22.9.3

141b (ההוא דאמר לה לדביתהו) → 142b (והלכתא ככל הני לישני דאמר מר בריה דרב יוסף משמיה דרבא)

> א. כִּי תִהְיֶיןָ לְאִישׁ שְׁתֵּי נָשִׁים הָאַחַת אֲהוּבָה וְהָאַחַת שְׂנוּאָה **וְיָלְדוּ לוֹ** בָנִים הָאֲהוּבָה וְהַשְּׂנוּאָה וְהָיָה הַבֵּן הַבְּכוֹר לַשְּׂנִיאָה... כִּי אֶת הַבְּכֹר בֶּן הַשְּׂנוּאָה **יַכִּיר** לָתֵת לוֹ פִּי שְׁנַיִם בְּכֹל אֲשֶׁר יִמָּצֵא לוֹ כִּי הוּא רֵאשִׁית אֹנוֹ לוֹ מִשְׁפַּט הַבְּכֹרָה: *דברים פרק כא פסוק טו, יז*

I המזכה לעובר – granting to the unborn
- a *Case*: man told his wife that he is granting everything to her unborn child
- b *Ruling (ר' הונא)*: this is a case of לא קנה – מזכה לעובר
  - i *Challenge*: our משנה – man grants 100 to his unborn son, 200 to his unborn daughter – valid
  - ii *Answer*: cannot answer – ר' הונא cannot identify author of that clause
    1. *Question*: why not identify him as ר"מ – who allows קנינים of futures
       (a) *Answer*: ר"מ only allows such acquisitions to persons who are currently alive
    2. *Question*: why not identify him as ר' יוסי who recognizes the unborn as having financial status
       (a) *Proof*: if a בת כהן, married to a ישראל, is widowed and she is pregnant – may not eat תרומה (due to presence of עובר)
       (b) *Answer*: that is only in re automatic ירושה, not a new הקנאה
    3. *Question*: why not identify him as ריב"ב, who allows gifting to any proper heir
       (a) *Answer*: he (like ר"מ) only allows it to someone currently alive
    4. *Question*: why not identify him as ריב"ב and extend his position to allow for ר' יוסי's re: עובר
       (a) *Answer*: we have no basis for making that claim (that ריב"ב accepts ר' יוסי's position vis-à-vis עובר)
    5. *Question*: why not explain that the gift in our משנה is a מבשרני-gift (as above)
       (a) *Answer*: the next clause – if there are no other children (but the טומטום), "he" inherits all – can't be מבשר
    6. *Question*: why not explain our משנה as a case where she already gave birth
       (a) *Answer*: language doesn't allow for it – "כל שתלד" (future) – would have to be "כל שילדה" (past)
    7. *Question*: why not explain that the father intended that when she gives birth, the gift will take effect
       (a) *Answer*: ר' הונא is being consistent with his own approach:
           (i) *המזכה לעובר*:
               1. *ר"נ*: takes effect if he states "when she gives birth"
               2. *ר"ה*: never takes effect
               3. *ר' ששת*: works even in utero
                  a. *Argument*: ruling that if a גר dies and someone seizes his property, then hears that he had a child or his wife was pregnant – must return
                     i. *Then*: heard that son died or his wife miscarried – must make a new חזקה to acquire
                  b. *אביי*: that is in re: ירושה which is automatic
                  c. *רבא*: original קנין was "weak" (didn't know if there was an heir)→ must make 2nd חזקה
                  d. *Split the difference:* if, after learning the heir hadn't died – he did (לרבא- still needs 2nd חזקה)
               4. *Challenge:* ruling that a 1-day old child bequeaths and inherits → not an עובר
                  a. *ר' ששת*: this is in reference to inheriting mother's estate to bequeath to paternal brothers
                     i. *And:* only works with a child who was already born
                     ii. *Reason:* a son isn't יורש his mother's property to pass it on to אחים מן האב posthumously
                     iii. *Challenge:* is the premise that the עובר will always predecease mother (in such a case)?
                     iv. *Counter:* case where baby was מפרכס for 3 days (after mother died in childbirth)
                     v. *Rejection:* just like a rodent's tail continues to have spasms – it is already dead
                  b. *מר בריה דר' יוסף (בשם רבא)*: this refers to his ability to diminish חלק בכורה as per v. 1
                     i. *Note:* this was the version of the סורא in ילפותא
                     ii. *In פומבדיתא*: if a בכור is born after father's death, no פי שנים as per יכיר (v. 1)
                     iii. *And:* father isn't present to "recognize" him
                  c. *Ruling:* we follow both rulings reported by מר בריה דר' יוסף in רבא's name

