

22.8.18

130a (משנה 2ה) → 131a (משנה 1ה)

1. והנה גיוס הנחילו את בניו את אשר יחיה לו לא יוכל לבקר את בן האהובה על פני בן השנואה הבכר: דברים כא, טז

- I 2ה **משנה**: bringing an outsider into ירושה
- a *If*: he said “an outsider should inherit” where there is a daughter
- b *Or*: a daughter should inherit where there are sons
- i *Ruling*: invalid, as it is a שכתוב בתורה
- ii *Note*: ר' יוחנן בן ברוקה – if the intended recipient is a proper heir, valid; if not – invalid
- II **Analysis of משנה**:
- a *Difficulty*: implication of רישא is that a proper heir would be valid
- i *In which case*: ת”ק and ריב”ב aren’t disagreeing
- ii *Suggestion*: perhaps ריב”ב allows even an outsider to inherit
- 1 *Rejection*: ר' ישמעאל בנו ר' שמעאל חכמים only disagreed about a proper heir
- 2 *But*: all agree that an outsider cannot inherit
- iii *Answer1*: perhaps our תנא disagrees with ר' ישמעאל בנו של ריב”ב about the extent of the dispute
- 1 *Support*: ר' שמעאל בנו של ר' ישמעאל implies that others thought they did
- iv *Answer2*: the entire משנה is ריב”ב with a חסורי מיחסרה
- b *Ruling*:
- i (Bavel) *דבא* as per ריב”ב – following v. 1a – which implies that he may bequeath to whom he wishes
- 1 *Challenge* (אבי): that is inferred from v.1b
- 2 *Defense*: that דרשה is needed as per אליעזר ר' “balancing” of v1a-1b:
- (a) *v1b*: I would have reasoned, via ק”ו, that if father cannot take away בכורה, who is weaker insofar as he does not have rights to ראו, (i) *then*: certainly he cannot take away פשוט, who does have rights to בראוי – (ii) *therefore*: v. 1a is needed, to allow father to bequeath to whom he wishes
- (b) *v1a*: (inverse of above reasoning)
- (c) *therefore*: both parts of the verse are needed
- ii (Galil) *זריקא* ר' זריקא quoted a tradition from רבי that הלכה is in accord with ריב”ב
- 1 *אבא* ד' אבא: it should read “he ruled (in practice) like ריב”ב”
- 2 *Point of disagreement*: ר' זריקא maintains that a decision is a stronger indicator; ר' אבא – a practical ruling עדיף
- III *Tangent*: ברייתא – we do not apply הלכה from a theoretical ruling *or* from a practical ruling
- a *Until*: the teacher states הלכה למעשה
- b *Once*: the teacher has stated הלכה למעשה, he may act – as long as he doesn’t rule via analogy
- i *Challenge*: the entire system of הלכה is based on analogy
- ii *Answer*: that limitation is only in regard to טריפות – as per the ruling that לזו דומה לזו אין אומרים בטריפות
- 1 *Reason*: the same organ could be cut from one side and the animal will die; from the other and he’ll live
- c *Story*: ר' יוחנן taught his students that they should not rule based on his teachings unless he states הלכה למעשה
- d *And*: רבא told his students that if they find a question in one of his rulings, they should not disregard it without bringing it to his attention
- i *If*: he has a response to their question/challenge – he’ll provide it
- ii *And if*: he doesn’t have a response – he’ll recant
- e *However*: after he is dead, they should not tear it up¹ nor should they act on it
- i *Not tear it up*: perhaps he would have had a response
- ii *Not act on it*: a judge can only judge based on the evidence in front of him and what he understands

¹ The rulings of the *בתי מדרש* of the *אמוראים* were committed to writing, even though the discussions (*שקלא וטריא*) were still maintained as oral tradition