

22.9.9

148a (קא מגמרי טענתא לאינשי ומפסדי לי) → 149a (איבעיא להו דקל לאחד)

- I Continued discussion of laws of מתנת שכ"מ from נחמן של ר' נחמן
- a *If*: someone gifts a tree to one and the פירות to another, is there a שיוור in the first gift to allow the פירות to be gifted?
- i *If*: we don't allow for room for another to get פירות, what if he left them for himself?
- ii *Answer* (ר'בא בשם ר'נ): he leaves room for himself – everyone leaves for himself generously
- iii *Note* (ר' אבא לר' אשי): comment was learned as a gloss on רשב"ל:
- 1 רשב"ל: if someone sells a house contingent upon keeping the upper balcony – valid
- (a) *If*: he sells a house and the דיוטא עליונה to another – is there "room" for the דיוטא to be sold separately?
- (b) *Answer* (ר'בא בשם ר'נ): even if there isn't room to sell ד"ע to another, חוץ מד"ע is a שיוור (as above)
- (i) *And*: according to ר' זביד (סא), he may put out beams from the ד"ע
- b *If*: שכ"מ assigned all of his property
- i *If*: he was dividing it up
- 1 *If*: he dies – valid
- 2 *If*: he recovers – gets it all back
- ii *But if*: he changed his mind (from one recipient to the next)
- 1 *If*: he dies – valid
- 2 *If*: he recovers – can only reclaim last gift
- (a) *C challenge*: perhaps he wasn't rethinking but considering to whom to give
- (b) *Answer*: in a usual case of שכ"מ, he thinks it out first before beginning to give away his estate
- c *If*: a שכ"מ assigned everything and then recovered – doesn't retract gift (
- i *Reason*: we suspect that he may have property elsewhere
- 1 *Challenge*: our משנה
- 2 *Answer*: our משנה is a case where he said כל נכסי OR where we have witnesses that he has no other property
- II Series of questions about מתנת שכ"מ
- a *If*: a שכ"מ, who gave everything away, recanted part of the gift – does that retract the entire gift?
- i *Proof*: if he gave all to A, then gave some to B – B gets that portion, A gets nothing
- 1 *Isn't this*: a case where he died? (proving that חזרה בכלולה)
- 2 *Rejection*: this is a case where he recovered – proved from סיפא:
- (a) *If*: he gave some to A then all to B – A gets his part and B gets nothing
- (i) *But*: if he died, both should get their part (B should get everything beyond A's part)
- (b) *Block* (ר' יימר): he could have recovered – since partial חזרה=full חזרה, that's why B gets (in רישא)
- (i) *But*: if partial חזרה ~full חזרה, it should be considered like מחלק and no one should get
- ii *Final analysis*: partial חזרה=full חזרה; חזרה רישא could be either recovered or dead; סיפא could only be case of recovery
- b *If*: he was מקדיש everything, or made it all הפקר or gave it all to צדקה and then recovered – is there גמ"ד תיקו
- III Valid formulations for מתנת שכ"מ
- a ריב"ב – all valid; ירת – ברייתא; יתול, יזכה, יחזיק, יקנה: ר' ששת
- i *Question*: is לשון מתנה בהן, יעמוד בהן, ייראה בהן, יהנה בהן – a valid מתנה
- IV Further questions about שכ"מ
- a *If*: he sold (instead of gifting) his entire estate and recovered – can he retract the sale?
- i ר' יהודה בשם ר'ב: sometimes said he may, sometimes that he may not
- ii *Resolution*: if the cash is still around, he may retract; if he sold to pay off a debt, he may not retract
- b *Is*: an admission (הודאה) of a שכ"מ satisfactory for a קנין?
- i *Proof*: story of איסור גיורא whose son, ר'ב מרי, was conceived before איסור converted (→not a יורש) and had deposited coins with ר'בא, who wanted to acquire them at איסור's death; he considered the various ways ר' מרי could get them (ר'בא was at the time)
- 1 בר ירושה – not a ירושה
- 2 תקנת חכמים – only applies to someone who is a בר ירושה, as per מתנת שכ"מ
- 3 משיכה – he's not there to perform משיכה
- 4 אין מטבע נקנה בחליפין (חליפין) – cannot acquire coins via חליפין
- 5 קנין אגב – קנין איסור – קנין אגב
- 6 מעמד שלשתן (ר'בא, איסור גיורא, ר' מרי)
- (a) הודאה) ר' מרי איסור admit that they are owned by ר' מרי (הודאה) ר' מרי איסור
- (i) *Indeed*: that's what they did, and ר'בא was upset that people coached איסור and caused him to lose