

22.10.9;170b (משנה 2) → 172a (ואמר ליה האי אחרינא הוא)

1. עשיר בְּרִשִׁים יִמְשֹׁל וְעֵבֶד לֹחֵ לְאִישׁ מְלוּחָ: מְשַׁלִּי פֶדֶק כֵּב פֶּסוּק ז

- I 20 dealing with the שטר הלוואה when part of the loan is paid off
- a ר' יהודה שטר for new amount
- b ר' יוסי שטר and write a שובר for לווח
- i Challenge (ר' יהודה): then lender has to watch his שובר
- ii Retort (ר' יוסי): this is appropriate – he shouldn't harm the lender's rights
- c Final ruling שטר and writes another (רב הונא בשם רב): like neither; rather, רב tears up שטר and writes another
- i Comment (ר' יהודה בריתא (supporting ר' יהודה), he would've ruled like ר' י"ה to ר' ירמיה or ר'נ): had רב known the בריתא (רב הונא בשם רב), he would've ruled like ר' י"ה
- 1 מזמן ראשון שטר and write another one שטר
- (a) Response (ר' הונא): רב did hear the בריתא and nonetheless ruled against it
- (b) Reason: רב has power to usurp property (via אחריות עדים); אחריות עדים who already did their job can't be assumed to be assigned to do it again
- (i) Challenge: רב rules that עדים can sign as many שטרי מכר on a field (בדאירכס) as necessary
- (ii) Answer1 (רב יוסף): that is in re: שטר מתנה (no אחריות → no damage to 3rd party)
- (iii) Answer2 (רבנן): that is in re: אחריות בו שטר
- 2 Revisiting the בריתא: if he paid part of the loan
- (a) מזמן ראשון שטר and write a new one שטר
- (b) ר' יוסי let the שטר sit as is and the מלווח writes the לווח a receipt
- (i) Reasons: שובר speeds up full payment (לווח doesn't want to lose it) and allows collection ראשון
1. Challenge: ר' יהודה also authorized collection ראשון (as per שטר new)
2. Answer: ר' יוסי's response:
- a. If: ר' יהודה meant שובר, then they differ on one point; if זמן שני, they differ on 2
- d Related בריתא: if a שטר is dated שבת or יו"כ (10 of תשרי), it is clearly a post-dated שטר and is כשר
- i ד' יהודה. all post-dated שטרות are valid, since we don't write a שובר – no bad consequences possible
- ii ד' יוסי. only such a post-dated שטר (where it being מאוחר is inherently obvious) is valid; else, invalid
- 1 Reason: since ר' יוסי holds that we allow שוברות to be written, could lead to injustice:
- (a) Lender could write שובר, claiming he lost שטר, then collect again
- e Further details about שוברים:
- i ר' הונא בריה דר"י: we only write a שובר for a partial amount; but full amount, if paid, requires שטר to be torn up
- 1 Challenge: story of יצחק בר יוסף, who, in spite of רב ושמואל insisted on writing שובר as per ר"ל
- (a) Block: אביי, just because the מלווח lost the שטר, why should the לווח have to guard his שובר?
- (b) Retort: רבא – indeed, as per v. 1
- ii משנה שביעית י א post-dated שטרות are valid
- 1 ד' המנונא. only applies to שטרי הלוואה, but not שטרי מקח, since he could double-collect (as above)
- (a) Challenge: couldn't he double-collect on a loan?
- (b) Answer: we don't write a שובר (ר' יהודה follows)
- (i) Challenge (ר' כהנא): our practice is to allow שטרות and to write a שובר
1. Defense: ר' אבא instituted a line to be written into a שטר מאוחר indicating that it's post-dated
2. Challenge (ר' ל' אשי): but we don't write that and allow שוברים?
- a. Defense: ר' ספרא instituted that if שטר knows date of שטר, write it on שובר; else, leave it without a date and anytime he produces it, it will nullify any שטר brought against it
- b. Challenge: we don't write "מאוחר", nor a date on the שובר
- i. Answer: anyone (לווח) who doesn't take advantage of that תקנה – hurts himself
- f Practice of חכמים in re dating שטרות: שילא רבא directed his סופרים to write date of original קנין on שטרי הקניה; if they don't know that date, to write date on which they were executing it – to avoid appearance of שקר
- i שטר דב should bear name of the town where they are writing it, 'tho they were directed to do so elsewhere
- g Limits on "rewriting שטרות":
- i דבא: if someone has a שטר for 100, we don't rewrite 2 @50; nor vice-versa
- 1 Reason: we want לווח to have to pay up quickly if appropriate (100 in one שטר); but not if separate loans
- 2 And: we don't want שטר פגימת שטר where inappropriate (was 2 loans); we do want it where appropriate (1 loan)
- ii ד' אשי: if מלווח requests that his שטר-100 be rewritten as 50, since לווח paid half, we don't do so
- 1 Reason: may have paid all, מלווח claimed שטר was lost and wrote שובר – and will claim this is a different loan