

31.8.2

(וכולה כלישנא קמא) 48b → (משנה א) 47b

1. כי תהיין לאיש שתי נשים האחת אהובה והאחת שנואה וילדו לו בנים האהובה והשנואה והיה הבן הבכור לשנייה: דברים כא, טו
2. כל פטר רחם לכל בשר אשר יקריבו לה' באדם ובבהמה יהיה לך אך פדה תפדה את בכור האדם ואת בכור הבהמה הטמאה תפדה: במדבר יח, טו
3. כי את הבכור בן השנואה יכיר לתת לו פי שנים בכל אשר ימצא לו כי הוא ראשית אנו לו משפט הבכור: דברים כא, יז
4. ואם נקבה תלד וטמאה שבעים כנדתה וששים יום וששת ימים תשב על דמי טהרה: ויקרא יב, ח

- I 2a משנה א: those which are בכור for both (in spite of an earlier miscarriage)
- a If: she exuded a sac filled with water, blood or pieces of meat
- b Or: she miscarried and it looked like rodents, reptiles or fish; of if she miscarried on 40<sup>th</sup> day (or earlier) of gestation
- II 2b משנה ב: if the first son is delivered via a C-section
- a ד"ק: neither he nor the next one (delivered vaginally) are either type of בכור
- i Reason: 1<sup>st</sup> is neither פוטר רחם, nor does he fit לו וילדו (v. 1) and בכור for one thing (פוטר רחם – the 2<sup>nd</sup>) isn't בכור
- b ד"ש: first one is בכור לנחלה, second one is בכור לכהן
- i Reason: infers that C-section is considered לידה from v. 2 (in re: יולדת) → 1<sup>st</sup> is "וילדו לו"; and בכור for one thing (פוטר רחם) is בכור for all → 2<sup>nd</sup> is בכור לכהן
- III 2g משנה ג: ספק בכור
- a If: a man had a wife who had never had a child and she gave birth to twin boys (and we don't know which is בכור)
- i Then: he gives 5 סלעים כהן
- ii If: one of them dies within 1<sup>st</sup> 30 days – father is exempt (המע"ה)
- iii If: the father died (and sons are alive)
- 1 ד"מ: if they paid (כהן) before dividing the estate – it is given; if not – they are exempt
  - 2 ה' סלעים on it for שעבוד ד' יהודה
- iv But if: he had a boy and girl (twins – we don't know which is first) – he is exempt (המע"ה)
- IV Analysis of dispute ר"מ/ר"י: Did father die before 30 days or afterwards?
- a Approach#1: died beforehand; else all would have to agree that property has lien on it for סלעים
- i Challenge: should be no difference if already divided property – either way, each son can divert כהן to other son
- 1 ד"רמיה: this supports position that if 2 men with same name buy into a field together, the בע"ח of one of them (unclear which one) can seize from joint property
  - 2 דבא: since property is essentially an ערב for the owner, he can't collect from the "ערב" if he can't collect from debtor, per ז: בבא בתרא יז: which we take to mean that he can't sue the ערב first
- b Approach#2 (דבא): he died after 30 days, and if there were sufficient funds on estate, the כהן could collect
- i Case: there are only 5 סלעים on property
- 1 And: all accept ר' אסי – if brothers divide property, ½ is לקוחות ½ ירושה
  - (a) Background: רב holds that if a בע"ח of father seizes property from heirs after division, they are considered ירושה and ירושה is annulled; שמואל considers them לקוחות and the one from whom it was seized is "out of luck"; אסי takes a middle position (due to doubt about ruling)
  - 2 And: all agree that מלוה בתורה (like פדיון הבן) is not considered מלוה בשטר (rather על פה)
  - 3 And: all accept ר"פ's ruling that מלוה ע"פ can be collected from heirs but not from לקוחות
  - 4 Dispute: is whether a כהן collects part of 5 ("חצי חמש") or only full amount (ר"מ – only 5; ר"י – even part)
  - (a) Challenge: why does ר"י say that the property has a lien on it – the man is obligated!
  - (b) Furthermore: ר"י (ברייתא) states that only if each brother has 10 זוז (2.5 סלע) they are liable
  - (i) Must mean: 10 each of ירושה – else he could allow for less (חמש חצי חמש) → he only allows for חמש
- c Rather: ר"מ and ר"י disagree about whether to accept ר' אסי and ר"פ – since ר"י doesn't accept them, all 5 are available
- d Note: some read this entire give-and-take as a comment on יהודה ר' ruling alone – "נתחייבו נכסים"
- i Commenting: when did father die? If he died after 1<sup>st</sup> month, shall we infer that ר"מ would rule that if they already divided – they are exempt? Property already had a lien put on it (at day #30)
- ii Rather: he must have died during 1<sup>st</sup> month – but if they already divided, why does ר"י obligate them?
- 1 ד"רמיה: this supports position that if a man bought a field from a member of same town with same name,
  - (a) Then: בע"ח (who has earlier שט"ח on one of them) can collect from לקוחות
  - (b) Challenge (דבא): as per above, about role of property as ערב etc.