

25.7.3

47b (משנה ה') [החנווני על פנקסו כיצד] → 49a (סיום הפרק)

1. וְזֶה דְּבַר הַשְּׂמֵטָה שְׂמוּט כָּל בַּעַל מִשָּׁה יְדוּ אֲשֶׁר יִשָּׂה בְּרַעְיוֹ לֹא יִגַּשׁ אֶת רַעְיוֹ וְאֵת אֲחִיו כִּי קָרָא שְׂמֵטָה לֹה': דְּבָרִים טו, ב

- I חנווני על פנקסו: explication of משנה ה'
- a חנווני על פנקסו: (not a case where חנווני claims what is written as a debt in his ledger); when בעה"ב commissioned storekeeper to pay worker or give his son some goods; they claim they never got them and storekeeper claims he gave them
- i Each side: swears and collects
- ii Dissent (שמעון בן גנסי): this is enabling a certain שבועת שקר; rather, they both take without שבועה
- 1 Question (רבי): what is the purpose of this oath?
- 2 Answer (ר' חייא): to mollify בעה"ב
- (a) Query: did רבי accept this answer (and confirm ruling in משנה ה')?
- (b) Response: evidently not, as he ruled that the worker takes the oath to the חנווני (not the בעה"ב)
- (i) Emendation (רבנא): he meant that the worker takes the oath to the בעה"ב in the presence of the חנווני
- (ii) Purpose: to shame the worker into backing off and not lying
- II Tangential dispute re: mutually contradictory sets of witnesses (AB vs. CD)
- a ר' הונא: they are still regarded as valid (for other testimonies) as long as they testify independently of each other
- b ר' חסדא: they are regarded as עדי שקר
- i Implications: in cases of שטרות (on which they are signed)
- 1 If: there are two different lenders, two different לוויין and 2 שטרות, one signed by AB, the other by CD
- (a) Then: ruling falls along lines of this dispute
- 2 If: there is one מלוה, one לווה and 2 שטרות (one with AB, the other with CD)
- (a) Then: the מלוה has the lower hand (can only collect the lesser amount)
- 3 If: there are two lenders, one borrower and 2 שטרות (AB and CD)
- (a) Then: this replicates the ruling in our משנה ה'
- 4 If: there are 2 לוויין and one lender and 2 שטרות (AB/CD) - what is the ruling? תיקו
- c Challenge (to ר' חסדא): if the testimony of עדי החדש is within an acceptable margin of error (1 מרדע-length) – accepted
- i If not: not accepted, but they may join another testimony
- 1 Assumption: this refers to some unrelated עדות ממון
- 2 Implication: they are not inherently עדי שקר → refutation of ר' חסדא
- 3 Defense: means that either may join a second corroborating witness for עדות החדש
- III משנה ו'
- a If: the בעה"ב asked a storekeeper for a דינר of fruit
- i Then: then חנווני demanded his money (they agree he got fruit) and בעה"ב claims he paid him (and where he put it)
- 1 consequence: בעה"ב takes oath that he paid and is exempt
- (a) ברייתא: ר' יהודה – only need an oath if the fruit is before them on the table
- (i) But: if the בעה"ב already put it in his bag, we know the חנווני wouldn't allow him to do so without paying and he is exempt without an oath
- ii but if: בעה"ב demanded his fruit (they agree that he paid) and חנווני claims he gave it (and put it in his house)
- 1 Consequence: חנווני takes oath that he gave the fruit and is exempt
- iii Dissent (ר' יהודה): whoever is holding the fruit has the upper hand
- b If: the בעה"ב asked שלחני for a דינר of coins
- i Then: then שלחני demanded his דינר (they agree he got coins) and בעה"ב claims he paid him (and where he put it)
- 1 consequence: בעה"ב takes oath that he paid and is exempt
- ii but if: בעה"ב demanded his coins (they agree that he paid) and שלחני claims he gave it (and put it in his pouch)
- 1 Consequence: שלחני takes oath that he gave the fruit and is exempt
- iii Dissent (ר' יהודה): it isn't customary for the שלחני to give coins before he's been paid
- c Justification: for both cases
- i If: we only learned about חנווני and fruit – סד"א since the חנווני is interested in getting his fruit to the client quickly due to rot, he may have given it to him without getting paid; but in case of שלחני, סד"א all agree with ר' יהודה
- 1 And: the inverse; if we only had סיפא, we would think that ר' יהודה agrees in case of חנווני – קמ"ל

IV ז' משנה: other cases where שבועות are required for collection

- a *Just as*: a woman who claims she already collected some of her כתובה and wishes to collect the rest must swear,
- i *similarly*: if 1 עד testifies that it was paid, *or*: any collection from משועבדים *or*: from heirs
- 1 *question*: from whom are the heirs collecting?
 - 2 *Answer*: heirs of מלווה from לווה (if from לווה himself, no need for oath, as father wouldn't have needed one)
 - (a) *דב ושמואל* only applies if מלווה died first
 - (i) *However*: if מלווה died first, מלווה was already liable for a שבועה
 - (ii) *And*: a man cannot bequeath rights of collection via a שבועה to an heir
 - (b) *דא* in that case, heirs of מלווה take שבועת היורשין (e.g. "father never told us this was paid") and collect
 - (c) *Further*: the question was sent to אמי ר', so he ruled:
 - (i) *If*: the מלווה had gone to דין, been told to swear and then died, heirs can no longer swear and collect
 1. *But*: if he hadn't yet come to דין (though לווה died) – & מלווה died, heirs may swear and collect
 - (d) *ל"ג* rejects אמי ר'; if one accepts רב ושמואל, accept as is (with death of מלווה, מלווה becomes liable for שבועה)
 - (i) *Challenge*: ר"ג rejects entire approach, as he reads משנה inverted (ר' יוסי – להלכה – rules יחלוקו)
 - (ii) *Answer*: his comment was per ר"מ (or alternate version of משנה)
 - 3 *Challenges to דב ושמואל*
 - (a) *דא אושעיא*: heirs of אלמנה may sue for her כתובה for up to 25 years (→ take oath that they "inherited" from their mother and collect)
 - (i) *Answer*: if their mother already took the oath before she died
 - (b) *בריייתא*: if he married and his wife predeceased him, then remarried and died, the 2nd wife and her heirs take precedence over heirs of 1st (→ her heirs take an oath and collect)
 - (i) *Answer*: again – if she took the oath and then died
 - (c) *משנה כתובות* (if he banned himself from any claims over her or her heirs), yet his heirs may make her or her heirs take an oath
 - (i) *Answer* (ר' שמעה): distributed; she (if an אלמנה) or her heirs (if a גרושה)
 - (d) *דב נתן בר הושעיא*: a son is stronger than his father, that a son may collect with or without an oath, and father can only collect if he swears
 - (i) *Reference*: with an oath – שבועת היורשין; without an oath – as per רשב"ג (below)
 1. *Answer* (ר' יוסף): this ruling follows ב"ש – any שטר that stands for collection is already ממון
 - 4 *in טורא*: colleagues wanted to overturn רב's ruling; he refused but agreed to limit it
 - (a) *example*: ר"פ's ruling that if someone is פוגם שטר (admits that some was paid) and dies, heirs may take an oath and collect the rest (and רב's ruling doesn't bar collection)
 - (b) *Attempt*: man died and heirs of מלווה went to ערב; ר"פ suggested that we allow it as it isn't exactly per ר"ש
 - (i) *Rejection* (ר"ה בריה דר"י): the ערב will go after the heirs – so it is יתומין מן היתומין
 - (c) *Attempt*: man died, leaving a brother; רב"ח thought they could limit רב's ruling from this
 - (i) *Rejection* (רבא): how is "father didn't tell us" different from "brother didn't tell me"?
 - 5 *Final ruling* (ר' חמא): either position is valid → א שטר of יתומים isn't destroyed (we may rule like ר"א) and isn't used for collection (as per רב ושמואל) – (story with דיין who ruled like ר"א and the "letter" from ר"א)
- ii *or*: if she collects in her ex-husband's absence,
- iii *or*: if heirs wish to collect – all require a שבועה:
- 1 *they must swear*: that father never told them the debt was paid and they didn't find a receipt among his שטרות
 - 2 *ד' יוחנן בן ברוקה*: even if this heir was born after death of the father, he may swear and collect
 - 3 *דשב"ג*: if there are witnesses that father, at time of death, said debt was still owed, heir may collect w/o שבועה

V ח' משנה: the following take an oath even if there is no claim (גמ – meaning, even if there is only שמה)

- a Partners, sharecroppers, trustees (אפוטרופין), a widow who is running the estate, or a man running affairs of the house
- i Meaning of בן בית – not just a familiar friend, but someone who is running financial affairs of household
- ii *Case*: when any of these asks "why are you claiming from me"? and the claimant requests an oath (that he hasn't taken funds improperly) – must swear - note (גמ) – only if claim is at least 2 מעה כסף (or a denial of מעה)
- 1 *Note*: once the partners or sharecroppers have dissolved the relationship, cannot force an oath
 - 2 *If*: an oath is introduced from some other obligation, he may "roll on" these other claims
 - (a) *Question*: can a שבועה דרבנן be used for הלגול?
 - (i) *Answer*: from ruling that if he became a שותף before שמיטה (then dissolved) then borrowed after שמיטה – he may "drag" in שבועה
 1. *Ruling*: all of these שבועות may be "dragged" in – except for שנשבע ונטל
 - 3 *And*: שמיטה cancels the oath (along with the debt) - per v. 1