

22.10.12; 174a (ההוא ערבא דיתמי) → 175a (וכמסורין דמו)

- I Dispute re: ר"פ/ר' הונא בריה דר"י re: ערב's ability to sue minor heirs for loan he has paid off
- a Case: an ערב for יתומים paid off a loan without notifying them
 - i ל"פ. he cannot collect from them – פריעת בע"ח מצוה – and the minors aren't obligated
 - ii ל"ה. he cannot collect from them – concern that father (לווה) had given the מלווה a security (צורי אתפסיה)
 - 1 Split the difference: if father admitted the debt before dying or died in חרם (as a result of his refusal to pay)
 - 2 Ruling (from א"י): if he died in חרם, we rule like ר"ה בריה דר"י → they must pay
 - 3 Challenge: if ערב is holding a שט"ח, he cannot collect (from לווה); but if it states "paid", he may
 - (a) לר"ה בריה דר"י. it works – case where father admitted debt
 - (b) לר"פ. shouldn't work
 - (i) Defense: he troubled himself to have התקבלתי ממך written – in order to collect
 - b Case: someone was an ערב for a loan from a non-Jew, he paid it off before the non-Jew sued the יתומים (בני הלווה)
 - i Ruling: ר' אבימי בשם רבא (quoted to ר' אשי) – even according to ר"ה (חייש לצררי) ר"ה, this only applies to a Jewish lender; but if the lender is a non-Jew, who will go directly to the ערב, the father wouldn't have given him צורי
 - ii Response (ר' אשי): just the opposite - even according to ר"פ (לא חייש לצררי) ר"פ, here we should assume that the father gave him a security (and loan had already been paid off → can't sue יתומים), since he will go after ערב, ערב wouldn't have signed on if there wasn't a security given to מלווה.
- II Analysis of end of משנה:ג' רשב"ג's ruling in re: ערב לכתובה (husband must be מדיר his wife הנאה so as not to take her back)
- a Story: ר' ת"ח's father was the ערב for his כתובה and was poor; אב"י wondered why no one advised him to divorce wife (away from ב"ד to avoid making נזר), have her collect כתובה from father-in-law and remarry (turned out he was כהן)
 - i Challenge: רשב"ג ruled that such behavior (in re: using רשב"ג's ruling about אחריק to sell at intermediary point) is unethical (רשע ערום)
 - 1 Answer: it was his own son and a ת"ח in need
 - ii Challenge: father was an ערב and we hold that ערב לכתובה never pays (as per below)
 - 1 Answer: he was a קבלן
 - (a) Note: this only works if we rule that קבלן pays even if לווה has no funds; if we rule that if לווה has no funds, קבלן doesn't pay – how would this have worked?
 - (i) Answer1: perhaps son had a field (at time of writing כתובה) that was subsequently flooded
 - (ii) Answer2: perhaps a father's property is משתעבד to the son, even if son has no property of his own
 - b Background: all agree that ערב לכתובה has no liability and that a קבלן דבע"ח has liability
 - i Dispute: re: ערב לחוב and ערב לכתובה
 - 1 One: holds that only if לווה (בעל) has property is the ערב/קבלן liable;
 - 2 Other: in any case, ערב/קבלן is liable
 - 3 Ruling: in any case, ערב/קבלן is משתעבד; except for ערב לכתובה, who is never משתעבד, even if בעל has property
 - (a) Reason: he was simply doing a מצוה (helping the זיווג)
- III הונא ר' ruling re: שכ"מ, after being מקדיש all his property, declared that he owes money to someone
- a Ruling: he is believed – חזקה that no one will try to cheat הקדש
 - i Challenge (ר"נ): 'tho no one would try to cheat his sons, we have the ruling of רב ושמואל:
 - 1 Ruling: if a שכ"מ says that he owes someone money, we don't give it unless he said תנו
 - (a) Implication: he may be saying it just to keep his sons from looking too wealthy
 - (b) Similarly: he may be saying he owes פ' money (vis-à-vis הקדש) to keep himself from looking too rich
 - ii Answer: ר"ה's ruling was only in a case where he is holding a שטר (that he owes to פ')
 - 1 Implication: רב ושמואל's ruling is if he isn't holding a שטר
 - (a) Challenge: then it is a מלוה ע"פ which cannot be collected from יורשים (see next page)
 - 2 Rather: in both cases, he is holding a שטר; if he says תנו, it is like a קיום; if not, no קיום
 - b Related ruling (רבה): if a שכ"מ declares that he owes money to פ' and heirs say they paid – believed
 - i But: if he orders them to give money to פ' and they say they did – not believed
 - 1 Challenge: this is backwards; where he said "give", we can assume they gave; but where he just said "I owe", no reason to believe that they paid it off
 - 2 Rather: if שכ"מ said that he owes money to פ' and then heirs said that he later said that he paid – believed
 - (a) Reason: he reminded himself
 - 3 But: if he said "give..." and they said "he later told us that he paid"; not believed
 - (a) Reason: if he had paid, he wouldn't have said "give"
 - c Related ruling (רבה): a שכ"מ who admits to a debt need not say אתם עדי or כתובו – no one "plays games" on his death-bed and the words of a שכ"מ are considered written and handed over