

14.2.5

19b (אתמר ספר שאינו מוגה) → 20b (אפילו טובא נמי)

Note: at the beginning of this passage, the גמרא makes reference to a שטר מודעה. This is a document produced by an unwilling seller who is protesting the other document (of sale), claiming that he was coerced into selling.

1. אם אנו בידד הרחיקו ואל תשכן באהלך עולה: איוב פרק יא פסוק יד

- I. Continuation of discussion of documents that should not be held
 - a. Unchecked תורה – until 30 days (no longer, following v. 1)
- II. Return to discussion of אמנה
 - a. ר' נחמן: witnesses who testify that they signed on to a שטר אמנה or שטר מודעה aren't believed
 - i. מר בר ר' אשי: they are believed re: שטר מודעה, since it is allowed to be written
 - b. ר'נ רבא asked ר'נ: if the עדים maintain that the sale was conditional (unstated in the שטר) – are they believed?
 - i. Lemma1: just like אמנה ומודעה – they are uprooting the שטר → not believed OR
 - ii. Lemma2: a condition is distinct from the שטר itself → may be believed
 - c. Answer: we instruct the claimants to fulfill the (unwritten) condition before claiming the property
 - d. Tangent: 2 witnesses to the שטר, but one adds that there was a condition:
 - i. דב פפא: both are testifying to the שטר and 1 is "upsetting" it - his testimony is ignored against 2
 1. דב הוה א בריה דר'י: even if both claim it was a תנאי, that should be ineffective; rather
 - ii. The one is uprooting his earlier testimony, and the שטר remains unsubstantiated
- III. Variation on our משנה – others claiming the witnesses were invalid
 - a. Case: שטר signed עדים, then died; others substantiate signatures but claim they were קטנים etc.
 - b. Ruling: they are believed (unless the signatures are otherwise substantiated – see below [IV])
 - i. Assumption: שטר may be used to collect
 - ii. Challenge: shouldn't this be 2 v. 2 and not be usable
 - iii. Answer1 (ר' ששת): this proves that הכחשה is part of the process of הזמה, which may only be done in the presence of the challenged witnesses
 1. challenge (ר' נחמן): if they were here it would be a valid rejection; now that they aren't here and if they were they might have admitted it – it isn't a valid rejection? Rather...
 - iv. Answer2: it is a "double knockout" and the money remains where it is, as in case of בר שטיא:
 1. case: בר שטיא had lucid moments; he sold land and 2 witnesses claimed he sold it while lucid, 2 others testified that he sold it while incompetent – we leave the property with him (אוקי ממונא בחזקת מריה)
 - a. Caveat: only if land was family holding; else, assume he also bought it as a שוטה
 - c. Tangent: ר'ר' ruling that we only perform הזמה in the presence of the accused עדים, but הכחשה (challenge to the validity of their testimony) may be done in their absence; even הזמה in their absence, while not a valid הזמה, is a valid הכחשה
- IV. קיום השטר (validation of a document)
 - a. quote from above: if their signature is found on a שטר that was challenged and substantiated in ב"ד
 - i. supports ר' אסי: שטר is only substantiated with signatures that were challenged & confirmed in ב"ד
 - ii. Nehardeans: שטר only מקויים from 2 כתובות or 2 שטרי מכר of fields –with ג' שנים (w/o מחאה)
 1. caveat: the supporting documents must be held by another; else, we suspect forgery
- V. Using notes to jog memory of testimony
 - a. Permissible to write testimony and then use it to testify even after a long time
 - i. ר' הונא: as long as he remembers it in general terms without looking
 - ii. ר' יוחנן: even if he doesn't remember it at all
 1. רבה: from ר"י → 1 witness may remind his fellow
 2. question: may the litigant remind him?
 - a. Answer: no, unless the witness is a תלמיד חכם (supporting story with ר' אשי)
 - b. Associated discussion re testimony from memory:
 - i. Ruling: hillocks which are far out of town and older than 60 years are טמא (ר"מ)
 1. reason: we assume that someone was buried there and everyone forgot
 2. implication: ר"מ maintains that memory is valid for 60 years
 3. rejection: when testifying, someone pays attention and remembers longer