

14.9.2

84a (משנה ב') → 85b (מיחזא חזא)

Note: the *סוגיא* refers to a discussion in *סנהדרין* about *טעה בדבר משנה*. The *גמרא* there discusses the consequences of a *דיין* erring in his ruling – is the ruling overturned? There are two types of error – *טעה בדבר משנה* – error regarding an explicit ruling – and *טעה בשקול הדעת* – error regarding proper analogies and applications of canon. The interested reader is directed to the *בעל המאור* and *רא"ש* at the beginning of the 4<sup>th</sup> chapter of *סנהדרין*

I משנה ב'

- a conflict between competing creditors and יורשין while there is a מלוה or פקדון held by an outsider
  - i ר"ט: give the מלוה/פקדון to the "weakest one"
    - 1 ר' בנימין: the one with the latest שעבוד
    - 2 ר"א: כתובה – to enhance her prospects for remarriage
  - ii ר"ע: we don't show favoritism in דין – give it to the יורשין
    - 1 reason: all others require a שבועה to collect save the יורשין
  - iii note: need for both מלוה/פקדון
    - 1 if: we only had מלוה סד"א, מלוה is spent (מלוה להוצאה ניתנה) ר"ט would concur in case of פקדון (בעין)
    - 2 if: we only had פקדון סד"א, פקדון remains as is (בעין), ר"ע would agree with ר"ט in case of מלוה
- b if there are מטלטלין left on estate and בע"ח and כתובה are competing with יורשין
  - i תפיסה is valid – whoever grabs the מטלטלין gains them (יורשין or בע"ח or אשה)
  - ii if there is a surplus in what is grabbed:
    - 1 ר"ט – give the surplus to the "weaker" one (see above)
    - 2 ר"ע – no favoritism – it goes to the יורשין (as per above)
      - (a) note: ר"ע didn't have to mention surplus – he believes it all goes to יורשין – he's responding to ר"ט
      - (b) clarification: ר"ע does allow for תפיסה – but only while לווה is still alive
      - (c) clarification: ר"ט's allowance for תפיסה לאחר מיתה is limited to מטלטלין found:
        - (i) דב ושמואל in רה"ר (a location where קנין would be valid)
        - (ii) ד' יוחנן even in an alleyway
    - iii ruling: was done in accord with ר"ט (allowing תפיסה לאחר מיתה) and ר"ל reversed it
      - 1 dissent: ר' יוחנן: "של תורה ר"ע's opinion as ר"ט"
      - 2 Analyzing their dispute:
        - (a) Possibility #1: do we rule that טעה בדבר משנה חוזר (see note)
        - (b) Possibility #2: (agree that טעה בדבר משנה חוזר) - do we limit the rule כר"ע מחבירו to his חברים
        - (c) Possibility #3: (accept כר"ע מחבירו ולא מרבו) – was ר"ט a colleague or teacher
        - (d) Possibility #4: (agree ר"ט was a colleague) – is the rule "הלכה" or "מטין" (i.e. לכתחילה we favor ר"ע)
  - iv Cases:
    - 1 ר' יוחנן's relative grabbed a פרה from a סימטא (following ר"ט and his own ruling re: סימטא)
      - (a) Result: ר"ל rejected it and forced him to return it
    - 2 כר"ע grabbed a פרה from the herdsman, claiming he had grabbed it while the debtor was alive
      - (a) ruling: ר' נחמן since the herdsman had no proof that the animal was grabbed after the debtor's death, we employ מינו (he could have claimed he bought the animal) and the בע"ח is believed
        - (i) Challenge: בהמה דקה cannot be claimed by חזקה (since they always wander around)
        - (ii) Answer: cattle are different, since they are handed over to the care of a herdsman
    - 3 members of the בי נשיאה grabbed a slave girl from יתומים; several חכמים ruled in their favor
      - (a) ruling: ר' אבא accused them of sycophancy – ruling like ר"ע and forced them to return her
    - 4 חשו was owed money by a man with a boat; after he died, חשו sent his agent to grab it
      - (a) response: ר' פפא & ר' הונא בדרי" & ר' פפא (also creditors) got him away – שבח במקום לאחרים – תופס & תופס לבע"ח במקום שבח לאחרים – תופס & תופס
      - (b) their claims: each claimed the whole boat, claiming that they had taken it from רה"ר (the flowing river)
      - (c) final ruling: they lost it, since they grabbed it after death (besides their abuse of position)

- 5 אבימי owed money in בי חוזאי, sent it with an agent. Agent paid and requested שטר, but they claimed it was for an additional oral debt. When he returned, אבימי ruled that since they could say להד"ם, they are believed that it is for another debt.
- (a) *Question*: does the משלח have to pay the loss to his משלח?
- (i) *Possibility*: depends if the משלח told him to get the שטר before or after paying
- (ii) *Ruling*: in either case, he must pay, for he was sent to help, not harm, the משלח
- 6 woman was entrusted with a bunch of שטרות, upon the owner's death his heirs came to collect it; she claimed תפיסה מחיים for a debt that the owner owed her
- (a) *ruling*: ר' נחמן: if she hadn't refused to return them while he was alive, it is תפיסה לאחר מיתה
- 7 a woman came to ב"ד to swear in order to keep from paying (she denied a debt); רבא's wife said she knows that this woman is not trusted vis-à-vis שבועות רבא; רבא turned the שבועה around<sup>7</sup>
- (a) *caveat*: רבא's wife was believed by him because of קים לי – he believed her
- (b) *Application*: we "demote" a שטר based on his word of a trustworthy person (e.g. ר' חסדא)
- 8 woman came to ב"ד to take an oath; her litigant wanted a change in venue; she requested זכותא indicating that upon swearing, she could collect and ר' ביבי בר אביי allowed it
- (a) *challenge*: an אשרתא written in advance is invalid – looks like שקר
- (b) *rejection*: all found שטרות may be used (except גיטי נשים לר"מ – due to לשמה) & as per יוחנן – a מיחזא כשיקרא → no concern of שעבוד has been forgiven → no concern of מיחזא כשיקרא
- 9 a fellow claimed that the 7 jewels, wrapped in a sheet, in the house of ריב"ל's grandson, were his
- (a) *ruling*: claim is accepted, since we know that ריב"ל's grandson was not wealthy and this fellow provided identification (סימנים)
- (i) *caveat*: only if the fellow wasn't a regular at that house; else, he may have seen the "real" owner bring it
- 10 A man entrusted חסא with his silver cup; חסא died without informing the heirs
- (a) *Ruling*: claim is valid
- (i) *Reasons*: we know that חסא wasn't wealthy, and the man had סימנים
- (ii) *Caveat*: only if the man wasn't a regular at חסא's house; else he may have seen a מפקיד
- 11 A man entrusted fancy clothes with ספרא's brother, who died without informing the heirs
- (a) *Ruling*: claim is valid
- (i) *Reasons*: we know that חסא wasn't wealthy, and the man had סימנים
- (ii) *Caveat*: only if the man wasn't a regular at חסא's house; else he may have seen a מפקיד

<sup>7</sup> חשוד על השבועה, שכנגדו נשבע ונטל – if one is חשוד על השבועה, his litigant may take an oath and collect