

22.3.18

51b (ת"ר אין מקבלין פקדונות) → 52b (לא גזלה מיתמי קמ"ל)

- I Related **ברייתא** – handling property handed over by financially dependent people
- a *We may not accept פקדונות* from: women, slaves or minors
  - b *If accepted*: return to them
    - i *Exception*: in case of **קטן** – put it in trust
      - 1 *Meaning*: buy a **ס"ת** (**ר' חסדא**)
      - 2 *Or*: buy a fruit bearing tree (**רבה בר ר' הונא**)
    - ii *If they died*: return to husband, master or heirs (of **קטן**)
  - c *If*: granter gave deathbed instruction as to whom it belongs – follow it (give to named recipient/owner)
    - i *If*: reasonable meaning of instruction is untenable, interpret it and act on interpretation
  - d *Story*: granter gave deathbed instruction as to whom it belongs – follow it (give to named recipient/owner)
    - i *Ruling* (**רב**): if she is trusted ("**מהימנא**"), give to them
      - 1 *If not*: interpret her meaning and act on it
    - ii *Variation*: if they're wealthy ("**אמידא**") such that it is reasonable that they would own them – give to them
      - 1 *If not*: interpret her meaning and act on it
- II Analysis of next clause of **משנה ד'**: fathers and sons cannot claim **חזקה** on each other's property
- a **רב יוסף**: even if they separated financially
  - b **רבא**: rule does not apply if they separated
    - i *Case*: **ר"פ** ruled like **רבא** in a case where they separated and allowed **חזקה**
    - ii *Support*: **רבנ"י** and **ברייתא** all ruling that if son separates (and woman divorces) they are like an outsider
    - iii *Final ruling*: in accord with **רבא** – **חלקו לא**
- III Related discussion – if the eldest brother (after death of father) is handling his own business on the estate and claims that **שטרות** that bear his name are his own (from his maternal inheritance):
- a **רב**: he must bring proof to that effect, else brothers share in it
  - b **שמואל**: brothers must bring proof that it is part of the father's estate, else he keeps it
    - i **שמואל**: **רב** accedes in case where eldest brother died, that brothers have onus of proof over his heirs
    - ii *Challenge* (**ר"פ**): how could we argue on their behalf with an argument that their father couldn't have made?
      - 1 *Support*: **רבא** seized trade-scissors from heirs, which owner claimed he had lent to father, since these are the type of things that are typically lent and borrowed → no claim of **חזקה** – **קשיא** (against **שמואל**)
    - iii *Limitation* (**ר' חסדא**): **רב**'s ruling – obligating brother to prove his ownership – only if they continue to eat together (i.e. share in all the financial operations and benefits of the household) – if not, he is believed
    - iv *Question*: what sort of proof is needed (according to **רב** – whom we follow – for brother)?
      - 1 **דבה**: witnesses
      - 2 **ששת**: validate **שטר**
    - v *Final ruling* (**ר"ג**, asked by **רבא**) – follows **ברייתא** (which substantiates **רב**'s position)
      - 1 **ברייתא**: equates a widow vis-à-vis orphans' property to our case of older brother
        - (a) *Justification for equation*: we may have thought that a widow, whose reputation is enhanced by her working on behalf of the orphans, would never lie to take their property – **קמ"ל** that she must provide the proof
      - 2 *Note*: no resolution on dispute between **ר' רבה** and **ששת** about nature of proof