

14.10.5

95a (משנה ר) → 95b (סיום הפרק)

I משנה ר: circular claims

- a if a man is married to 2 wives (A & B) and sells his land to X; A writes a relinquishing of claims to X,
- b then: B may extract from X, A from B and X from A etc. until they come to a settlement
 - i challenge: how can such a relinquishment work?
 - ii Answer: she made a קנין
 - iii Challenge: nonetheless, why can't she claim that she was just making her husband happy
 - 1 Explanation: by removing any claim from property he sold to X
 - 2 Support: (ה:ו) גיטין – if someone bought מלוג נכסי from the husband, then from the wife – invalid
 - (a) Reason: she can claim she was just trying to make her husband happy
 - iv Answer: ר"מ disagrees with her ability to claim נחת רוח עשיתי לבעלי (as per ברייתא where husband sells land to 2 buyers and she signs off on 2nd – ר"מ rules that she forfeits her יהודה, (כתובה), ר' יהודה supports it
 - v Challenge: why would רבי establish a סתם according to ר"מ in כתובות and according to ר' יהודה in גיטין
 - vi Answer: ר"מ – follows both, if she is already divorced
 - vii Answer: (רב אשי) – entire statement is ר"מ
 - 1 Where there are 2 buyers: and she only signs off on one – that is a valid signature, not just נחת רוח לבעל
 - 2 Where there is only one buyer: ר"מ agrees that she can make this claim
 - 3 Our משנה: where the husband wrote it to another beforehand – she didn't endorse it – then he sold to X and she confirmed it
 - viii Ruling: (גיטין ה:ב) – we never collect from משועבדים unless there are no available בני חורין – even poor land
 - 1 Question: what if the בני חורין are flooded/destroyed?
 - 2 suggestion: from ברייתא ר"מ says she lost the כתובה even if she only signed off on the 2nd sale
 - (a) Proof: if she could collect from בני חורין, she could turn to the 1st buyer and collect
 - 3 Rejection 1: (ר"ג) – "lost her rights" – only from 2nd
 - 4 Block: (רבא):
 - (a) 1st: "lost her rights" implies from all lands
 - (b) 2nd: ruling that if A borrows from B, then sells his land to C and D and B writes a quit-claim to D, he can't claim anything from C
 - (c) rejection: in that case, B proactively generated his own loss
 - (i) i.e.: in the case of flooding, he may collect from משועבדים; but here, he created his own "trap"
 - 5 challenge: our courts allow collection from משועבדים when the ב"ח are flooded
 - (a) case: man gave vineyard to creditor for 10 years of פירות to pay off loan, vineyard lost productivity after 5 years – חכמים ruled that he may collect from משועבדים
 - (b) defense: in that case, as well, the buyers (who now lose property to the original creditor) should have been careful in buying land from someone with an outstanding debt and pledge
 - (c) ruling: if the בני חורין become flooded, we allow collection from משועבדים
 - ix ruling: (אביי) if A sells property to B with ואחריו C and B marries; husband is considered לוקח & C has no claim
 - 1 Follows: רשב"ג (contra ר"ג) who rules that A→B (with C ואחריו) and B sells, C has no claim
 - 2 Challenge: אביי considered it evil to advise someone to sell in such a case
 - 3 Answer: he didn't rule that the woman should marry, rather if she marries...
 - x Ruling: (אביי) if A sells property to B with C ואחריו and B (woman) sold it to X and died:
 - 1 Disposition: husband removes from X, C removes from husband and X removes from C.
 - 2 Question: why is this different from our משנה where the cycle continues until they work it out
 - 3 Answer: in our משנה, all 3 parties lose; here, only the buyer loses
 - 4 Question (רב אשי → רפרם): didn't אביי rule that ואחריו is trumped by husband's interest?
 - 5 Answer: in our case, donor said it before she married, deliberately excluding husband
- c Same applies to בע"ח or a woman who is a חוב בעלת
 - i Meaning: a בע"ח with 2 buyers or a (על כתובה) חוב בעלת and 2 buyers – where they waived rights of collection from 2nd buyer