

19.02.07

47a (ומר סבר דעתיה אפרוטה) → 48b (אמר רב המקדש במלוה)

.7. וְצָאָה מִבֵּיתוֹ וְהִלְכָה וְהִיָּתָה לְאִישׁ אֲחֵר׃ דברים כד, ב

## I המקדש במלוה

- a **רב**: invalid – since a מלוה is given for the borrower's use (מלוה להוצאה ניתנה) → she receives nothing
- i **challenge**: apparent dispute between תנאים if it is valid – (but all agree that as a vehicle for מכירה it's valid)
- 1 **correction**: dispute is in re: his own loan (debt) to her if the promised amount was short
- (a) **validity**: she isn't ashamed to claim the rest
- (b) **invalidity**: she is ashamed to ask for the missing amount
- (c) **challenge**: ר"א rules that if he promises 100 for קידושין and gives her 1, it's valid and the rest is owed
- (i) **answer**: she'll never be ashamed to collect 99/100 of the debt, but 1/100 – she may be embarrassed
- 2 **challenge**: if he gives her a פקדון and then declares it to be used for קידושין – if it was lost or destroyed but there was a ש"פ left – מקודשת
- (a) **dispute**: whether this rule applies to הלוואה (רשב"א) or a loan doesn't even require a ש"פ remaining (ת"ק)
- (b) **response**: the ruling in re: פקדון is also unreasonable:
- (i) **if**: she accepted אחריות, then it's the same as a loan
- (ii) **if**: she didn't accept אחריות – then the ruling should be qualified – “only if she didn't accept אחריות”
- (c) **rather**: invert rulings: ת"ק – even if a ש"פ remains, invalid (מקדש במלוה); רשב"א equates to פקדון
- (i) **core of the dispute**:
1. **students of דב**: whether a מלוה (that hasn't been spent) is in the domain of the lender
- a. **and**: the same applies to אונסין (if the מלוה was destroyed or lost)
- b. **positions**: חכמים – domain of borrower (→ המקדש במלוה אינה מקודשת); רשב"א – domain of lender
2. **דבה**: re: אונסין all agree that it is owned by the borrower; dispute only re: חזרה
- a. **Challenge**: הונא's ruling – שאלה – only becomes property of שואל when used – is this תנאים?
- b. **Answer**: all agree in re: שאלה that is returned as is that without use, it remains ברשות בעלים
- b **Suggestion**: רב's ruling is subject to מחלוקת תנאים – מקדש בשטר חוב is disputed (isn't this her own שט"ח to him?)
- i **Rejection**: this is in re: שטר חוב of others (that owe him, and he transfers it to her); מח' in re: מלוה בשטר & מלוה בעל פה
- 1 **Dispute re**: מלוה בשטר
- (a) **May be**: whether we accept רבי's leniency that במסירה נקנות במסירה OR
- (b) **All accept חכמים** (and שטר was signed over) – do we accept ר"פ – a sold שט"ח must include “כל שעבודיה” OR
- (c) **All accept ד"פ** (and that was written) – do we accept שמואל that the creditor can מוחל the שטר after selling OR
- (d) **All accept שמואל** (he could be מוחל) – does a woman rely on his not forgoing debt?
- 2 **Dispute re**: מלוה על פה –
- (a) **Do we accept**: רב's ruling in re: מעמד שלשתן and extend it to הלוואה (or does it only apply to פקדון?)
- c **Suggestion**: רב's ruling is subject to dispute about קידושין with a שטר (ר"מ – invalid; ר"א – valid; חכמים – only if paper is ש"פ)
- i **Rejection**: case is שטר אירוסין w/o עדים (חכמים are unsure if to rule like ר"מ or ר"א in re: חתימה: עדי מסירה/עדי חתימה)
- ii **Or**: case is שטר קידושין written לשמה – do we accept ר"ל's ruling (per v. 1) that it must be written לשמה?
- iii **Or**: case is שט"ק written לשמה but without her consent – dispute among אמוראים if it's valid
- d **Suggestion**: רב's ruling subject to מח' re: קידושין where she requests work on his part: is it valid before she receives it
- i **Rejection**: dispute is whether שכירות is paid along the way or only at the end (אינה לשכירות אלא לבסוף)
- ii **Or**: all agree that שכירות is paid along the way; dispute whether artisan owns the appreciated value
- iii **Or**: all agree that artisan doesn't own appreciated value; in this case, the artisan added some of his own material
- 1 **Dispute**: קידושין on a loan (הכלי) and a פרוטה (his added material) – does she focus on הלווה or פרוטה?
- 2 **Note**: follows dispute between רבי and חכמים ר' נתן+חכמים
- (a) **disagree** if שכירות is paid along the way, agree that she focuses on הלוואה
- (b) **דבי**: she focuses on פרוטה, therefore if he adds anything to it – מקודשת