

32.6.1

21b → 22b (דאחזוקי סהדי בשקרי לא מחזקינן) (משנה או)

- I 10 משנה: duration of public auction – morning and evening for property sales to pay off debts
- a Orphans (minors): 30 days
- i Note: this follows ר"מ (יהודה) holds 60 and 90 for הקדש; חכמים hold 60 for each
- 1 However: ר"מ elsewhere is quoted as ruling 60 days for יתומים
- 2 Resolution (אבימי from ר' חסדא): if they only announce on ב' – 60 days (19 times); if every weekday – 30 days
- (a) Even though: the 60-day system leads to far fewer announcements; since there is more time – valid
- b הקדש 60 days
- c Timing: announcements – made morning and evening
- i Reason: to allow interested party to ask workers, on their way out, to investigate property in question, then to check with them when they return at the end of the day
- ii Support: ברייתא, following our משנה, explains that interested buyer indicates to workers the exact location and markings of the field in question and the asking price
- 1 Note: ברייתא concludes with announcement that it is being sold to pay off בע"ח or כתובה
- (a) Reason: some may prefer to pay בע"ח, who will take lesser coins
- (i) But: others may prefer to pay כתובה, where אשה may be willing to take money in installments
- II Limitations on selling נכסי יתומים (when they are minors)
- a דב אסי only if רבית is "eating" into loan
- b יוחנן רבית or if the widow is collecting her כתובה
- i דב אסי does not allow in cases of כתובה, since her wages go to the orphans, they are not losing (due to מזונות)
- ii דב יוחנן it is possible that her מעשה ידים come out to less than her food bill → loss for יתומים
- c Challenge1: our משנה – we sell יתומים property (after 30 or 60 days of announcing)
- i Proposal: if בע"ח is a non-Jew, he won't heed us to wait that long for payment
- ii Therefore: must be a ישראל – but if he is charging interest, we won't allow him to collect it
- 1 Note: ר' יוחנן could answer that the case in our משנה is כתובה; אסי ר' is challenged
- (a) Challenge: even ר' יוחנן would be difficult; why would we take away מזונות, which is a sure-bet, for הכרזה – which may or may not bring in a good price?
- (b) Answer: that could be per שמואל – once she claims כתובה, she immediately forfeits מזונות
- (i) Challenge: if so, we shouldn't attend to her request at all (and leave her without מזונות or collection)
- (ii) Answer: once we attend to her (for her claim, negating מזונות) we attend all the way through
- iii Answer: אסי ר' could explain that the בע"ח is a non-Jew, who accepts the waiting period (מדיני ישראל) but not רבית
- d Challenge2: rule that when seizing property of יתומים, only זיבורית is taken
- i Circumstance: as above – cannot be בע"ח who isn't Jewish – he wouldn't heed us to collect only זיבורית
- ii Must be: Jewish בע"ח – but if he isn't collecting רבית (which we wouldn't allow) – why collect at all?
- 1 Note: ר' יוחנן could answer that the case here is כתובה; אסי ר' is challenged
- (a) However: even ר' יוחנן is challenged – since all כתובות are collected from זיבורית
- (b) Defense: could follow ר"מ – כתובה is generally collected from בינונית
- iii Answer: אסי ר' could explain that the בע"ח is a non-Jew, who accepts collecting זיבורית (מדיני ישראל) but not רבית
- e Challenge3: in ברייתא (above), we announce that the collection is for בע"ח or for אשה בכתובה – challenge to אסי ר'
- i Answer: could be a case where the father admitted to the debt before he died
- ii Note: that answer could be used to defend אסי ר' against all three challenges
- f Story: מרימר collected land from יתומים to pay off father's כתובה to his גרושה
- i Challenge (דבינא לאמימר): per אסי ר' and יוחנן ר' – no permission to do so (even ר"י only allowed אלמנה due to מזונות)
- ii Answer: other tradition regarding יוחנן ר' ruling – it is due to חינא (making her a more attractive bride)
- g דב נחמן originally wouldn't touch יתומים's property, until he heard of רב's curse towards יתומים who owe
- i Reason: ר"י's reason for not addressing their property at all
- 1 דב since paying the בע"ח is a מצוה, minors are not obligated
- 2 דב בריה דר"י perhaps father gave the בע"ח (e.g.) collateral for collection and they don't know about it
- (a) Split difference: if father admitted the debt on his deathbed or if he died in contempt of ב"ד for not paying
- (b) Ruling (from א"י): if he was בשמתא, we collect – per ר"י בריה דר"י

- (c) *Testing*: explanations of ר"נ against our משנה
- (i) ל"ה בריה דר"י is easily explained – case where father admitted to the debt
- (ii) ד"פ cannot explain the משנה
1. *Answer1*: could be a כתובה, if we accept חניא as the justification
 2. *Answer2*: could be a non-Jew who won't heed ב"ד regarding collecting from minors, but will heed ב"ד regarding the waiting period
- (d) *Testing*: explanations of ר"נ against ברייתא (above – both בע"ח and כתובה are invoked)
- (i) ל"ה בריה דר"י is easily explained – case where father admitted to the debt
- (ii) ד"פ must explain it as בע"ח who is non-Jewish – but then he wouldn't heed us
1. *Answer*: as above, a non-Jew who will heed ב"ד regarding the waiting period, but not to wait until they reach majority
- 3 דבא due to a possibly missing שובר (receipt)
- (a) *Challenge*: we don't raise that as a concern
- (i) *Per*: ז: שבועות – if she comes to collect כתובה in husband's absence, cannot collect without a שבועה
1. ד' יצחק נפחא – we only allow this for אשה – due to חניא, not for בע"ח (must wait for return)
 2. ד"נ even בע"ח
 - a. *But*: if we are concerned about a missing שובר – we should be concerned here as well
 - b. *Answer*: in this case, we allow collection to prevent people from borrowing money and disappearing and being "untouchable"
- h *Final ruling (דבא)*: we do not seize נכסי יתומים
- i *However*: if father instructed them to pay ("תני"), we follow through on his wishes
- 1 *And*: if he directed a particular field or coin for payment ("כסף זה", "שדה זה") we do not appoint אפוטרופוס
 - 2 *But*: if he didn't identify a particular field or coin – we appoint an אפוטרופוס
- ii *נהרדעי* even if he directed a specific field or coin, we appoint an אפוטרופוס
- 1 *Except*: in a case where we find the field not be theirs (stolen)
 - (a) *Reason*: we do not assume the witnesses (of the theft) to be liars
- iii ד' אשי therefore, we do not seize their property, per רבא
- 1 *But*: in those cases where we seize it, we always appoint an אפוטרופוס, per נהרדעי
 - 2 *Except*: for a stolen field, per concern about protecting integrity of witnesses