22.8.22
135b (משנה וב) → 137a (זה המשיא עצה למכור כרשב"ג)

I משנה וב: finding a will on the body of a former שכ"מ
- a *If*: someone dies and a דייתיקי (will) is found tied to his body – meaningless
- b *However*: if he made a קנין on it via another (even if not the named recipient) while alive – valid
  - i *Definition of דייתיקי (which works posthumously)*: if it states "this should be confirmed and fulfilled"
  - ii *Definition of מתנה (which works for a בריא posthumously)*: must say מהיום ולאחר מיתה
- c *ר' יוחנן's ruling*: if a שכ"מ said "write and give" and then died, we don't complete it
  - i *Reason*: he may have intended to acquire through שטר, which cannot be executed posthumously
  - ii *Note*: ruling was formulated by ר"א and confirmed by ר' יוחנן, stating "it must be investigated"
    1. *Meaning*: a דייתיקי can cancel an earlier one;
       - (a) *If*: he intended to give the recipient more power through the שטר, we still write; if not – we don't
         - (i) *Challenge*: if a בריא says "write and give" and then dies – we don't write (שמא גמר להקנותו בשטר)
           1. *Implication*: for a שכ"מ, we write in any case
           2. *Response*: only in a case where we have evidence that he said כתבו to enhance his position
       - (b) *Example of ייפוי כח*: as per an addition of וקנינא or "אף כתובו" (clearly adding on to earlier command)
  - iii *Ruling (שמואל)*: in case he is מייפה כח, we do write and give

II משנה זו: making a will effective posthumously and the status of the property in the meantime
- a Necessity of back-dating:
  - i ר' יהודה: must write "from today – after death" (so that it is retroactive and valid)
  - ii ר' יוסי: no need (the date on the שטר substantiates retroactivity)
    1. *Note*: no dispute in case of דייתיקי or regular שטר הקנאה; dispute limited to שטר זכרון דברים (without "קנין")
    2. *note*: מהיום ולאחר מיתה generates ספק גט, since we are unsure if ולאחר מיתה is a condition or reversal
       - (a) *But*: here it is valid, since the meaning is harmonious – acquisition now; rights to פירות after death
- b Status:
  - i *Father*: may not sell – as he has written them to his son
    1. *If*: he sells, sale reverts to son upon father's death
  - ii *Son*: may not sell, as they are not in his control
    1. *If*: he sells, buyer has no rights until death of father

III Excursus: קנין פירות
- a *If*: son sold while father was alive and son predeceased father
  - i *ר' יוחנן*: buyer doesn't get – קנין פירות (of father) are כקנין הגוף and son never "owned it"
  - ii *ר"ל*: buyer gets it – קנין פירות לאו כקנין הגוף דמי and son always owned it (reverts to buyer after death of father)
    1. *Note*: this dispute already recorded in re: מקרא ביכורים by someone who bought a field for its פירות
    2. *Defense*:
       - (a) *ר' יוחנן*: here it is needed; סד"א that father is מוחל to his son (and cedes ownership in spite of ק"פ) קמ"ל
       - (b) *ר"ל*: here it is needed; סד"א that ק"פ *kept* by owner is always כקנין הגוף – קמ"ל
    3. *Challenge (ר"י to ר"ל)*: the rule of אחריך supports ק"פ לאו כקה"ג
       - (a) *Argument*: if it were כקנין הגוף, if #2 in line dies, it should revert to heirs of prinicipal, not of #1
       - (b) *Answer*: אחריך is a unique case – implies a gift of גוף and פירות
       - (c) *Challenge*: ברייתא rules that it reverts to heirs of principal!
       - (d) *Answer*: this is a dispute רבי/רשב"ג in an אחריך case (involving a sequence of 2)
         - (i) *If*: #1 sells or spends
           1. *רבי*: #2 may seize from buyers (אחריך is "total")
           2. *רשב"ג*: #2 only receives whatever remains from #1's stewardship (אחריך is limited)
              - a. *Challenge*: reversed ברייתא –
                - i. *רבי*: #1 may sell and spend
                - ii. *רשב"ג*: #1 only has אכילת פירות
           3. *Resolution*:
              - a. *רבי*: if he gave פירות – limited; if he gave גוף הקרקע – total
              - b. *רשב"ג*: לכתחילה vs. בדיעבד
                - i. *Note*: אביי defines a רשע ערום ("clean" רשע) as someone who advises a "#1" to sell such property as per רשב"ג

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