

19.03.05

63a (משנה ו) → 64a (אבל לא למכות ולעונשין)

- I 11 משנה ו: made contingent on services – valid, if services are completed
- a *examples*: speaking on her behalf to the government; doing work for her
- b ד"ל: only valid if he also gives her a ש"פ
- i → the services cannot be used themselves for קידושין, only operate her as a condition
- ii *challenge*: several rulings in which services, even keeping her company etc. are appraised and, if ש"פ >, valid קידושין
- 1 *answer*: our תנא holds that שכירות is payable in process (ועד סוף) (ישנה לשכירות מתחילה ועד סוף) → it's a מלוה (invalid)
- 2 *and*: our תנא holds that שכירות is only payable at the end (איינה לשכירות אלא בסוף) → it's a direct הנאה → מקודשת (בשכר ש... ע"מ) (instead of ... use of ע"מ) (reason: ר"ל interprets our משנה this way because of use of ע"מ)
- II 21 משנה ז: made contingent on father's assent
- a *If*: father "consents" (meaning discussed below) – מקודשת; if not, קידושין fail
- b *If*: father dies – קידושין are valid
- c *If*: son dies, we coach father to say that he wasn't interested (to avoid לייבום)
- i *Analysis*: meaning of "father's consent"
- 1 *If*: it means that he verbally confirmed his assent
- (a) *Then*: end of משנה is odd – how can we validate קידושין without his verbal assent?
- 2 *Rather*: it must mean that he was silent
- (a) *Then*: how does it help for father to declare his opposition if son died; he was already silent
- 3 *Answer1* (ר' ינאי): first case and final two are different conditions relating to "consent"
- (a) *1st clause*: means he remains silent (immediately valid if he is silent)
- (b) *2nd and 3rd clause*: means he doesn't protest (can protest at any time – even after son is dead)
- (i) *observation* (ר"ל): evidently it's preferable to attribute the משנה to one school and split the circumstances; rather than split the authorship
- 4 *answer2* (ר' יוסף בר אמי): all one condition – means "as long as father doesn't protest within 30 days"
- III ז' משנה ז: accepted by father from ???
- a *If*: he isn't sure from whom he accepted them and someone claims to be the מקדש – he is believed
- i דב: only believed to necessitate a גט – not to marry
- 1 *rationale*: no one would sin without getting benefit (גט); but, he may have "cast his eyes on her" (no marriage)
- ii דב אסי: even believed for marriage; but agrees with רב if she accepted קידושין herself
- 1 *challenge* (to רב): 2nd clause of our משנה (below)
- (a) *answer*: that case is different; since there's another suitor, neither will deliberately lie
- 2 *support for ר' אסי* (ברייתא): - adds that if A already married her and B comes and claims to be the חתן
- (a) *then*: he has no power to prohibit her on her husband
- (b) *if*: she herself makes the claim that she accepted קידושין and A claims to be the man – may not marry
- (i) *reason*: she may be protecting him
- iii *question*: in this case, does an adulterer get סקילה?
- 1 דב: no סקילה – תורה only gave credibility to father vis-à-vis איסורא, not מיתה
- 2 דב אסי: סקילה – credibility extends to מיתב
- (a) *Note*: רב אסי concurs in case she accepted קידושין and someone identified himself – no סקילה
- (i) *Surprise*: רב אסי is amazed at his own ruling – if case where he may marry – סקילה; ק"ו where he may not
- (ii) *Defense*: father is given full credibility, she isn't
- 3 דב חסדא: in neither case is there סקילה
- (a) *note*: he's consistent with his own ruling, that father's credibility extends to קרבן etc. but not punishment
- (i) *support*: ברייתא
- b *If*: two men both claim to be the suitors, both give a גט; if they are willing, one gives a גט and the other may marry her