

14.9.3

86b (משנה ד') → 87a (הלכה כבן אימא מרים)

- I משנה ד': accountability of wife if she's selling husband's goods or is trustee over his property
- a חכמים: he can adjure her with a שבועה at any point
  - b ר"א: he may do so even if he hasn't appointed her – since she is always a trustee over his dough etc.
    - i ר"א intended that he may initiate an oath (not just add it on via שבועה גלגול) as we see from חכמים' reaction – אין אדם דר עם נחש בכפיפה
- II משנה ה': stages of rendering oaths impossible
- a if he says נדר ושבועה אין לי עליך – he may not make her take an oath, but he may take her interested parties (heirs, anyone acting on her behalf)
    - i שבועה – refers to
      - 1 רב: if she becomes a אפוטרופא (trustee) during his life
      - 2 ר' נחמן: if she agrees that she collected part of the כתובה ("פוגמת"), such that she can only collect the rest with a שבועה (as per ז:ט)
      - (a) ר' אשי: אפוטרופא isn't reasonable, since she would have no reason to think that she would be asked to serve as such that she would anticipate and ask him to excuse her from an oath → פוגמת) כר' נחמן
      - (b) Response: רב's statement was a comment on משנה ו' – (see below): the heirs may only administer an oath if she became an אפוטרופא – and only for future interest, not for past:
        - (i) רב: refers to a case where she became an אפוטרופא while husband was alive (but anything after death – including her use of funds for the burial – is accessible to an oath)
        - (ii) רב מתנא: even any expenditure until the funeral is excused –
          1. reason: payment for taxes, feeding orphans and burial are taken from estate w/o procedure
    - ii variations on language:
      - 1 דלא נדר/דלא שבועה – only he is unable to administer an oath
      - 2 נקי נדר/נקי שבועה:
        - (a) ר' חייא (רבה) – no one can administer an oath "you are free and **clear** of oaths"
        - (b) ר' יוסף (ר' יוסף) – anyone can administer an oath "**clear** your name with an oath"
      - 3 ר' זכאי: either of above are subject to object associated with oath:
        - (a) מנכסי: only he is disempowered
        - (b) מנכסיא אילין: he and his heirs are disempowered
      - 4 אבא שאול בן אימא מרים: all of these formulae, including מנכסי, disempower him and his heirs from שבועה
        - (a) However: חכמים stated that anyone coming to claim money from estate must take an oath
        - (b) Note: הלכה כאבא שאול בן אימא מרים
    - b if he says נדר ושבועה אין לי עליך ועל יורשיך ועל הבאים ברשותך –these are inaccessible; his heirs may administer an oath
    - c if he says נדר ושבועה אין לי ולא ליורשי ולא לבאים ברשותי עליך ועל יורשיך ועל הבאים ברשותך – all are out
  - III משנה ו': if she went straight from husband's death to her father's house or remained on the estate but never controlled any of the funds as an אפוטרופא, the heirs cannot administer an oath
    - a however: if she became an אפוטרופא, they can administer an oath for future considerations only