

14.2.3

17b (משיב אבידה הוי) → 18b (ומודה ר' יהושע)

- I. Analysis of משה "concession" in the הושיע ר' יהושע
- a. Question: why not use case of X admitting to Y that field was Y's and he bought it from him?
    - i. Answer: due to סיפא – if there are witnesses etc. which cannot play out with above claim
      1. Explanation: if X has been on the field 3 years (שני חזקה) – why not believe him; if not, it's obvious that he's not believed (that's the definition of מחאה)
      2. Clarification: in case that is brought (father), could have had 2 years of חזקה while father was alive and 1 afterwards,
      3. additional component: ר' הונא, who doesn't allow for חזקה on the property of a minor, even after he is an adult
        - a. purpose of הונא's statement:
          - i. 1: to show this ruling from our משנה
          - ii. 2: to teach rule that "even after he is an adult" (not in our משנה)
  - b. Question: why not use case as above – with 2 years of חזקה while he was around and 1 after he fled
    - i. Check: why did Y flee?
      1. possibility #1: to save his life
        - a. rejection: there, מחאה is impossible → חזקה is meaningless
      2. possibility #2: for financial reasons
        - a. support: Y should have protested (מחאה in absentia is valid)
  - c. Question: why not teach a case of a loan – where X admits that he borrowed from Y, but claims that he paid him back
    - i. Answer: due to סיפא, where if there are עדים to the loan, he isn't believed
    - ii. Explanation: a man is believed to say פרעתי, even if the loan was made בפני עדים
  - d. Question: why not teach case where X says that he borrowed 100 from Y's father but he paid back 50?
    - i. Dilemma:
      1. דבנן. he is believed, considered like a משיב אבדה
      2. לאב"י. not believed – requires a שבועה
    - ii. reason for dispute:
      1. (background): רבה explains מודה במקצת as follows:
        - a. 1: a person is incapable of denying any debt directly to his creditor
        - b. 2: →he may owe all of it and is admitting to part, reasoning that he'll pay part now and the rest when he gets it
      2. לאב"י. this חזקה equally applies to the creditor or his son
        - a. therefore: if he admits to part, he isn't משיב אבדה but מודה במקצת
      3. דבנן. חזקה only applies to creditor himself
        - a. Therefore: in this case, he's considered משיב אבדה