

22.1.04

5a (משנה ד') → 6a (כל האומר לא לויתי כאומר לא פרעתי דמי)

- I משנה ד' coercion of neighbors to re-construct a pre-existent wall that falls
- a If: it is a wall in a חצר, it may be built (by coercion) until ד"א
- i Therefore: the assumption (חזקה) is that each partner paid his portion unless proof is brought to the contrary
- b And: building over ד"א cannot be forced
- i But: if he built another wall next to the common one (built above ד"א), even if he didn't connect them via a ceiling
- ii Then: he is (retroactively) charged for (his portion) of all of it (the full height of the dividing wall)
- iii Therefore: the חזקה is that the recalcitrant partner did not pay his portion unless proof is brought to the contrary
- II Back door: credibility regarding paying off a loan
- a If: there is a set time to pay off a loan and the debtor claims that he paid before the deadline
- i דשב"ל not believed (חזקה): people do not pay early
- ii אביי ורבא sometimes people pay early if they have the money, in order to avoid the later hassle
- iii Test against our משנה:
- 1 דישא he is believed to have paid it off – must be בתוך הזמן, else it is obvious (supports רבא ורבי)
- (a) Rejection: each layer of the wall generates its own liability and is considered בזמן
- 2 סיפא (in the case of the higher wall, where he must co-pay as a result of having built an adjacent wall); he is not believed to have paid it off – must be בתוך הזמן, else he should be believed (supports רשב"ל)
- (a) Rejection: this case is different; he will reason that he may never have to pay, so we have no reason to assume that he would have paid up early
- iv Rulings:
- 1 אביי ורבא ד' פפא ור' הונא בריה דר' ר' ruled in accord with אביי ורבא
- 2 הלכה – רשב"ל מר בר ר' אשי ruled in accord with רשב"ל
- (a) Even: collecting from orphans (heirs of the debtor who died בתוך הזמן)
- (i) Even though: normally, one must take an oath before collecting from יתמי, here the חזקה that no one pays off before the deadline trumps that requirement.
- v Question: if the creditor sues for payment after the זמן and the debtor claims he paid early
- 1 Lemma1: does the מיגו (he could have responded that he paid on time and been believed) trump חזקה OR
- 2 Lemma2: does the חזקה that no one pays early discredit his claim
- (a) Solutions:
- (i) from דישא he is believed to have paid it off – must be that he claimed בתוך הזמן, else it is obvious
1. Implication: his מיגו trumps the חזקה
2. Rejection: each layer is בזמן (→there is no time-frame considered "בתוך הזמן" here)
- (ii) From סיפא he is not believed to have paid it off – must be בתוך הזמן, else he should be believed
1. Implication: the חזקה discredits the מיגו
2. Rejection: this case is different; he will reason that he may never have to pay
- (iii) From external ruling: if A claims B owes him money and B admits to it, and the next day A duns B for payment
1. If: B claims that he already paid – exempt
2. But if: B claims that he doesn't owe it – liable
- a. Assumed interpretations:
- i. "already paid": (נתתי לך) – paid on time
- ii. "doesn't owe it": (אין לך בידי) - paid early
- iii. Implication: חזקה of not paying on time discredits מיגו
- b. Rejection:
- i. "don't owe it": (אין לך בידי) – never borrowed
- ii. Following: ruling that anyone who claims לא לויתי כאומר לא פרעתי is tantamount to admitting that he never paid it off (כל האומר לא לויתי כאומר לא פרעתי)