

14.9.4

87a (משנה ז') → 88b (לאפוקי מד"א ומחלוקתו)

. 1 לא יקום עד אחד באיש לכל עון ולכל חטאת בכל חטא אשר יחטא על פי שני עדים או על פי שלשה עדים יקום דבר: דברים יט, טו

- I כתובה: circumstances under which a woman must take an oath to collect
- a פוגמת - if he claims that the כתובה was paid and she admits to receiving part
- i מודה במקצת - רמי בר חמא considered this to be a שבועה דאורייתא, as a classic
- ii Challenge (זבא): in a שבועה דאורייתא, the שבע keeps his money; here she collects; also, we don't take an oath about the disposition of a שטר which is linked to קרקע
- iii rather: it is a דרבנן, since she isn't exacting when she collects, שבועה forces her to keep an accurate accounting
- iv question: what if that first מנה was paid in front of witnesses – does she still have to take the oath?
- 1 Lemma1: since he ensured that there were עדים for part, his claim of full payment (w/עדים) is weak
- 2 Lemma2: perhaps עדים happened to be around at the time
- 3 Answer: from the list of נשבעין ונוטלין which includes שטר פוגם w/o עדים → if there were עדים, no שבועה
- 4 Rejection: w/o עדים needed; סד"א that it is considered like משיב אבדה (he had no proof of partial collection)
- v Question: what if she collected less than a ש"פ multiple times – תיקו
- 1 Lemma1: do we notice her exactitude and assume her to be telling the truth
- 2 Lemma2: perhaps she is deceiving him with this tactic
- vi Question: is פוחתת – she admits that the כתובה was less than the written amount but she never got it- like פוגמת
- 1 Answer: no שבועה needed; the שטר is understood to be אמנה
- b if 1 witness testifies that it was paid up
- i רמי בר חמא considered this also to be a שבועה דאורייתא, as per the inference from v. 1
- ii Challenge (זבא): in a שבועה דאורייתא, the שבע keeps his money; here she collects; also, we don't take an oath about the disposition of a שטר which is linked to קרקע
- iii rather: it is a דרבנן in order to mollify the husband
- iv note: if the husband is sharp and wants to administer a שבועה דאורייתא, he should bring the witness along with another, notify them of his intent and pay the כתובה in front of both; then he claims the first payment was a loan, to which there is 1 witness that she received it and she must take a שבועה to protect the funds
- c collecting from the heirs
- i note: (שבועות ז:ז) – משנה – rules that יתומים also need an oath to collect
- 1 Case: cannot be collecting from a debtor of the father, since the father himself didn't need a שבועה
- 2 Rather: they are collecting from the heirs of the debtor
- 3 Caveat: only if debtor's heirs say that father told them he borrowed; if he said "לא לויתי", collect w/o שבועה
- (a) Reason: לא האומר לא לויתי כאומר לא פרעתי דמי
- d collecting from משועבדים – if he sold the property from which she wants to collect
- e collecting in his absence – also true for a בע"ח, to encourage lending
- f ר"ש: only when she claims her כתובה the יורשין may administer an oath, otherwise not
- i possibility 1: referent is collecting in his absence; רבנן maintain that any use of the funds – even for מזוני, must be taken בשבועה, and ר"ש says only for collection of כתובה – parallel to dispute (ג:א) חנן/בני כהנים גדולים (ג:א)
- 1 challenge: should read that ב"ד administers the oath, not the יורשין
- ii possibility 2: referent is 'משנה ו' – if she was named executrix they may administer an oath – ר"ש disagrees – only when she claims כתובה – parallels dispute (ג:ד) אבא שאול/חכמים (גיטין ה:ד)
- 1 challenge: text should read "if she claims" not "as long as she claims"
- iii possibility 3: referent is 'משנה ה', if he disempowers his rights to שבועה, ר"ש maintains that unless she claims כתובה, they may not administer oaths, paralleling dispute אבא שאול בן אימא מרים/חכמים
- 1 challenge: what is meaning of "as long as she isn't claiming כתובה...?"
- iv possibility 4: to counter ר"א and his disputants (משנה ד') that allow oaths to be administered otherwise (חננוני/אפוסטרופוס or even more often)