

22.10.7

168a (משנה ו) → 169b (והדר זבנה ניהלה באחריות)

I שטר מושנה וז

- a If: someone has a שטר חוב that got erased, he brings witnesses (that know when it was written and the contents) and they come to ב"ד for קיום: this man's שטר was erased on such-and-such a day and so-and-so are his עדים
- i wording of קיום 3 דיינים sign that פ' came before them and such-and-such a date and פ' ופ' were his עדים
- 1 if: they added "we investigated the עדים and their words jibed" – he may use the שטר to collect
 - (a) if not: he may not collect without substantiating the שטר
 - 2 if: the שטר was deliberately torn (by ב"ד) – may not use
 - (a) Marker (רב יהודה): if the names and date and תורף were torn
 - (i) Alternatively (אביי): if it was torn both length-wise and width-wise
- ii Story: Arabs were taking land and forcing owners to give them their deeds of sale
- 1 Owners: came to אביי, asking him to write a שטר 2nd on their property so they could claim it back
 - (a) He refused: as per ספרא ר' – cannot write 2 שטרות on 1 field (see below)
 - (b) When pestered: he had his סופר erase and write a שטר on מחק (invalid)
 - (i) Challenge (ר' אחא בר מנימי): if the original writing is there, שטר is valid
 1. Answer: he directed that gibberish be written, then erased
- b Related ברייתא:
- i If: someone lost his שטר חוב, even if he brings עדים who testify that they signed it – cannot write another
- 1 Caveat: only applies to הלוואה, not to מקח וממכר – without its אחריות
 - (a) Reason: as per ספרא ר' – we don't write 2 שטרות on one field, lest בע"ח reuse to seize property improperly
 - (i) Explication: the בע"ח could seize it once, then this fellow could seize property from later לקוחות, have בע"ח allow him to live on it a few years, then he'll re-seize it and our fellow will re-claim loss from later לקוחות
 1. Challenge: when בע"ח seizes it the first time, we tear up his הלוואה שטר (can't reclaim)
 - a. As per: ruling that a טירפא must read "we tore up his הלוואה שטר"
 - b. And: an אדרכתא must read "we tore up his טירפא"
 - c. And: a שומא must read "we tore up his אדרכתא"
 - i. Answer: if he claims a theft from his father (and brings עדים that it belonged to his father) – he can wait a few years and make that claim again
 2. Challenge: why does בע"ח have to let him wait a while on the field; since he has 2 שטרות, he can immediately seize from other לקוחות
 - a. Answer: he doesn't want to deal with many litigants (he's afraid that his deception will become known if he has to seize from multiple בעלי דין within a short time)
 3. Challenge: why not write a proper שטר מכר with אחריות and give the seller a שובר, indicating that all שטרי מכר are invalid except for the one produced on that day
 - a. Students to ר' פפא or ר' אשי: this implies that we don't write a שובר
 - b. Rejection: we generally write a שובר; but here, we are concerned that the בע"ח will seize property from this לוקח and then they'll seize it from another לוקח, who doesn't have the שובר
 - i. Block: eventually, the מוכר will produce the שובר to reinstate the land
 - ii. Answer: in meantime, בע"ח will have eaten some of the פירות (may not be recoverable)
 - iii. Alternatively: could be sold to a לוקח שלא באחריות and he'll have no recourse
 - c. Challenge: same should apply to שטרי הלוואה - if we allow שובר, same scenario may play out
 - i. Answer: in case of money, לוקח knows that the מוכר may have come to an agreement with the בע"ח and he won't relinquish property without checking first (מכר=)
 - (b) Formulation (w/o אחריות): this שטר isn't to be used for collection – even from בני חרי – just as a deed
 - (i) Conclusion (רפרם): אחריות is to be assumed (סופר) – if this weren't written, we could collect
 - (ii) Dissent (ר' אשי): אחריות is not assumed – meaning of משנה is that we don't write אחריות in the שטר
 1. Case: woman sent man to buy her some land, which he bought באחריות שלא באחריות
 - a. Her claim: I sent you to repair things, not to foul them up
 - b. Solution (ר'נ): שליח has to re-purchase it שלא באחריות and sell to משלחת with אחריות
 - 2 Dissent: רשב"ג doesn't allow writing מקח וממכר שטרי either
 - (a) As per: his פסק that if someone writes a שטר מתנה and the recipient returns the שטר – מתנה is returned
 - (b) חכמים: gift is not returned