

22.8.19

131a (בעי רבא) → 132a (דניחא לה דתיפוק עלה קלא דכתבינהו ניחלה להנהו נכסים)

I Discussion of extending our ruling to a בריא

- a *רבא's question*: did ריב"ב allow directing a ירושה to a single heir for a בריא as well?
- b *Answer* (ר' משרשיא): from נתן הבבלי ר' נתן's observation to רבי about משנת כתובות (re: כתובת בנין דכרין):
  - i ריב"ב follows: *משנה*
  - ii דבי originally responded that משנה should read יסבון (given as gift, not as ירושה)
    - 1 *Later*: recanted; if it were a gift, the בנין דכרין would be able to seize from משועבדים
  - iii *Implication*: follows ריב"ב – and this is regarding a מתנת בריא (תנאי כתובה)
- c *פפא ד' asked* about difference between יסבון/ירתון – in neither case should it work, since א"א מקנה דשלב"ע
  - i *Note*: even ר"מ wouldn't allow acquisition of דשלב"ע here, since the recipient (בן זכר) isn't in existence
  - ii *Answer* (ר' פ): must be since תנאי ב"ד is unique → could even follow רבנן (disproving משרשיא)
  - iii *Retort* (אב"י): it is because of the use of לשון ירושה that allows a דשלב"ע to be designated to a דשלב"ע
    - 1 *Recant*: כתובת בנין נוקבן, which is a gift; since the תקנות were made together, it is considered as תכ"ד and even רבנן agree that it is valid (no longer associated with ריב"ב, *contra* נתן הבבלי ר' נתן's solution)
    - 2 *Challenge*: perhaps the תקנות were made at different times
    - 3 *Defense*: can't be, as per "מדרש" of ראב"ע in ביבנה כרם, using juxtaposition of תקנות
      - (a) *Block*: could be 2<sup>nd</sup> תקנה was made by a later ב"ד, patterned after the first

II שמואל's ruling about a שכ"מ who assigns the entire estate to the wife:

- a He intended to make her a trustee; same applies if he assigns it to an adult son
  - i *Question*: if he assigns to minor son – does he intend to give him the entire estate or make him trustee?
  - ii *Answer*: שמואל – even if he is in the crib, he is only making him a trustee
    - 1 *Tangent*: if he gifted all to an outsider and to his son – ½ is a gift (to outsider) and son is אפטרופוס over ½
    - 2 *Same*: if he assigns all to wife and outsider
      - (a) *But*: if the wife is either his fiancée or ex-wife – her portion is a gift (wouldn't make her אפטרופוס)
    - 3 *Question*: if he assigns to a daughter (and there are sons) or a wife (and there are brothers) or a wife (and the husband has sons) – is she an אפטרופוס or outright recipient?
      - (a) *רבא* *דבינא בשם רבא*: in all cases, she is an אפטרופוס except for the ארוסה וגרושה
      - (b) *ד' עירא בשם רבא*: in all cases, she keeps the money except for a wife if the husband has sons (אפטרופא)
  - iii *Question* (רבא): does this also work for a בריא? (or do we assume them all to be מתנה גמורה?)
    - 1 *Answer*: ruling that if a man assigns the פירות of his property to his wife, this doesn't deplete her כתובה
      - (a) *But*: if he wrote a percentage of his property over – she collects her כתובה from the rest
      - (b) *And*: if he assigned her all of his property and a שטר חוב (from before the gift, after the marriage) was produced:
        - (i) *ד' א*: she should destroy the שטר מתנה and hold onto the (land for) כתובה
        - (ii) *חכמים*: she should tear up her כתובה and hold on to the gift – and lose on both sides
          - 1. *Story*: יהודה הנחתום ר' יהודה had this happen to his daughter-in-law and they ruled *חכמים*
    - (c) *Upshot*: she does acquire – must be בריא, since if he were a שכ"מ, she'd be a trustee
      - (i) *Rejection*: could be שכ"מ, as per the exceptions above (רבינא – ex-wife etc.; עירא – ר' – most of the list)
      - (ii) *Ruling* (ר' נ): she should destroy her כתובה, keep the שטר מתנה and lose both
        - 1. *Challenge*: ר"י always considers the donor's intent, as per ruling re: assigning property to others when he heard that his son died and it turns out that he is alive (חכמים/רשב"מ)
        - 2. *Answer*: in this case, he'd rather have his wife keep מתנה; enhances her reputation that he gifted her all of his property