

19.04.11

79b (משנה י') → 80b (לא) (אבל משקים עכורים - לא)

Note: following the model of סוטה, the rule of ספק טומאה is that if the ספק occurred in רה"ר, it is טהור; if in a secluded area – ספק טמא, however, this is only true if the person to whom the ספק happened could be asked about it (as a סוטה); this is called יש בו דעת לישאל. Otherwise, even in רה"ר it is considered טהור.

- I י' משנה: demonstrating ייחוס of one's wife under circumstances where no one knows her
- a case #1: someone goes to מדה"י with wife & returns with wife and sons and claims her to be his wife and they – her sons:
- i ruling: he's believed that they are מיוחסים (since she was already "vetted" when they married)
- b case #2: in above case, he returns with sons and claims that she died overseas
- i ruling: he's believed that she was מיוחס but not re: the sons
- II יא משנה: same as above, but he left for overseas alone
- a case #3: he comes back with wife and children, having married her overseas –
- i ruling: must bring proof re: the woman, but not re: the sons
- b case #4: he comes back with sons and claims that he married overseas and she died
- i ruling: must bring proof re: both the woman and the sons
- c note: all of these (assumption of ייחוס בנים when wife is alive) only apply if they cling to her (demonstrating filiality)
- i supporting ברייתא: only needs to bring proof re: adult children
- ii caveat: only if there was one wife; if 2 wives (married one there and she died and this is #2) – require proof for all children – even קטנים (they may be children of the first wife)
- 1 limitation (ר"ל): we only accept ייחוס based on children clinging to wife for קדשי הגבול (תרומה) but not for יוחסין
- 2 dissent (ר' יוחנן): we accept it even for יוחסין
- (a) Consistency: ר' יוחנן rules that we give מכות and מב"ד based on חזקה (but we don't burn תרומה based on חזקה)
- (i) מכות: as per יהודה – if she was known to be נדה by neighbors, husband can receive מכות on her account
- (ii) מב"ד: as per הונא בר ר' הונא – if people grew up in a house together, they're assumed to be kin → חיוב מיתה
1. supporting story: woman who raised child and then had ביאה with him and was stoned
- (iii) תרומה: as ר' יוחנן himself rules – אין שורפין על החזקות – תרומה (ר"ל) dissents
1. parallel: their dispute about ruling in re: a baby found next to dough
- a. ר"מ: dough is טהור
- i. reason: a few babies don't mess with שרצים and the עיסה had a חזקת כשרות
- b. רבנן: dough is טמא
- i. reason: minority of "careful" babies are insignificant; רוב (of babies that play with שרצים) trumps חזקת כשרות (חזקה > רוב)
- c. comment of ר"ל: this is an example of burning תרומה based on חזקה (really – רוב)
- d. dissent (ר' יוחנן): this תרומה isn't burned
- i. but if: dough found in house with שרצים (טמא) and frogs (טהור) & pieces found in dough:
- ii. If: majority שרצים - dough is טמא, if majority frogs – dough is טהור
- (b) Support for ר' יוחנן ברייתא: teaching that there are 2 things that have no דעת לישאל but חכמים equated them with דעת לישאל (see note):
- (i) baby (as above) and
- (ii) dough found in house with chickens and משקים טמאים there and there were peck-marks in the dough:
1. we regard the dough as ספק טמא (תולין – don't eat, don't burn)
- a. limitation: if the liquids aren't clear, unless we see liquids on dough - טהור