

## 23.3.2

24a (משנה ב') → 24b (אין לאחר קנין כלום)

- I בע"ד two parallel disputes ר"מ/חכמים regarding rights of litigants (*Note (רב יוסף)*: only applies when the recanting בע"ד originally accepted the "unusual" when there was only 1 דיין, now that there are 3, he wants to change his mind)
- a *If*: one accepts an invalid witness (a קרוב or 3 shepherds, i.e. פסולים)
- i ד"מ: he may recant
  - ii חכמים: he may not recant
- b *If*: one "forgives" an oath and allows his בע"ד to take a נדר instead
- i ד"מ: he may recant
  - ii חכמים: he may not recant
- II Analysis
- a Context of "flexibility"
- i שמואל: dispute only applies when the "forgiver" said that he would forgive a debt owed him based on the testimony of the פסול או קרוב (or the נדר), but if he committed to pay based on it, all agree that he may recant
  - ii ר' יוחנן: dispute applies when he agreed to pay
    - 1 *Question*: does ר' יוחנן mean that the dispute is *only* in a case where he committed to pay, but if he committed to forgive all agree that he may not recant?
      - (a) *Or*: does he maintain that the dispute applies to both מחול לך and אתן לך?
      - (b) *Suggested proof*: רבא claimed that the dispute is only in a case of אתן לך, but not מחול לך (all agree that he may not recant) → רבא must follow ר' יוחנן and he must have limited dispute to אתן לך
        - (i) *Rejection*: רבא was stating his own opinion, not reflecting ר' יוחנן's
        - (c) *Challenge (to רבא)*: section (b) of the משנה allows for "forgiving" an oath
          - (i) *We assume*: case is of someone who swears to avoid payment, parallel to מחול לך – and they disagree!
          - (ii) *Counter*: case is someone who swears in order to collect (אתן לך):
            1. *Challenge*: if so, same dispute taught twice
            2. *Answer*: one is a case of relying on others (עדים פסולים/קרובים); other is relying on himself (litigant)
              - a. *Justification*: if we only had בעצמו תולה בדעת עצמו ר"מ that סד"א, תולה בדעת עצמו ר"מ limits his ability to recant to there, as he never really fully accepted the דיין; (& flip)
- b Timing of "flexibility"
- i ר"ל: dispute only applies if he recants during judgment, after גמ"ד all agree that he can't recant
  - ii גמ"ד: dispute applies after גמ"ד
    - 1 *Question*: does ר' יוחנן mean that the dispute is *only* after גמ"ד, but if during דיין all agree that he may recant?
      - (a) *Or*: does he maintain that the dispute applies to both לפני גמ"ד as well as לאחר גמ"ד?
      - (b) *Proof*: רבא explicitly ruled that he may recant before גמ"ד, but not after
        - (i) *Ergo*: רבא must have ruled like ר"י (according to רבנן) → dispute is only after גמ"ד
        - (ii) רבנן ר"מ wouldn't be ruling like ר"י *contra* רבא דש"י
- c *Final ruling(s)*:
- i *Version 1*: message sent from בר יעקב ר' נחמן בר יעקב: dispute is after גמ"ד and הלכה כחכמים (can't recant at that point)
  - ii *Version 2 (רב אשי – as per סורא version)*: dispute is in case of אתן לך, and הלכה כחכמים
  - iii *Version 2 (רבי חנינא בר שלמיא – as per פומבדיתא version)*: שמואל was asked (by רב) – if he had made a קנין on the agreement to be "flexible" and then recanted before גמ"ד – may he recant?
    - 1 *Answer*: once there is a קנין, nothing can come later to annul it