

22.8.16

127b (ומאתקפתא דר' אשי) → 129a (שלח ליה ר' אבא לר' יוסף בר חמא)

Note: our session is comprised of 7 הלכות sent by ר' אבא, who was a student of הונא and ר' יהודה and then, in ר' אלעזר, a student of ר' אלעזר. ר' אלעזר was a חכם in מחוזא, best known for being the father of ר' אבא, he lived at the end of the 3<sup>rd</sup> century. These הלכות were sent to ר' יוסף בר חמא in בבב. טבריה. בן פדת

## I Series of הלכות sent to ר' יוסף בר חמא by ר' אבא

- a If: A accuses B of stealing his slave (who is in B's possession) and B counters that A gave him as a gift
- i Then: B agrees to let A claim him back – שבועה,
  - ii Ruling: B cannot renege on his agreement
    - 1 Question: what is ר' אבא teaching? The משנה (סנהדרין ג:ב) rules that if a litigant accepts a פסול as דיין:
      - (a) ל"מ. he may renege
      - (b) חכמים. he may not renege
    - 2 Answer: teaches that the dispute is even when the litigant agrees to pay (אתון לך), not just to exempt the other (מחול לך) – and הלכה כחכמים (cannot renege)
- b Collection: a בע"ח may collect from slaves of the heirs (as קרקע)
- i Dissent: ר"נ disagrees
- c כשר לעדות: a שלישי בשני (a 2<sup>nd</sup> cousin once removed; e.g. פרץ may testify for/against אליפז) is פסולי עדות
- i דבא. he can even testify for/against the ראשון (e.g. a grandnephew – פרץ testifying for/against עשו)
  - ii מר בר ר' אשי. permits even father's father (as an extension of רבא's ruling – rejected)
- d פסול לעדות by someone who was valid and became invalid: if someone knew עדות then became blind – פסול לעדות
- i Dissent (שמואל): may testify about קרקע – he may be able to identify the boundaries – but not clothing
  - ii Extension (ר' ששת): even for clothing – he may be able to identify the length and width, but not metals
  - iii Extension (ר"פ): even for metals – he may be able to identify by weight
    - 1 Rejection: ruling that if he was valid, became invalid – only כשר לעדות if he became valid again
- e Identifying child: if he declares about a baby among children – believed
- i Dissent (ר' יוחנן): not believed
    - 1 Meaning of ruling:
      - (a) אבני: if he declares that one of his children will not inherit, valid (as per ר' יוחנן ב"ב); ר"י – invalid (רבנן) יירש/לא יירש (ר' אבא) (Challenge) isn't the term; should be יירש
      - (b) דבא: if he identifies one child as בכור, believed (as per יהודה); ר' יוחנן – not believed (as per רבנן)
- f Including wife in inheritance: if he declares that his wife should inherit with the sons – valid
- i דבא: only regarding property currently in estate, but she divides as per # of sons at time of death
- g מודה במקצת: if A brings שט"ח to B, claiming none was paid; B admits to owing ½ but עדים testify that B paid in full
- i Ruling: B takes a שבועה on the half (that was paid) and pays the other ½ only from חורין בני
    - 1 Reason: לקוחות were relying on עדים when they bought the land (assuming it to be free and clear)
    - 2 Note: even ר"ע, who considers a case where לויה admits to more than he must a משיב אבדה and משבועה
      - (a) Here: would require a שבועה, as here there are עדים
      - (b) Challenge (מר בר ר' אשי): should be opposite; even רשב"א who doesn't reckon such a case as משיב אבדה, would agree here, since there are עדים supporting his version
- h Ruling (מר זוטרא): follows ר' אבא's messages in each case
- i Question (to ר' אשי): what of ר"נ (his position on collecting from עדים)?
    - 1 Answer: our version of this series has ר' אבא saying we may not collect from עדים (same as ר"נ)
  - ii Challenge: if so, what is מר זוטרא excluding?
    - 1 Cannot be: דבא ('s extension to בראשון): he is simply adding; perhaps ר' אבא would agree
    - 2 Cannot be: מר בר ר' אשי (ad loc.) – as he was rejected
    - 3 Cannot be: to reject פפא ששת, ר' ששת, ר' שמואל, (re: testimony from currently פסול לעדות) – they're already rejected
      - (a) Rather: to favor his position over ר' יוחנן (regarding father's identification of the בכור)
      - (b) And: from ר"ע מר בר ר' אשי's challenge to ר' אבא's ruling that even ר"ע would require an oath in case (g)