

19.01.11

12a (דלית ליה קלא) → 13b (וב"ה אומרים)

1. אלה וכחש ורצח ונגב ונאף פרוצו ודמים ודמים נגעו: הושע פרק ד פסוק ב
 2. על כן תאבל הארץ ואמלל כל יושב בה בחיית השדה ובעוף השמים וגם דגי הים ואספפו: הושע פרק ד פסוק ג
 3. כל אשר נשמת רוח חיים באפיו מכל אשר בחרבה מתו: בראשית פרק ז פסוק כב
 4. כי מנאפים מלאה הארץ כי מפני אלה אבלה הארץ יגשו נאות מדבר ותהי מרוצתם רעה וגבורתם לא כן: ירמיהו פרק כג פסוק י

- I Analyzing רב"ה's approach – פרוטה ושווה פרוטה –
- a ר' יוסף suggested that "פרוטה" means any coin
 - b אבוי – from measure given in our משנה → it's a specific and set amount; from more recent estimations → still set
 - i note: value of איסר fluctuates between 24-32 in a זוז (if איסר goes up – 24 per זוז)
- II possibility of value (שמואל): even if the item isn't ש"פ here (and now), it may be elsewhere → קידושי ספק
- a dissent: ר' חסדא didn't consider ספק קידושי in such a case –
 - i Note: even if there were עדים elsewhere to that effect (עדים בצד אסתן ותאסר) (עדים בצד אסתן ותאסר)
 - b Note: if a family member (e.g. mother) testifies that it was ש"פ at the time – she doesn't have the purview to ban the woman on the 2nd מקדש (by confirming the 1st קידושין)
 - i Dissent (to חסדא ר'): אבוי ורביא – we are only lenient in case of שבויה (that she is טהורה) not איש
 - ii Result: in particular case, רבנן avoided marrying into that family (not due to שמואל, but due to אבוי ורביא)
 - c Case: man was מקדש with cheap item in שוק –
 - i Ruling: need גט (as per שמואל – may have value elsewhere) and מכות as per רב:
 - 1 מקדש בשוק קידושין, including מכות דב:
 - (a) Dissent: נהרדעי – he only gave מכות for מקדש בביאה (perhaps without שידוכי – perhaps even with שידוכי)
 - d Related case: man was מקדש with insufficient item, then he pointed out >ש"פ buried in it, which she took w/o a word
 - i Ruling (רבא): since the silent acceptance happened after giving the money, it's meaningless
 - 1 Proof: if he gives her money as פקדון, then tells her to keep it as קידושין
 - (a) If: he said it at the time he handed over the money – מקודשת
 - (b) If: he said it later: if "רצתה" then it's valid, if not – not
 - (i) Analysis: לא רצתה must be silence; if she really said "no", then even מ"מ בשעת מ"מ should be invalid
 - (ii) Challenge: no analogy – in that case, she was given a פקדון and knows if she throws it away – חייבת
 1. retort: women aren't expert in law – she'll think the same about קידושין
 2. ruling (רבנא): those who are familiar with the challenge should regard this as ספק;
 3. however: we (who aren't) disregard the possibility of קידושין at all in this case
 - e case of stolen item: girl was selling wares, man stole one and offered it back as קידושין; she took it silently
 - i ruling: she may say "I simply accepted my own wares back" → קידושין no
 - ii challenge: ruling that קידושין via stolen merchandise (of hers) is valid
 - iii resolution: if they had already had שידוכין, it's valid (proof from resolution with contradictory ברייתא)

III Gathering after death of ר' אסי – students and colleagues "gathering" his teachings

 - a Just as woman isn't נקנית with מש"פ – פחות מש"פ – same applies to קרקע
 - i Challenge: קרקע may be purchased for מש"פ
 - ii Answer: that is only if done via חליפין
 - b Comment on שמואל's dictum about non-experts staying away from גר"ק – homiletic application of vv. 1-4
 - c Comment on ב:ה – קנים ב:ה – if a חטאת brought her יולדת but died before bringing עולה – brought by heirs
 - i שעבודא לאו דאורייתא – only if she designated it while alive
 - ii שעבודא דאורייתא – (ר') אסי (בשם ר') יוחנן
 - 1 Note: this parallels disagreement re: collecting an oral debt from heirs and לקוחות:
 - (a) רב ושמואל: may not collect – שעבודא לאו דאורייתא
 - (b) ר"ל ור' יוחנן: may collect – שעבודא דאורייתא
 - 2 Justification: if we only had dispute in re: מלוה על פה – סד"א that שמואל agrees in re: קנים (it's written in תורה)
 - 3 And: if we only had dispute in re: קנים – סד"א that ר' יוחנן obligates since it's written in בתורה
 - iii Final ruling (רבא פפא): שעבודא דאורייתא
 - 1 Therefore: an oral debt is collected from heirs
 - 2 But: not from לקוחות – since there's no לקוחות