

14.13.4

109a (משנה ר') → 110b (ומעפר כרמו לכרמים)

1. ויברכו העם לכל האנשים המתנדבים לשבת בירושלם: נחמיה יא, ב  
 2. כל ימי עני רעים וטוב לב משתה תמיד: משלי טו, טו  
 3. אף לילות בשפל גגים גגו ממטר גגים לגגו ברום הרים כרמו מעפר כרמו לכרמים ספר בן-סירא

I אדם' 4th ruling: משנה ר'

- a If someone challenges A's right to have sold a field to B, but he is a witness on the deed of sale:
  - i אדם: he retains his rights to challenge
    - 1 reason: he may argue that it was easier to challenge B than A
  - ii חכמים: he loses his rights of appeal
  - iii consensus: if he uses the field as a marker on a sale to another, he forfeits his rights
    - 1 caveat: only in sale to another; if the sale was to the putative challenger, the challenger doesn't lose his rights, arguing that if he didn't accept the שטר he'd lose the sale
    - 2 counter: perhaps he should have made a discreet protest via מודעה
    - 3 block: the word will get to the seller and he'll renege
    - 4 story:
      - (a) setup: A sold property to X, using property contested by B as a marker, B then died
      - (b) consequently: executor was appointed, claimed that B would have argued that he conceded one furrow (ר' יוחנן) and that's why he didn't protest the use of the marker
      - (c) finally: the furrow had a row of grafted palms; he claimed that B would have argued that he subsequently bought that furrow back – believed (ר' יוחנן) based on שאסר
  - iv note: forfeiture applies
    - 1 only: if he is a witness (we assume he read the שטר)
    - 2 not: דיין (who only verifies the signatures and doesn't necessarily read the שטר)

II אדם' 5th ruling: משנה ז'

- a If someone went overseas and when he returned the easement to his field was lost
  - i אדם: he has rights to the shortest path
  - ii חכמים: he has no rights and must buy a path from the owner of the surrounding property
  - iii clarification:
    - 1 if: the 4 surrounding fields are held by different owners, all agree that he has no claim
    - 2 if: the surrounding fields are held by 1 owner, all agree that he has rights to the shortest path
    - 3 but if: 1 person bought the surrounding fields from different owners, they disagree:
      - (a) אדם: he can say, in any case, I have rights to a path of yours
      - (b) חכמים: owner can say "if you don't cooperate, I'll return the שטרות to the original owners and you'll have no claim at all" (as it is, the owner will give him a "break" on the path)
  - iv stories:
    - 1 1: man left his daughter a tree; heirs divided property (without giving it to her)
      - (a) ruling: ר' יוסף thought to compare it to our משנה
      - (b) Rejection: in this case, we see the tree – they must give it to her and redivide the estate
    - 2 2: man left his daughter a "tree" and died; all he had was 2 half-trees (each owned with partners)
      - (a) question: do people refer to 2 halves of a tree as "tree"?
      - (b) answer: indeed they do -

III אדם' 6th ruling: משנה ח'

- a If A claims that B owes him money, but B shows a שטר that A sold him land
  - i אדם: B may claim that he owes nothing; if he owed A money, A wouldn't have sold him land
  - ii חכמים: B has no claim; A was wise to sell him land so that he can take it as a pledge if he defaults
    - 1 note: where שטר is given only after payment, all agree that B's claim is valid
    - 2 dispute: where שטר is given first:
      - (a) אדם: he should have written a מודעה (protest) that B still owes him money
      - (b) דבנן: he was afraid to write a מודעה, since B would hear of it (ליה) and would have reneged on the sale

IV משנה ט' 7<sup>th</sup> ruling:

- a if A and B have שטרי חוב on each other
  - i אדמון: B can claim that the original debt must've been paid, else A wouldn't have borrowed from him
  - ii שט"ח חכמים: each collects his שט"ח
  - iii *associated dispute*: if 2 people have שטרי חוב against each other (for the same amount):
    - 1 דב נחמן: each collects
    - 2 דב ששת: what's the point in swapping – leave things as is
    - 3 note: all agree that if the lands to be collected were of equal status, no point in swapping
    - 4 *disagreement possibility #1*: if one has זיבורית and the other has בינונית
      - (a) ד"נ: we estimate based on debtor's land → they swap and the prior owner of זיבורית "trades up"
      - (b) ד"ש: we estimate based on an objective standard – they'll just collect and return same land
      - (c) challenge: only works if owner of זיבורית comes first, and in our case they come simultaneously
    - 5 *disagreement possibility #2*: one has עדיית ובינונית and the other has זיבורית (same conceptual difference as above)
    - 6 challenge (to ד"ש): from our משנה – חכמים say that both collect
      - (a) defense (ד"נ in defense of ד"ש): one loan is for 5 years and on day it came due, the creditor borrowed for 10 years
        - (i) Dispute:
          - 1. חכמים: people do lend for a day
          - 2. אדמון: people don't lend for a day
    - 7 *disagreement possibility #3*: (רמי בר חמא) – case where one side had died and his orphans came
      - (a) reason: orphans may collect but their property isn't accessible for collection
        - (i) challenge: states: "each collects"
        - (ii) answer: means one collects and the other should be able to collect...
      - (b) challenges (רבא):
        - (i) states that both collect
        - (ii) why doesn't living creditor/debtor give them land and then re-collect it as per ד"נ
      - (c) challenge: why not set up משנה as being case where orphans have זיבורית and living creditor has זיבורית/עדיית – because we can collect no better than זיבורית from orphans
        - (i) answer: only if he didn't seize property – but if he seizes better than זיבורית (as here), תפס

## V משנה י' rights of husband to force his wife to move

- a there are three districts in א"י – עבר הירדן, גליל, יהודה, and he may not force her to move from one to the other
  - i he may force her to move from city to city, town to town within one district
  - ii but not from town to city or city to town
    - 1 reason: city to town – lack of resources; town to city – hard to live in city (v. 1)
  - iii we may force her to move from a bad place to a good place but not from good to bad
    - 1 ד"ש: even from a bad to good – the shock of a healthy place may be unhealthy
      - (a) as per v. 2 and quote from בן סירא (v. 3) and dictum of שמואל