26.5.9

71a (משנה זב) → 72a (והלכתא כרב הונא בריה דרב יהושע)

I משנה זב: selling wine to עכו"ם while avoiding problem of דמי יין נסך in payment
- a *If*: they agreed on a price before measuring the wine – money is מותר
- b *But if*: he measured first – money is אסור – has status of דמי יי"נ

II "Backdoor" discussion regarding validity of קנין משיכה for non-Jew
- a משיכה קונה בגוי :אמימר
  - i *Proof*: when the Parthians send gifts to each other, they never retract the gift
    - 1 *Block (ר' אשי)*: that's due to their pride, not the validity of the קנין
- b משיכה אינה קונה :ר' אשי
  - i *Proof*: רב's directive to ישראלי wine sellers:
    - 1 *When you sell*: first collect from them before pouring into the flask; if they don't have money on hand, make it a loan which the allows for later collection
    - 2 *Rationale*: if not, it becomes יי"נ while still in your possession, then when you accept payment – דמי יי"נ ואסור
      - (a) *Explanation*: if משיכה were valid, it would be his from the moment he took it, although it only becomes יי"נ when he touches it (which must be after he picks it up or draws it to himself)
    - 3 *block*: that would be true if the ישראל were pouring into his own כלים;
      - (a) *but*: here, he is pouring in to כלי הגוי – (where there is some יי"נ residue on bottom – אסור on contact)
      - (b) *rebuttal*: in that case, it becomes the property of גוי when it hits air space of כלי, not יי"נ 'til it hits bottom
        - (i) *explanation*: this would only be a problem if we accepted the validity of ניצוק as חיבור (which we don't)
      - (c) *defense*: if גוי were holding כלי – that would be right; in this case, his כלי is sitting on the ground
        - (i) *explanation*: it doesn't become his until it "hits bottom" of כלי
      - (d) *rebuttal*: let his כלי be קונה for him, 'tho it is in the property of the מוכר
        - (i) *explanation*: does this mean that we rule כליו של קונה ברשות מוכר לא קנה? (it's a dispute in ב"מ)
        - (ii) *defense*: in this case, there is יי"נ residue blocking pouring spout; each drop becomes יי"נ immediately
    - 4 *challenge*: does this mean that we rule against רשב"ג (ע"ז ה:י) who allowed (in case of תערובת) selling the entire batch of wine to עכו"ם, less the value of the actual יי"נ?
      - (a) *Defense*: the question is about רב's ruling; רב ruled like רשב"ג only when barrels got mixed up, not wine
    - 5 *challenge*: ruling that if one buys coins from עכו"ם and finds ע"ז among them
      - (a) *if*: he took them before paying – return them
      - (b) *if* : he already paid – dispose of the ע"ז at ים המלח
        - (i) *explanation*: if we thinkthat משיכה קונה בגוי, how can the ישראל return them (ברישא)
          1. *answer (אביי)*: it appears to be a מקח טעות – he took the coins assuming them to be only coins
             a. *challenge (רבא)*: if so, סיפא should also be returnable, as it looks like מקח טעות
          2. *answer (רבא)*: both are מקח טעות, but in סיפא, since he already paid, appears as אסור → ע"ז ביד ישראל
    - 6 *challenge(to ר' אשי)*: our משנה - if משיכה (=measuring) isn't valid, why is the money מותר?
      - (a) *Answer*: in this case, the עכו"ם paid him up front
        - (i) *Block*: then why should the money be אסור in the סיפא?
        - (ii) *Comeback*: if משיכה קונה, why the distinction between רישא וסיפא?
          1. *Rather*; (if משיכה קונה), by setting a price, there's reliance (סמיכות דעת) on the deal
          2. *Similarly*: (if משיכה אינה קונה), though he already got paid, only with setting price is there גמירות דעת
    - 7 *Challenge (רבינא לר' אשי)*: ר' יוחנן's ruling that a ב"נ is killed for stealing any amount and לא ניתן להשבון
      - (a) *Explanation*: if we say that משיכה קונה, we see that he made a קנין and for that – he is liable
        - (i) *but if*: משיכה אינה קונה, why is he punished?
          1. *Answer*; for his troubling ישראל from whom he stole; לא ניתן להשבון means השבה גזלה doesn't apply
          2. *Challenge*: but he is also killed if he steals from another בן נח
          3. *Rather*: משיכה בגוי קונה – QED

III Analysis of Halakhic power/impact of פסיקת ממון (agreeing on a price)
- a *cases*: a man declared that if he ever sells his land, it'll be to פלוני
  - i *but*: he sold it to another
    - 1 ***רב יוסף***:פלוני has rights to the land
    - 2 *Challenge (**אביי**)*: they hadn't agreed on a price (פסיקת דמים)
      - (a) *Proof (that **פס"ד** matters)*: from our משנה
        - (i) *Block*: perhaps פסיקת ממון is only significant due to חומרא of **י"נ**
      - (b) *Rather*: proof (used by ר' חסדא and ר' הונא when they had such cases come before them)
        - (i) *If*: buyer brings donkey-drivers and workers, carrying fruit of מוכר, into his house
          1. *Whether or not*: they measured before or after setting a price, either side can retract deal
        - (ii) *but if*: the buyer also unloaded the fruit (i.e. did a מעשה קנין)
          1. *if*: they already set a price before measuring – neither side may retract
          2. *but if*: they didn't yet set a price – either side may retract offer
- b *case*: a man committed that if he would sell his land, it would be to פ' for 100 זוז
  - i *and*: he went and sold it to another for 120 זוז
  - ii ***ר' כהנא***: should go to first one
    - 1 *Challenge (**ר' יעקב מנהר פקוד**)*: seller was "coerced" by better offer (**הלכה**)
- c *If*: someone commits to sell at a price "as appraised by three"he commits to accept ruling of 2 out of 3
- d *But if*: he commits to accept price "as stated by 3" – all three must agree for him to be committed
- e *If*: he commits to a price "as appraised by four" – all four must agree
  - i *And certainly*: if he said "as stated by four"
- f *If*: he committed to appraisal of three and after their appraisal, the other states that he wants a different group of 3, who are more expert, to appraise –
  - i *Ruling (**ר"פ**)*: the second may prevent the sale from happening until the other 3 come along to appraise
    - 1 *Chalelnge (**ר' הונא בריה דר' יהושע**)*: just because he stated this , will we hold up the deal? Perhaps the first three are more expert!
    - 2 *ruling*: accords with ר' הונא בריה דר"י (and the second cannot reject the 1st appraisal)

