

22.3.19

52b (אף פנימי לא קנה) → 53b (במה דברים אמורים)

- I Analysis exclusionary clause of משנה – חזקה ג' שנים – משנה "מחזיק"
- a Challenge: all of these are "מחזיק" – what is the contrast?
 - b Answer: משנה is deficient and should be completed as follows:
 - i "this only applies to": a case where there is a claim (and a challenge), e.g. purchase
 - ii "but in case where": there is no claim, e.g. a gift, brothers dividing an estate or seizing הגר נכסי – where there is no challenge to the ownership,
 - 1 then: if he puts up a door, a fence or makes an opening of any size – immediate חזקה
 - c variation: in ברייתא קידושין of בית לוי ר' הושעיא, בית לוי ר' הושעיא, בית לוי ר' הושעיא added that any גדר נעל or פרוץ in the presence of seller/giver is valid
 - i inference: if the מקנה isn't present, this isn't sufficient
 - 1 explanation (רזבא): if he is present, he need not confirm with "לך חזק וקני"; if absent, he must do so
 - ii question (רזב): does this also apply to a מתנה (or only to מכירה)?
 - 1 Response (שמואל): why the question? If מכר, where the מקנה is receiving money, still requires וקני, certainly a מתנה requires it
 - 2 Defense: רב maintains that a gift is always given generously (בעין יפה) – may be unnecessary
- II Clarification of amount of building to be done to be considered נעל גדר משה – נעל גדר משה
- a שמואל: if he added to a fence so that it was now 10 טפחים high, or made an opening that he could go through
 - i question about the fence: if it was impassable and is now impassable – he didn't accomplish anything
 - 1 and if: it was originally passable and now impassable – he did a lot – (not "כל שהוא")
 - 2 answer: it was originally easily impassable and now only with great difficulty
 - ii question about the opening: if it was accessible and now accessible – he didn't accomplish anything
 - 1 and if: it was originally inaccessible and now passable – he did a lot (not שהוא)
 - 2 answer: it was barely passable and now easily accessible
 - b ר' יוחנן: if he added a stone or took one away from the fence and it helped – קנה
 - i question: what does this mean
 - 1 proposal: that it means that he put a stone in to keep water out or took one out to allow water out
 - (a) rejection: this is just helping, as anyone would do for a fellow, and doesn't prove ownership
 - 2 rather: he added a rock which (brought water into his field – רמב"ם) (kept water in his field – רשב"ם) or he took one away which allowed more water to come in
- III ר' יוחנן: two fields with a boundary between them
- a if: he was מחזיק on the field he intended to acquire – valid
 - b if: he was מחזיק on one, intending to acquire both – only the one he possessed is his
 - c but if: he was מחזיק on one intending to acquire the other – neither is his
 - i spinoffs:
 - 1 ד' זירא: what if he made חזקה on one to possess both and the boundary
 - (a) lemma1: the land is all one, including the boundary
 - (b) lemma2: each property is independent and he acquires nothing – תיקו
 - 2 ד' אלעזר: what if he seized the boundary itself
 - (a) lemma1: the boundary is like the reins of both properties and he acquires both OR
 - (b) lemma2: the boundary is independent and he acquires nothing – תיקו
 - ii parallel – ר' נחמן, quoting ר' אבהו – two houses, one inside the other
 - 1 if: he took possession of the outer one in order to...
 - (a) acquire it – this is valid (only for חיצון)
 - (b) acquire both – only valid for חיצון
 - (c) acquire the פנימי – he has nothing
 - 2 if: he took possession of the inner one in order to...
 - (a) Acquire inner one – valid
 - (b) Acquire both – valid for both
 - (c) Acquire outer one – he gets nothing