

22.3.16

49a (ולא לאיש חזקה בנכסי אשתו) → 50b (כספו המיוחד לו)

Note: as per v. 1, if a man strikes his **כנעני** **עבד** with a mortal blow but the **עבד** lives for another two days or more before dying, the owner is exempt from the homicide. Our passage will refer to a dispute about "mixed ownership" and the application of this ruling

ז. אף אם יום או יומים יעמד לא יקם כי כספו הוא: שמות כא, כא

- I Analysis of next clause of excluded class from חזקה – a man cannot use חזקה as proof of קנין of his wife's property
- a Challenge: this is obvious, as he has rights to her פירות (and she wouldn't protest his presence)
- i Answer: case where he relinquished his rights by writing **דין ודברים אין לי בנכסייך**
- ii Challenge: this is a meaningless statement, as per ברייתא א
- 1 Answer: depends on several factors
- (a) Case - **דבי ר' ינאי** - he wrote this while they were betrothed (i.e. before his rights to פירות)
- (b) Rule - **ד' כהנא** - a person may exclude himself from a right coming to him from a source mandated by רבנו
- (c) Rule - **דבא** - a person may forgo the rights granted to him by just such a תקנת חכמים
- (i) just such: אשה may forgo מזונות and not give her salary to her husband (תקנה made for her benefit)
- b implication: if husband brought proof (e.g. שטר) that she sold it to him – would be accepted
- i challenge: why can't she argue that she was merely appeasing him?
- 1 As per: הו: ruling that if someone bought נכסי מלוג from a man and then confirmed קנין with the wife – בטל
- (a) Reason: she can claim that she was just trying to appease her husband
- 2 Answer: regarding that ruling, רבה בר רב הונא limited it to the 3 (types of) fields in her purview:
- (a) כתובה: that which is explicitly identified in the כתובה for collection
- (b) כתובה: that which he sets aside for collection from the כתובה
- (c) צאן ברזל: fields she brings in to the marriage and for which he accepts liability
- (i) cannot be excluding: other fields of his – this would create more enmity, as he would accuse her of plotting divorce or anticipating his demise
- (ii) must be excluding: נכסי מלוג
1. challenge: אממר's ruling that if a man and woman sell נכסי מלוג – sale is invalid!
- a. Defense1: his ruling only applies to case where one sold without the other
- i. If he sold: after his death, she may seize it as per her ownership
- ii. If she sold: after her death, he may seize it as per אשמה
- iii. However: if they both sold – or she sold to him – sale is valid
- b. Defense2: אממר followed approach of ר"א (below – in context of פירות):
- (d) Case: if A sells his ע"כ to B but borrows him for 30 days, then hits him with a mortal blow, and the slave dies after 2 days (see note)
- (i) קנין פירות: קנין הגוף – דין יום או יומים – he holds הגוף
- (ii) קנין פירות: קנין הגוף – דין יום או יומים – he holds הגוף
- (iii) נפשות (owners'): both are protected – he is unsure about פירות and rules leniently in case of נפשות
- (iv) קנין פירות: neither is protected –
1. reason (דבא): he isn't fully כספו of either
2. application: אממר feels that since אשה has קנין הגוף and בעל has פירות, neither is enough of an owner to be able to sell → even a cooperative sale is insufficient