

23.3.7

29b (משנה ז') → 31a (דין גליא רזיא)

1. לא תלך רכיל בעמיק לא תעמד על דם רעהו אני ה': ויקרא יט, טז  
 2. הולך רכיל מנקה טוד ונאמן רוח מכסה דבר: משלי יא, יג  
 3. ונפש כי תחטא ושמעה קול אלה והוא עד או ראה או ידע אם לוא יגיד ונשא עונו: ויקרא ה, א  
 4. לא יקום עד אחד באיש לכל עון ולכל חטאת בכל חטא אשר יחטא על פי שני עדים או על פי שלשה עדים יקום דבר: דברים יט, טז

- I שטר אודיתא – a שטר confirming admission of a debt
- a *If*: he admits in front of 2 and makes a קנין – they may write it
  - b *But if*: he admits in front of 3 but does not make a קנין
    - i דב. we write it
    - ii דב. אסי. we don't write it (although רב, in practice, took אסי's opinion into account and didn't allow it to be written)
  - c Conditions for writing:
    - i דב. אידי בר אבין. if the 3 were already sitting, we don't write; but if the בע"ד gathered them – we do
    - ii דבא. even in that case we don't write until the בע"ד says to them הוּו עלי דייני
    - iii מר בר אשי. even that is not enough – unless they sit (formally) and send him a הזמנה
  - d Object of admission:
    - i *If*: it is מטלטלין - he must make a קנין on the admission for them to write
    - ii *But if*: קרקע – אממר – קרקע. we don't write without a קנין; מר זוטרא – קנין – we do write – הלכה
      - 1 Question: what if it is מטלטלין that are visible?
        - (a) דב. אסי. similar to קרקע (we write, even without a קנין)
        - (b) דב. אשי. since they haven't yet been collected – still considered מטלטלין
  - e Proper language of שטר אודיתא.
    - i *Even if*: it is missing a proper ב"ד formula – valid, as per ר"ל's חזקה that עדים don't sign on a שטר unless it was properly executed (בע"ד was an adult) :: דיינים won't sign unless they were properly commissioned
      - 1 Suggestion: if an אשרתא is missing the formula "there were 3 of us and one is no longer (dead)" – parallel
        - (a) Rejection: such a שטר is invalid – we are concerned about טועין ב"ד
          - (i) *But*: if they wrote "בי דינא", valid, as long as we can be sure it was done properly
            - 1. e.g.: "בי דינא דרב אשי" and "ר אשי" instructed us to write thus..."
- II בריתא – other circumstances where admission may be believed/accepted
- a *If*: a man points to a cache of money hidden by heirs' father and he identifies it as belonging to פ' or מע"ש
    - i *If*: he is near the box (in the field) – believed (מיגו he could have given it himself)
    - ii *But if*: he is away (e.g. in the house) – not believed and they can keep it
  - b *If*: they saw father hiding money and he told them it belonged to פ' or מע"ש
    - i *If*: he seemed to be informing them – believed
    - ii *But if*: he seemed to be obfuscating – not believed (they may keep it)
  - c *If*: the heir was troubled that he couldn't find moneys left him by his father
    - i *And*: he was shown the location in a dream and told that they belong to פ'
    - ii *Result*: he may keep them – dreams are of no consequence in such cases
- III Analysis of last clause of משנה – writing פסק דין
- a ר' יוחנן: they simply write the result
  - b ר"ל: they identify which דיינים ruled which way
  - c ר"א: they identify it as a dispute, but anonymously
    - i Split the difference: whether dissenting member must pay in case of ב"ד error (ר"י – pay; ר"ל – exempt)
      - 1 Rejection: even ר"י shouldn't obligate him to pay – he can argue that had they listened to him, they'd be פטור
    - ii Rather: whether the 2 have to pay 1/3 each or make up the missing 1/3 (and each pays 1/2)
      - 1 Rejection: the 2 can tell #3 that had he not joined them, they wouldn't be liable; they shouldn't pay his 1/3
    - iii Rather: they disagree about v. 1; ר"י is concerned about them; ר"א is more concerned about the appearance of dishonesty if it doesn't properly record who voted which way; ר"א takes both concerns into account

- IV ' משנה ז' (included with ' משנה ו' on כט.) announcing decision
- a First: they bring "them" in; the eldest דיין announces the פסק
- i And: once done, they may not tell the דיין בעלי דין how each one voted as per vv. 1-2 (see above)
- ii Discussion: "who" is brought in?
- 1 Cannot be: בעלי דין – they should be standing there
- 2 Must be: עדים
- (a) Note: this is *contra* opinion of ר' נתן, as follows:
- (i) עדים need to see transaction together
1. דיב"ק even if they saw it at different times (discussed below) - valid
- (ii) And: they must testify together
1. ד' נתן even if they come on different days; ב"ד records their testimonies
- 3 Rather: must be בעלי דין; as per נחמיה דין:
- (a) Process: when deliberating, בעלי דין and עדים are excused from chambers
- V Revisiting the two disputes; ריב"ק/חכמים about witnessing and ר' נתן/חכמים about presenting testimony
- a ריב"ק/חכמים: dispute may be grounded in text or reasoning
- i Reasoning: each one saw a different מנה (being lent or being admitted to)
- 1 דיב"ק nonetheless, in sum we have 2 witnesses testifying about 1 מנה
- ii Text: from v. 4, we know that every mention of עד means "2" → v. 3 refers to 2, described as 1
- 1 דיב"ק rest of v. 3 (ראה או ידע) expands to allow for independent witnessing
- b ר' נתן/חכמים: dispute may be grounded in text or reasoning
- i Reasoning: each single witness that comes only comes to generate שבועה
- 1 ד' נתן even when they come together, they testify separately
- ii Text: v. 3 juxtaposes testifying to seeing; and both ר' נתן and חכמים accept position *contra* ריב"ק
- 1 ד' נתן rejects analogy by juxtaposition
- (a) Story: ר' יוחנן ר' יוסי בר חנינא successful "pull" to get סמיכה for חנינא
- (i) Note: implication – if a great man gives סמיכה - even based on being misled – it isn't revoked
- c final ruling:
- i מטלטלין follows ריב"ק, only in case of קרקע but not קרקע
- ii Challenge (אב"י): implying that רבנן disagree about קרקע?
- 1 Explanation: several reports that רבנן concede to ריב"ק in case of קרקע
- (a) And: from ב"מ ב"מ – they agree in re: חזקה, קרקע, חזקה, שתי שערות and about שתי שערות
- (i) Clarification about שערות: if one saw שתי שערות on one side; another saw two on the other
- iii מטלטלין (according to רב יוסף): ריב"ק follows הלכה (רב יוסף) as well as קרקע
- 1 Dissent: רב is reported as limiting it to קרקע
- (a) Consistency: רב holds that they only "join" if הודאה follows הודאה or loan; if loan is 2<sup>nd</sup> – לא מצטרפין
- (b) Observation: הודאה אחר הודאה seems to be the same as הודאה אחר הודאה
- (i) Defense: in case of two הודאות, they could have been about 1 loan, each עד was notified about other
1. But: if so, הודאה אחר הודאה is the same as הודאה אחר הודאה
- iv ריב"ק: they are מצטרפין, no matter what the sequence – as per גהרדעי
- VI Conflicting testimony
- a דיני ממונות vs דיני נפשות is valid in ממונות but invalid in נפשות
- i דבא stands to reason only in case of incidental testimony (e.g. color of pouch) but not essential (e.g. color of coin)
- 1 Challenge: incidental inconsistencies don't invalidate דיני נפשות
- (a) Proof: חסדא – if there is a conflict about the weapon – פסול; if about the color of killer's clothes – כשר
- (b) Answer: רבא may disagree with ר"ח
- b גהרדעי: even an essential contradiction (e.g. color of coin) is acceptable – seems to follow ריב"ק
- i Block: ריב"ק only stated his rule when there is no contradiction
- ii Rather: follows רשב"א's version (2 כותות) of the dispute ב"ש/ב"ה when עדים testify that he owes 200 or 100
- 1 ג"ש: no testimony
- 2 ג"ה: 200 includes 100 – he owes 100
- (a) Parallel: barrel of oil/barrel of wine - case where ר' אמי accepted עדות based on רשב"א
- (i) Block: רשב"א only applied this when one is subsumed under other (200 includes 100)
- (ii) Answer: for value
- (iii) Parallel: if one testifies that the loan took place on 1<sup>st</sup> story, other on 2<sup>nd</sup>; מצטרפים
- VII Story relating to end of משנה: member of ב"מ divulged secret after 22 years and he was expelled as a "מגלה סוד"