22.9.13

153a (משנה וב) → 155a (משנה וב) (אא״כ נעשה בגדול)

- I משנה dispute between donor (who recovered) and recipient (of entire estate) if he was שכ"מ (retract) or בריא ו
  - a *p*"7: onus of proof on donor
  - b המע"ה :*חכמים* 
    - i *Story*: man had שטר written that had 1<sup>st</sup> ½ of ונסח "he was sick in bed", without typical ending "and he died as a result of this sickness"; the heirs argued that he had recovered and then died
      - 1 *Rulnig* (*רבה*): since he is dead, the assumption is that he died from that sickness
        - (a) *Challenge (אביי)*: in case of boats (most of which sink), we are מחמיר as if they are alive (and dead) –
          (i) *Therefore*: ק"ו case of people who are sick, most of whom recover
      - 2 Support for ר' יעקב . דר the burden of proof is always on the recipients
        - (a) *Dissent*: שכ״מ, they must prove that he recovered (& vice-versa)
        - (b) Note: parallal dispute re: טומאה (in case of ספק, in defining טומאה, which depends on season)
- II Discussion of dispute between ראיה, hinging on menaing of ראיה in the ראיה's response
  - a בריא witnesses must testify that he was a בריא
    - i Dispute: is parallel to that of ר' יעקב/ר' נתן (above); ר"נ::ר"מ and ר' יעקב::חכמים ר' יעקב::חכמים
    - ii Parallel: עדים ruled that חכמים require עדים
      - Challenge: אביי is it because שטר is missing mention of his being hale? Also missing "deathbed"
        (a) Answer: therefore, neither phrase is present to give indication אוקי ממונא בחזקת מריה
  - b (*and אטר (רבה בר ר' הונא must be confirmed (קיום השטר)*) קיום השטר)
    - i Dispute: if a חכמים, confirmed by the one who wrote it, still requires שטר, שטר no; העמים needs קיים) needs
    - ii *Challenge*: ר"מ/חכמים already had this dispute:
      - 1 If: עדים לפסלו חכמים אין נאמנים לפסלו ר״מ testify that they signed a שטר but were forced (e.g.) אדים לפסלו
      - 2 *Resolution*: in that case, עדים אד are strong (their word generates נאמנות, not here (flip for reverse)
  - c Parallel dispute: in א"י
    - i קיום השטר ר״ל ;ראיה בעדים :*ר׳ יוחנן*
    - *Challenge (ר"י לר"ל*): story in ב"ב man sold his father's property and died; family members came to challenge sale , claiming he was a minor at the time and they asked אר"ע to exhume the body
      - 1 Ruling: we cannot defile the body besides which, סימנים sometimes change post mortis
      - 2 *Argument*: position of requiring עדים is sound since he told the buyers to bring עדים and they couldn't produce them, that's why they requested exhumation but if we require קיום השטר, why exhume just confirm the שטר and they can take possession
        - (a) *Counter* (5"7): property was in possession of buyers and family members wanted to exhume
          - (i) *Support*: that's why **"** argued that we canot defile body (buyers wouldn't care)
            - (ii) *Block*: that's why r'' gave two reasons
    - iii *Challenge (ר"ל לר"י*): (from ברייתא דבר קפרא) if someone was benefiting from a field and another challenged his ownership and the current "owner" showed a שטר which indicated that the challenger had sold or given it to him
      - 1 If: the challenger claimed it was forged the "owner" needs but to execute קיים השטר
      - 2 *But if*: מערער פסים claims שטר) שטר אמנה and שטר) was confirmed but meaningless)
        - (a) Then: if there are witnesses, that will determine status; if not follow what it states in שטר
        - (b) Implication: this follows ר״מ who says מודה בשטר שכתבו אין צריך לקיימו and not מודה and not
        - (c) *Response*: everyone agrees that אין צריך לקיימו
          - (i) *Challenge*: but they disagree (re: עדים invalidating their own חתימות, above)
            - 1. *Answer*: עדים can do so, but a בעל-דין doesn't have that power
          - (ii) *Challenge: ""* is quoted as saying that the family members (above) were right to challenge
            - 1. *Response*: "ר" denied every saying that (even though his student, ר"א, quoted him)
            - 2. Block: but we have a reliable report that י"י interpreted חכמים (here) as being about קיום השטר
        - (d) Answer: the positions are reversed (י"ז's statement about רבנן means רבנן, to the exclusion of ר"מ)
          - (i) Meaning: in our כתובות takes position that המע"ה (קיום השטר=) and we must reverse כתובות
          - (ii) And: ראיה בעדים ר"י/ר are reversed as well (ראיה בעדים ראיה)
            - 1. *But*: no need to switch the challenge י"י still challenged ר"ל from story in ב"ב:
            - 2. איז my position need קיום השטר we understand why the property לקוחות got the property
            - 3. *But*: if needing ראיה בעדים, how could they get it
              - a. Response: agrees that family's ערער is invalid since אי"כ נעשה בגדול אשטר אא"כ נעשה איי אין העדים חותמין על השטר אא

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