

## 21.1.11

13b (אמר ר"א) → 14b (אחוי טרפך ואשלם לך)

Note: in our משנה and ר"מ, חכמים disagreed about the status of a שטר without אחריות; in the second half of this שעור שמואל provides an explanation for רבנן's position – אחריות טעות סופר הוא – meaning that if אחריות was omitted, it wasn't intentional, but an oversight of the סופר and should be understood as part of the contract.

## I Analyzing the parameters of the dispute between ר"מ/חכמים

- a ר"א: dispute only if the לוה doesn't admit to the debt:
- i ר"מ: if there is no אחריות, they won't collect at all – even from בני חורין
  - ii חכמים: if there is no אחריות, they'll still collect – from משועבדים
  - iii However: if the לוה admits to the debt, all agree it should be returned – no concern it was already paid or collusion
- b ר' יוחנן: dispute only if the לוה does admit to the debt
- i ר"מ: if there is no אחריות, they will collect from בני חורין but not משועבדים
  - ii חכמים: they collect from משועבדים even if אחריות isn't written in
  - iii However: if the לוה doesn't admit to it, all agree that it isn't returned – we are concerned that it's already been paid
- c ברייתא: supports ר' יוחנן, challenging one part of ר"א's position and 2 of שמואל's position (above – חושש לפרעון ולקנוניא – לא חושש לפרעון ולקנוניא)
- i if: he found שט"ח:
    - 1 if: there was אחריות, he shouldn't return to either, even if they admit to validity (→ we're חושש לפרעון ולקנוניא)
    - 2 if: there is no אחריות,
      - (a) ר"מ: if לוה admits to validity, return; else, don't return to either, since without אחריות, they collect from ב"ח
      - (b) חכמים: if לוה admits to validity, still no return – since even without אחריות, they collect from משועבדים
  - ii Challenges:
    - 1 To ר"א: who said that according to ר"מ, a שטר without אחריות doesn't collect even from ב"ח
      - (a) And: according to both ר"מ and רבנן we aren't concerned about קנוניא (collusion)
      - (b) But: ברייתא taught that w/o אחריות we still collect from ב"ח and we are concerned about קנוניא, since when both admit to the debt, we still don't return it (if there is אחריות – since לקוחות may be defrauded)
        - (i) Challenge: this is two blocks against ר"א (and the גמרא claimed it was one)
        - (ii) Answer: it's all one – ר"א's position on the משנה led him to both interpretations
    - 2 To שמואל: one as per above (challenge to ר"א), since he also interprets משנה as a case of מודה אין הלוה מודה
      - (a) And: he ruled that if a שטר הקנאה is found in the שוק, we may return it – no חשש פרעון
      - (b) ברייתא: rules that even if they admit to it, return to neither, as we are חושש לפרעון
        - (i) And: certainly in שמואל's framework, where the לוה denies it - we should be חושש לפרעון
- d שמואל: רבנן's reason for allowing collection from משועבדים even without אחריות written – אחריות טעות סופר הוא (see note)
- i Challenge: שמואל ruled that a סופר has to check with a seller if he is including אחריות in his מכירה שטר
    - 1 Proposed answer: different versions/traditions of שמואל's ruling (no need for this answer)
    - 2 Answer: distinction between שטר הלוואה – where a person will not give money without a guarantee (אחריות)
      - (a) And: שטר מקח, where someone is willing to buy land even if it may later be seized
    - 3 Story: where שמואל himself ruled that a שטר מקח without אחריות carries no guarantee and he explained it the same way – שטרי הלוואה אחריות טעות סופר – שטר מקח, not שטר מקח

## II 2 rulings of אביי in re: selling land with or without אחריות

- a If: A sold land to B באחריות & then a creditor of A's came to collect, he can't ignore A, claiming B is his בעל דין
- i reason: A argues that if he seizes from B, B will then sue him
  - ii some say: even if the land was sold באחריות שלא, since A doesn't want B to have ill will towards him
- b If: A sold land to B באחריות and then A's ownership was challenged
- i if: B hasn't yet taken possession (steps onto the property) – he may renege on the deal;
  - ii but if: B has taken possession, he is "stuck with a bag of knots"
  - iii some suggest: even if he sold the land באחריות, A needn't take it back until it has been seized by the claimants