

21.1.06; 7a (ת"ר שנים אדוקין בשטר) → 8a (מגו דזכי לנפשיה זכי נמי לחבריה) →

I תוספתא ב"מ א:טו Analysis of

- a If two people are holding a שט"ח
- i The מלווה claims it to be his and he lost it and now found it; the לווה claims it had been paid
- 1 דבי confirm the עדים and return to מלווה; דשב"ג split
 - (a) Challenge: our משנה stipulates a split
 - (b) Rather (ר"ג): if it is מקויים, split as per משנה; dispute is only in case it's not מקויים
 - (i) דבי if someone admits to writing a שטר, still not considered מקויים; only with קיום can he split
 - (ii) קיום מודה בשטר שכתבו א"צ לקיימו דשב"ג → split even without קיום
 - ii If: it was found by the דיין –
 - 1 It can never be used
 - 2 ר' יוסי it maintains its חזקה
 - (a) Question: why single out the דיין here?
 - (b) Answer (רבא): means "if someone found a שטר that had already been in the hands of a דיין"
 - (i) Meaning: there was already a writ of collection - still it may not every be used
 1. Reason: concerned that perhaps it was already executed
 2. Note: if there was no הנפק, certainly we wouldn't return it – perhaps the loan was retracted
 - (ii) ר' יוסי it maintains its חזקה and we aren't concerned that it was already executed (if there is a הנפק)
 1. Challenge: ר' יוסי is concerned about the possibility a שטר has already been executed:
 - a. Support: if someone finds a כתובה
 - i. If: the husband admits that it is his, return it to the woman; if not, return it to neither
 - ii. ר' יוסי if they are currently married, return it to wife; if not, return it to neither
 - b. Answer1: reverse positions in our ברייתא – ר' יוסי never allows using it; חכמים - maintains חזקה
 - i. Challenge: רבנן contradict themselves
 - ii. Answer: ברייתא about כתובה is entirely authored by ר' יוסי, limiting ruling to case where they're no longer married – but if they're still married, give it to wife
 - c. Answer2 (ר"פ): no need to reverse; ר"י is responding to רבנן according to their approach; i.e. to ר"י, never a concern that it was executed; but they should cede the point if married
 - i. Reponse: רבנן's concern is that he already gave her צרורות for the כתובה
 - d. Answer3 (רבנא): reverse our ברייתא – here, רבנן are concerned there may have been 2 כתובות
- b Further analysis of dispute between רבי/רשב"ג
- i ר"א – dispute if both holding טופס and תורף, but if one is holding תורף, other holding טופס – each gets what he holds
- 1 Challenge: no value to טופס
 - 2 Answer: entire שטר is sold, added value of having זמן (allowing collection from משועבדים) is paid
 - (a) Proof: our משנה provides for a split, couldn't be physical split, as that would ruin garment
 - (i) Block: fit for small children (same for רבא's ruling about the golden garment)
 - (ii) Same: for next משנה about splitting an animal (value only if טהורה → must be sale+split proceeds)
 - ii ר"י: in any case, equal split
 - 1 Challenge: תוספתא that each gets what he is holding
 - 2 Answer: if תורף is in the middle (but closer to one – קמ"ל that the other can demand a different direction of split)
- II תוספתא ב"מ א:טו's inference from our משנה – and רבא's dissent
- a רב"ח – if A picks up a מציאה for B, B is קונה (that's why the opposite litigant has a valid hold on the garment)
- b רבא – רבא ... לא קנה חבירו – but the other's קנין is the result of a מיגו – since A's קנין is valid for him, it's also valid for B
- i Proof: a שליח who steals doesn't implicate משלח; but partners who steal are liable – QED
- ii Implication: if a חרש pick something up together, the חרש's קנין is valid for פקח as well
- 1 Challenge: how is the פקח's קנין valid? (the other side is lifted by חרש; as if still on ground)
 - 2 Rather: the חרש alone is קונה (thanks to פקח הגבהת פקח)
 - (a) Application of מיגו: since 2 חרשים are קונה (מפני דרכי שלום), this חרש is also קונה
 - (b) Challenge: only apply מיגו when "1st lifter" lifts on behalf of other; here, פקח himself isn't קונה → חרש לא קנה
 - (c) Question: why is this different than 2 חרשים?
 - (i) Answer: 2 חרשים are קונה as מד"ס so they won't fight; here, if פקח isn't קונה, the חרש won't think he's קונה
- c Question: what is רב"ח's source for his inference?
- i Answer: from end of ב' משנה – if they agree or have עדים, split w/o שבועה
- ii Explanation: in re: מקח וממכר, this is obvious → must be re: מציאה → חבירו קנה חבירו → מציאה חבירו קנה חבירו
- 1 רבא: reasoning is לחבריה זכי נמי לחבריה