

25.6.3

40b (והלכו להם למדה"י נאמן) → 41b (מנה לי בידך אין לך ביד) 40b

## I כופר הכל שבועת היסת for ר'נ

a משנה א' rules that if defendant denies all, he is exempt

i nonetheless, we administer a היסת ד'נ

1 Justification: no one makes an absolutely baseless claim

(a) Challenge: we already have a חזקה that no one denies a debt to his creditor

(b) Answer: indeed; but he may be denying it since he has no funds, rationalizing that when he does, he'll pay

2 Alternatively: ר'נ's ruling was about סיפא – when נתבע admits to חוב, then claims he already paid

(a) Note: this approach would exclude first; 1<sup>st</sup> would certainly apply היסת שבועת היסת to this

3 Distinction (between שבועה מה"ת and this): rights of נשבע to "flip" שבועה to תובע (only in מה"ס)

(a) However: to מר בר ר' אשי, who allows for "flipping" even in שבועה מה"ת – distinction is ב"ד's right to seize property

(b) Note: ר' יוסי (from his ruling re: חש"ו גזל גמור מד"ס – even בחיוב דרבנן, ב"ד seizes property – what is distinction?)

(i) Answer: we don't apply rule of נשבע ונוטל, נשבע על השבועה, שכנגדו חשוד על השבועה, which is, itself, a תקנה

(ii) However: to רבנן דר' יוסי, how do we extract payment?

1. Answer 1: we put him in נודי until he pays

a. Challenge: this is too harsh for a שבועה דרבנן

b. Rather: we put him in נודי for 30 days (minimum), then give him מכות and he is "clean"

## II ר'פ's ruling: if תובע brings שט"ח and נתבע claims that he paid, we ignore his response

a But: if נתבע demands that תובע take an oath before collecting, we enforce it

b Question (לר' אשי): how is this different from פגום שטר (when בעל השטר comes to collect part, admitting that some has been paid; and he must take an oath to collect that part)?

i Answer: פגום שטר has an automatic oath, even if נתבע doesn't demand it

ii However: if the תובע is a ת"ח, we don't force him to take an oath

1 Challenge: shall we allow ת"ח to take without an oath?

2 Rather: it means that we don't force the oath (he gets nothing but may seize; or he may take oath if wishes)

## III Responsibility of לווה to repay in front of עדים (ר' אסי ושמואל);

a ר' אסי (version 1): if he borrows בפני עדים, must repay before עדים (i.e. not believed to claim פריעתך)

i שמואל's response: he can claim he paid before עדים who have subsequently traveled abroad (or died)

ii Proof: our משנה rules that if he admits to debt (בפני עדים) and the next day claims he paid – believed (contra ר' אסי)

1 Defense (ר' אסי): only ruled that way if original loan was בפני עדים (→ didn't trust לווה)

b ר' אסי (version 2 – רב יוסף) – if he borrows בפני עדים, need not repay before עדים;

i But: if he made repayment contingent on עדים – then he must repay before עדים

ii שמואל's response: he can claim he paid before עדים who have subsequently traveled abroad (or died)

iii Proof: our משנה – if he said תפרעני אלא בפני עדים, not believed (if he says לך נתתי) → refutation of שמואל

1 Defense (שמואל): it is subject to מח' תנאים –

(a) If: lender states "I lent you before עדים, do not repay without עדים"

(i) דל"ק: must pay or bring proof that he repaid

(ii) דיב"ב: he may claim that he paid before עדים who have subsequently traveled abroad

2 Challenge (ר' אחא בריה דר' איקא): perhaps this case is only if he made this demand at the time of collection – to wit

"since I lent you בפני עדים, pay back בפני עדים"; but all will agree that if he made this stipulation at the time of the loan,

must repay with עדים

c Final ruling: ר' פפי (quoting רבא) – as per first version of ר' אסי

i Dissent: ר' פפא (quoting רבא) – per 2<sup>nd</sup> version, including requirement if he makes it a condition of repayment

1 And: שמואל's "out"; if he claims he repaid before עדים and they are gone – believed