

21.1.16

19a (שחרורי עבדים) → 20a (עדי בחתומי זכין לו)

I Further analysis of 'משנה ז'

- a עבד – שחרורי עבדים – rules that if the master admits to it, return to עבד;
- i *Question*: why not suspect that שטר was written before liberation, and slave bought land in the intervening time (which went straight to master), master sold it during intervening time and now slave seizes it (illicitly)
- ii *Answer*: valid if we follow חכמים that it is a זכות to be liberated and אב"י's approach that עדי בחתומי זכין לו
- iii *But*: if we follow ר"מ, that it is a חובה to leave, how do we return it in this case?
- 1 *Answer*: the לקוחות demand that the עבד prove when he was actually liberated before seizing property
- b Definition of דייתקי
- i מהיום ולאחר מיתה – i.e. this שטר should stand (directives of שכ"מ are considered written and given)
- 1 *Addition*: it must state מיתה ולאחר מיתה
- 2 *Challenge*: there should be no need for that phrase if is a מתנת שכ"מ
- 3 *Answer* (אב"י): expansion – a מתנת בריא that works like מתנת שכ"מ (only valid posthumously) must have מהיום...
- ii *Implication*: if he did direct it to be given, it may be given (if found)
- 1 *Challenge*: ruling that דייתקי may not be given even if both parties admit to it
- 2 *Resolution1* (אבא בר ממל): if the fellow was בריא, may not be returned; if שכ"מ, may be returned
- (a) *Reason*: a שכ"מ is someone who, in any case, may change his mind; even if he changed his mind - licit
- (b) *However*: a בריא may not and the חשש that he changed his mind and decided to give to another is critical
- (c) *Challenge* (ר' זב"ד): both sources use word דייתקי (=מתנת שכ"מ)
- 3 *Resolution2* (ר' זב"ד): both are מתנת שכ"מ; if the שכ"מ was still alive, give to him (he may change his mind, so there's no reason for concern); if he is dead and his son wants it returned, do not return (son may not redirect father's gift; if he does so, it may be collusion to deprive the rightful recipient and to split the proceeds)
- (a) *And*: in such a case, we tell the son to write a new שטר giving that putative recipient the gift (which will, in any case, not be given via the first שטר)
- c Ruling re: returning found (receipt)
- i ברייתא: if she admits to writing it, it may be returned to husband
- 1 *And*: we don't raise the חשש that she wrote the שובר earlier than the date she received the כתובה
- 2 *And*: she sold her כתובה for טובת הנאה (speculation) in the meantime, he will now go and seize from לקוחות
- (a) *Conclusion* (רבא): supports שמואל's ruling that a בע"ח who sells the note may forgive it – even his heir may forgive it
- (i) *Explanation*: in this case, if she "forgave the debt" by writing a שובר, it is forgiven from date on שובר
- (ii) *Therefore*: if the husband seizes the כתובה that was sold in the meantime – this is proper
- (b) *Challenge* (אב"י): even without שמואל this will work (i.e. this doesn't support שמואל's ruling)
- (i) *Reason*: in this case, the כתובה is presented by her – no reason to think that she sold it
- (ii) *Block* (רבא): we still have to be concerned – perhaps there are 2 כתובות (1 that she sold, and the other that she brings to ב"ד)
- (iii) *Defense* (אב"י):
1. *First of all*: we aren't concerned about שתי כתובות
2. *Additionally*: a שובר collects as of the date on it
- a. *note*: עדי בחתומי זכין לו – אב"י is being consistent with his own approach