

22.10.8

169b (רשב"ג אומר) → 170b (אנא נמי לברר קאמינא)

- I Analysis of end of ברייתא: רשב"ג rules that if someone gives back שטר מתנה itself is retracted – חכמים dissent
- a Reason for רשב"ג's position
- i ר' אסי: it is as if he said – the gift is yours as long as you hold the שטר
- 1 Challenge (דבה): if so, even if it were stolen or lost the gift would be retracted
- ii דבה: dispute is whether אותיות נקנות במסירה (i.e. the fact of the קנין is acquired with the words)
- 1 אותיות נקנות במסירה: רשב"ג → when he returns the שטר, he is returning the gift
- (a) Challenge: ברייתא in which רבי/רשב"ג disagree about a case where someone is defending his hold on land and he can use a שטר or חזקה
- (b) שטר use: רבי
- (c) חזקה use: רשב"ג (also?) (only?)
- (i) Explanation of dispute (ר' דימי): אין אותיות נקנות במסירה רשב"ג holds
- (ii) Comment (אבני): then this stands in opposition to רבה (above)
1. Meaning: if we explain that ברייתא as per ר' דימי, it leads to a contradiction in רשב"ג's words
- (iii) Rather: explanation of dispute in ברייתא is case where one of the עדים proved to be קרוב/פסול
1. And: dispute mirrors that of ר"א/ר"מ (עדי חתימה vs. עדי מסירה) - ר"מ::רשב"ג - ר"א::רבי
- a. Rejection: ר"א agrees that an inherently forged שטר is invalid (מזויף מתוכו)
- (iv) Rather: case in ברייתא is where there are no עדים on the שטר at all
- (v) Alternatively: they are disputing issue of זריק לקיימו
1. רשב"ג: even if he admitted he wrote it, it requires קיום (→ use חזקה)
2. רבי: if he admits he wrote it, no need for קיום
3. Challenge: their positions are reversed in this case:
- (d) Case: שטר; שטר both לוה & מלוה claims it hasn't been paid & לוה claims it has
- (i) רבי requires קיום (we assume that he'll collect it all after קיום)
- (ii) רשב"ג doesn't require קיום
1. Explanation: רבי certainly accepts ruling of א:א בבא מציעא
2. Rather: dispute is case where it isn't מקויים; רבי holds זריק לקיימו
3. And: after קיום, he can collect ½ (רשב"ג allows collection of ½ w/o קיום; מודה בשטר...א"צ לקיימו)
- (iii) Answer1: switch positions (רבי says they split without need for קיום)
- (iv) Answer2: dispute in our ברייתא is לברר
1. Meaning: if someone brings several arguments, does each need to be examined?
- a. As per: case brought before נפחא ר' יצחק נפחא; borrower claimed he paid back in front of specific עדים, who he named
- b. Ruling: he must provide the עדים
- c. Challenge: המלוה את חברו בעדים א"צ לפרעו בעדים
- d. Answer: רב rules that if a borrower claims specific עדים saw him pay back, he must provide them
- i. And: he explains the dispute רשב"ג/רבי (שטר vs. חזקה) as just referring to the need לברר – to clarify the secondary claim
- ii. Answer: that's what ר' יצחק נפחא was doing in requiring the לוה to produce the עדים