

22.3.3

30b (ולכשיבא חבירו למחר שומעין דבריו) → 32a (עמוד) [1st case - top of דאמר]

- I Case #4 (מבית מדרשו של רבא): A was on land, B claimed it was his
- a A: claimed he bought it from פלוני, who told him that he had bought it from B
- i Response (B): פלוני is a thief
- ii Counter (A): has witnesses that he came to B and asked him about the land and B told him to buy it!
- iii Defense (B): it was easier for him to retrieve it from A than from פלוני (the thief)
- 1 Ruling (רבא): this claim is valid (no חזקה to A)
- 2 Challenge: is he ruling like אדמון יג: (כתובות יג: - contra חכמים)?
- (a) Defense: even חכמים would agree here – in that case, the fellow signed it away; here, he only spoke, and that isn't enough to lose his claims on his land
- II Case #5 (מבית מדרשו של רבא): A was on land, B claimed it was his
- a A: claimed he bought it from פלוני and had used it for שני חזקה
- i Response (B): פלוני is a thief
- ii Counter (A): has witnesses that B came to him at night and asked to buy it for a token price!
- 1 Reponse (B): preferred to pay a small price than to go to court to retrieve it
- 2 Ruling (רבא): this is a valid response; people sometime do this (→no proof for A)
- III Case #6 (מבית מדרשו של רבא): A was on land, B claimed it was his
- a A: claimed he bought it from פלוני and had used it for שני חזקה
- i Response: B has a שטר that he bought it 4 years earlier
- ii Counter (A): "שני חזקה" didn't mean "3 years", rather – many years
- 1 Ruling (רבא): people do refer to many years as שני חזקה (A's claim holds)
- (a) Caveat: only if his חזקה (in this case) was 7 years or more (i.e. 3 more than the מכר שטר)
- (i) But: if the חזקה didn't date back to more than 3 years before the שטר, there is no מחאה
- IV Discussions re: counter-claims of ancestral ownership
- a If: A and B both claimed ancestral ownership; A had witnesses to that effect, B had witnesses of חזקה (בית מדרשו של רבה)
- i Ruling (רבה): B has a "מה לי לשקר" – he could have claimed that he bought it from A → B's claim wins
- ii Challenge (אבוי): we don't allow "מה לי לשקר" to trump witnesses
- iii Twist: if B then comes and admits that it was A's family's land, but he bought it from A – can he modify his claim?
- 1 Note: he explained his claim of "אבותי" – that he was as secure in his ownership as if it were ancestral land
- 2 אולי he may do so
- (a) Limitation: if original claim was "it was my ancestral land and not yours" – cannot modify (contradicts self)
- (b) Limitation: if B didn't modify his claim inside ב"ד, but went out and then did so – must have been coached
- iv גהדרעי he may not do so
- 1 exception: if his new claim is that it was his ancestors' – who bought it from A's ancestors
- 2 exception: if he is talking outside of ב"ד and doesn't claim, then claims inside – we accept it
- (a) reason: sometimes people keep their strategy "close to the vest" until they come in to ב"ד
- 3 note: אממיר is a member of the גהדרעי and he allows modification of a claim – הלכה – (טוען וחוזר וטוען) הלכה
- b If: A and B both claimed ancestral ownership; A had witnesses to that & חזקה, B had witnesses of חזקה (בית מדרשו של ר"נ)
- i Ruling (ר"נ): testimonies of חזקה cancel each other out, A is awarded land due to testimony of אבותי של ר"נ
- 1 Challenge (רבא): testimony is inherently contradicted (since we accepted B's claim of חזקה as valid)
- 2 Response: only current use is contradicted, not ancestral ownership
- (a) Suggestion: their dispute aligns with ר' חסדא v. ר' הונא in re: accepting two sets of contradictory עדים
- (b) Rejection: רבא would argue that ר"ה (who allows 2 sets to be heard) would agree that in re: that same testimony, they are rejected; only dispute is about their fitness for other עדויות
- ii Twist: if B then brings witnesses that it was his ancestral land
- 1 ר"נ: we moved him from the land, we reinstate him; and we're not concerned about the reputation of the ב"ד
- (a) Challenge (ר' זעירא or רבא): ruling that if ב"ד allowed a woman (whose husband may be dead) to remarry and then witnesses came to the effect that he wasn't dead – she needn't divorce – due to ב"ד כבוד
- (b) ר"נ was convinced (temporarily) and held back from reinstating "B"; then, he went ahead and acted on it
- (i) Reason: he was relying on the תנאים (ר' יהודה, ר"א, רשב"ג) תנאים who (after analysis of their dispute in re: establishing status of כהן) all agree that we aren't concerned with ב"ד כבוד and modify status based on new information
1. Note: we interpret their dispute as related to the question if witnesses must come as a unit