

22.8.5

113a (ובני אחות) → 114b (והלכתא כוותיה דרב יוסף בשדה ענין ומחצה)

.1 והיה ביום הנחילו את בניו את אשר יהיה לו לא יוכל לבקר את בן האהובה על פני בן השנואה הבכר: דברים פרק כא פסוק טז  
 .2 ואם אין אחים לאביו ונתתם את נחלתו לשאריו הקרב אליו ממשפחתו וירש אתה והיתה לבני ישראל לחקת משפט כאשר צוה ה' את משה: במדבר כז:א

- I Analysis of 2<sup>nd</sup> grouping in משנה; 3<sup>rd</sup> set – man inherits from his mother's sisters (but not the inverse)
- a ברייתא only nephews, not nieces;
- i Meaning: nephews take precedence over nieces
- 1 Source: v. 2 ירושה וירש, comparing primary ירושה to "secondary" ירושה
- II נחלה as משפט (v. 2)
- a תנא to ד' v. 1 implies that נחלה (=דין נחלה) only done by day, as per ברייתא using v. 2
- i As per: רב יהודה's ruling –
- 1 If: 3 go to visit someone on his deathbed, they may write down his commands (as עדות)  
 (a) Or: they may adjudicate the division of property as דין
- 2 If: only 2 go to visit – they may only write (as עדים)
- 3 But: even 3 may only adjudicate if it is during the day; at night, they may only write but may not adjudicate (the next day) – as they are עדים and an עד cannot subsequently become דיינים
- ii Related discussion: until when is a קנין דברים (done with קנין סודר) revocable?
- 1 דבה: as long as they are still sitting on the case
- 2 ד' יוסף: as long as they are still discussing the matter
- (a) Support: רב יהודה's ruling above –
- (i) Explanation: if they could change as long as they are sitting, why aren't we concerned that he changed his mind?
- (ii) Retort (בי ר' כהנא ר' אשי): יוסף: ר' יוסף's position is no stronger – we should be concerned that while they are sitting he changed his mind
1. Answer: it must be a case where they already moved on to another subject
2. Parallel: could be a case where they already got up and sat down again, finishing that קנין
- iii Ruling: הלכה follows יוסף ר' in these three cases (in disagreements with רבה):
- 1 שדה: that heirs may refuse to allow one of their fellows to pick a specific field, since it borders his field
- 2 ענין: our dispute – a קנין may be revoked only while they are still discussing that issue
- 3 מחצה: in re: מתנת שכ"מ, when he gives it to "wife and her sons", ½ goes to wife and ½ to all sons, as opposed to the wife and sons dividing equally among them