braisa cites four opinions as to the slave's status regarding the Halachah of יום או יומים
 One is not liable for killing his slave if the slave survived at least 24 hours after sustaining his injuries.

5

2

אמימר may refer to either...

זבנה איהי לדידיה OR דזבינו תרוייהו לעלמא

And this is actually a Machlokes:

While אמימר holds
לא עשו ולא כלום

Because as רשב"ם explains

כיון שאינו מיוחד
 לא לאיש ולא לאשה
 אינו קרוי שדה האיש
 ולא שדה האשה

Since each one has only partial ownership in the field, the wife only owns the actual field, while the husband only owns the rights to the produce, they are not considered owners of the field, and therefore cannot sell it even together.

Our Mishnah holds
זבינה זביני

Because the field was sold with the permission of both;

המוכר את עבדו

ופסק עמו שימשנו שלשים יום

If someone sold his slave and stipulated that he must continue to work for him for 30 days;
 The לוקח has the הגוף, he owns the actual slave; and the מוכר has the פירות, he owns the rights to all benefits of the slave.

The Braisa cites four opinions as to the slave's status regarding the Halachah of

יום או יומים

One is not liable for killing his slave if the slave survived at least 24 hours after sustaining his injuries.

6 רבי אלעזר holds שניהם אינן בדין יום או יומים זה לפי שאינו תחתיו וזה לפי שאינו כספו This leniency does not apply to either owner, because the Pasuk says לא יוקם כי כספו הוא כספו המיוחד לו This Halachah applies only to a slave which is the owner's exclusive property,

6 רבי אלעזר שניהם אינן בדין יום או יומים זה לפי שאינו תחתיו וזה לפי שאינו כספו This leniency does not apply to either owner, because the Pasuk says לא יוקם כי כספו הוא כספו המיוחד לו This Halachah applies only to a slave which is the owner's exclusive property, Apparently, רבי אלעזר holds that since each one has only partial ownership, they are not considered owners. Therefore, they do not have the leniency of יום או יומים.

7 The Gemara continues to discuss the Mishnah's Halachah of ולא לאיש חזקה בנכסי אשתו The Mishnah implies אינה צריכה למחות בבעלה הואיל ולית ליה חזקה A wife does not even need to make a מחאה to her husband occupying the field, because he cannot establish a חזקה anyway.

7 ולא לאיש חזקה בנכסי אשתו אינה צריכה למחות בבעלה הואיל ולית ליה חזקה A wife does not even need to make a מחאה to her husband occupying the field, because he cannot establish a חזקה anyway.

8 The Gemara asks

והאמר רב
 אשת איש צריכה למחות
 רב says a married woman must make a מחאה to one who
 occupies her field, and this can refer only to בעל, her
 husband, because regarding אחר, someone else, רב says
 אין מחזיקין בנכסי אשת איש
 One cannot establish a חזקה in a property that belongs to a
 married woman, because as the רשב"ם explains
 מציא אמרה
 על בעלי סמכתי שהוא ימחה ויערער
 ולכך שתקתי
 She can claim that she did not make a מחאה because she
 relied on her husband to make the מחאה.

Apparently, רב disagrees with the Mishnah and holds a
 husband CAN establish a חזקה in his wife's field?

The Gemara offers two explanations that there is no
 Machlokes

1.
 בבעל
 רב's Halachah does refer to the husband
 וכגון שחפר בה בורות שיחין ומערות
 The husband transformed the land by digging pits and
 caves. In this case
 צריכה למחות
 The husband can establish a חזקה, for which the wife must
 make a מחאה, because
 לפירות אשתעבד ליה ולא לקלקל קרקע
 The husband only has the rights to the produce, but not to
 ruin the land, and therefore if he did so, this would
 establish a חזקה that he bought the land.

While the Mishnah refers to
 אכילת פירות
 The husband only ate the produce but did not transform
 the land. In this case
 אינה צריכה למחות
 Because
 אין אשתו מקפדת אם יאכל הפירות שלא כדין

8



וכאמר רב

אשת איש צריכה למחות

A married woman must make a מחאה
 to one who occupies her field,
 and this can refer only to בעל, her husband,

because regarding someone else

אין מחזיקין בנכסי אשת איש

One cannot establish a חזקה in a property
 that belongs to a married woman,

because as the רשב"ם explains

מציא אמרה

על בעלי סמכתי שהוא ימחה ויערער

ולכך שתקתי

She can claim that she did not make a מחאה because
 she relied on her husband to make the מחאה.

Apparently, רב holds

A husband CAN establish a חזקה in his wife's field?

1

בבעל

The Mishnah refers to

אכילת פירות

The husband only ate
 the produce, but did not
 transform the land.

In this case

אינה צריכה

למחות

because

אין אשתו מקפדת

אם יאכל הפירות

שלא כדין

Raw refers to

וכגון שחפר בה בורות

שיחין ומערות

The husband
 transformed the land
 by digging pits and caves.

In this case

צריכה למחות

The husband can establish a
 חזקה, for which the wife must
 make a מחאה, because

לפירות אשתעבד ליה

ולא לקלקל קרקע

The husband only had the rights
 to the produce, but not to ruin
 the land. Therefore if he did so,
 this would establish a חזקה that
 he bought the land.

9

OR

2.

באחר

ר'ב's Halachah does refer to a stranger;

וכגון שאכלה מוקצת חזקה בחיי הבעל

ושלש לאחר מיתת הבעל

He began to take all the produce while the husband was

alive, and also for three years after the husband died, and

he claims he bought the field from her husband who

bought it from his wife, while she claims

בעל מכרה לו לפירות

Her husband only sold him the produce and therefore she

did not require a מחאה.

In this case

צריכה למחות

The stranger can establish a חזקה, for which the woman

must make a מחאה, because he has a מיגו,

מיגו דאי בעי אמר ליה אנא זבינתה מינך

כי א"ל נמי את זבינתה ליה וזבנה ניהלי

מהימן

Since he could have made a superior claim that he bought

the field from the wife after her husband died, for which

he would be believed through his חזקה of three years, he is

also believed with his inferior claim that he bought it from

her husband who had bought it from his wife.

9

2

באחר

ר'b's Halachah does refer to a stranger;

וכגון שאכלה

מוקצת חזקה בחיי הבעל

ושלש לאחר מיתת הבעל

He began to take all the produce while the husband was

alive, and also for three years after the husband died,

and he claims he bought the field

from her husband who bought it from his wife.

While she claims

בעל מכרה לו לפירות

Her husband only sold him the produce

and therefore she did not require a מחאה.

In this case

צריכה למחות

The stranger can establish a חזקה,

for which the woman must make a מחאה,

because he has a מיגו,

מיגו דאי בעי אמר ליה

אנא זבינתה מינך

כי א"ל נמי

את זבינתה ליה וזבנה ניהלי

מהימן

Since he could have made a superior claim that he bought it from the wife after her husband died, for which he would be believed through his חזקה of 3 years,

he is also believed with his inferior claim

that he bought it from her husband

who had bought it from his wife.