

14.8.2

79a (משנה ג) → 80b (בהו עיסקא)

Note: משנה ה' (below) introduces the consideration of **שבח בית אביה** which may refer to her rights to keep properties that are part of her paternal legacy; or it may be a consideration of honor for her family, that disposing of properties that were in their possession is a slight to their honor

- I **משנה ג'**: disposition of assets that fall to the woman while married
- a if it is money or **פירות תלושין** – purchase land with the money; land is hers and he gets income
 - i if they disagree about what to buy, the priority is: (1)land, (2)house, (3)date trees, (4)fruit trees, (5)vineyards
 - b if it is **פירות המחוברין**:
 - i **ר"מ**: estimate the added value due to **פירות**, that amount (only) is used to buy land as above
 - ii **חכמים**: entire piece becomes **מלוג**
 - 1 **question**: status of fish in fishery, logs in forest – could be **פירות**, could be **קרקע**
 - (a) **rule**: if the branch regrows (every season) – **פירות**, if not – **קרקע**
 - (i) **ruling**: if someone steals the offspring of **מלוג**, **בהמת מלוג**, the **כפל**-payment goes to her (i.e. not "פירות")
 - (ii) **challenge**: doesn't follow **חכמים** OR **חנניה**:
 - 1. **חכמים**: the offspring of **מלוג** belongs to him, the offspring of **מלוג** – to her
 - a. **reason**: we are concerned that the mother (=קרן) may die (if animal dies, there's a pelt)
 - 2. **חנניה** **both belong to him**
 - a. **nonetheless**: **חנניה** agrees that at divorce, she must buy them back (**שבח בית אביה**)
 - (iii) **answer**: all agree that he was never granted **פירות** (**כפל** is a **פרי** of the **פרי**)
 - 2 **associated ruling** (**ר' נחמן**): if she brought in an animal or tree for its produce, he may continue using it until it dies (since it has a pelt, feathers etc. its considered **קרן**)
 - 3 **additional ruling**: if she brings in a garment, he may use it until it's tattered and she keeps tatters (**קרן**)
 - (a) **follows**: ruling of **חכמים** **contra** **ר"מ** regarding a sulphur quarry etc.
 - iii **משנה ד'**: **ר"ש** – her "weakness" when marrying is her strength upon divorce (and the inverse):
 - 1 when she marries, **פירות מחוברין** are his; upon divorce they are hers
 - 2 when she marries, **פירות התלושין** are hers; upon divorce, they are his
 - (a) difference between **ר"ש** and **חכמים**: **פירות מחוברין** at time of divorce
- II **משנה ה'**: various properties that fall to her and the consideration of **שבח בית אביה** (see note)
- a if elderly slaves fall to her:
 - i **חכמים**: sell and use the funds to buy **קרקע** as per above
 - ii **ירושלמי**: **שבח בית אביה** (ירושלמי): only if they have some value
 - b if elderly (non-producing) olive grove or vineyard fell to her
 - i **חכמים**: sell and use the funds to buy **קרקע** as per above
 - ii **יהודה**: **ר' יהודה**: don't sell – they are considered **שבח בית אביה** (**תוספות**): only if they produce something)
 - c **note**: position of **חכמים** in both cases – only if it isn't in her field; if it was, all agree not to sell (**שבח בית אביה**)

- III נכסי מלוג: expenses and benefits of משנה ה2
- a even if he expended a lot and only benefited a bit, or the opposite – he has no claim nor does she
- i smallest amount:
- 1 **רבי אסי**: even if the benefit was only 1 fig; **בי רב**: even pressed dates
 - 2 *question* (**רב ניבי**): date dregs – (תיקו)
- ii *caveat*: it had to be enjoyed in a proper manner
- 1 *question*: if not enjoyed in a **מכובד** manner – (dispute in **א"י**'s worth OR **כדינר** (24 **איסרים**))
- b if he expended and didn't benefit at all, he swears to the value of his expenditure and claims it (upon divorce)
- i *report*: (**דייני פומבדיתא**): **רב יהודה** ruled that the husband had benefited when he fed some vines to his animal
- 1 *Reason*: **רב יהודה** is consistent – he rules that devouring prohibited items is still a **ראיה חזקה**
- ii *Ruling*: caring for his minor wife's property was deemed to be parallel to caring for another's
- 1 *Meaning*: even if he benefits, he can still claim the expenditures (minus the benefit)
 - 2 *Reason*: to make sure that he doesn't neglect the property
- iii *Story*: woman inherited 400, husband spent 600 to retrieve it; spent 1 **זוז** on the way
- 1 *Suggested ruling*: (**ר' אמאי**) – considered spending, loses all of his expenditures
 - 2 *Retort*: since he spent of the capital, not considered an expenditure (**ר' אמאי** agreed)
- c *Caveat*: only if the expenditure was more than the appreciation – he only gets the appreciation-value
- i *Question*: what if the husband has a share-cropper work the wife's field, and he benefits
- 1 *Answer*: if the husband is an **אריס**, they lose their claim with him; otherwise, it is a standard **אריס** deal
- ii *Question*: if husband sells land for **פירות**, is it a valid sale or not?
- 1 *Reason*: Perhaps his rights are only to increase food in the house
 - 2 *Contrary* (**ר' יהודה בר מרימר**): inferred from a ruling of **רבא**:
 - (a) *Case*: a woman brought 2 slavegirls into the marriage; husband married a second wife and took one of the slaves to serve the 2nd wife; 1st wife complained to **רבא** and he ignored her
 - (i) *Assumption*: because husband may sell **קרקע** for **פירות**
 - (ii) *Reality*: because it increases **רווח ביתא**
- iii *Final ruling*: his sale is null and void
- 1 *Suggested reason #1* (**רבא**): his rights are only to increase **פירות** in the house
 - 2 *Suggested reason #2* (**אבאי**): to ensure that he (buyer) doesn't neglect her field
 - 3 *Split the difference*:
 - (a) 1: if the field is nearby (she can keep an eye on its care)
 - (i) only **רבא** would negate the sale
 - (b) 2: if the husband is an **אריס** (he himself looks after the land and delivers the **פירות** to the buyer)
 - (i) only **רבא** would disallow
 - (c) 3: if the husband trades with the purchase money
 - (i) **רבא** would allow