

22.3.5

34b (ההוא ארבא) → 35b (שלא ניתן להישבון)

- I Case #11: the contested boat
- a Case: there was a boat in the river and two were contesting ownership
- i A: came to ב"ד and asked them to seize it while he gathered his witnesses, out of concern that B would sell it
- ii Question: does ב"ד seize it or not?
- 1 ג' הונא we seize it
- 2 ג' יהודה we do not seize it
- iii Follow up: if it is seized (כרב הונא), and then A fails to produce witnesses and B demands that they release it, allowing for כל דאלימ גבר (either through physical aggressiveness or via arguments), is it released?
- 1 ר' הונא ג' פפא it is released (aligned with הונא)
- 2 ג' יהודה it is not released (explains why his position is לא תפסינן above)
- iv Ruling: we do not seize, but if it was seized (by mutual agreement, for instance), it is not released
- II Discussion: A & B both claim that something is their ancestral property (boat, land etc.) and neither has שטר or חזקה, עדים
- a Ruling (ר"נ): כל דאלימ גבר
- b Challenge: why is this different from 2 שטרות מתנה with same date, to different recipients:
- i ג' they split
- ii שמואל: judge's discretion (which recipient he was more likely to favor)
- iii Answer: in that case (of the שטר), there will never be a method of clarifying further; in our case, there are no witnesses or חזקה, there may be a more solid proof that will surface later.
- c Challenge: why is this different from ב"מ ח:ד, where if it is unclear if offspring belong to buyer or seller, we split?
- i Answer: in that case, each has a real claim on the שפחה/פרה, as each fully owned it at some point; in our case, one of them never owned this property at all... יחלוקי would certainly be a miscarriage of justice
- d Twist: if a third party comes and seizes this land (which A & B were disputing):
- i ג' הרדעי: we don't confiscate from him, as per חייא ר' dictum – גולן של רבים לאו שמיה גולן –
- 1 Meaning: since the property is not securely in anyone's hands, it is quasi-הפקר
- ii Dissent (ר' אשי): it certainly is confiscated and he is considered a גולן
- 1 Explanation of ג' חייא: it means that there is no one to whom he can return it (חומרא)