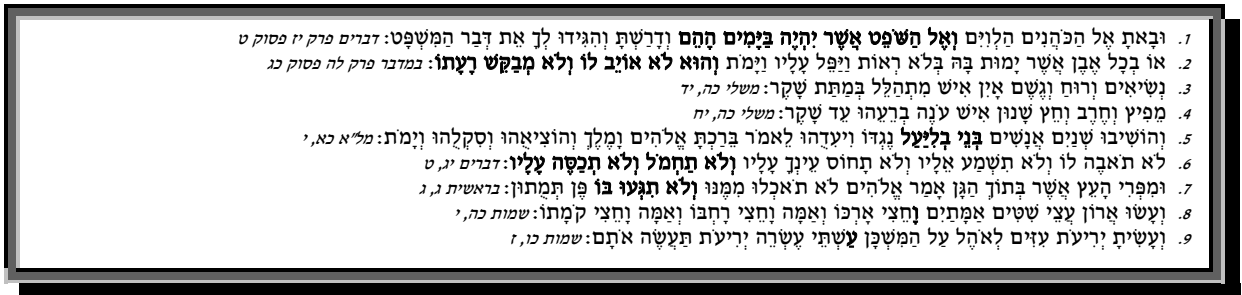


23.3.6

28b → 29b (כבר הורה זקן) → (חורגו)



- I Continued analysis of ד' משנה (alone)
  - a apparently reflecting ר' יוסי and ר' יהודה agreeing that both חורגו and גיסו are "solo"
    - i Rejected: our משנה follows neither
    - ii Rather: ר' יהודה claims only חורגו is "solo" (:משנה), ר' יוסי extends to גיסו (~משנה)
  - b Final ruling (שמואל) follows ר' יוסי (that only inheriting relatives are פסול)
    - i Case: ר' יוסף tried to confirm a שטר with two brothers-in-law signed as עדים (as per ר' יוסי)
      - 1 Support: שמואל ruled like ר' יוסי
      - 2 Challenge (אב"י): perhaps he meant ר' יוסי of the ברייתא (extending "solo" status to גיסו)
        - (a) Response: שמואל gave an example of he and פנחס (his brother and גיס [they married sisters])
        - (b) Counter (אב"י): perhaps he meant that as brothers-in-law they were פסולים?
        - (c) Solution (ר' יוסף): give the שטר in the presence of ר' מסיירה as per ר' יוסף
        - (d) Block: ר"א invalidates a שטר that is מזויף מתוכו (deal failed)
- II Final ruling in dispute with ר' יהודה in case of קרוב ונתרחק
  - a הלכה כר"י: רב (still invalid)
  - b אין הלכה כר"י: ר' יוחנן and ר"נ (valid)
    - i Alternate version: ר' יוחנן ruled like ריב"ל (v. 1) that קרוב ונתרחק is כשר
    - ii Story: קרובים שנתרחקו מר עובקא invalidated –not because הלכה כר"י (it's not), but they didn't respect his דין פסקי
- III Source for 'ה משנה – ר' יהודה's opinion that אוהב (defined as best man, during week – or just day – of wedding) and שונה (de-fined as someone who hasn't spoken with the בע"ד for 3 days due to enmity) are פסול and רבנן's dissent
  - a Source: v. 2 – which is extended to אוהב by reason of symmetry
    - i דב"ד: one מעוט is used for דיין, other to teach lesson about 2 scholars who always fight – cannot serve on 1
- IV 'ה משנה: process of hearing testimony
  - a First: they gather them and frighten them (vv. 5-7)
  - b Second: everyone is excused except eldest/greatest; they ask him how he knows that the defendant is חייב to תובע
    - i If: he answers that he heard נתבע admit it – or another told him – this is ignored
    - ii But if: he testifies that the נתבע admitted to the תובע in his presence - accepted
      - 1 Note: this supports רב יהודה who reported רב בשם רב that the לוה must assign and recognize the עדים
        - (a) Support: ר' יוחנן's ruling about "hiding witnesses" – if "confessing" לוה responds "just kidding" – פטור – "just kidding" – if he denies having admitted – he is now a liar (עדים heard him)
        - (i) אב"י: only if he says "just kidding"; if he denies having admitted – he is now a liar (עדים heard him)
        - (ii) Rejection (רבא): when someone says something that he doesn't mean, he doesn't remember saying it
      - (b) Stories: of מלוים who hid witnesses and tried to get לוים to agree to testimony – when they said "no" – found to be rejected and witnesses (who were lying in hiding) could not testify
        - (i) Inference (ר"פ): if the מלוה says עדיי אתם and the לוה is silent = acquiescence → valid
      - (c) Story: man was called "שטרות holder"; protested that he only had one, but then denied that debt
        - (i) ר"נ: a person may wish to present himself as less wealthy than he is → believed
      - (d) Parallel: with heirs; where we deny notion that עשוי להשביע את עצמו – they paid ½
        - (i) Counter: ר' חייא extended principal to heirs, they kept ½, but he refused to revisit 1st case – כבר הורה זקן
    - 2 Note: addendum to ר' יוחנן's ruling – we do not advance arguments for a מסית (?)
      - (a) Clarification: text added that we are not טוען for someone (who isn't טוען himself) in ממונות
        - (i) But: we are טוען in דיני נפשות – except in case of מסית, as per v. 6 and v. 7 (נחש)
      - 1. Tangent: v. 7 (and vv. 8-9) are examples of גורע כל המוסיף
- iii Then: we check other witnesses; if they are in agreement, ד' discusses matter and votes
  - 1 If: it is 2 vs. 1, ruling follows 2; but if 1 says "I don't know", even if other 2 agree, they add דינים