

22.9.12

152a (לא איפרק מטיבעא) → 153a (איתמר מתנת שכ"מ)

I Disputes between רב/שמואל regarding מתנת שכ"מ

- a *If*: a שכ"מ has "קנין" written into it
- i מתנת בריא ומתנת שכ"מ – both strengths – רב (ב"ר)
- 1 מתנת בריא: he can't retract it if he recovers
 - 2 מתנת שכ"מ: he can transfer his credit to another without מעמד שלשתן
- ii שמואל: isn't sure if it works at all
- 1 Reason: seems like he wanted to use a שטר (מתנת שכ"מ) and סטר (contra תקנת חכמים) after מיתה
- iii Challenge: רב ושמואל seem to have taken opposite positions in the case of a שכ"מ who declared ותנו כתבו...
 - 1 דב: we do not execute it; he may have intended to use שטר, ואין שטר לאחר מיתה
 - 2 שמואל: the הלכה is that we do execute it
 - 3 Answers:
 - (a) דב: if the עדים made a קנין from him – valid; if not – we do not execute
 - (b) שמואל: if he was intending to give the recipient more power to collect – valid
 - 4 Example: ר"נ saw רב"א answer רב"א's challenge:
 - (a) Challenge: שמואל ruled that if a שכ"מ wrote all of his property over, even if they made a קנין, he may retract it if he recovers – because we know it was only done because he thought he was dying
 - (i) And: ר"נ made a signal to רבא and was silent
 - (ii) רב"א asked רבא to explain the signal: ruling only applies if he was מייפה כח of the recipient
 1. Example of כח ייפוי: if he writes "in addition to this gift, קנינא מיניה"
- b *If*: he writes to one and is מזכה it (via an agent) and then does the same for another
- i Note: if he just wrote to one and then to another, all agree that דייתיקי מבטלת דייתיקי and the 2nd gains
- ii דב: first one gets (as in any מתנת בריא)
- iii שמואל: second one gets (as in any מתנת שכ"מ)
- 1 Challenge: they already had this dispute (above, (a))
 - 2 Resolution: in that case, they made a קנין – perhaps that's why רב regards it as מתנת בריא
 - (a) But: here, perhaps he would regard it as מתנת שכ"מ (flip reasoning for שמואל)
 - (b) Note: this was the version in סורא, but in פומבדיתא...
- c שמואל: if he wrote all of his property to another and they made a קנין – can't retract
- i Assumption: only applies to giving it to another (instead of 1st recipient), but he can retract it for himself
- 1 Correction (ר' חסדא): שמואל's ruling even applies re: retraction
- ii Case: a man gave everything away, made a קנין then recovered and wanted to retract
- 1 Ruling (ר' הונא): can't retract – should've done it "as everyone else does"
- d "חיים ומות": if a מתנת שכ"מ includes the words ובמוות
- i דב: considered מתנת שכ"מ – wrote חיים to avoid mentioning death only (שלא לפתח פה לשטן)
- ii שמואל: considered מתנת בריא – wrote במוות meaning "forever"
- 1 גהרדעי: rule like רב (!)
 - 2 דבא: but if he said מחיים – valid (as per מתנת שכ"מ)
 - (a) אממר: we do not accept רבא's ruling
 - (i) Question (ר' אשי): this is obvious, as we rule like גהרדעי – in accord with רב
 - (ii) Justification: we might have thought that רבא is explaining רב קמ"ל – רב wouldn't cede in case of מחיים
 - 3 Case: fellow wrote חיים ובמוות then recovered and came to ר"נ (in גהרדעא, שמואל's town) for relief
 - (a) ר' ירמיה בר אבא שום טמיא to שום טמיא – sent him to שמואל's town – we can't rule against him – ל"נ
 - 4 Case: woman came to רבא and he ruled in accord with his own position (didn't allow her to recover)
 - (a) Then: she pestered him, so he wrote a פסק in her favor, with a line indicating that it shouldn't be taken seriously, which she discovered and she cursed him – the curse played out, even though he attempted to preempt it