

21.8.6

(מודה סומכוס היכא דאיכא שבועה דאורייתא, ודקטעה לידה כדרבא) 100b → 100a (משנה ד')

I 'ד: resolving doubts and discrepancies in commerce

- a *If*: someone bought a donkey for a cow and the cow gave birth or he sold his שפחה and she gave birth
- i *Claims*: seller claims that birth happened before sale, buyer argues that it took place afterwards
- 1 *Ruling*: split
- (a) *Question*: why not see where the animal is standing and the other be considered "המע"ה?
- (i) *Answer*: circumstances – the mother was in "neutral territory"
- (b) *Question*: why not maintain מרא קמה?
- (i) *Answer*: follows סומכוס (שבועה בלא חולקין בלא שבועה)
1. *Challenge*: סומכוס's position is, as far as we know, only maintained in שמא vs. שמה
- a. *Answer1* (רבה בר רב הונא): סומכוס's position is even וברי
- b. *Answer 2* (רבא): his position is only שמה ושמה; in our case, neither claims ברי
- c. *Analysis*: end of משנה presents a case of שמה ושמה (יודע) – split
- i. *This supports*: רבא, as the סיפא and רישא match, both being שמה ושמה
- ii. *But*: רבה בר"ה – why need to teach that שמה ושמה חולקין if we already taught וברי חולקין?
- iii. *Answer*: סיפא is there to clarify (by contrast) the רישא, that it is וברי
- d. *question*: end of משנה (גדול vs. קטן) – why not split w/o שבועה (according to רבב"ה)?
- i. *Answer*: סומכוס agrees when there is a שבועה מה"ת (see below) that it must be administered
- b *If*: the seller had large and small field OR adult and minor slave and sold one
- i *Claims*:
- 1 *buyer is sure*: buyer claims he bought the larger/older, seller says he doesn't know – buyer gets larger/older
- 2 *seller is sure*: seller claims he sold the smaller/younger, buyer doesn't know – seller's claim wins
- 3 *both are sure*: seller swears that he sold the smaller/younger
- (a) *challenge*: the response isn't in kind with the claim (should be no שבועה)
- (i) *also*: this is a case of הילך (the buyer is willing to take that which he admits to)
- (ii) *also*: we do not swear regarding עבדים (as they are compared to קרקע)
1. *answer1* (רב): the claim is for the money (buyer says he gave money for an adult slave, etc.)
2. *Answer2* (שמואל): claim is for clothing (of adult slave vs. that of minor slave); bales of a large field etc.
- a. *Challenge*: the response isn't in kind to the claim
- b. *Answer*: claim of clothing is re: complete garment which is מחובר
- c. *Challenge* (ר' הושעיא): text says "slave", not "clothing"
3. *Answer3* (ר' הושעיא): claim is for slave with his clothing (and field with its bales)
- a. *Challenge*: is the משנה coming to teach זוקקין – that "drag" קרקע (& עבדים) to a שבועה?
4. *Answer4* (ר' ששת): follows ר"מ → מטלטלין: עבדים
- a. *And*: though response isn't in kind with claim – per ר"ג (חייב – בשעורים – חייב) ר"ג
- b. *And*: no הילך, as he destroyed the עבד קטן and small field
- i. *Challenge*: ר"מ holds קרקע: עבד as per his position in ב"ק ט:ב
- ii. *Answer*: follows רבה בר אבהו who flips his position with חכמים
- c. *And*: it seems that ר"מ compares קרקע: עבדים and allows for an oath on קרקע as per his ruling about our case of a sold שפחה and חכמים respond that על העבדים ולא על קמ"ל – אין נשבעין לא על העבדים ולא על קמ"ל
- i. *Rejection*: perhaps חכמים argue that he should agree with them as he **does** re: קרקע
- ii. *Rather*: we must accept ר' הושעיא's read; and זוקקין is needed here, since we might consider the slave's clothing (and bales of a field) as appendages of the slave(/field) – קמ"ל
- 4 *neither is sure*: split – following סומכוס, even though in the case where they are both ברי, he allows for an oath since there is a שבועה מה"ת which must be administered – case where he cut off her hand and → no הילך and the response is in kind with the claim (as above)