

Introduction to בבא מציעא

בבא מציעא is the next stage in נזיקין – moving to contested claims and אבדות. The first chapter will deal with tangential issues related to various שטרות and to whom they should be returned if found – several key ש"ס-wide topics will be addressed here.

21.1.01; 2a (משנה א') → 3a (הלכה תרוייהו משתבעי ושקלי מבעל הבית)

Note: in our משניות, claims are settled via an oath- this שבועה is rabbinically enacted, as presented in this שיעור (ג.)

1. וכן. ע. ה. לחמרו וכן. ע. ה. ל. מלתו וכן. ע. ה. לכל אבדת חיד א. ר. אבד מ. מצאת לא ת כל להתע. מ. דברים פרק כב פסוק ג

- I מקח or אבדה competing claims over משנה א'
 - a If: two are holding a garment, each claiming full ownership, as an אבדה or purchase
 - i Then: each takes an oath that he owns no less than half and they split
 - b If: one claims full ownership and the other claims half
 - i Then: the "full-claimant" takes an oath that he owes no less than 3/4 and he collects 3/4
 - ii And: the other takes an oath that he owes no less than 1/4 and he collects 1/4
- II משנה ב' competing claims of ownership of animal between rider and driver
 - a If: 2 were riding on an animal or one was riding and the other leading
 - b And: each claimed full, exclusive ownership,
 - c Then: they each take an oath that they own no less than half and split
 - d However: if (in any of these cases), if they come to an agreement or there are witnesses – split without an oath
- III Clarification and justification of cases in משנה
 - a Approach #1: only one case – מציאה
 - i Challenge: it should just say אני מצאתיה לא
 - ii Answer: סד"א that he means "I saw it" and that is a valid קנין (see ahead ק"ח)
 - 1 Challenge: v. 1 proves that מצא means possession
 - 2 Defense: in BibHeb, it means possession, but תנא is using RabHeb – could mean "I saw it"
 - iii Challenge: if so, let there just be the claim of שלי כולה
 - iv Answer: if so, סד"א that a claim of מצאתיה (taught elsewhere) would be valid, even though it means "I saw it"
 - 1 Challenge: it is taught as two claims and understood as אבדה and מקח, respectively
 - b Approach #2: separate claims – justification
 - i If: we had מציאה סד"א, מציאה רבנן enforced oath because people rationalize keeping a מציאה (no loss to other)
 - ii And if: we had מר"מ סד"א, מר"מ only there is there an oath, because the (liar) rationalizes that since both he and the other paid and he "needs" it, he'll take it and the other will have to shop further
 - 1 Challenge: if so, why not see who paid?
 - 2 Answer: both paid, one with consent of seller and other against his will and he doesn't remember which
- IV Identification of authorities who (perhaps) could not subscribe to the משנה
 - a בן-ננס (שבועות ז:ה) – disallowing a double-oath which must include a lie
 - i Defense: in that case, one is certainly lying; in our case, perhaps they found it together
 - b ב"ק מו: (סומכוס) – when ממון is in doubt, the claimants split without an oath
 - i counter: can it be רבנן? In that case, they employ the rule of עליו הראיה
 - ii defense: since המע"ה can't be applied here (there is no מוחזק), they would have split w/oath
 - iii but: סומכוס – in that case (the פרה who gave birth before or after נזק) – no one is holding on and he doesn't require שבועה; here, he would certainly not require שבועה (since they are both holding on)
 - 1 Answer: perhaps סומכוס would allow for שבועה when both are ברי (unlike there, where they are both שמה)
 - 2 However: according to רבב"ח, סומכוס's ruling extends to ברי וברי – could he still subscribe to our משנה?
 - (a) Answer: yes – in that case (ב"ק), there is real loss to one of the claimants
 - (b) Counter: that's all the more reason to employ the oath there, yet he doesn't do so
 - (c) Defense: the oath here is מדרבנן, as per יוחנן ר' explanation, to prevent rash unsubstantiated seizures
 - c ר' יוסי (ahead ג:ד): if 100/200 were entrusted, and each claims 200, all of it sits until one admits, so that liar will lose
 - i counter: even רבנן agree that the rest (3rd 100) remains in trust – so our משנה should be the same
 - ii defense: acc. to רבנן, in that case, certainly one is lying, but here, it is possible that they both own it (אבדה)
 - iii answer: in our case, there may be no liar, nor may there be reason to "fine" the liar, as he has nothing to lose
 - 1 counter: that is only valid in re: אבדה, not מר"מ; answer: as we originally stated (contra ר' יוסי)
 - (a) note: justification why, in שבועות ז:ה, we don't keep ב'בעה's money in trust until "liar" is found