

18.05.03

50b (משיב אבדה הוא) → 51b (אין מוציאין לאכילת פירות)

- I נכסים משועבדים: limitations on use of משנה ג'
- a may not be seized for פירות or שבח קרקעות (from stolen field, being returned to owner)
- i *reason1* (ר"ל): not written (in deed of sale from גזלן to buyer)
- 1 *challenge*: food for widow and daughters (later in our משנה) are considered as written – yet we don't take נכסים משועבדים for that
- 2 *answer*: that was the original תקנה – only considered as written for purposes of collection from בני חורין
- ii *reason2* (ר' חנינא): since there's an undetermined amount that will be collected
- 1 *Question*: does ר' חנינא require both "unwritten" and "undetermined" to restrict collection to בני חורין?
- 2 *Possible proof*: ר' חנינא (commenting to ר' יוחנן) noted that we seize "inherited" property for פרנסה (dowry)
- (a) *Explanation*: dowry isn't written but is a set amount (1/10)
- (b) *Rejection*: since a dowry is a well-known gift, it is considered as if it is written
- iii *Challenge*: (if a man agrees to support his wife's daughter, who then marries another – who makes the same arrangement – and both men die...) the wife's daughter collects from משועבדים, but his own daughter – only ב"ח
- 1 *Answer*: they made a קנין (only applies to wife's daughters, not his own who are born afterwards)
- (a) *Challenge*: they could've both been there at the time (if he divorced and remarried her)
- (b) *Rather*: since his daughter eats ב"ד מתנאי ב"ד, we don't seize משועבדים
- (i) *Rejection*: the reasoning is backward
- (c) *Rather*: since his own daughter is fed ב"ד מתנאי ב"ד, he may have given her some property beforehand
- iv *dispute*: ת"ק – reason for our תקנה – since the obligations (of שבח קרקע and מזונות etc.) weren't written
- 1 *Dissent*: ר' יוסי – there is no תיקון העולם in this; rather, it is because these amounts aren't predetermined
- II מפני תיקון העולם: someone who returns a מציאה cannot be obligated to take an oath
- a ר' יצחק: if the מוצא returns one money-pouch and the owner claims there were two tied together – ישבע
- i *however*: if he claims 2 oxen – no oath (since oxen regularly rip away from each other)
- ii *limitation*: if the owner claimed 2 oxen and the finder admitted to 2 but claimed he had returned one – יישבע
- iii *challenge*: doesn't ר' יצחק accept the תקנה in our משנה?
- iv *Answer*: he accepts the ruling of ר' אב"י – sometimes a person might take an oath as a result of his own claim
- 1 *For instance*: if he says that he owed the claimant's father some money but paid some of it back to the father – יישבע
- (a) *Dissent*: חכמים regard him as a משיב אבידה and is exempt from an oath
- 2 *Same challenge*: doesn't ר' אב"י accept our תקנה?
- 3 *Answer*: it's a case where the claimant is a קטן
- (a) *Note*: can't mean a minor, since we never take an oath on the claim of a חש"ו
- (i) *Rather*: it means an adult, who, in the context of his father's affairs, is a קטן
- (ii) *Challenge*: if so, he isn't taking an oath due to his *own* claim, rather the "קטן"'s
1. *note*: which is like all claims
- (b) *rather*: their dispute is regarding the range of application of ר' רבה's "חזקה" which explains מודה במקצת:
- (i) *דבה*: a person is incapable of fully denying a debt to his creditor; he admits to some, rationalizing that he will be able to pay the rest later – so the תורה obligated him to swear to the disputed amount.
1. *חכמים*: this only applies to the creditor himself; to his son, the debtor would be able to lie
- a. *therefore*: if he admits to some, we believe him and consider him like a משיב אבדה
2. *דאב"י*: this applies to the creditor as well as his son – and the oath of מודה במקצת is employed here as well