

22.7.3

104b (משנה ג') → 105b (קמ"ל)

- I 'ג' משנה ג' ruling about conflicting declarations of sale
- a *If*: he uses both "exacting" phrase of מדה בחבל and "flexible" phrase הן חסר הן יתר – the final phrase cancels earlier one
- b *Analysis*: whether בן ננס' opinion represents consensus or not
- i דב' בן ננס' colleagues disagree and maintain that both phrases must be accommodated
- 1 *Note*: רב nonetheless accepts בן ננס' ruling, as seen from end of סוגיא רב
  - 2 *Question*: what is רב teaching? There was the case in צפורי with one who rented a מרחץ for "12 דינר a year, 1 דינר per month"; the year was extended (חדש העיבור) and יוסי ורשב"ג agreed that the difference should be split (i.e. the final declaration does not nullify the earlier one; rather they are both maintained and we have a ספק)
  - 3 *Answer*: in that case, there's room to interpret his final words as an interpretation of the first; but here it is clear that he has changed his mind – קמ"ל
- ii שמואל' colleagues disagree – follow lesser of declarations (whichever one includes lower payment)
- 1 *Inference*: שמואל rejects בן ננס (his wording – בן ננס – gives that impression)
    - (a) *Challenge*: רב ושמואל ruled that if one is selling a כור for a set price, he can renege until the last סאה is measured; but if he states כור בשלשים, and then adds בסלע סאה, each סאה becomes sold as it is measured
      - (i) *In other words*: שמואל rules that we allow the final phrase to nullify the earlier one
      - (ii) *Rather*: we must conclude that he rules in accordance with בן ננס
        1. *Challenge*: שמואל, in the case of the bathhouse (above), interpreted the ruling as a case where it was the middle of the (contested) month – ergo, the fee is split
          - a. *But*: if it was the beginning of the month, the lessor gains all; if at the end, the lessee
          - b. *In other words*: שמואל maintains that we still have a ספק and מוחזק is the determinant
        - (iii) *Rather*: we must now conclude that he rules against בן ננס (ולא סבירא ליה) בן ננס
          1. *And*: the reason for his ruling in the case of the מרחץ is תפיסה (מוחזק)
          2. *Also*: the reason for his ruling in the case of the כור is תפיסה – the buyer is already holding the contested סאות
- iii (המנונא) רב ב' בשם ר' הונא: if a price of מאה מעה, איסתירא, is agreed upon – he must pay an איסתירא; if the order is reversed, he must pay מעה
- 1 *Teaching*: that the final declaration defines the agreement (and nullifies the earlier phrase)
  - 2 *Question*: רב already taught this; he commented (about the bathhouse case) that were he there, he would have given it all to the lessor (as the final phrase was 1 דינר per month)
    - (a) *Answer*: that case may have been interpreted as a clarification – 12 דינר per year, meaning 1 דינר per month – קמ"ל that it was a cause of conflicting declarations and we follow the final declaration