

The [division] (dispute)

מחלוקת –

OVERVIEW

The ברייתא taught that if the מלוה and the לוה are בשטר there is a dispute between רבי, who maintains that in order for the מלוה to collect (half), the שטר needs to be מקויים, and רשב"ג who maintains יחלוקו even without קיום. ר' אלעזר qualifies the ברייתא and says that the מחלוקת is when they are both holding equally the טופס and the תורף; if however one is holding the טופס and the other is holding the תורף, then each one receives what he is holding. A cursory reading would indicate that in a case of אחד there is no מחלוקת between רבי and רשב"ג. However, both רש"י and תוספות reject this interpretation.

פירש רש"י¹ דהיינו יחלוקו דקאמר רבן שמעון בן גמליאל² –

רש"י explained that the word 'מחלוקת' here refers to the 'division' which רשב"ג ruled that the מלוה ולוה divide the debt in the שטר –

והדין עמו שלא רצה לפרש פלוגתא דרבי ורבן שמעון בן גמליאל –

And he is correct in that he did not want to explain 'מחלוקת' to mean that the dispute between רבי and רשב"ג is only when they are both holding the טופס and the תורף equally –

משום דהיכי קאמר אבל אחד אדוק בטופס כולי משמע דהתם לא פליגי –

Because how can ר' אלעזר conclude, 'but if one is holding the טופס, etc.'; which would indicate that in this situation there is no dispute between רבי and רשב"ג –

וזה אינו דגם שם אם אינו מקויים לא שקיל לרבי מידי³:

And this is not so; for even in that case where one is holding the טופס etc., the מלוה will not receive anything according to רבי if the שטר is not מקויים.

SUMMARY

מחלוקת here means dividing the שטר. According to רבי the מלוה can never collect his debt (even if he holds the entire שטר) unless the שטר is מקויים.

¹ בד"ה מחלוקת.

² ר' אלעזר is saying that we divide the money of the שטר equally according to רשב"ג (and according to רבי if it is a שטר מקויים; see 'Thinking it over' # 1), only if both parties are holding on equally to the תורף and טופס, but not if they are holding different parts of the שטר.

³ According to רבי the מלוה can always claim (במגו דמזויף) פרעתי if the שטר is not מקויים, even if the מלוה is in total possession of the שטר.

THINKING IT OVER

1. יחלוקו רשב"ג that mentions רש"י. ⁴Seemingly רבי agrees that if it is a שטר מקויים the rule is יחלוקו. Why then did רש"י limit this מחלוקת to רשב"ג and did not include רבי? ⁵!
2. Why indeed did ר' אלעזר use the term מחלוקת (which [almost] universally means a dispute), when he meant the division of יחלוקו; he should have said 'והאי יחלוקו וכו' or something similar?!

⁴ See footnote # 2.

⁵ See # 69. אמ"ה and יד דוד בגמ' ד"ה מחלוקת