

21.1.10; 12a (משנה ה') → 13b (לא היו דברים מעולם)

- I 'משנה ה' which belong to the paterfamilias and those which belong to the family member
- a מציאות of minor children, עבדים כנענים and the wife belong to paterfamilias
- i שמואל: reason that מציאת קטן goes to his father is that he automatically brings it to him
- 1 *Inference*: שמואל maintains that a קטן has no יד for himself
  - 2 *Challenge*: שמואל ruled like ר' יוסי who allows any worker – hired or sharecropper – to bring his child or wife to collect לקט after him (עשיר חכמים disallow in case of sharecropper, as he is considered an עשיר)
    - (a) *Analysis*: קטן must have his own יד; else how can sharecropper's son collect; sharecropper is an עשיר
    - (b) *Answer*: שמואל agrees that קטן יש לו יד; he is merely explaining the position of our תנא
  - 3 *Challenge*: ר' יוסי maintains that a קטן does not have a יד, as per his ruling in ה:ח גיטין ה:ח (following חסדא ר')
    - (a) *Answer1* (אביי): in the case of לקט רבנן, רבנן made his presence as if לקט-season is over, since the other עניים see the worker and his family and they assume that they will pick up all the לקט
      - (i) *Challenge*: it isn't permissible to put a deterrent in the field to keep עניים away
      - (b) *Answer2* (רבא): they made the (usually) ineligible זוכה as one who is eligible
        - (i) *Reason*: it is in the interest of the עניים, as they can benefit in the same way at some point
- ii *Note*: this entire approach is *contra* ר' חייא בר אבא, who interprets קטן/קדול in our משנה as in/dependent of father
- b מוצא of adult children, עבדים עברים, אמה עבריה or his ex-wife – even if he hasn't yet paid the כתובה – belong to the מוצא
- i Q: why not regard מציאת ע"ע as that of a פועל, which goes to בעה"ב? (unless hired for a specific job - it goes to him)
- 1 *Answer1* (ר' יוחנן): case where worker is doing a specialized job and his master doesn't want him to change
  - 2 *Answer2* (רבא): case where he picks up מציאה while working
  - 3 *Answer3* (ר"פ): if he was hired to collect the same things as (what eventually proved to be) the מציאה (e.g. fish)
- ii Q: why is מציאה אמה עבריה hers?
- 1 *If*: she's already matured, she should be gone
  - 2 *If*: she hasn't and (father is alive → fatehr) (father dead → goes free as per ר"ל [קידושין טז.])
    - (a) *Answer*: ר"ל was refuted; she doesn't go free; this could be a case where she is underage and father's dead
      - (i) *Note*: doesn't this serve as further refutation of ר"ל?
      - (ii) *Answer*: not necessarily, father could be alive and שלהם may mean "not master" (rather – father)
- iii Q: isn't "ex-wife" obvious?
- 1 *Answer*: even if she is only "partially divorced" (מגורשת ואינה מגורשת) – e.g. גירושין (ספק גירושין)
  - (a) *And*: in any of those cases, the husband is still liable for מזונות, but not to keep her מציאה which was designed to avoid enmity – in this case, it's too late for that
- II 'משנה ה' returning שטרי חוב to the named parties
- a חכמים: if there is אחריות נכסים in the שטר, don't return them
- i *Reason*: ב"ד will enforce collection from לקוחות
  - ii *However, if*: there is no אחריות נכסים in the שטר, may return it, as ב"ד won't enforce collection from לקוחות
- b ד"מ: regardless, may not return it, as ב"ד will enforce collection from לקוחות in any case
- i case: must be where the לווה admits to the debt and that he hasn't yet paid it
- 1 *reason*: for not returning if there is אחריות – perhaps the loan took place later than the date on the שטר and לקוחות will have their purchased land seized in appropriately
    - (a) *challenge*: why not raise this problem with any שטר?
    - (b) *Answer1* (ר' אסי): if שטר הקנאה, where the לווה obligates himself from this date, no concern, else we don't write the שטר without the presence of the מלווה and his handing over the loan; our case is שטר דלאו הקנאה
      - (i) *Therefore*: no concern in regular case; here there is a ריעותא (שטר) lost, giving impression that it wasn't valid, else the owner would have watched it more carefully), perhaps it was written without מלווה
    - (c) *Answer2* (אביי): the עדים generate immediate שעבוד (even שטר דלאו הקנאה)
      - (i) *Reason for his answer*: shouldn't be any concern that a non-הקנאה was written without מלווה
      - (ii) *Challenge*: 'משנה ז' – don't return דייתקי מתנה, שטרי מתנה etc. he may have changed his mind and not given
        1. *explanation*: if לווה בחתומי זכין לו, liability should be there in any case
        2. *answer*: we only apply that principle if the שטר eventually got to the proper recipient
      - (iii) *challenge*: our משנה (according to ר' אסי, it is שטר דלאו הקנאה) – why not return if לווה בחתומי זכין לו?
        1. *answer*: we are concerned that the מלווה and לווה are conspiring to cheat the לקוחות
          - a. *but*: according to שמואל, who doesn't effectuate such a concern, how is it explained?
            - i. *Answer*: he interprets our משנה as a case where לווה doesn't admit to debt
            - ii. *And*: the שטר is returned to the מלווה for him to use as a "bottle-stuffer"
            - iii. *Note*: cannot be returned to לווה, since he denies the שטר "exists"