

22.3.14

46b (הוה ממטי ליה לדידיה ולחמריה לשחזור) → 47b (אריס אין לו חזקה)

- I Analysis of limitation of אריס from using חזקה
- a Challenge: until now he has had a חזקה over a percentage...why not over all?
 - i Answer (ר' יוחנן): our משנה is in re: אריסים of the estate (they would sometimes get full year's yield)
 - b Related rulings:
 - i ר'נ: if an אריס brings another אריס in his place, this is a חזקה
 - 1 reason: no one would allow a different אריס without protesting
 - ii ר' יוחנן: if an אריס delegates land to other אריסים – no חזקה
 - 1 reason: he may have been asked to do so by the בעה"ב
 - c question (posed by ר'ח's son to ר'נב"י): may an אריס testify about the land?
 - i Answer (quoting שמואל): he may
 - ii Challenge: ברייתא ruled that he may not
 - 1 Resolution: if there are פירות on the land, he may not; else he may
- II ברייתא defining when involved parties may testify about ownership of land
- a An ערב (guarantor on a loan)
 - b A lender
 - c An earlier buyer (who subsequently sold to focus of testimony)
 - i Caveat: as long as the borrower/earlier buyer has other land (than that with which the עד is involved)
 - d Question: may a קבלן ("super-ערב", to whom lender can directly go for collection) testify?
 - i Some say: he may – status like ערב
 - ii Other say: he may not – he has an interest in the borrower having more land so that בע"ח will go to לוה
- III יוחנן ר' expansion on our משנה – allowing children of those (who have no חזקה) to have חזקה
- a אומן – his son can claim חזקה
 - b אריס – his son can claim חזקה
 - c גזלן – even his son cannot – but his grandson can
 - i רבא: even this may not work, if his claim is based on his grandfather's ownership
 - ii Question: what is the case –
 - 1 If: they are claiming that their fathers owned the items – even the sons of אריס ואומן may not
 - 2 But if: they are making their own claim – even בן הגזלן should be able to make the claim
 - iii Answer: they are claiming it was their fathers'; witnesses testify that claimant admitted to father that it was his
 - 1 In cases: of אומן ואריס, reason to think that the claimant was sincere
 - 2 However, in case of: גזלן, as per ר"כ, we assume the claimant was afraid to challenge גזלן and "admitted"
 - iv Note: definition of גזלן for this purpose
 - 1 ר' יוחנן: if this land was reported as stolen
 - 2 ר"ח: even if not – if this is a family that is known to murder to gain assets
- IV ברייתא: listing those in our משנה who have no חזקה – in case where their status or relationship changes
- a אריס ואומן who no longer work as such – now have חזקה
 - b Son who separates himself financially from father's business – has חזקה
 - i ר'א: father is just forgiving his presence → חזקה קמ"ל, חזקה no
 - c Woman who is divorced
 - i Challenge: this is obvious
 - ii Answer: case where she is מגורשת ואינה מגורשת (e.g. ספק גט) – where husband is still liable for מזונות
- V הונא ר' note on our משנה – any of those (who do not have חזקה) who bring proof of ownership (e.g. שטר) – accepted
- a Exception: גזלן
 - b Challenge: this is obvious, as per גיטין ה:ו: in re: buying land from Sicarii
 - i Answer: ר'א: סד"א that it would work if he had a שטר, as per רב – קמ"ל as per שמואל that even a שטר is insufficient
 - 1 שמואל: confirms the sale if the real owner not only gives a שטר, but also writes נכסים אחריות
 - c Note (ר' ביבי): the thief cannot keep the land, but the purchase price is returned to him
 - i Exception: only if the witnesses testify to the payment, but not if they only testified that the גזלן admitted that he owes him money, as per ר'כ claim that a גזלן will intimidate גזלן into admissions that aren't true