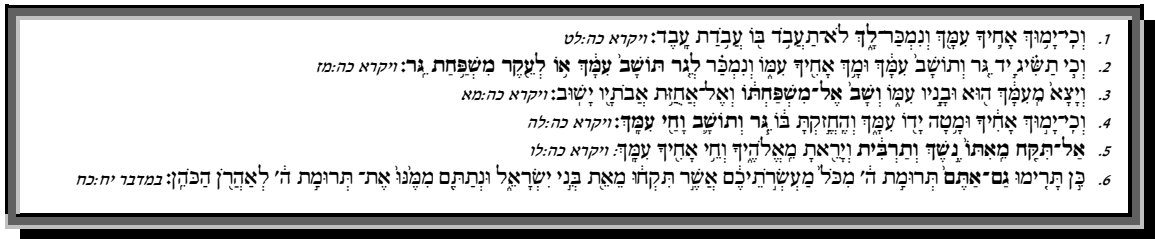


21.5.10

71a (תניא רבי אומר) → 72b (שטרא מקיים ליה)



- I Tangent to משנה – רבי’s question re mention of גר צדק in re עברי and גר תושב and רבית in re גר תושב
 - a ע"ז דרשה on vv. 1-2 - even if sold to non-Jew for work in ע"ע מכירת ע"ע
 - i Challenge: a גר cannot purchase an ע"ע nor be bought as one
 - 1 Cannot be purchased: per v. 3
 - 2 גר nor woman (unseemly) may purchase: גמרא – anyone who cannot be bought as ע"ע cannot buy one
 - (a) Answer (רנב"י): he cannot buy and have rights as ישראלי owner (to bequeath ע"ע) but as נכרי
 - 3 Woman: apparently contra רשב"ג who allows woman to buy עבד (חכמים – may only buy שפחה)
 - (a) Rejection: רשב"ג was referring to עבד כנעני, who will boast of his relationship with her (if it happens)
 - (i) But: ע"ע is צנוע and will keep it quiet → he would agree to forbid
 - (ii) Challenge: why did רב יוסף disallow widow from raising a dog? (due to bestiality)
 - 1. Explanation: the dog will follow her and all will know → should be מותר
 - 2. Answer: they'll think it's because she feeds him → won't deter her
 - b דבית. vv. 4-5 – challenge from our משנה – permitted to lend and borrow רבית just like נכרי
 - i דבית. key word in v5 is מאתו (only one – ישראל)
 - ii Related דרשה. prohibition against רבית implies permission to become ערב
 - 1 Question: ערב on whose behalf?
 - (a) If: ישראל – משנה later teaches that lender, borrower, ערב and עדים are all in violation
 - (b) Rather: נכרי –
 - (i) Challenge: in their system, מלווה can go straight to ערב, who will collect רבית from לווה (ישראל)
 - (ii) ד"ש. in a case where the (נכרי) מלווה agrees to abide by ב"ד rules (go straight to לווה only)
 - 1. Challenge: if he agreed to abide by ישראל – דיני ישראל – should be no רבית
 - 2. Answer (ר"ש): he agreed to ישראלי clause about ערב vs. לווה; not about רבית
- II Explication of last clause in משנה – מדעת נכרי אבל לא מדעת ישראל – משנה
 - a גרייתא. if ישראל borrows from נכרי w/רבית and when paying back, another ישראל wants to borrow it from him and will pay the נכרי per same agreement – אסור; but if the נכרי is present, ok (analyzed below)
 - i Similarly: if נכרי borrows from ישראל w/רבית and when paying back, another ישראל wants to borrow it from him per same terms – מותר; if they do it in the presence of the ישראל (מלווה) – אסור
 - ii Challenge: 2nd example is understood (חומר); but why does presence of נכרי permit in 1st case?
 - 1 Explanation: since there is no שליחות from נכרי, ישראל is taking רבית from another ישראל
 - 2 Answer1 (ר' אחא ב"ר איקא): case where נכרי told him to put money on ground and be paid off
 - (a) Block: that is obviously מותר
 - 3 Answer2 (ר"פ): the נכרי accepted it and handed it to 2nd ישראל
 - (a) Block: also obviously מותר
 - (b) Defense: אדעתא דישראל when the נכרי acts here, he does it דישראל –
 - 4 Answer3 (ר' אשי): exclusion of שליחות from נכרי is only re: תרומה (v6)
 - (a) Block: this is an errant statement – we infer all of שליחות from this verse (& 2 others – cf. קידושין מא-מב)
 - 5 Variation to answer 3: exclusion of שליחות is his acting on our behalf – but we can be his שליח
 - (a) Block: this is an errant statement – אתם applies in both directions
 - 6 Answer4 (רבינא): he isn't empowered vis-à-vis שליחות; but has זכיה דרבנן like a קטן
 - (a) Rejection: a קטן will grow in to full זכויות; unlike the נכרי

- III loan with נכרי converting before collection
- a *If:* ישראל borrowed from נכרי and he turned the רבית into part of the loan and converted
- i *If:* he converted after he transferred רבית to קרן – may collect both
- ii *But if:* he converted first, may only collect קרן
- b *Similarly, if:* נכרי borrowed from ישראל and he turned the רבית into part of the loan and converted – same ruling
- i ד' יוסי where the נכרי is the borrower, regardless of the sequence, ישראל may collect both,
- 1 ד' הונא we rule in accord with יוסי ר'
- 2 ד' יוסי's reasoning is: so that no one thinks the נכרי converted to save paying the רבית
- IV Validity of שטרות written with רבית
- a ד' מ"מ may not even collect קרן – we fine him on the היתר as well
- b חכמים may collect קרן – we do not fine him for the היתר
- c *Challenge (to חכמים):* משנה (שה) שביעית (יה) a pre-dated שטר is פסול (post-dated is valid)
- i *Point:* why is the pre-dated שטר invalid for use after the date?
- ii ד' ל"ל this is only ר"מ's opinion per our case
- iii ד' יוחנן even רבנן agree here – concern that he may use שטר early
- d *Realted story:* A borrowed money from B; gave his orchard to B as a lien. B benefited from it for 3 years then demanded that A sell the orchard to him – else he would “lose” the שטר משכנתא, claim he had bought it and had lost the מכירה שטר (he had a חוקת ראייה of 3 years which obviates the need for the שטר).
- i A: gave the orchard to his minor son, then “sold” it to B; then clarified that it wasn't his to sell.
- ii *Ruling:* the sale is invalid; question is the status of the money that B gave A for the “sale”
- 1 *Are they:* considered a מלוה בשטר → may collect from משועבדים
- 2 *Or are they:* considered a מלוה בעל פה → may only collect from בני חורין
- iii אבני isn't this like ר"א's ruling – if a debtor agrees that he commissioned a שטר, no need for קיום
- 1 *And:* the debt may be collected from משועבדים
- 2 דבא cases are different – in that case, it is a שטר that could have been written; here – לא ניתן להכתב
- iv דבינא what of ר"א's suggestion that we disallow שטר מוקדם because he *might* use it from earlier date?
- 1 *Why don't we argue:* that it was a שטר that could(/should) not have been written (early)?
- 2 *Answer:* it ought not to have been written early – but could have later on (unlike this – never “writeable”)
- v *Challenge:* rule of appreciated lands in hands of thief and his (unknowing) buyer
- 1 *Collect:* קרן from משועבדים and appreciation only from בני חורין
- 2 *Why don't we argue:* that the שטר מכירה of the thief → buyer wasn't “writeable” (→ all from בני חורין only)
- 3 *Answer:* according to either explanation – the (unwitting) buyer doesn't want to be called גזלן or that he wants to maintain his reputation as trustworthy, he'll appease the owner and make the שטר “valid” (even though it isn't truly valid – wasn't the גזלן's to sell)
- (a) *But in our case:* A was trying to “bury” assets from B, he certainly doesn't intend to confirm the שטר!