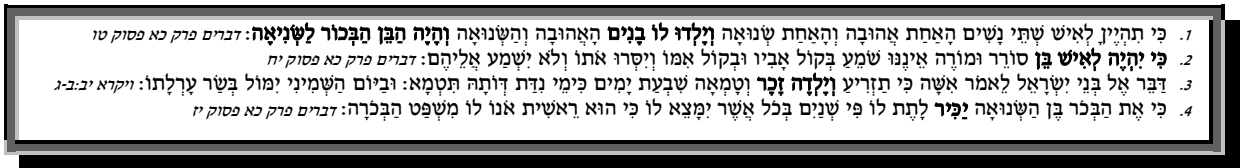


22.8.15

126b (משנה הו) → 127b (מצר עבדא ק' זוזי)



- I ירושה: reapportionment of משנה הו
  - a If: he subverts the ירושה, by equating the בכור to the others or removing a son from ירושה – invalid statement
    - i Reason: מתנה על מה שכתוב בתורה
  - b But: if he divides up his property as a שכ"מ, equating the בכור or removing one son – valid
    - i But: if he used the terminology of ירושה in his division – invalid
    - ii However: if the beginning, middle or end of the שטר has the word מתנה – valid
- II Analysis:
  - a Authorship: not יהודה ר', who allows שכתוב בתורה in financial rights, as per his ruling in re: מקדש ע"מ שאין ר"מ disallows all conditions, ר"י allows for שאר וכסות as they are financial claims
    - i Block: משנה ר"י would agree with our משנה; in that case, the woman forgoes the right; here, the heir isn't מוחל
  - b Identification:
    - i If: witnesses come forth saying that they heard father identify him as "my בכור" – he gets פי שנים
    - ii But: if they only heard father say that he is a "בכור א" – may have meant בכור לאם
      - 1 case: man testified that פלוני was בכור; רב"ח asked how he knew – he heard father call him "בכור סכל"
        - (a) Rejection: perhaps he was referring to בכור לאם
      - 2 Case: man testified – people would come to father, he would send them to "בכור", whose spittle heals
        - (a) Support: we have a tradition that only בכור לאב has such spittle, not בכור לאם
- III Status of טומטום who is surgically "exposed" to be a boy – vis-à-vis בכורה and other applications
  - a ר' אמי: not given פי שנים, as per v. 1 – must be a (recognized) son from time of "existence"
  - b ר' רנב"י: not judged as סורר ומורה, as per v. 2 – must be a son from time of existence
  - c אממר: doesn't eat into בכורה (see רשב"ם for example) as per v. 1 – וילדו לו בנים
  - d ר' שיזבי: isn't circumcised on 8<sup>th</sup> day (if on שבת) as per v. 3
  - e ר' שריא: mother isn't תמאה טומאת לידה as per v. 3
    - i refutation: if a woman miscarries and it is a טומטום (or אנדרוניוס) – observes טומאה ימי of male and female
      - 1 meaning: 7 days of טהרה of male, then 66 טומאה ימי of female (לחוריא)
    - ii suggestion: perhaps this is also a refutation of שיזבי ר' (in re: מילה)
      - 1 defense: תנא holds that it is a ספק and is מחמיר (טהרה לידה) for both M and F → שבת מילה doesn't trump שבת
      - 2 Challenge: if so, a טומטום should observe טומאה ימי for (M) F and נדה ימי
        - (a) Meaning: two weeks of טומאה for F, then no טהרה (if she sees דם – considered נדה) – קשיא
  - f Support for ר' אמי (רבא): ברייתא:
    - i ספק בכור – טומטום excludes בן
      - 1 Meaning (of ספק): as per רבא's ruling in case of 2 wives (of 1 man) who gave birth in seclusion and it was unclear which son was בכור, that the sons (when they get older) write a הרשאה for each other to keep other brothers from evading debt to בכור (Originally: רבא stated this rule without regard for sequence)
        - (a) After: hearing ר' ינאי's ruling, that if there was never a moment when the בכור was known, there is no הרשאה written (only if they knew then the boys got mixed up is it written) – he taught that nuance
- IV Father's identifying בכור against other evidence
  - a Question asked of שמואל: if A was known to be בכור and father identifies B as בכור
    - i Response: each son writes a הרשאה for the other (to preserve חלק בכורה)
    - ii Challenge: he should have answered in accord with יהודה ר' or רבנן (as below)
      - 1 Answer: he was in doubt if כר"י or not
      - 2 Background: v. 4 - יכיר → identify him to others
        - (a) ד' יהודה: this teaches that if father identifies son as בכור (or as וב"ח) – believed
        - (b) דבנן: not believed – יכיר only relates to a son who needs identifying (no בכור identified before this)
          - (i) Challenge: this is only for giving him פי-שנים; which he could do as a gift in any case

1. *Answer*: affects property that comes to the father afterwards
  2. *Note*: to אדם מקנה דשלב"ע (ר"מ) – must be regarding property that comes to him as גוסס
- (c) *ברייתא*: if he was known as בכור and father identified another as בכור – believed (כר' יהודה)
- (i) *סיפא*: if he was known *not* to be בכור and father identified him as בכור – not believed (כרבנן)
- (d) *ג' יוחנן*: if he first declares that X is his son, then says that he is his slave – not believed
- (i) *But*: if he first declares that he is his slave and then that he is his son – believed
    1. *Reason*: he meant to say that his son serves him like a slave
  - (ii) *Note*: the opposite ruling applies when passing through customs
    1. *Reason*: someone would call his slave "son" to exempt from customs duties
  - (iii) *Challenge*: if a man was serving him like a son and he identified him as a son and then identified him as a slave – not believed; also not believed in the inverse order
    1. *Defense*: in that case, he was called "slave to the boundary of 100" – meaning, worth up to 100 זוז (or something similar)