

20.4.04

39a (ר' יעקב סבר רשות משנה) → 40a (משנה ד')

- I (משנה) further issues of ownership and liability (part 1 of the משנה)
- a If: an ox owned by a competent person gores an ox owned by a חש"ו – liable
- b However, if: an ox owned by a חש"ו gores an ox owned by a competent person, he is exempt
- i Furthermore: if an ox owned by a חש"ו gores, ב"ד appoints a trustee in whose presence העדאה is done
- 1 Contradiction: identified – whether or not a trustee is appointed
 - 2 Resolution: only after 3 times do we testify in front of אפוטרופוס so that next time he pays נ"ש
 - (a) Question: who will pay נ"ש in this case?
 - (i) ר' יוחנן: from estate of (incompetent) orphans – else no one will accept trusteeship
 - (ii) ר' יוסי בר חנינא: from אפוטרופוס – and then they collect from heirs when they reach majority
 1. Challenge: ר' יוחנן, concurring with statement that we rarely collect from יתומים, adds that we also do so for a שטר that includes רבית or for payment of כתובה
 - a. Answer1: reverse positions (ר' יוסי בר חנינא states: from estate of orphans)
 - b. Answer2 (רבא): don't reverse – נזקין are unique
 - 3 If: the incompetent came of age or otherwise became competent:
 - (a) ד"מ: animal becomes תם again
 - (b) ד' יוסי: animal maintains its status
- II Dissenting ברייתא (ר' יהודה בר נקוסא) quoting ר' (סומכוס), in re: appointing a trustee for העדאה for purposes of collection
- a If the owner has become deaf (etc.):
- i סומכוס: remains תם until owners are able to be included in העדאה
 - ii חכמים: we appoint an אפוטרופוס for העדאה
- b if he becomes competent (again):
- i סומכוס: he reverts to תמות
 - ii ר' יוסי: maintains status (of מועד)
- c analysis:
- i סומכוס's position in first clause must mean that we don't collect from תם
 - 1 argument: if it meant that there is no העדאה, how can he maintain (2nd clause) that the animal reverts to תם?
 - ii Disagreement in 2nd clause: whether change of רשות changes the status of the animal
- III Related ברייתא:
- a If: an ox owned by חש"ו gores, ר' יעקב – pays ½ damages
- i Question: what is the circumstance?
- 1 Explanation: cannot be תם, that is too obvious; must be מועד
 - 2 If: he watched it properly, should be exempt
 - 3 However, if: he watched it minimally, should be נזק שלם
 - 4 Answer (רבא): he had watched it with שמירה פחותה
 - (a) And: ר' יעקב accepts ר' יהודה's position on 2 issues:
 - (i) מועד: only needs minimal שמירה (→ exempt from נ"ש)
 - (ii) מועד: is still ½ תם, a segment that it retains even as תם (→ still pays ח"נ)
 - (b) and: ר' יעקב must agree that we appoint an אפוטרופוס for collection from יתומים
 - 5 Challenge (אב"י): ר' יהודה ר' יעקב disagrees with ר' יהודה:
 - (a) ח"נ: an ox owned by חש"ו – ר' יהודה says "חייב" and ר' יעקב states "ח"נ"
 - (i) note: ר' יעקב may be disagreeing (אב"י) → ר' יהודה's "חייב" means נזק שלם;
 1. if so: disagreement is in case where there was no שמירה, following ר' יהודה that every מועד is ½
 - a. disagreement: if we appoint אפוטרופוס to collect מגופו (ר' יעקב) – only ½ from מיטב collected)
 - (ii) Or: ר' יעקב may be explaining ר' יהודה's "חייב" as being ח"נ (רבא)
 1. question: (acc. to רבא) why explain ברייתא as case of מועד; why not explain it as case of תם which wasn't properly watched (ר"י – שמירה פחותה – ר"י) and ר' יעקב is teaching that we do appoint אפוטרופוס to collect from the animal itself (לגבות מגופו)?
 2. Answer: רבא can teach several points – ר' יעקב agrees with ר' יהודה in re: תמות, and in re: אפוטרופוס
 - (b) 3rd approach to dispute (רבנא): case is where he was incompetent and then became competent;
 - (i) ד' יעקב: reverts to תם (רשות משנה)
 - (ii) ד' יהודה: maintains status (רשות אינה משנה)