

23.3.2

24a (משנה ב') → 24b (אין לאחר קנין כלום)

- I בע"ד recanting (ר"ב יוסף): only applies when the recanting בע"ד originally accepted the "unusual" when there was only 1 דיין, now that there are 3, he wants to change his mind
- a If: one accepts an invalid witness (a קרוב or 3 shepherds, i.e. פסולים)
 - i מ"מ: he may recant
 - ii חכמים: he may not recant
 - b If: one "forgives" an oath and allows his בע"ד to take a נדר instead
 - i מ"מ: he may recant
 - ii חכמים: he may not recant
- II Analysis
- a Context of "flexibility"
 - i שמואל: dispute only applies when the "forgiver" said that he would forgive a debt owed him based on the testimony of the פסול (or the נדר), but if he committed to pay based on it, all agree that he may recant
 - ii ר' יוחנן: dispute applies when he agreed to pay
 - 1 Question: does ר' יוחנן mean that the dispute is *only* in a case where he committed to pay, but if he committed to forgive all agree that he may not recant?
 - (a) Or: does he maintain that the dispute applies to both מחול לך and אתן לך?
 - (b) Suggested proof: רבא claimed that the dispute is only in a case of אתן לך, but not מחול לך (all agree that he may not recant) → רבא must follow ר' יוחנן and he must have limited dispute to אתן לך
 - (i) Rejection: רבא was stating his own opinion, not reflecting ר' יוחנן's
 - (c) Challenge (to רבא): section (b) of the משנה allows for "forgiving" an oath
 - (i) We assume: case is of someone who swears to avoid payment, parallel to מחול לך – and they disagree!
 - (ii) Counter: case is someone who swears in order to collect (אתן לך::)
 - 1. Challenge: if so, same dispute taught twice
 - 2. Answer: one is a case of relying on others (עדים פסולים/קרובים); other is relying on himself (litigant)
 - a. Justification: if we only had תולה בדעת עצמו, תולה ב"מ, א"ס that ר"מ limits his ability to recant to there, as he never really fully accepted the דיין (& flip)
 - b Timing of "flexibility"
 - i ר"ל: dispute only applies if he recants during judgment, after גמ"ד all agree that he can't recant
 - ii ר"י: dispute applies after גמ"ד
 - 1 Question: does ר' יוחנן mean that the dispute is *only* after גמ"ד, but if during דיין all agree that he may recant?
 - (a) Or: does he maintain that the dispute applies to both לפני גמ"ד as well as לאחר גמ"ד?
 - (b) Proof: רבא explicitly ruled that he may recant before גמ"ד, but not after
 - (i) Ergo: רבא must have ruled like ר"י (according to רבנן) → dispute is only after גמ"ד
 - (ii) רבנן ר"מ wouldn't be ruling like רבא דש"י
 - c Final ruling(s):
 - i Version 1: message sent from ר' נחמן בר יעקב: dispute is after גמ"ד and הלכה כחכמים (can't recant at that point)
 - ii Version 2 (ר"ב אשי – as per סוּרָא version): dispute is in case of אתן לך, and הלכה כחכמים
 - iii Version 2 (רבי חנינא בר שלמיא – as per פומבדיתא version): שמואל was asked (by ר"ב) – if he had made a קנין on the agreement to be "flexible" and then recanted before גמ"ד – may he recant?
 - 1 Answer: once there is a קנין, nothing can come later to annul it