

23.10.4

88a (דלא כולי עלמא חזו לטהדותא) 89a → (שלשה בתי דינין) 88a

7. וְכָל הָעָם יִשְׁמְעוּ וְיִרְאוּ וְלֹא יִזְדוֹן עוֹד: דברים ז', יג

- I Parameters of **ממרא**: זקן **אלעזר** dispute ר' כהנא/ר' אלעזר
- a **ר' כהנא**: only liable if the majority position is anchored in tradition and his is his own reasoning
- i *Therefore*: **מהללאל** (עדייות ה:ז) עקביא בן מהללאל wasn't liable; he based his dissents on tradition
- b **ר' אלעזר**: any dispute – even if *they* use reasoning and *he* claims tradition – he is liable
- i *However*: עקביא wasn't liable, as he never ruled that his positions be adopted in practice
- c *Arguments*:
- i *Our nabo*: no proof either way from our **משנה**, as the phrase **כך דרשתי** may be equivocal
- 1 *And*: could mean "they have a tradition" but "I derived"
- ii *Report of יאשיה* **ר' 3** traditions he heard from **זעירא** from the **אנשי ירושלים**
- 1 *If*: a husband wishes to forgo his **קינוי** (re: **סוטה**), he may do so
- 2 *And if*: parents wish to forgive their son (re: **בן סורר ומורה**), they may do so
- 3 *And*: if the **ב"ד** wishes to forgive a rebellious elder (**זקן ממרא**), they may do so
- 4 *But*: when he reported this to the "Rabbis of the south", they concurred re: the first two
- (a) *But*: rejected the ruling about **ב"ד** forgiving **ממרא** - to prevent disputes
- iii *Related ברייתא* **ר' יוסי** of **ברייתא** history of disputes
- 1 *Originally*: there were few disputes, the system was followed and **ב"ד הגדול** settled the few disputes
- (a) *And*: the **ב"ד הגדול** would appoint judges to lower (outer) courts based on expertise and character
- (i) *And*: they would then be promoted (as older judges died)
- (b) *However*: when students of **ב"ה** וב"ש weren't diligent, increased – disputes multiplied and the **תורה** took on the appearance of two legal systems
- II Analysis of end of **משנה** - only if he returns to his city and instructs according to his (outvoted) opinion
- a **ברייתא**: only liable if he himself practices or instructs others and they act on his instruction
- i *Challenge*: if he himself acted on it, he is already **חייב מיתה** (for his actions)
- 1 *Note*: if his instruction was in re: **חיוב דום** (e.g. **חלב ודם**), it still works; but question remains re: **חיוב מב"ד**
- (a) *Answer*: he still requires the **התראה** (which he presumably couldn't have gotten earlier)
- (b) *Challenge*: what about a case of **מסית**, where there is no **התראה** required?
- (i) *Answer*: he had a reasonable explanation last time, which he no longer has
- III **משנה ג'**: surprising limitation of **ממרא**, זקן **ממרא** where **דברי סופרים** are treated with greater severity than **דברי תורה**
- a *If*: he utterly uproots a **מצוה**, e.g – there is no **מצוות תפילין**, exempt
- b *But if*: he adds on to rabbinically defined parameters – e.g. there are 5 **בתים** in **תפילין**, liable
- i **אושעיא** **ר' בשם ר' אושעיא**: only liable if he adds on to **דברי סופרים**, where the addition invalidates the whole
- 1 *And*: this can only apply to a fifth **בית** of **תפילין** (all this follows **ר' יהודה** above)
- (a) *Challenge*: should be able to apply to **לולב** (i.e. adding a fifth **מין**)
- (i) *Block*: if we hold **לולב א"צ** **אגד**, then the fifth doesn't affect the other four
1. *And*: if we hold **לולב צריך אגד**, it wasn't valid until now in any case
- (b) *Challenge*: should be able to apply to **ציצית** (added strings)
- (i) *Block*: if we hold **לא דאורייתא** **קשר עליון**, extra strings sit separately, don't affect the proper ones
1. *And*: if we hold **קשר עליון דאורייתא**, wasn't yet valid
- (c) *Challenge*: these arguments could exclude **תפילין** as well
- (i) *Answer*: if the added **בית** is attached with a block to the outside, it invalidates the proper four
- IV **משנה ד'**: dispute **יהודה** if he is executed locally and immediately or at **ב"ד הגדול** on the **רגל**
- a **ר"ע**: only killed at **ב"ד הגדול** and on the **רגל**, in order to fulfill v. 1
- b **ר' יהודה**: no right to delay his execution (**עינוי הדין**); we execute immediately and send a message out to all (v. 1)
- i **ברייתא**: **ר' יהודה** points to the key word – **ישמעו**, not **יראו** – they have to hear about it, not see it
- ii **ברייתא**: there are four **מחוייבי מב"ד** which the herald announces:
- 1 **מסית** – as per **יג**, **דברים יג**: **וְכָל הָעָם יִשְׁמְעוּ וְיִרְאוּ וְלֹא יִזְדוֹן עוֹד: דברים יג**
- 2 **בן סורר ומורה** – as per **כא**, **דברים כא**: **וְכָל הָעָם יִשְׁמְעוּ וְיִרְאוּ וְלֹא יִזְדוֹן עוֹד: דברים כא**
- 3 **זקן ממרא** – as per v. 1
- 4 **הנשארם** **ישמעו ויראו** ולא יספו לעשות עוד **כדבר הרע הזה בקרבך**: **דברים יט**, **כ** as per **עדים זוממים**
- (a) *Note*: use of **נשארים** here, because not all are **עדות** → don't need to witness their execution