

23.3.1

23a (משנה א') → 24a (תלמודה של בבל)

1. וארעה את צאן ההרנה לכן עניי הצאן ואשח לי שני מקלות לאחד קראתי נעם ולאחד קראתי תבלים וארעה את הצאן: זכריה יא, ז.
 2. ואמר אלה שני בני היצהר העמדים על אדון כל הארץ: זכריה ד, יד.
 3. ואשא עיני וארא והנה שתיים נשים יוצאות ורוח בכנפיהם ולהנה כנפים ככנפי החסידה ותשאנה את האיפה בין הארץ ובין השמים: זכריה ה, ט.
 4. במחשכים הושיבני כמתי עולם: איכה ג, ו.

- I דיינים or עדים and nullification of ב"ד and selection of ר"מ and מ"מ: משנה א'
- a If: the disputants agree to do so, each one chooses a דיין, and the third is chosen by
- i ר"מ: both the בעלי דין and the דיינים 2
- ii חכמים: the two דיינים alone
- 1 As per: the custom of ירושלים, not to join as עדים or דיינים (or a meal) without checking into their co-officiants
- b Invalidating judges:
- i ר"מ: each one may invalidate the other's judge(s) (discussed below)
- ii חכמים: may only do so with proof that he is פסול או קרוב; but if they are כשרים or מומחים לרבים – may not invalidate
- 1 Question (on ר"מ): how could he arbitrarily invalidate a דיין?
- (a) יוחנן: only applies in ad hoc courts in Syria; but מומחים may not be summarily invalidated
- (i) Challenge: from חכמים's response → ר"מ even allows for מומחים
- (ii) Response: they mean that if the דיינים are "כשרים", they should be considered as מומחים
1. Challenge: חכמים's response to ר"מ is geared towards מומחים דיינים (ברייתא supporting)
2. Answer: they meant דיינים that the public accepted as מומחים (supporting)
- 2 Question to ר"מ: aren't עדים: מומחים:: (i.e. can get no more credulous) and ר"מ allows דיינים (below)
- (a) Answer 1 (ליל): read ערו (he can only invalidate if there is 1 witness)
- (i) Question: what is the 1 עד coming for? Cannot be ממון – already מה"ת פסול; cannot be שבועה – שר מה"ת – שבועה
1. Must be: when he originally accepted the one as an ממון, then recanted (as per ב' משנה) – justified
- (ii) Challenge; the language of the משנה is exact – and it speaks about 2 עדים (as distinct from 1 דיין)
1. Answer (א'): the בעל דין and another are invalidating עד
- a. Challenge: he is נוגע בעדות (has an interest in invalidating) – should be פסול
- b. Answer: they are claiming an inherent פסול (פגם משפחה)
- i. ר"מ: testimony is about עד, indirect result is his עדות in this case being ignored out
- ii. דבנן: in any case, he is נוגע בעדות as the immediate result affects his case
- (b) Answer 2 (ר' דימי as per ר' יוחנן): case - בע"ד had 2 sets of עדים (and the other בע"ד invalidates the 1st)
- (i) ר"מ: צריך לברר – therefore his invalidating the 1st כת won't affect outcome (not נוגע בעדות)
- (ii) א"צ לברר דבנן – therefore his invalidating 1st כת may affect outcome (if 2nd כת don't show, are פסול etc.)
1. Question: what if 2nd כת are then found to be invalid?
- a. Answer (ר' אשי or ר' י): the עדים הפוסלים were already accepted – both groups are now "out"
2. Note: this seems to parallel dispute רבי/רשב"ג about a defense of חזקה w/טר/שטר
- a. דבי: must (also) clarify שטר
- b. דשב"ג: no need to clarify שטר
- i. Rejection: even רבי may agree that here, no need to clarify; there, חזקה is built on שטר
- (c) Answer 3 (רבין as per ר' יוחנן): this clause is a case where he invalidates עדים and that is substantiated
- (i) Therefore: since he is believed about עדים, we allow him to invalidate דיין
- (ii) Last clause: inversion – he claimed דיין was invalid and was proved right – מיגו...
1. Challenge (רבא): not parallel; in case he invalidates דיינים, there are other דין בתי; but no other עדים
- a. Answer: in this case, there were 2 כתי עדים
- i. Challenge: then רבין's case is essentially the same as דימי ר' version
- ii. Answer: they disagree about use of מיגו for invalidation
- c Invalidating witnesses:
- i ר"מ: each one may invalidate the other's witnesses (also discussed below)
- ii חכמים: may only do so with proof that he is פסול או קרוב; but if they are כשרים, may not invalidate
- II Coda: (referring to ר"ל's humble words about ר"מ) – contrast of kindness and collegiality of חכמי א"י with the haughtiness and roughness of בבל חכמי (vv. 1-3)
- a Note: ר' יוחנן explained "בבל" as "mixed up with גמרא" (praise?)
- b Note: v. 4 – "darkness" is applied to בבל תלמודה של