

14.9.1

83a (משנה א') → 84a (וליה לא סבירא ליה)

- I נכסי מלוג: when the husband wishes to forgive his rights to מלוג
- a if he "writes" that he has no claims on her property: (ר' חייא reads "says" instead of "writes" throughout)
- i he continues to have rights to פירות and inherits the property if she predeceases him
- ii *forgiven*: if she sells the property, the sale is valid
- b if he "writes" that he has no claims on her property or its פירות
- i *forgiven*: he forfeits rights to פירות
- 1 *ובפירי פירותיהן עד עולם*: he continues to eat פירות פירי unless he adds "עד עולם"
- ii *held*: he still inherits the property if she predeceases him
- c if he "writes" that he has no claims on her property, its פירות or פירי פירי during her life and after her death
- i *forgiven*: פירות and פירוש
- ii *dissent*: רשב"ג - he still inherits, since ירושת הבעל is מה"ת and בטל מה"ת
- 1 *Ruling*: (רב) follows רשב"ג but not for his reason:
- (a) *His reason*: דאורייתא הבעל ירושת הבעל and only regarding דאורייתא is a condition nullified
- (b) *D's reason*: רבנן gave their rulings the strength of ד"ת
- II Analysis of first clause
- a *Challenge*: why is this phrase valid at all?
- i *Support*: if a man uses similar phrasing in re: a field that he wishes to gift, it is invalid
- ii *Answer* (ר' ינאי): only works if he wrote/said it before נישואין (while she was already ארוסה)
- 1 *Per*: ר' כהנא – if an inheritance comes to someone from "outside" (not as kin), he may stipulate not to get it
- 2 *And per*: רבא – a man may forgo תקנת חכמים that is for his benefit
- (a) *Index case*: a woman may forgo מזונות and keep her ידים מעשה ידים
- 3 *Challenge*: if so, even after she is married he should be able to withdraw from control
- (a) *Answer1* (אבוי): his power is equal to hers once married
- (b) *Answer2* (רבא): his power is *greater* than hers once married
- (i) *Split the difference*: re: שומרת יבם who had property fall to her and then she died (vis-à-vis פירוש)
- b *Question posed*: if he went beyond writing/saying דין ודברים...but also made a קנין חליפין to solidify it
- i *רב יוסף*: the קנין just solidifies an otherwise meaningless statement
- ii *ר' ינאי*: the קנין generates a removal of his control over the field
- 1 *אבוי*: ר' יוסף's ruling is reasonable if he later challenges his removal
- 2 *אמימר*: the rule is that in any case, his קנין has removed him fully (even if he challenges it)
- c *Challenge*: why can't she claim that he has fully removed himself from all rights to the field?
- i *Answer* (אבוי): the holder of the שטר always has the burden of proof
- ii *Challenge*: if so, perhaps he meant to remove himself from פירות (a lesser value to him)?
- 1 *Answer* (אבוי): "a bird in the hand..."
- iii *Challenge*: why can't she claim that he removed himself from inheriting the field?
- 1 *Answer*: death is common (50/50 that she'll predecease him); a sale of the field is not common
- iv *Answer2* (ר' אשי): the phrasing נכסיק implies an exclusion of פירות (נכס) and posthumous (י"ד...)
- III Analysis of פירות vs. פירי פירות (in ר' יהודה's dissent)
- a *Definition*: if she brought in land, the residual income is פירות; if he sold those פירות and bought land → פירי פירות
- b *Question*: which phrase is יהודה's "red-line" – פירי פירות or פירי פירות?
- i *If*: it is פירי פירות, teaches that if he writes פירות, it implies later sales as if it said עד עולם
- ii *If*: it is עד עולם, teaches that even if he writes פירי פירות, without "עד עולם" it doesn't extend beyond first sale
- iii *If*: it is both, teaches that without עד עולם, 2nd stage sale is his; without פירי פירות perhaps עד עולם is re: פירות only
- c *Question*: if he writes פירי פירות (skipping פירות) - does he get the פירות?
- i *Answer*: should be obvious – he has removed himself from all, including פירות
- ii *Argument*: if not, once he has the פירות and has taken them, there are no פירי פירות
- 1 *Block*: in our משנה, ר' יהודה requires "פירי פירות" -but if he ate פירות, there are none!
- 2 *Rather*: the case is where he held onto the original פירות (same for our question)

IV Analysis of רשב"ג's dissent

- a **דב**: we rule like רשב"ג but *not* for the same reason
- i *Cannot mean*: that he does inherit, but not because בתורה שכתוב בתורה בטל is מתנה ע"מ שכתוב בתורה
 - 1 *Meaning*: that רב holds that קיים is מתנה ע"מ שכתוב בתורה
 - (a) *But*: he holds that ירושת הבעל is דרבנן and they made their rules more stringent
 - 2 *Challenge*: רב does *not* hold that מתנה ע"מ שכתוב בתורה תנאו קיים
 - (a) *Proof*: if someone makes a purchase on condition that there is no claim of אונאה (against תונו לא) (לא תונו אונאה) (מתנה ע"מ שכתוב בתורה תנאו בטל →)
 - (i) **דב** still holds and he can make that claim
 - ii *Proposal2*: he means that we rule like רשב"ג that המתנה ע"מ שכתוב בתורה תנאו בטל
 - 1 *But*: he rejects the consequence that if she dies, he still inherits,
 - 2 *Rejection*: that means that he accepts the *reasoning* but not the *ruling*
 - iii *Proposal3*: he accepts רשב"ג's ruling that if she dies, he inherits her nonetheless
 - 1 *But*: rejects his reasoning; רשב"ג holds that מתנה ע"מ שכתוב תנאו בטל
 - (a) *Implying*: that if it were תנאו קיים the condition is valid and stands (תנאו קיים)
 - (b) *And*: רב feels that even if the condition were averse to a תק"ח, it would be null
 - 2 *Rejection*: that is accepting his ruling *and* his reasoning (and רב is simply extending his reasoning)
 - iv *Conclusive answer*: he rules like רשב"ג that he inherits her field
 - 1 *But*: not for his reasoning – רשב"ג clearly holds that ירושת הבעל is דאורייתא
 - (a) *And*: רב hold that ירושת הבעל is דרבנן but חכמים made their rule as strong as תורה
 - 2 *Challenge*: רב seems to hold that דאורייתא is ירושת הבעל
 - (a) *Source*: ריב"ב – בכורות ח"י: rules that if someone inherits land from his wife, he must return it to her family and then discount what they pay him
 - (i) *And*: in our discussion about that משנה, we asked whether ירושת הבעל was דאורייתא (in which case why should he have to return it) or דרבנן (in which case, why should he have to discount what they pay him)
 - (ii) *And*: רב answered that ריב"ב held that ירושת הבעל דאורייתא but the referent was a family burial plot and he must return it for גנם משפחה (and he discounts her grave which he was obligated to pay for in any case)
 1. *Per*: the ruling that if someone sells his spot in a family plot, the family can bury their dead against the wishes of the buyer
 - (b) *Answer*: רב was only answering for ריב"ב, but his own position is that ירושת הבעל is דרבנן