

20.7.9

72b (משנה ג) → 73b (כדי שאילת הרב לתלמיד שלום עליך אית ליה)

1. לא תשא שמע שווא אל תשת ידך עם רשע להיות עד חמס: שמות פרק כג פסוק א

- I גניבה וטביחה/מכירה עדים in cases of various scenarios involving זוממים
- a if: the one set of עדים of both גניבה and טביחה/מכירה turned out to be זוממים – they pay full 4/5
 - b if: if separate sets testified to גניבה and ט"מ and both were found זומם: one set pays כפל, the other pays remaining 2 or 3
 - c if: only the 2nd set turns out to be זוממים; he pays כפל and they pay 2 or 3
 - d if: one of the final עדים turns out to be זומם, the 2nd עדות is nullified and he pays כפל
 - e if: one of the 1st set turns out to be זומם, the entire testimony is stricken – without גניבה עדות טביחה means nothing
- II Dispute between רבא/אבבי about retroactively invalidating עדים זוממים to date of falsified testimony
- a אבבי: invalidated retroactively (עדים זוממים למפרע הם נפסלים)
 - i argument: they are רשעים from that moment and v. 1 invalidates עד רשע
 - b רבא: only invalidated from date of הזמה (עדים זוממים מכאן ולהבא נפסלים)
 - i argument1: if עד זומם is a חידוש (why believe מזימים over first set?) – we can only apply invalidity from moment of הזמה
 - ii argument2: רבא essentially agrees with אבבי, but won't invalidate retroactively due to פסידיא דלקוחות
 - 1 explanation: if others used these witnesses for purchase in the meantime, they will lose their acquisition
 - iii split the difference: if 2 witnesses were מזים each witness independently – only 2nd argument would apply
 - c ruling: follows אבבי as "ע" of "ק"מ"מ
 - d test against 1st clause in our משנה: if the עדים first testified about גניבה, we now should invalidate them retroactively and not find them liable for 4/5 for טביחה/מכירה
 - i response: case was where they testified about ט"מ first
 - ii challenge: if so, we now should invalidate עדות גניבה retroactively and there's no liability at all
 - iii rather: they testified about both at the same time
 - e suggestion: their dispute mirrors dispute between ר' יוסי/חכמים:
 - i if: 2 witnesses testified about גניבה and they were also the witnesses of טביחה
 - 1 and: they were מזום about the גניבה – entire testimony nullified
 - 2 however, if: they were מזום about the טביחה, he pays כפל and they pay 2 or 3
 - 3 dissent (ר' יוסי): this only applies to שתי עדויות; but עדות אחת – if part is nullified, the whole is nullified
 - (a) Proposed meaning: שתי עדויות – 2 sets of witnesses; עדות אחת – 1 set at different times
 - (i) If so: why would הזמה of later testimony nullify earlier one?
 - (b) Rather: שתי עדויות – 1 set, separate testimony; עדות אחת – 1 set, compound testimony
 - (i) And: we assume that all agree that תוך כדי דיבור is considered one utterance
 - (ii) Proposal: רבנן maintain that invalidity is only from here on – only last part of testimony is annulled
 - (iii) And: ר' יוסי – retroactive and since it was all תוך כדי דיבור, entire testimony is annulled
 - (c) Rejection: if all agreed to תוך כדי דיבור, all would agree to retroactive annulment
 - (d) Rather: dispute is in re: תוך כדי דיבור (רבנן – separate declarations; ר"י – all one declaration)
 - (i) Challenge: (תמורה ה:ד) – ר"י (contra ר"מ) if he changed his mind re: the target of תמורה – last one accepted
 1. And: our explanation was that he did so תוך כדי דיבור דמי → תוך כדי דיבור לאו כדיבור דמי
 2. Answer: there are two standards of תכ"ד:
 - a. Greeting a teacher: שלום עליך רבי ומורי (4 words) - ר"י rejects this as תוך כדי דיבור – too long
 - b. Greeting a student: שלום עליך (2 words) – ר"י accepts this as תוך כדי דיבור – not too long