

23.3.7

29b (משנה ז') → 31a (דין גליא רזיא)

1. לא תלך רכיל בעמיתך לא תעמד על דם רעך אני ה' ויקרא יט, טז
 2. הולך רכיל מגלה סוד ונאמן רוח מכסה דבר: משלי יא, יג
 3. ונפש כי תחטא ושמעה קול אלה והוא עד או ראה או ידע אם לוא יגיד ונשא עונו: ויקרא ה, א
 4. לא יקום עד אחד באיש לכל עון ולכל חטאת בכל חטא אשר יחטא על פי שני עדים או על פי שלשה עדים יקום דבר: דברים יט, טו

- I שטר אודיתא – a שטר confirming admission of a debt
- a *If*: he admist in front of 2 and makes a קנין – they may write it
 - b *But if*: he admits in front of 3 but does not make a קנין
 - i דב: we write it
 - ii דב אסי: we don't write it (although רב, in practice, took אסי's opinion into account and didn't allow it to be written)
 - c *Conditions for writing*:
 - i דב אידי בר אבין: if the 3 were already sitting, we don't write; but if the בע"ד gathered them – we do
 - ii דבא: even in that case we don't write until the בע"ד says to them הו עילי דיני
 - iii מר ב"ר אשי: even that is not enough – unless they sit (formally) and send him a הזמנה
 - d *Object of admission*:
 - i *If*: it is מטלטלין - he must make a קנין on the admission for them to write
 - ii *But if*: קרקע – אממר – we don't write without a קנין; מר וטורא – we do write – הלכה
 - 1 *Question*: what if it is מטלטלין that are visible?
 - (a) דבינא: similar to קרקע (we write, even without a קנין)
 - (b) דב אשי: since they haven't yet been collected – still considered מטלטלין
 - e *Proper language of שטר אודיתא*:
 - i *Even if*: it is missing a proper ב"ד formula– valid, as per ר"ל's חוקה that עדים don't sign on a שטר unless it was properly executed (בע"ד was an adult) :: דיינים won't sign unless they were properly commissioned
 - 1 *Suggestion*: if an אשרתא is missing the formula "there were 3 of us and one is no longer (dead)" – parallel
 - (a) *Rejection*: רבא ruled that such a שטר is invalid – we are concerned about טועין ב"ד
 - (i) *But*: if they wrote "בי דינא", valid, as long as we can be sure it was done properly
 - 1. e.g.: "בי דינא דרב אשי" and "ר אשי" instructed us to write thus..."
- II בריתא – other circumstances where admission may be believed/accepted
- a *If*: a man points to a cache of money hidden by heirs' father and he identifies it as belonging to פ' or מע"ש
 - i *If*: he is near the box (in the field) – believed (מיגו he could have given it himself)
 - ii *But if*: he is away (e.g. in the house) – not believed and they can keep it
 - b *If*: they saw father hiding money and he told them it belonged to פ' or מע"ש
 - i *If*: he seemed to be informing them – believed
 - ii *But if*: he seemed to be obfuscating – not believed (they may keep it)
 - c *If*: the heir was troubled that he couldn't find moneys left him by his father
 - i *And*: he was shown the location in a dream and told that they belong to פ'
 - ii *Result*: he may keep them – dreams are of no consequence in such cases
- III Analysis of last clause of משנה – writing פסק דין
- a ר' יוחנן: they simply write the result
 - b ר"ל: they identify which דיינים ruled which way
 - c ר"א: they identify it as a dispute, but anonymously
 - i *Split the difference*: whether dissenting member must pay in case of ב"ד error (ר"י – pay; ר"ל – exempt)
 - 1 *Rejection*: even ר"י shouldn't obligate him to pay – he can argue that had they listened to him, they'd be פטור
 - ii *Rather*: whether the 2 have to pay 1/3 each or make up the missing 1/3 (and each pays 1/2)
 - 1 *Rejection*: the 2 can tell #3 that had he not joined them, they wouldn't be liable; they shouldn't pay his 1/3
 - iii *Rather*: they disagree about v. 1; ר"י is concerned about them; ר"א is more concerned about the appearance of dishonesty if it doesn't properly record who voted which way; ר"א takes both concerns into account

- IV 'משנה ז' (included with 'משנה ו' on כט.) announcing decision
- a *First*: they bring "them" in; the eldest דין announces the פסק
- i *And*: once done, they may not tell the בעלי דין how each one voted as per vv. 1-2 (see above)
- ii *Discussion*: "who" is brought in
- 1 *Cannot be*: בעלי דין – they should be standing there
- 2 *Must be*: עדים
- (a) *Note*: this is *contra* opinion of ר' נתן, as follows:
- (i) *עדים* need to see transaction together
1. *דיב"ק*. even if they saw it at different times (discussed below) - valid
- (ii) *And*: they must testify together
1. *ד' נתן*. even if they come on different days; ב"ד records their testimonies
- 3 *Rather*: must be בעלי דין; as per נחמיה
- (a) *Process*: when deliberating, בעלי דין and עדים are excused from chambers
- V Revisiting the two disputes; ריב"ק/חכמים about witnessing and ר' נתן/חכמים about presenting testimony
- a ריב"ק/חכמים: dispute may be grounded in text or reasoning
- i *Reasoning*: each one saw a different מנה (being lent or being admitted to)
- 1 *דיב"ק*. nonetheless, in sum we have 2 witnesses testifying about 1 מנה
- ii *Text*: from v. 4, we know that every mention of עד means "2" → v. 3 refers to 2, described as 1
- 1 *דיב"ק*. rest of v. 3 (ראה או ידע) expands to allow for independent witnessing
- b ר' נתן/חכמים: dispute may be grounded in text or reasoning
- i *Reasoning*: each single witness that comes only comes to generate שבועה
- 1 *ד' נתן*. even when they come together, they testify separately
- ii *Text*: v. 3 juxtaposes testifying to seeing; and both ר' נתן and חכמים accept position *contra* ריב"ק
- 1 *ד' נתן*. rejects analogy by juxtaposition
- (a) *Story*: ר' יוחנן from ר' יוסי בר חנינא סמיכה for ר' שמעון בן אליקים
- (i) *Note*: implication – if a great man gives סמיכה - even based on being misled – it isn't revoked
- c *final ruling*:
- i מטלטלין follows ריב"ק, only in case of קרקע but not קרקע
- ii *Challenge* (אב"י): implying that רבנן disagree about קרקע?
- 1 *Explanation*: several reports that רבנן concede to ריב"ק in case of קרקע
- (a) *And*: from ב"מ's קרנא – they agree in re: קרקע, חזקה, שתי שערות and about שתי שערות
- (i) *Clarification about שערות*: if one saw שתי שערות on one side; another saw two on the other
- iii מטלטלין follows ריב"ק in קרקע as well as קרקע (according to ר' יוסף): עולא
- 1 *Dissent*: רב is reported as limiting it to קרקע
- (a) *Consistency*: רב holds that they only "join" if הודאה follows הודאה or loan; if loan is 2nd – לא מצטרפין
- (b) *Observation*: הודאה אחר הודאה seems to be the same as הודאה אחר הודאה
- (i) *Defense*: in case of two הודאות, they could have been about 1 loan, each עד was notified about other
1. *But*: if so, הודאה אחר הודאה is the same as הודאה אחר הודאה
- iv ריב"ק: they are מצטרף, no matter what the sequence – as per גהרדעי
- VI Conflicting testimony
- a דיני ממונות is valid in דיני נפשות
- i דיב"ק: stands to reason only in case of incidental testimony (e.g. color of pouch) but not essential (e.g. color of coin)
- 1 *Challenge*: incidental inconsistencies don't invalidate דיני נפשות
- (a) *Proof*: ר' חסדא – if there is a conflict about the weapon – פסול; if about the color of killer's clothes – כשר
- (b) *Answer*: רבא may disagree with ר"ח
- b גהרדעי: even an essential contradiction (e.g. color of coin) is acceptable – seems to follow ריב"ק
- i *Block*: ריב"ק only stated his rule when there is no contradiction
- ii *Rather*: follows רשב"א's version (2 כותות) of the dispute ב"ש/ב"ה when עדים testify that he owes 200 or 100
- 1 *ג"ש*: no testimony
- 2 *ג"ה*: 200 includes 100 – he owes 100
- (a) *Parallel*: barrel of oil/barrel of wine - case where ר' אמי accepted עדות based on רשב"א
- (i) *Block*: רשב"א only applied this when one is subsumed under other (200 includes 100)
- (ii) *Answer*: for value
- (iii) *Parallel*: if one testifies that the loan took place on 1st story, other on 2nd; מצטרפים
- VII Story relating to end of משנה: member of ב"מ divulged secret after 22 years and he was expelled as a "מגלה סוד"