

19.04.10

78b (משנה ט') → 79b (והילכתא כוותיה דרב)

I קידושין doubled-over: משנה ט'

- a case #1: a man sends a שליח to accept קידושין for his daughter, and he also accepts קידושין himself
 - i ruling: whichever was accepted earlier is valid
 - ii if: unknown which was first, both give a גט; if they are agreeable, one gives a גט and the other marries her
- b case #2: a woman sends a שליח to accept קידושין for her – but she also accepts קידושין for herself
 - i ruling: as above
- c justification:
 - i if: we only had case #1, we would ascribe father's "trumping" of the שליח to his expertise in יוחסין
 - 1 but: we wouldn't associate that with the woman, who isn't an expert in יוחסין (still relies on שליח)
 - ii and if: we only had case #2, we would ascribe her "trumping" of the שליח to woman's care in choosing a mate
 - 1 but: we wouldn't associate that with the father, who may not be as careful, still relies on the שליח

II dispute רב/שמואל re: conflict between her קידושין and her father's – when she is a בוגרת

- a Case: if she accepted קידושין for herself in the city and her father was on the road
 - i רב: she alone has קידושין – she is currently a בוגרת
 - ii שמואל: we are concerned about "overlap" akin to ruling in משנה
 - iii case: must be on day that her 6 months of נערות was complete
 - 1 if earlier: רב wouldn't call her a בוגרת
 - 2 if later: שמואל would have to accept her independent status and disregard father's קידושין
 - iv arguments:
 - 1 דב: since she is a בוגרת now (afternoon), she must have been a בוגרת in the morning (when קידושין overlapped)
 - 2 שמואל: her חזקה of being in father's domain only ends when it is confirmed
 - (a) challenge: ruling re: מקוה that was measured and found to be deficient, we assume it to be deficient since immediately after last time we measured it and found it to be properly full (→retroactivity of current status)
 - (b) answer: that case is different – we can argue that the טמא maintains his חזקת טומאה
 - (c) counter: why not argue that the מקוה maintains its חזקת כשרות
 - (i) answer: the deficient מקוה stands before us
 - (ii) similarly: the בוגרת stands before us (as a בוגרת)
 - 1. counter: we may argue that she just became a בוגרת
 - 2. response: argue that the מקוה just became deficient
 - a. answer: in the case of the מקוה, there are 2 strikes against it – חזקת טומאה and חסר לפנינו
 - (d) challenge: ruling re: חבית of wine that proves to be vinegar – any תרומה taken during the previous 3 days is assumed to be certainly invalid – before that is considered ספק
 - (i) note: in our resolution of the contradiction between חבית and מקוה, we concluded that חבית is authored by רשב"י, who also regards טהרות as ספק in case of מקוה (→"ברה" they are טהור)
 - (ii) so: לרבנן, this is considered certain טבל
 - (iii) answer: (as per above, concluding with) – here there are 2 strikes – חזקת טבל and vinegar in our presence
- 3 suggestion: this dispute replicates מחלוקת תנאים in re: recovering a מתנה by a בריא (who claims he was a שכ"מ)
 - (a) יעקב: ד' he may take from the recipients without proof; they only take from him with proof (that he was בריא)
 - (b) נתן: ד' if he is בריא, the burden of proof is on him; if שכ"מ, burden of proof on them
 - (i) suggestion: ר' יעקב::שמואל, ר' נתן::רב
 - (ii) rejection: רב accepts יעקב רב – in that case, there is חזקת ממן; here, she has certainly changed (to בוגרת)
 - (iii) rejection: שמואל accepts נתן רב – in that case, most people are בריאים; here, why assume she had left נערות?
- 4 Suggestion: dispute replicates two opinions in ברייתא in re: same case
 - (a) Rejection: both follow שמואל; case that allows for her קידושין alone is when she avers to being בוגרת yesterday
 - (b) Suggestion: perhaps, then, רב ושמואל don't disagree either (as above – if she challenges father – מקודשת)
 - (i) Rejection: שמואל was upset and ר' יוסף ב"ר מנשה ruled like רב
 - 1. block: perhaps he was upset because in that case she averred to being a בוגרת as of time of קידושין
- v final ruling: follows רב