

18.01.07

10b (משנה ה) → 11b (ממתנתא)

- I (in)validity of שטרות produced by non-Jewish courts (ערכאות של נכרים)
- a all are valid – even if the witnesses are non-Jews, except for גיטי נשים ושחרורי עבדים
- i *Observation*: the משנה doesn't distinguish between deeds of sale and gifts
- 1 *Understood*: why deeds of sale work, since they wouldn't have written it without money changing hands and the שטר is simply operating as proof
  - 2 *However*: how does a שטר מתנה work? The only vehicle for transfer is the deed, which is worthless
  - 3 *Answer1*: דינא דמלכותא דינא - i.e. the government's actions have an Halakhic imprimatur
  - 4 *Answer2*: the משנה excepts anything similar to גיטי נשים (anything where the document effects the transfer, not just testifying to its validity)
- b *dissent*: ר"ש – even these are valid – the only invalidity is if they were done by commoners (non-experts)
- i *Challenge*: how can the גט be valid without valid witnesses
- 1 *Explanation*: the laws of גיטין וקידושין don't apply to non-Jews
- ii *Answer*: ר"ש is adopting ר"א's approach that עדי מסירה כרתי (and the witnesses just serve as proof מפני תקה"ע)
- 1 *Challenge*: although ר"א doesn't require witnesses, if the שטר is internally defective (e.g. with improper witnesses) – he agrees that it is invalid
    - (a) *Answer*: in our case, the witnesses signed with names that are clearly non-Jewish (שמות מובהקין)
      - (i) *Examples provided*: of both שמות מובהקין (which only non-Jews have) and שמות שאינן מובהקין
      - (ii) *Explanation*: if the names are "universal", someone may rely on these (non-Jewish) witnesses
    - (b) *Challenge*: why doesn't ר"ש make that distinction, instead of only הדיוטות (non-experts)?
    - (c) *Answer1*: he does make that distinction - if the names are לא מובהקין, it is as if done by הדיוטות
    - (d) *Answer2*: the last clause addresses other שטרות (that are invalid if done by הדיוטות)
    - (e) *Support*: גיטי נשים ושחרורי עבדים – ר"ע/חכמים – תוספתא א:ד
      - (i) *Continuation of תוספתא*: רשב"ג only reckons as invalid in city/district where Jews (are allowed to) sign their own documents; but in place where they don't allow us to sign – all are valid
        1. *reason*: all know that we're not relying on the signatures to effect the גט or sale etc.
      - (ii) *challenge*: why not decree against locations where we don't sign as a precaution against the locations where we do – just as חכמים did with שמות מובהקין against שמות מובהקין
      - (iii) *Answer*: we could blur the distinction between names, not locales
  - 2 *Story*: רבינא considered validating a document prepared by an ad hoc "court" of non-Jews
    - (a) *Block*: the משנה only allowed ערכאות (formal court)
  - 3 *Ruling*: רבא – Parthian document handed over in front of Jewish witnesses - valid & may be used to collect
    - (a) *Caveat*: only collect from property which is free and clear (בני חורין)
      - (i) *Challenge*: but our witnesses don't know how to read פרסי
        1. *answer*: case must be that they know how to read it
      - (ii) *challenge*: we always require a text that can't be forged
        1. *answer*: they used a properly processed parchment
      - (iii) *challenge*: we require a recap of the gist of the שטר at the end
        1. *answer*: if they did it that way
      - (iv) *challenge*: if so, why don't we allow collection from משועבדים?
        1. *answer*: such a document has no קול – the buyer wouldn't have known about it
- c *related question*: what is the status of a גט, produced in א"י, that comes to us with witnesses having non-Jewish names?
- i *Answer* (ר' יוחנן): we only had Luke and Loos come before us and we accepted such a document
- 1 *Implication*: only applies to names like לוקוס ולוס, that are never taken by Jews
  - 2 *Challenge*: ברייתא – if גיטין come from מדה"י with witnesses with non-Jewish names, they are valid, since most Jews in מדה"י have non-Jewish names
    - (a) *Answer*: that's the reason – since we assume these to be Jews since most Jews there have such names
    - (b) *Alterntate take*: that was ר"ל's question and ר' יוחנן answered from that ברייתא and permitted them