

22.10.6

167a (משנה ג') → 168a (יוסי כ' הלכה כ')

1. כי יקח איש אשה ובעלה והיה אם לא תמצא חן בעיניו כי מצא בה ערות דבר וכתב לה ספר כריתת ונתן בגדה ושלחה מביתו: דברים כד, א

I ג משנה ג writing שטרות in the presence of only one party

a גיטי permissible to write גט for husband w/o wife there; & to write שובר for wife w/o husband there

i Proviso: the סופר must know them

1 Meaning: he must know the names of both the husband and wife

(a) Even: the wife's name on the גט and the husband's name on the שובר (אביי)

(i) Concern: what if he gives the גט to a another woman whose husband has his name?

1. Answer: רב – two men with same name must divorce in presence of other

(ii) Concern: perhaps he has a different name and moves to another town, assuming another name in order to divorce another man's wife

1. Answer: we don't have such an exaggerated concern; once his name is "stuck" for 30 days, we assume it to be accurate

a. If: he hasn't yet been there for 30 days, how do we confirm his identity?

i. אביי: if he answers to that name

ii. ד' זבד רמאי is clever with his deception – there is no solution before 30 days

2 Stories relating to "innocence" of scholars in re women:

(a) Case: שובר came before בר אבא בר ירמיה ר' which he had signed; she denied receiving funds and he also had thought that it wasn't she; when told that her voice had deepened, he recanted & identified her

(i) Ruling (אביי): tho generally we hold חוזר ומגיד שוב אינו חוזר ומגיד, here, since ת"ח aren't overly familiar with women's voices, we accept his recantation

(b) Case: שובר came before בר אבא בר ירמיה ר'; she denied it but he insisted it was her

(i) Ruling (אביי): 'tho generally we don't expect a ת"ח to be that familiar with a woman, if he insists that he knows who she is, we accept it

(c) Ruling (אביי): if a ת"ח goes to be מקדש a girl, he should take a commoner with him so that they don't cheat him and present a different girl

ii Note: husband pays for both שטרות – as per v. 1

1 Note: we no longer do this, in order to keep him from holding up her גט

b שטרי הלואה borrower must be present; lender not necessary

i Note: this is obvious – but even extends to a case of עיסקא (½ loan, ½ פקדון)

ii Payment: borrower must pay for שטר

c שטרי מקח seller must be present; buyer not necessary

i Payment: buyer pays for שטר

1 Note: even if the seller is selling due to a deficiency on his field (or dropping prices)

II ד' משנה ד שטרות that require both parties' presence

a שטרי אירוסין ונישואין paid by חתן

i Note: even if חתן is a ת"ח, whose entrance into family is an honor for father-in-law

b שטרי אריסות וקבלנות agreements of sharecropping; sharecropper (קבלן) pays

i Note: even if he must let field lie fallow for a time, where he gets no immediate הנאה

c שטרי בירורין (or any מעשה ב"ד): both pay

i Meaning: in בבל they explained – שטרי טענתא – א"י – זב"א (each recommends a judge and the 2 דיינים a 3rd)

ii דשב"ג: in case of שטרי בירורין, two שטרות are written, one for each party

1 Suggestion: perhaps their dispute is in re: כופין על מדת סדום (ק) כופין ת"ח → each has to pay his half)

(a) Rejection: all hold על מדת סדום – רשב"ג – no one wants the other holding his טענות, leads to disputes

III ה' משנה ה "security assurances"

a If: someone paid off part of his debt and then they agreed to give the שטר to a middle-man until it is paid off

i And then: the לווה declared that if he doesn't pay off the loan by a certain date, the שלישי should return the entire שטר to the lender

1 אסמכתא קניא – ד' יוסי he should give it to him

2 אסמכתא לא קניא – ד' יהודה he should not give it to him

(a) Ruling: ר' יוחנן and רב ruled in accord with יוסי ר'

(b) Final ruling: אסמכתא לא קניא