

22.3.17

50b (מענות שאינן טמונין קנתה) → 51b (ולא לאיש חזקה בנכסי אשתו)

ז. עשיר בְּרָשִׁים יִמְשׁוּל וְעָבֵד לֹא לְאִישׁ מְלֻחָה: מְשָׁלִי פֶּדֶק כֵּב פְּסוּק ז

- I Second analysis of exclusion of a husband from חזקה – on his wife’s property
- a Challenge: רב ruled that a married woman must register a protest (מחאה) against someone on her land
- i Clarification: against whom?
- 1 If: it is against an outsider – רב already ruled that חזקה is ineffective on a married woman’s property
 - 2 Must be: against her husband (implying that his חזקה is valid) - if he was damaging property (digging)
 - (a) Challenge: we have a rule אין חזקה לנוזקין
 - (b) Defense: rule means that one cannot claim protected status of מזיק as a result of חזקה
 - (c) Alternatively: only applies to noxious נוזקין, e.g. privy
 - 3 Alternate (רב יוסף): against an outsider – in case where his חזקה began during husband’s life then continued 3 years afterwards – he would be believed that he bought it (if she doesn’t register מחאה) due to מינו
- ii Retake: רב later ruled like (שמואל “דייני גולה”) – מחזיקין בנכסי אשת איש – as per רב יוסף’s explanation (above)
- II Analysis of next clause: a woman cannot claim חזקה on her husband’s property
- a Challenge: this is also obvious, since she has מזונות, that is what she is expending
- i Answer: in case where he designated another property for מזונות
- ii Implication: she may prove ownership with a שטר
- 1 Challenge: why can’t he claim that he was just trying to get her to show her “hidden stash”?
 - 2 implication: a שטר מכר from husband to wife is valid, and we don’t raise this consideration
 - (a) block: perhaps it is only valid if it is a שטר מתנה
 - (b) related conversation (ר"ה to ר"נ): we taught that a שטר מכר is valid and we don’t raise this concern
 - (i) challenge: this is obvious – even without the money, there’s still a שטר, one of the קרקע קניני
 1. block: שמואל said that שטר is only valid in case of מתנה, but מכר is only valid with מעות
 2. challenge (ר' המנונא): שטר is worth less than ש"פ – and includes שטר מכר
 3. answer: that is only in case he is selling off bad property (wants sale to be immediate)
 - a. otherwise: only works after מעות are given, and validity of שטר is limited to שטר מתנה
 4. alternate answer (ר' אשי): he really wanted to give it as a מתנה; he wrote it as a מכר to give the recipient more legal standing (vis-à-vis לקוחות)
 - (c) block: if someone borrows from his עבד or wife and then frees/divorces – they have no claim on him
 - (i) reason: he clearly just wanted to see what funds they were hiding
 - (ii) defense: in those cases, v. 1 testifies that he wouldn’t really want to be indebted to them
 - 3 Related ruling (ר' הונא בר אבין)
 - (a) If: a man sells land to his wife, the sale is valid and he eats פירות
 - (i) Dissent (ר' אבהו and colleagues): he wanted to gift it to her (→ פירות no), but wanted to enhance her legal standing vis-à-vis לקוחות and wrote it as a sale
 - (ii) challenge: if someone borrows from עבד/אשה then frees/divorces – they have no claim on him
 1. reason: he clearly just wanted to see what funds they were hiding
 2. defense: in those cases, v. 1 testifies that he wouldn’t really want to be indebted to them
 - (b) רב: if he sells land to his wife – קנין is valid, פירות to husband
 - (i) but if: he gifts her land – קנין is valid, no פירות
 - (c) ר"א: in either case – קנין is valid, no פירות
 - (d) practical ruling (ר' חסדא): as per ר"א
 - (i) challenge: why did he abandon the “great ones” (רב) to follow “smaller ones” (ר"א)?
 - (ii) Answer: he was also following “great one” – ר' יוחנן
 - (e) Final ruling (רבא): sale - קנין is **invalid** and husband eats פירות; gift- קנין is valid but no פירות
 - (i) Challenge: first part is self-contradictory (if קנין is no good, why does he have פירות?)
 1. resolution: if the money was hidden, no קנין (he was trying to expose the money);
 - a. but if: money wasn’t hidden, קנין is valid