

22.9.17; 158b (משנה י) → 159b (סיום הפרק)

1. תחת אבתיק יהיו בניד השיתמו לשרים בכל הארץ: תהלים מה, יז
 2. ולא תסב נחלה לבני ישראל ממטה אל מטה כי איש בנחלת מטה אבתיקו בני ישראל: במדבר פרק לו פסוק ז
 3. ולא תסב נחלה ממטה למטה אחר כי איש בנחלתו ידבקו מטות בני ישראל: במדבר פרק לו פסוק ט

- I י משנה י ספק of who died first – widow or her only son – vis-à-vis whose relatives get inheritance
- a agree – they split
- i Dissent: ר"ע believes the נכסים remain with the מוחזק
- 1 Meaning: ר' אילא (from א"י, position adopted by זירא ר' after he made עלייה) – heirs of mother
 (a) "wiser" position (אוריא דא"י מחכימא) – since property was already מוחזק to mother's tribe
- 2 רבא (before עלייה, later adopted by רבה in בבב) – heirs of son
- ii Counter: בן עזאי remarked to ר"ע that we felt bad about the earlier מחלוקת – at least here they agree
- 1 Note: from the way he addressed ר"ע, we see that בן עזאי was a "collegial student" (תלמיד חבר)
- II "Competition" for the most inscrutable of ממונות
- a (Test case #1: if a son borrowed against his father's property and then died (and then father died))
- i Then: his son may seize property from buyers
- ii knockout: entire case doesn't make sense – what is there to seize)
- b Test case #1: if a son sold father's property while father was alive, then son died, then father
- i Then: his son (grandson) may seize property from buyers – because his father sold "nothing"
- ii Explanation (→defeats as "inscrutable"): son can come as heir to grandfather, as per v. 1
- c Test case #2: if a son sold his חלק בכורה (same sequence of dying)
- i Then: his son may seize בכורה from buyers
- ii Explanation: son comes in place of grandfather – then takes place of his own father (בכור)
- d Test case #3: if someone signed as עד and then became גזלן
- i Then: others may confirm his signature – but not he
- ii Explanation: could be case where his signature had already been confirmed in ב"ד
- e Test case #4: if he had signed on a שטר and then that same property became his as ירושה (same result)
- i Explanation: same – perhaps his signature had been confirmed in ב"ד
- f Test case #5: if he signed a שטר then became related to בעל דין (same result)
- i Cannot: use above explanation, as רב יוסף already expanded this ruling to a case where ידו בב"ד
- ii Explanation: that is God's decree (which explains cases #3 and #4 as well)
- g Rather: revert to case #1 – and v. 1 is a ברכה, not legal standing
- i Challenge: from our משנה, implying that יורשי האב = his grandsons; if father died first, they claim over בע"ח
- 1 Rejection: יורשי האב are his brothers (of son); מורישי are his uncles (father's brothers)
- III Question asked of רב ששה – can son inherit from his mother after his death – to bequeath to his paternal brothers
- a Answer: no – from ruling about father and daughter's son who were captured – and from our משנה
- i Reason (אבני): vv. 2-3 equate property transfer through husband and through son
- 1 Just as: husband doesn't inherit from wife after (her) death, so son doesn't inherit from mother after death
- IV Case: A agreed to sell all of the property of "בי בר סיסין" to B; but A owned one piece of land that was called "בי בר סיסין" and B claimed it; A responded that that wasn't bought from סיסין, just called that incidentally
- a Ruling (ר"נ): B gets that (questionable) piece of land
- i Challenge (רבא): המע"ה – B should have to prove that that land is really בי בר סיסין
- b Note: both positions represent apparent reversals from this case:
- i Case (בית מדרשו של ר"נ): A was living in a house, B contested his ownership
- 1 A: claimed that he bought it from B and had used it for a חזקה-duration (B denied it, claiming he was far away)
- 2 Ruling (ר"נ): A must prove his חזקה (e.g. bring witnesses that he's been on the land and used it for that time)
- (a) Challenge (רבא): the onus of proof should be on A, as per הראיה עליו
- (b) Implied contradictions:
- (i) רבא in this case, sees מחזק as מוחזק and the claimant (seller) as מחברו; in our case, reversed
- (ii) רבא inverse of ר"נ
- 3 Resolution:
- (a) רבא in our case, the seller is holding on to "בי בר סיסין"; in this case, the מחזק (לוקח) is on the land
- (b) ר"נ in our case, since the land is called "בב"ס", the seller must prove that it isn't really בב"ס, in this case, the קיום השטר is no different than one with a שטר; we always require השטר