

22.9.16

157a (משנה ח) → 158b (והללו באין לירש יחלוקו)

- I בעלי חוב vis-à-vis payment to various of who died first – man or his heir – משנה ח
- a Case: man - who owed כתובה and/or מלוה - and his father (other מורשים) died in collapse of house
 - b Claim: father's heirs claim that son died first (father inherited property and creditors can't collect)
 - c Counter: creditors claim that father died first (son inherited property and they can collect from it)
 - i Rulings:
 - 1 ב"ש – they split (בע"ח get paid half)
 - 2 בחזקתן נכסים – ב"ה (בחזקתן)
- II Back-door סוגיא – שעבוד on property purchased after the debt was incurred
- a Ruling: מלוה ע"פ (מלוה ע"פ) can be collected from משועבדים (unlike מלוה ע"פ)
 - i Question (שמואל): can property acquired after the debt was incurred be included in שעבוד?
 - 1 Note: this question can only be asked according to רבנן; ר"מ (אדם מקנה דשלב"ע) would certainly confirm
 - (a) דב יוסף proof from case in כתובות where a claimed בע"ח sold property to his alleged debtor, who used the sale as proof that the בע"ח isn't owed any money; חכמים's response – he was smart to sell the property so that it can become a lien against the debt → future purchases are משתעבד
 - 2 Correction (רבא): that is clear, as the שטר indicates דעל כתפאי מינאי – ואפילו מגלימא דעל כתפאי מינאי – ואפילו מגלימא דעל כתפאי מינאי
 - 3 The question is: if he purchases it and then sells it can it be seized?
 - (a) Answer: from our משנה – since בע"ח are claiming that father died first (i.e. son then inherited - momentarily – his property, which then would be seized by בע"ח) → even קנה והוריש is משתעבד
 - (i) Block: that is due to the obligation of the heirs to pay their father's debts
 - (ii) Rejection: that obligation is a מלוה ע"פ, which isn't paid from לקוחות
 - (b) Answer: our משנה is authored by ר"מ (אדם מקנה דשלב"ע)
 - (c) Also: משנה in א: שביעית about post-dated שטרות being valid – as per ר"מ only
 - (d) Also: ruling that a בע"ח can collect from appreciation (albeit not ממשועבדים) – as per ר"מ only
 - ii Analysis: (only open for discussion if we accept the principle that subsequent purchases are משתעבד)
 - 1 Case: if someone borrowed from 2 subsequent lenders and then bought land – who has first claim?
 - (a) חכמי א"י first one has claim
 - (b) ד' הונא ורבה בר אבהו they split
 - (c) דב אשי two versions (first or split)
 - (i) הלכה split
 - (ii) Challenge: ruling that if a buyer has the property seized by a בע"ח, he can collect the קרן from the seller (even משועבדים) and שבה (that he appreciated) from בני חורין
 1. Explanation: if בע"ח and buyer split proceeds, why does the buyer collect all of appreciation
 2. Defense: collection mentioned there means "1/2 collection"
- III נכסי מלוה and כתובה vis-à-vis ownership of who died first – man or his wife – משנה ט
- a Case: as above, house collapsed and killed man and wife
 - i Claims: heirs of husband claim she died first (→ he inherited her כתובה and נכסימלוה)
 - ii Counter: heirs of wife claim he died first (→ he owed כתובה and נכסי מלוה return to her family)
 - 1 Rulings:
 - (a) ב"ש – split
 - (b) בחזקתן נכסים – ב"ה
 - (i) "נכסים בחזקתן" (understood by גמרא to refer to a third class of property – נכסי צ"ב –
 1. Question: who is מוחזק?
 - a. ד' יוחנן husband's heirs (since he had אחריות for their value)
 - b. ד' אלעזר wife's heirs (came from her family)
 - c. ד' ר' ל (and קפרא): split
 - (ii) כתובה – belongs to heirs of husband
 - (iii) נכסי מלוה – belong to heirs of wife