

22.10.11

173a (משנה ח') → 174a (וקי"ל לא יתבע ערב תחלה)

1. אנכי אֶעֱרְבֶנּוּ מִיָּדִי תִּבְקָשׁוּ אִם לֹא הִבִּיאֲתִי אֵלָיְךָ וְהִצַּגְתִּי לְפָנֶיךָ וְחִטַּאתִי לְךָ כֹּל הַיָּמִים: בראשית מג, ט  
 2. וַיֹּאמֶר רָאוּבֵן אֶל אָבִיו לֵאמֹר אֶת שְׁנֵי בְנֵי תַמִּית אִם לֹא אֲבִיאֲנֹו אֵלָיְךָ תִּנְהָ אֲתוֹ עַל יָדִי וְאֲנִי אֲשִׁיבֶנּוּ אֵלָיְךָ: בראשית מב, לו  
 3. לָקַח בְּגָדוֹ כִּי עָרַב זָר וּבָעַד נִכְרִיהַ חֲבֵלָהוּ: משלי כ, טז  
 4. בְּנֵי אִם עֲרַבְתָּ לְרַעְדָּ תִקְעֶת לְזָר כְּפִיד: נוקשת באמרי-פיד נלכדת באמרי-פיד: עשה זאת אפוא בני והנצל כי באת בכך-רעךְ התרפס ורהב רעך: משלי ו, א-ג

- I ערב: collection from an משנה ח'
- a If: someone lends money and there is an ערב, he shouldn't collect from him (before addressing borrower)
    - i Reason: רבה ור' יוסף – רבה ור' יוסף's claim is that he assured מלוה that לוה would be there – and he's present (hasn't fled)
      - 1 Counter (ר'נ): that is the approach of the Sassanian courts!
      - 2 Block: the Sassanian courts go after the ערב first!
      - 3 Rather: just like the Sassanian courts, that don't explain their reason for what they do...
    - ii Rather: means "shouldn't collect from the ערב first" (support from ברייתא)
  - b But if: he said "I'm lending on condition that I may collect from whichever I choose" – he may
    - i ר' יוחנן דבב"ח בשם ר' יוחנן only applies if the לוה has no property; if he does, may not collect from לוה
      - 1 Challenge: from רשב"ג's dissent → ת"ק must hold that even if לוה has property, may collect from ערב
        - (a) Rather: מחסרא –
        - (b) Reads: first half – if לוה has no property; but if he does, never collect from ערב
          - (i) However: if he is a קבלן (who accepts full responsibility for the loan) – even if the לוה has property, he may collect from קבלן
            - 1. Dissent (רשב"ג): if the לוה has property, in no case may he collect from ערב
            - 2. Note: ר' יוחנן ruled that everywhere רשב"ג's opinion is mentioned in the משנה, הלכה follows his opinion, except for ראייה אחרונה and this case (ערב)
    - c Dissent: רשב"ג – if the borrower has property, in neither case may he collect from ערב
      - i Similarly: רשב"ג ruled that if someone is an ערב for a woman's כתובה and her husband is about to divorce her, the husband must ban any הנאה from the woman (so they can't remarry) to avoid them conspiring to hurt the ערב
- II Source(s) of ערבות
- a ר' הונא v. 1
    - i Challenge (ר' חסדא): this is a case of קבלנות (where he accepts full responsibility) as per v. 2
    - ii Rather: vv. 3-4
      - 1 Interpretation of v4: if you owe him money – pay; if not (if it's a personal affront), bring friends (to ask מחילה)
- III ערב of an שעבוד
- a אסמכתא – it depends on one's position on ערב
    - i ערב משתעבד → אסמכתא קניא – ר' יוסי
    - ii ערב לא משתעבד → אסמכתא לא קניא – ר' יהודה
  - b Counter (ר'אשי): in practice, we allow for ערב, 'tho we rule like ר' יהודה re: אסמכתא
  - c Rather (ר'אשי): with the הנאה he gets from the מלוה trusting him, he obligates himself (משעבד נפשיה)
- IV Distinction between ערב and קבלן
- a Formulation (ר' הונא)
    - i ערבות: "lend to him and I'll be the guarantor", "...and I'll pay back", "... and I'll be liable", "...and I'll give"
    - ii קבלנות: "give to him and I'll be the קבלן", "...and I'll pay back", "... and I'll be liable", "...and I'll give"
    - iii Question: mixing terms (e.g. "lend to him and I'll be a קבלן" or "give to him and I'll be an ערב")
      - 1 קבלן a ד' יצחק if he uses the word ערב, it is ערבות; if קבלנות – he's a קבלן
      - 2 ד' חסדא all formulations (including those of ר' הונא) are קבלנות except for "lend to him and I'll be the ערב"
      - 3 ד'בא all formulations (including those of ר' הונא) are ערבות except for "give to him and I'll give (to you)"
    - iv אמימר: if he says "תן לו ואני נותן" the lender has no claim on the borrower (all to the קבלן)
      - 1 Rejection: this isn't true unless the loan goes through the קבלן's hands
  - b Case: a דין allowed lender to go directly to לוה's property for collection without notifying לוה
    - i ד' חנין ב"ר יבא dismissed him from his position as דין
    - ii ד'בא: praised him for the dismissal;
      - 1 Reason: a man's property is ערב for him and we don't collect first from an ערב (as per our משנה ח')