

22.10.13;175a (משנה ט) → 176b (סיום המסכת)

- I rights of collection from oral debt, written debt
- a משועבדים: can only be collected from מלוה בשטר with proper עדים
- b בני חורין: even from מלוה ע"פ עדים, an "IOU" signed by debtor or from an ערב signed after בני חורין
- i Story: ר' ישמעאל had a שטר come with ערב signed below עדים and he permitted collection from בני חורין
- ii Dissent (בן ננס): ערב is only liable if he generates the loan, not if he "saves the day"
- 1 Analogy: if a creditor is choking a debtor and a 3rd party steps in to save him and promised to pay if the בע"ח leaves him alone – he certainly isn't liable to pay
- (a) Response: ר'י's praise for ממונות and the wisdom involved – and for the genius of בן ננס שמעון בן ננס
- II Discussion re: שעבודא דאורייתא (if the תורה provides for property becoming משועבד to a debt)
- a משועבדים; essentially, even an oral debt should be collectible from עולא
- i Reason: שעבודא דאורייתא; מלוה ע"פ is excepted → לקוח בשטר (in re: מלוה בשטר, should have researched- has a קול)
- b דבה: essentially, no debt should be able to be collected from משועבדים
- i Reason: שעבוד is not מה"ת – מלוה בשטר may collect from לקוחות to encourage lending – but oral debt has no קול
- ii Challenge: רבה ruled (in re: ruling coming from א"י that a בכור gets פי שנים in case of a מלווה loaned by his father that is collected) that he only gets פי שנים if they collect land → שעבודא דאורייתא and land of the לווה was father's
- 1 Suggestion: perhaps our positions are reversed (עולא – עולא)
- 2 Rejection: עולא clearly rules that a בע"ח has claim on זיבורית (inferred from פסוקים in ב"ק)
- iii Answer: רבה was only explaining the position of א"י חכמי – but he holds שעבודא דאורייתא
- c שעבודא לאו דאורייתא – לקוחות or יורשין oral debt cannot collect from דב ושמואל
- d שעבודא דאורייתא – לקוחות and יורשין oral debt may be collected from ד' יוחנן ור"ל
- i Challenge (to רב ושמואל): if someone digs a בור ברה"ר and an animal falls and kills digger – owner of animal is פטור
- 1 Furthermore: if animal dies, heirs of בעל הבור have to pay
- 2 Implication: מלוה על פה (liability for נזקין) is collected from יורשים
- (a) Answer: case where there the digger was found liable in ב"ד
- (i) Challenge: ברייתא uses הרגו as example (i.e. animal killed him there)
- (b) Answer: animal made him a טריפה, but he was able to come to דין
- (i) Challenge: תנא taught the case as the ox killed him and buried him there (in the בור)
- (c) Answer: the ב"ד was standing over him at the בור and passing sentence as he died
- e Final ruling (ר"פ): oral debt is collected from יורשין (encourage lending) – but not from לקוחות (קול no)
- III Analysis of the "IOU"
- a Question (asked of ר' יוחנן): what if debtor's signature is recognized in ב"ד
- i Answer: still may only collect from בני חורין
- b Challenge: 3 גיטין פסולין – but if a woman remarries via any one of them – child is כשר
- i Includes: written by husband and there are no עדים & she may collect her כתובה – even from משועבדים נכסים משועבדים
- c Answer: in that case, it was originally written to be given in front of מסירה עדי and he was משעבד himself
- IV Analysis of the ערב signed after the עדים (can only collect from בני חורין of the ערב)
- a רב1: but if ערב is signed above עדים, may collect from משועבדים
- b רב2: even if ערב signed above עדים, may only collect from ב"ח
- i Resolution: if it states ערב פלוני, witnesses are also testifying to that → משועבדים
- 1 But if: it states פלוני ערב, this is an autonomous statement, unrelated to עדים's signature
- c פלוני ערב: in any case, only collect from בני חורין – even if it states ערב פלוני
- i Challenge: ר' יוחנן himself distinguished between ושאלו and שאילו (in former case, it is independent)
- 1 Answer: correction – ר' יוחנן ruled like רב – ערב פלוני will allow for משועבדים
- V Analysis of ר' ישמעאל's evaluation of בן ננס position
- a Ruling (ר' יוחנן): ר' ישמעאל follows הלכה, בן ננס ר' ישמעאל (may collect בני חורין from ערב)
- i Question: did ר"י disagree with בן ננס about his example of the man attacking his debtor?
- ii Answer: yes he did, and ר"י follows הלכה there, as well (man stepping in to help is חייב to pay, as he promised)
- b Dissent (ר' יוחנן) in the case of the חנוק, if the ערב makes a קנין with the בע"ח, he is liable שמואל
- i Implication: a regular ערב needs no קנין to become liable
- 1 contra: ר"נ – only ערב in ב"ד needs no קנין
- 2 Final הלכה: ערב needs no קנין if he commits at point of loan; if after, he needs קנין
- (a) Exception: if he is ערב בב"ד; ערב; the הנאה he gets from being trusted is the vehicle for שעבוד

תא ואלסא לבחא לבארא עולא

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