

15.4.9

43a (משנה ו) → 43b (מתנת בית חורון)

Note1: "A" is the מדיר and "B" the מודר

Note2: (to משנה ח) – a dying man (שכיב מרע) may gift part of all of his estate and his gift is valid; if he recovers and has gifted all of it, he may retract the gift, since it is clear that he intended the gift only if he died; if he gifted part of the estate, the gift is valid even if he recovers

- I משנה ו: Implications of a נדר against plowing a field
- a if A asked to borrow B's cow and B said "it's unavailable"
 - i A responded by vowing against plowing "this field that I plow (with this cow)"
 - 1 if A normally plows the field himself, only he is banned from plowing with that cow
 - 2 if A normally does not plow his own field, everyone is banned from plowing with that cow
- II משנה ז: Using a middleman to benefit the מודר
- a if B has nothing to eat, A may go to the storekeeper and tell him:
 - i "B is מודר from me and I don't know how to help him"
 - ii The storekeeper gives food to B and then sends the bill to A
 - b If B has work (building, reaping) he needs to get done and no money, A may approach the workers and say:
 - i "B is מודר from me and I don't know what to do"
 - ii They go and work for B and A pays them
- III משנה ח: more use of the middleman – and use of רשות הפקר when there is no middleman
- a if B and X are walking and A wants to give some food to B, he may gift it to X who gives it to B
 - b if B is walking alone, A may place the food on a rock and disown it (declare it "הפקר") and B may take it
 - i ר' יוסי forbids
 - ii ר' יוסי's reasoning:
 - 1 ר' יוחנן: he maintains that הפקר is like a gift and doesn't leave the domain of the giver until it enters the domain of whatever recipient eventually claims it
 - (a) challenge (ר' אבא): expands on ר' יוסי's opinion – he allows the case in our משנה if the declaration of הפקר preceded the נדר, but not if the נדר came first
 - (i) argument: if the issue is the non-existence of רשות הפקר, it shouldn't matter which came first
 - (ii) defense (ר' אבא himself): anyone who adjures a נדר doesn't have in mind that which he has already declared הפקר (→if the הפקר came first, that property wasn't included in his נדר)
 - (b) Challenge (ר' אבא): if a שכיב מרע gifts some of his estate to P and the rest to Q and recovers (see note2), P's gift remains and Q's gift is invalidated.
 - (i) Argument: even though P didn't yet get the property, it already left the שכיב מרע's domain such that Q receiving the rest would be considered a total liquidation and allows retraction
 - 2 ר' אבא: a precaution against allowing trickery as a loophole (as in מתנת בית חורון)