אבל כתוב עיטרא קלא אית ליה – However if a contract of division of labor **was written up,** then **it is publicized.**

Overview

An עיטרא is a contract describing the rights of (two) partners in whatever they may own in a partnership. Our גמרא states that if an עיטרא is written up, it is assumed that its content will be public knowledge. No one will be able to claim that he was not aware of the partnership. תוספות will cite a גמרא which seems to contradict this assumption.

תוספות anticipates a question:

והא דאמר בהמפקיד (בבא בציעא לט,א ושם (ע"ב) ד"ה לא) – And that which the גמרא **states in** פרק **המפקיד –**

גבי אין מורידין[1] לנכסי קטן – concerning the rule that **we do not** allow relatives of a minor to administrate and **descend into the estates of a minor,** which the minor received as his share of an inheritance. The reason given there is because we are concerned that if the relative will be administrating these fields, he may make a חזקה in these fields and claim them as part of his inheritance; since this relative is also an heir to these properties. The גמרא there concludes that this rule is valid –

לא שנא עביד עיטרא – regardless if an עיטרא was **written up –**

לא שנא לא עביד – or if an עיטרא **was not written up;** in either case –

אין מורידין – we do not allow any relative to **descend** and administrate the estate of the minor. Even if there is an עיטרא document that clearly states which properties belong to the minor and which belong to the relative, nevertheless we do not allow the relative to administrate the properties of the minor. The question is; we say in our גמרא that if an עיטרא is written up, then the partnership is well publicized so that everyone knows that it belongs to both partners. Why, therefore, by the קטן if there is an עיטרא written up, do we not allow his relative to administrate his properties? Seemingly there is nothing to be concerned about! Everyone knows which properties belong to the קטן!

תוספות replies:

גבי יתמי החמירו (ועיין עוד תוספות גיטין כח,א דיבור המתחיל והניחו) – Concerning orphans who are minors **they were more stringent.** Minor orphans are completely defenseless; בי"ד must protect their rights with extra diligence. Therefore even though usually an עיטרא provides sufficient publicity; nevertheless there is an outside chance that in this case with the orphans, the עיטרא will not provide the protection needed, therefore בי"ד will not allow any relative to administrate the properties of the minor orphans, lest he claim them as his own inheritance.

Summary

[1] The רש"ש inserts the word 'קרוב'.

An עיטרא, while able to publicize a partnership, is however not considered sufficiently reliable in the case of minor orphans. Therefore a relative is not permitted to administrate the properties of a minor orphan, lest he claim them as his own.

Thinking it over

Seemingly we could answer תוספות question in a different manner. An עיטרא establishes that there was a partnership. Therefore in our גמרא it prevents the מערער from claiming that they did not make a proper חזקה since they were alternating years. However in the case of minor orphans there is a different concern. Granted that we know that the orphans had a share in the property, however the relative may claim that he bought it from them (after they grew up). The עיטרא cannot protect against this claim. Therefore אין מורידין לנכסי קטן at all!