

22.3.9; 39a (אמר רבא אמר רב נחמן מחאה שלא בפניו...) → 41a (והלכתא חיישין)

- I Discussion re: absentee protest (מחאה שלא בפניו):
- a ר'נ (quoted by רבא): absentee protest is valid
 - i Challenge (רבא): ר' יהודה (in our משנה) includes, in his 3 years' accounting, a year to return – why not protest there?
 - ii Answer: it's just good advice – so that he can recover the land and the פירות
 - 1 Note: we can infer that רבא disagrees; yet he rules that מחאה היא בפניו (answer) – accepted ר'נ's answer
- II Amount of “protest audience” (מחאה בפני כמה)
- a 2 versions of ר' יוחנן's opinion:
 - i ר' חייא בר אבא - 2
 - ii ר' אבהו - 3
 - 1 Suggestion: they disagree whether to accept ר'ה בר ר'ה's ruling that anything said תלתא באפי isn't then לה"ר
 - (a) If: you maintain “2” for protest → even 2 is considered public (contra רב"ה)
 - (b) But if: you maintain “3” for protest → it is discreet until you have 3
 - 2 Rejection: all accept רב"ה; dispute is whether absentee protest is valid
 - (a) If: you maintain that מחאה שלא בפניו is invalid, he must be there and we only need עדים -2
 - (b) But if: you validate absentee protest, we need 3 to get the word to him
 - 3 Alternatively: all accept that absentee protest is valid, dispute is nature of מחאה
 - (a) If: you require עדות - 2 is sufficient,
 - (b) But if: you require גלוי מילתא (publicity) – need 3
 - b Story: claimant found 3 and registered מחאה in their presence; a year later;
 - i Ruling: (either in name of רב or stated by רב חייא בר רב [one of the 3]) – once he's protested, no need to do so ever year
 - ii ר'ל: must protest at the end of each 3 years
 - 1 Challenge (רבא): if we've identified the מחזיק as a usurper, how could he then get a חזקה (no need)
 - 2 Ruling (רבא): need to protest at the end of each 3 years
 - c בר קפרא: if the claimant issued another protest – if it was a different מחאה than the first, the intervening years can now constitute a חזקה; if the same טענה – no חזקה
- III ר'נ (quoted by רבא): size of minimum audience for various declarations
- a מחאה – 2, and no need to instruct them to write (tacit)
 - b מודעא – 2, and no need to instruct them to write (tacit)
 - c הודאה (of a debt) – 2, must declare “write”, else they may not commit it to writing
 - d קנין – 2, and no need to instruct them to write (tacit)
 - i דבא: if it is כמעשה ב"ד, why is 2 sufficient; if not כמעשה ב"ד, why no need for declaration to write?
 - ii Answer (on his own): it's not כמעשה ב"ד, but the assumption is עומד לכתובה (tacit)
 - e קיום שטרות - 3
- IV Tangent: parameters of כתיבת מודעא (and “hidden” שטר)
- a ר'ה ור' יוסף: a מודעא is only written against a (coercive) buyer who doesn't obey the ב"ד
 - i Dissent (רבא): even if one like us “coerces”
 - b אונס פלוני (עדים) know of “אונס פלוני” to be valid
 - i challenge: if this is a מודעא on a גט or מתנה, no need, as it will become clear with time (when he speaks up)
 - ii rather: must be on a sale (even though we generally don't write a מודעא for a sale, in case of אונס, we do, as per...)
 - 1 example: case of the vineyard that was held as a משכון for 3 years; lender “coerced” לויה to sell it, threatening that if he didn't the lender would “bury” the שטר משכנתא and claim it to be his by virtue of חזקה
 - c “hidden שטר” (מתנתא טמירתא) may not be used for collection
 - i ר' יוסף: if donor instructed עדים to hide and write the שטר
 - ii ר' יוסף: any שטר where the donor did not tell the עדים to sit in the שוק and publicize it
 - 1 Split the difference: the default (neither instruction given)
 - 2 הלכה: we are חושש in such a case (as per ר' אשי) and require ובריתא ותכתבו ליה and require חושש
 - iii דבא: it does work as a מודעא against a later מתנה שטר on the same property (and cancels it)
 - 1 Rejection (ר'פ): this ruling was (erroneously) inferred from a case:
 - 2 Case: M wanted to marry W; she only agreed if he would sign over all his property, which he did
 - (a) Then: M's son complained (about property) and M did a מתנה טמירתא on his property to his son
 - (b) Ruling (רבא): neither קנין is valid
 - (i) Assumption (of onlookers): due to מתנה טמירתא operating as a מודעא
 - (ii) Reality: here - clear that M didn't want to give her the property (planned to take it back)
 - (iii) But: in the index case, he clearly wanted to gift the “open donee” and not the טמירתא-recipient