

22.10.10

172a (משנה זז) → 173a (התם יד בעל השטר על התחונה)

- I שטר common and specific property in inheritance/confusion with common names in משנה זז
- a If: two brothers inherit a leasable property
- i If: father used it for leasing – they split proceeds (neither can force the other to divide for personal use)
- ii But if: father used it for himself, one can force other to divide (even though other may have no use for it)
- b If: there are two men with same name/patronym (e.g. יוסף בן שמעון) in same town
- i They cannot: lend each other money (will be unclear who is מלווה and who is לווה)
- ii And: no one else can lend them (each will claim that the other is the לווה)
- iii If: someone found a שטר among his שטרות, reading that the שט"ח of שמעון בן יוסף is paid – both are “paid off”
- 1 Challenge: no one can make a claim against either of them
- (a) Answer1: if the שט"ח was משולש (as per below) with more of an indicator, but the שובר was not
- (b) Answer2 (אב"י): if such a שובר were found **among the לווה's documents**, either debt is “paid”
- 2 Solution: add a generation to name or another indicator (e.g. כהן) (ברייתא: if needed, add generations)
- II סוגיא Backdoor
- a Case: שטר came to רב הונא, reading “I, בר פ', borrowed money from you” (without specifying בע"ח)
- i Ruling: “from you” can be anyone → anyone holding the שטר can collect
- 1 Support (found by רבא at ר"ח's behest): ברייתא – a dateless גט – גט אבא שאול – rules that if it states “I divorced her today” – that means the day it is produced
- (a) Similarly: “from you” means whoever is holding it
- (b) Challenge (אב"י): perhaps שאול אבא holds like ר"א כרתי – עדי מסירה כרתי (→ “today” doesn't constitute a date)
- (i) But: in our case, we should be concerned that the שטר fell from the real בע"ח's hand (and not allow the unnamed claimant to collect)
- (ii) Response (רבא): we aren't concerned that it fell (לנפילה לא חיישינן)
- (iii) Proof: our משנה – no one else can claim money from שמעון בן יוסף – but either of them can claim from another → we aren't חושש לנפילה
1. Defense (אב"י): while we're not concerned about נפילה with two potential players (יב"ש)
- a. But: we may be חושש לנפילה with unlimited players (ממך)
- (iv) Observation: ברייתא rules against our inference from משנה – יב"ש cannot use שט"ח against others
1. Point of dispute – suggestion1: אותיות נקנות במסירה
- a. משנה: they are → even if “wrong” יב"ש is holding שטר, he acquired loan with שטר
- b. ברייתא: אינן נקנות במסירה → unless he's the original יב"ש, cannot collect
2. Point of dispute - suggestion2: אותיות שנקנו במסירה – אם צריך להביא ראיה
- a. Meaning: if the “new” holder comes to collect, must he prove that he legitimately took possession as a בע"ח and it's not just a פקדון
- b. אב"י: must prove
- c. דבא: no need for proof
- i. Support: ברייתא ruling that if one brother produces a שט"ח (claiming that father gave it to him) – he must prove that it is legitimately his
- ii. אב"י: if brothers, who are naturally careful to guard against each other (due to easy access) must still bring proof, certainly an outsider must do so
- iii. דבא: only brothers, who have easy access, must prove ownership – not others
- (v) Observation: ברייתא rules against our משנה – allows others to use שט"ח against יב"ש
1. Point of dispute: whether we allow a לווה to direct writing a שטר הלוואה without מלווה present
- a. משנה: allowed → יב"ש may write as “לווה” from יב"ש, then use it as the “lender” to collect
- b. ברייתא: we don't allow it → if they come together to write שט"ח, they trust each other
- III משנה זז further confusion about identity of paid-off debt
- a If: a father tells his son (on his death-bed) that one of his שטרות is paid up – they are all “paid off”
- i If: there were 2 שטרות from one debtor, the greater debt is “paid off”
- 1 Comment (דבא): if A says to B “the שטר I have on you is paid off” – the greater amount is excused
- (a) But if: he says “your debt to me is paid off” – all the debts are excused
- (i) Challenge – reduction (אב"י): if A says to B “I've sold you my field” – biggest field is sold
- (ii) But if: he says “the field that I have is sold to you” – are all sold to him?
1. Defense: in our case, התחונה על השטר and the buyer must prove that he owns all fields