

22.10.11

173a (משנה ח') → 174a (מסכת ערב תחלה) (וקי"ל לא יתבע ערב תחלה) → 174a

1. אנכי אֶעֱרְבֶנּוּ מִיָּד תִּבְקָשׁוּ אִם לֹא הִבִּיאֲתוּ אֵלַיךְ וְהִצַּגְתִּי לְפָנֶיךָ וְהִטָּאתִי לְךָ כֹּל הַיָּמִים: בראשית מג, ט
 2. וְיֹאמֶר רְאוּבֵן אֶל אָבִיו לֵאמֹר אֶת שְׂגִי בְּנֵי תַמִּית אִם לֹא אָבִיאֲנִי אֵלַיךְ תִּנָּח אֹתוֹ עַל יְדֵי וְאֲנִי אֲשִׁיבֶנּוּ אֵלַיךְ: בראשית מב, לו
 3. לָקַח בְּגָדוֹ כִּי עָרַב זֶר וַיִּבְעַד וְנָכְרִיָּה חָבְלָהּ: משלי כ, טז
 4. בְּנֵי אִם עָרַבְתָּ לְרַעַד תִּקְעֶת לְזֶר כְּפִיד: נוקשת באמרי-פיד נלפדת באמרי-פיד: עשה זאת אפוא בני והנצל כי באת בכף-רעולך התרפס ורבה רעיד: משלי ו, א-ג

I ערב משנה ח'

- a If: someone lends money and there is an ערב, he shouldn't collect from him (before addressing borrower)
- i Reason: רבה ור' יוסף – רבה ור' יוסף's claim is that he assured מלוה that לוה would be there – and he's present (hasn't fled)
- 1 Counter (ר'נ): that is the approach of the Sassanian courts!
 - 2 Block: the Sassanian courts go after the ערב first!
 - 3 Rather: just like the Sassanian courts, that don't explain their reason for what they do...
- ii Rather: means "shouldn't collect from the ערב first" (support from ברייתא)
- b But if: he said "I'm lending on condition that I may collect from whichever I choose" – he may
- i לוה only applies if the לוה has no property; if he does, may not collect from לוה
- 1 Challenge: from רשב"ג's dissent → ת"ק must hold that even if לוה has property, may collect from ערב
 - (a) Rather: מחסורא –
 - (b) Reads: first half – if לוה has no property; but if he does, never collect from ערב
 - (i) However: if he is a קבלן (who accepts full responsibility for the loan) – even if the לוה has property, he may collect from קבלן
 1. Dissent (רשב"ג): if the לוה has property, in no case may he collect from ערב
 2. Note: ר' יוחנן ruled that everywhere רשב"ג's opinion is mentioned in the משנה, הלכה follows his opinion, except for ציידן, ראייה אחרונה and this case (ערב)
- c Dissent: רשב"ג – if the borrower has property, in neither case may he collect from ערב
- i Similarly: רשב"ג ruled that if someone is an ערב for a woman's כתובה and her husband is about to divorce her, the husband must ban any הנאה from the woman (so they can't remarry) to avoid them conspiring to hurt the ערב

II Source(s) of ערבות

- a v. 1: ר' הונא
- i Challenge (ר' חסדא): this is a case of קבלנות (where he accepts full responsibility) as per v. 2
- ii Rather: vv. 3-4
- 1 Interpretation of v4: if you owe him money – pay; if not (if it's a personal affront), bring friends (to ask מחילה)

III ערב of an שעבוד

- a אמיתר – it depends on one's position on אסמכתא
- i ערב משתעבד → אסמכתא קניא – ר' יוסי
- ii ערב לא משתעבד → אסמכתא לא קניא – ר' יהודה
- b אסמכתא re: ר' יהודה like ערב, 'tho we rule like יהודה (ר'אשי): in practice, we allow for ערב
- c Rather (ר'אשי): with the הנאה he gets from the מלוה trusting him, he obligates himself (משעבד נפשיה)

IV Distinction between ערב and קבלן

- a Formulation (ר' הונא)
- i ערבות: "lend to him and I'll be the guarantor", "...and I'll pay back", "... and I'll be liable", "...and I'll give"
- ii קבלנות: "give to him and I'll be the קבלן", "...and I'll pay back", "... and I'll be liable", "...and I'll give"
- iii Question: mixing terms (e.g. "lend to him and I'll be a קבלן" or "give to him and I'll be an ערב")
- 1 ערב: if he uses the word ערב, it is ערבות; if קבלנות – he's a קבלן
 - 2 חסדא: all formulations (including those of ר' הונא) are קבלנות except for "lend to him and I'll be the ערב"
 - 3 דבא: all formulations (including those of ר' הונא) are ערבות except for "give to him and I'll give (to you)"
- iv אמיתר: if he says "תן לו ואני נותן" the lender has no claim on the borrower (all to the קבלן)
- 1 Rejection: this isn't true unless the loan goes through the קבלן's hands
- b Case: a allowed lender to go directly to לוה's property for collection without notifying לוה
- i דיין dismissed him from his position as דיין
- ii דבא: praised him for the dismissal;
- 1 Reason: a man's property is ערב for him and we don't collect first from an ערב (as per our משנה)