Rabbi David Grossman

Bank Accounts, CD's, Bonds, Life Insurance Plans and Stocks

ראוי or מוחזק

Overview to hal' P' Shnayim - The Double Portion

The Posuk in Parshas "Pi Shnayim" states "For the firstborn, the son of the hated one you shall recognize, by giving him a double portion, in all (assets) that is found with him...." Chazal deduce from this Posuk a limitation to the halacha of "Pi Shnayim" - The Double Portion. Although the Torah entitles the "Bechor" – the firstborn son - to twice the inheritance of each one of his brothers, this benefit is only applicable to assets which are "found with him", namely, assets which are actually in the possession of the deceased at the time of death. These assets are referred to by Chazal as "Muchzak". "Ro'uy", on the other hand, refers to possessions that have not yet actualized, even in the event that they are already owed.

Modern day financial and estate planning has created many uncertainties with regard to this issue. In order to do justice to these complex matters, and to try to sort out the opinions of the many poskim that already deal with these matters, we must first familiarize ourselves with a few fundamental halakhot.
1. If the deceased had lent money to others in his lifetime, the loan is considered ראיי and the הבור will not receive פיני שלום even if the borrower has not yet spent the money. Under the principal of מלחת החרפה אין מתונה - a loan is given to be spent, the monies are considered belonging to the borrower, and therefore any funds that are returned as repayment, are considered ראיי. This applies even if the loan has already become due prior to death.

2. A loan is considered ראיי whether it is a מלחת בטל פה - a documented loan or merely a verbal loan, based on trust.

3. If the deceased was holding a Mashkon – a collateral against that loan, it is considered מועז, even if the Mashkon was received at the time of the loan. (The גמ"א says in the name of Rav Yitzchok “בשל חות קונה משכן” - the lender acquires the collateral”. The Gemoroh proceeds to explain that Rav Yitzchok’s rule, which considers the lender, in a few specific dimensions, as owner of the collateral does not apply to a Mashkon received at the time of the loan. The reason for this is it was not taken as a potential form of collection rather as a mere guarantee). The שין explains this by calling it "שכן בשבורה בידיו" - his debt is in his hand. Therefore, even though the lender does not own this collateral in any way it is still consdered מועז since he is "holding” his debt.
4. Based on the above explanation, the רמיה disagrees with the concept of שלחא of a gentile. The רמיה's opinion is that since the concept of שלחא does not apply to an אברים it is considered מוחזק. The argues by saying that all that is necessary to be considered מוחזק is שלחא and not as we see from שלחא בֶּשֶת הלאה. Therefore even in the case of a loan to a מוחזק it would be considered מוחזק.

5. A פֶּכְדוּת ie. any object that the deceased owned which was left in the custody of his friend to be guarded or was lent or rented out is considered to be מוחזק. This is based on the principle of כל הוי דא אלברשתא דרמי איתה which means that wherever it is, the object is still considered to be in the possession of the owner (enabling him to transfer ownership etc.).

6. The רמיה states, "He who had a partnership with others is called a מוחזק.”

A. עיסקא

The Gemora (Bava Metzia 104a) talks about the Rabbinic תקונה referred to as עיסקא. An עיסקא is the authentic partnership after which the modern day עיסקא was drafted, in which רנהכפinea project which will manage with the profits being split equally. The מניה says in the name of רנהכפinea "עיסקא is one half loan and the other half פֶּכְדוּת. "explains that the risk of loss is assumed one half by the "lender" and the other half by the recipient. The מניה proceeds to explain these words
with a double מחלקות where the Gemara states two assumed applications of Nahardey’s words and Reva contest them both.

1) “Therefore it is permitted for the recipient to take his portion and purchase beer with the proceeds of the loan” – in other words, the recipient may use these funds for anything he wishes, and need not invest these particular coins in the agreed venture. Reva disagrees, declaring that the very reason we call it עיסקא is so that the lender can tell the borrower "I've given this money solely for the use of investment". רושי explains the lenders argument to mean "I would like you to have an equal interest in this investment, thereby giving me a sense of security."

2) ר ABIIN states, "And if the recipient dies the proceeds become מטלטלין- as a movable object- in regard to his children." This refers to the הלכה that a debtor may not collect his debt from any מטלטלין or movable object of the deceased. Seeing that Nahardey stated that one half of the עיסקא is a loan, this means the recipient has acquired these monies. The lender, therefore, should no longer be able to collect his debt from the היתומים. This would apply even to collecting from the עיסקא itself. Reva argues again and says "It is for this very reason we call it an עיסקא so that if he dies it shall not be rendered מטלטלין by his children."

At this point there is a fundamental לוקתמח between רושי and Reva as to what exactly was Reva’s rebuttal. רושי explains that although this is a regular loan, these מטלטלין are not subject to the דין that מטלטלין...
movable objects of the orphans are not מושבעב to the debtor. The reason that they are not subject to the above-mentioned הלכה is as follows. The entire basis for this דין is that lenders generally do not rely on מטטלים as a source of collection, for they know that מטטלים can be hidden or sold and done away with; therefore they are not מושבעב (as opposed to real estate which cannot be moved, and therefore even if sold to others is still מושבעב to the lender). Therefore, explains רשיי, since the lender gave these monies solely for the purpose of investment, as previously mentioned that the borrower may not purchase beer etc., he was certainly relying on this עיסקא for payment, and therefore he may collect from the היתומים.

The ראב"ד however explains ראב"ד's argument, with the following words, "For the deceased had given (these monies) solely to invest it, therefore when he died, it returns to its owner". From these words it seems that the רבי יז understood the mechanics of the עיסקא in an entirely different manner from רשיי. From רשיי's explanation of the Gemoroh it is clear that he views the "loan" portion of the עיסקא as an authentic loan, which is merely not subject to the rule of מטטלי. The ראב"ד on the other hand does not view it as a הלואה (loan of money) at all, rather as a פקדון (as if it was a loaned object) - although the borrower is permitted to use the object it remains at all times in the possession of the lender. He therefore explains ראב"ד's argument to be saying that the reason the lender may collect from the orphans is because it was only acquired by the borrower to invest (to use for its "fruits" or dividends). The actual money however always belonged to the
lender. When he dies, it thereby returns to its owner, which implies that it will return automatically seemingly without being subject to the collection process.

With these two opinions in mind we can begin to understand the extreme diversification of opinions regarding the question of עיסקא – מוחזק or מוחזק or מוחזק. The Rav, based on the above rules that not only is the portion considered מוחזק but even the מלוה portion is considered מוחזק. He brings as a basis to his פסק the words of Rav - who rules that the lender may take back the עיסקא from the יורשים. Seemingly, he understood the גמרא as we explained according to the ר"י, that even the מלוה portion is considered מוחזק.

The רדב ז and the יהושע פנים both rule that the מלוה portion would be rendered מוחזק and the מלוה portion would be like every מלוה. It would seem that they understood Rav's words as we explained according to רש"י, that the מלוה is indeed a מוחזק.

Others, including the ריבות דברי are of the opinion that even theрапון ריבת מוחזק. They base their פסק on the fact that when the גמרא explains why a מלוה is considered מוחזק it uses the explanation "לאו אבוהון שביקי - not these exact monies did their father (the deceased) leave over". Since the same thing can be said even about the portion of
every, it is considered רואי, since it is termed "מוחזר ביניים" - lacking collection.

B. BANK ACCOUNTS IN JEWISH BANKS.

Bank accounts in Jewish-owned banks circumvent the prohibition of usury based on the עיסקא. Based on the above, one might have assumed that with regard to the question of a firstborn son getting a double portion in the father’s estate, whether the account is considered ro’uy or muchzak would be dependent on the previous לוקתמח. However, two of the leading פוסקים of our day rule that contemporary bank accounts would not be subject to the same ruling as the עיסקא. Interestingly, though, they give exactly opposite rulings to each other.

 armour_shield שליט קליין menasha suggests that even the פוסקים who rule that bank accounts are at least one half רואי would agree that in the modern day banking system it is entirely muchצק. The reason for this is that with every other type of loan there is a risk that the borrower will tell the lender to come back (to collect) another day. This is not the case with a bank, where you can come any day and demand your deposit. This is especially true in the modern day banking system, where you can access your entire assets at any time of day by withdrawing them from a cash machine. Thus the funds are definitely considered a פקדון. ר concurs with this ruling.
C. BANK ACCOUNTS IN GENTILE BANKS AND CD'S.

Although the reasoning of the שמש תבואות would apply even where there is no עיסקא היתר, in a gentile bank there is even less reason to entertain a possibility of מוחזק. Therefore, since ר' משה פינשטיין and many other פוסקים assume that it has a דין of ראי, it seems clear that the most we can suggest on behalf of the בכור is a ספק. The consensus is that in the event that one is in doubt whether a certain situation is considered being מוץיא מוץיא_concatenated or ראי, the בכור is considered being מוץיא(concatenated) from the מוץיאconcatenated, and all the brothers would split the second portion.
Therefore regarding a regular account in a gentile bank and certainly a Certificate of Deposit, which is definitely set up as a מלח (although one could technically withdraw his deposit prior to the expiration date, and would be merely subject to penalties, even so the setup is definitely one of מלח and would not be able to take פ שטפ away from the other brothers.

D. LIFE INSURANCE POLICY:

In the event that the designated beneficiary was the בכור himself, there is no question that he would receive the entire death benefit (exactly how and why "designation" works halachically, in spite of the fact that it is a דבר שלא מביא לולהדבר is beyond the scope of the present discussion.) Similarly in the event that all the sons were listed as beneficiaries, or even if the wife was designated alongside the sons, the דין would seemingly also be that the בכור does not receive anything extra. (Whether it is permitted to deprive the firstborn of his double portion in such a manner is also beyond the scope of the present discussion). What would be, however, if there were no designation? To simplify matters let us discuss a case where the wife has already passed on and there are no daughters - the sons are thus the only parties involved.

1. TERM LIFE INSURANCE: Term life insurance is definitely considered ראוי - since this asset is worthless until death, there is no greater example of ראוי than an asset that only emerges as of death.
2. WHOLE LIFE INSURANCE: Although in regard to whole life insurance the deceased was considered to have had equity during life, there doesn’t seem to be any reason to regard this benefit as מחותך any more than a bank account.

There is a possible difference, however. As mentioned above ר בָּלֵי דְלִיט היא explains that the reason a bank account is considered ראוי is because it is known that the bank’s intention is to lend the monies to others. It is therefore considered as if he himself lent the monies, making it ראוי. Subsequently one might suggest that with a life insurance company that would generally invest the premiums paid in stocks etc. which may be מחותך, the premiums paid would have a status of מחותך.

However, this is not the case. ר בָּלֵי דְלִיט היא was merely explaining why even those who render the classic עיסקא to be מחותך, would agree that even a Jewish bank account, albeit עלי פ הרה עיסקא ראוי, would still have a דRib ראי of ראוי. A gentile bank, on the other hand, is anyway considered ראוי in which case whole life insurance has a דRib ראי of ראוי according to all.

E. PENSION PLANS:

Again we will only discuss at this point an instance in which no beneficiary was named and there is no wife or daughters to consider. There is no difference between a pension plan and a bank account, for even if the deceased were to have worked and his employer hadn't paid his wages prior
to his death, the insurance payout is exactly like a מלח וברך and the פין בשנים would not receive.

F. CORPORATE, GOVERNMENT BONDS:

When using the following definition: "Obligations of the government on private companies to repay with interest monies that were lent to it", it is seemingly obvious that at most such bonds would be considered a מלח בשטר which is very clearly considered רצוי. Although they can be sold or traded on the open market, seeing as they don't represent anything tangible (as opposed to stocks, which represent ownership of a portion of a specific company), they must be considered a loan and would have a דין של רצוי. (One may try to suggest that the actual bond, being that it has a cash value and can be traded, could be viewed as a מכסון. To substantiate such a suggestion one must contrast a bond to every בשטר which can also be sold on the open market, albeit not as easily as bonds).

G. STOCKS:

As stated previously in the name of the רמי, a partnership is considered מוחזק; therefore at first glance stocks would seemingly have a דין של מוחזק since the stockholder owns an actual piece of the relevant company. The פוסקים however raise a doubt in the event that the shareholder can not in any way actualize his portion of the company, and even more so if he does not even have any right to vote on issues.
In his sefer מנהטן מנהטן напишет דיני וויס writes a lengthy dealing with the question of whether a shareholder of a company which produces חמץ must sell his shares to a gentile for the duration of פסח. In this he goes to great length to dispute the שאלה של阪 who argues that since the shareholder cannot exercise his ownership of the said company in any way, it is not considered a true ownership, thereby making the investment merely a loan. He quotes a section of American Law that states that a shareholder has no right to collect his share of the company from any holdings of the company. Similarly, a debtor of the company may not collect his debts from any shareholder of the company. Also the liability of any shareholder is limited to the value of his shares, in contrast to a standard partnership in which each partner is liable for the entire partnership. In spite of this וויס concludes that one must sell his shares over פסח. It would appear that the same question is applicable to the דיני שנים פגי of the דיני שנים. Therefore according to וויס the בכור would receive שנים פגי. In addition one could add that the argument that even if it was considered a loan the actual stock certificate can be deemed a מシアח since it has an inherent value, which would further the argument that it is considered מシアח (albeit only according to the opinion of the ש"ך, since it is a מシアח from an ע"כ-see overview section 4).
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