

22.3.11

42a (משנה ד') → 43b (ואני אשמור לך למחר)

- I חזקה מושגת: excluded classes from חזקה ד'
- a Circumstantial: artisans (working on land), partners, sharecroppers, trustees
 - b Relational: husbands/wives, fathers/sons,
 - c *Caveat*: all these rules only apply to חזקה ראיה, but חזקה קנין (e.g. in case of gift, dividing an estate, seizing unowned property such as that of a גר שמת ללא יורשין) requires only an act demonstrating ownership (e.g. changing the locks)
 - d Versions of the משנה:
 - i אריס חסר: as per our משנה – שותף (and most certainly אריס)
 - ii חסר: only אריס is unable, but שותף is able to be מחזיק
 - 1 as per his ruling: שותפים are treated autonomously vis-à-vis חזקה, עדות and being considered שומר שכר
- II Analysis of שמואל's ruling(s) about partners:
- a May be מחזיק
 - i *Challenge* (to יהודה (רב יהודה): שמואל ruled that a שותף is considered present (on the common property) ברשות (→ no חזקה)
 - 1 *Answer1* (ר"י): if he occupies half/if he occupies all of it (unclear which circumstance works – goes either way)
 - 2 *Answer2* (רבינא): in either case, he occupies all of it, but if it is smaller than דין חלוקה (ב"ב א:ו) – no חזקה
 - ii *Question*: what did שמואל mean that a “partner is considered present on the property ברשות”?
 - 1 *Cannot mean*: that he cannot make a חזקה; if so שמואל would say that
 - 2 *Rather*: must mean that if he plants on his own, even in a field that is not normally used for trees, he takes all ripened benefit (and isn't considered like an interloper who gets the lower of benefit/expense)
 - b They may testify for each other
 - i *Challenge*: each is directly affected by the testimony; if a challenger seizes the land, the partner also loses
 - 1 *Answer*: could be a case where the partner removed himself from interest in the property
 - 2 *Challenge*: that is ineffective, as per ברייתא אין לי... (stating דין ודברים אין לי... is meaningless)
 - (a) *Answer*: could be a case where the “removed” partner made a קנין to solidify the abdication
 - (b) *Challenge*: this still doesn't help; he is then presenting the land to his own creditor (gaining נוגע בעדות → נוגע בעדות)
 - (i) *Answer*: must be a case where he accepted liability – for any seizure due to his liability (else, he is certainly interested in the בע"ח seizing it, as this gets him “off the hook” for his debt)
 - 3 *Parallel challenge*: self-removal evidently never helps, as per the ruling that a case of a city-owned ספר תורה that is stolen cannot be judged by any members of the city, nor may any of them testify -they have a vested interest
 - (a) *Explanation*: if they could remove themselves, let them abdicate ownership and judge
 - (b) *Defense*: a ס"ת is unique, in that everyone still must hear it being read (all are interested parties)
 - 4 *Additional challenge*: if someone directs another to give a sum to the city, בני העיר cannot judge or testify
 - (a) *Same defense*: this is in re: donation of a ס"ת
 - 5 *Challenge*: if one directs money be given to the poor of the city, none of the townspeople may judge or testify
 - (a) *Defense1*: again, this is a case of ס"ת – since everyone is considered “needy” vis-à-vis a ס"ת
 - (b) *Defense2*: really means “the poor”
 - (i) *If*: they have a set amount to donate, let 2 donate first then testify/judge
 - (ii) *Rather*: must be a case where there is no set amount
 - (iii) *Or*: even if there is a set amount, the townsfolk's burden is lightened if the עניים have more
 - c They become שומר שכר for each other
 - i *Challenge*: this is שמירה בבעלים (the owner, who is the partner, is with the שומר at the time)
 - 1 *Answer* (ר' פפא): where they trade off days, so that each day only one is שומר and the other (“בעלים”) is absent