

20.10.1

111b (משנה א') → 112a (שאסור שבת ואיסור גנבה באין כאחד)

1. אל תקח מאתו נֶשֶׁךְ וְתַרְבִּית וְרֵאתָ מֵאֲלֶיךָ וְחֵי אֶחָד עִמָּךְ: וְיִקְרָא פֶּרֶק כֹּה פְסוּק לֹ

I 'משנה א' status of גזילה after גזלן dies

- a *If*: a man stole and gave some of it to his heirs or left it for them, they aren't obligated to return it
 - i **דמי בר חמא**: implies that heir is like a buyer (because father himself was liable)
 - ii **דבא**: not necessarily – in this case, they already used up the גזלה
 - 1 *Block*: from **סיפא** (see below), seems the גזלה is still around
 - 2 *Rather (דבא)*: case is where father gave them **אחריות נכסים** (land which could be used for payment)
 - (a) *Block*: רבי taught his son that **אחריות** may mean even if he left a cow and the son was plowing with it e.g. – they must return it to protect father's dignity
 - (i) *Rather (דבא)*: understands **משנה** like **אושעיא**
 - 1. if father fed them גזלה - they are exempt; (not a refutation of **ר' חסדא**, this may be **יאוש**)
 - 2. if it is still around - liable to pay (not a refutation of **רב"ח** – this may be **יאוש**)
 - 3. If he gave them **אחריות נכסים** – liable to pay
 - iii Alternate version of **רב"ח** v. **רבא** – comment on ruling that if father left them **רבית**, they need not repay
 - 1 *Reason*: as per v. 1 – *so that your brother may live with you* – warning to **מלווה ברבית**, not his son
 - 2 *Note*: if we read **רב"ח** as commenting on **רבית**, ק"ו he would make same observation on גזילה (where no such reasoning applies); but if we read it on גזילה, he may agree with **רבא** in re: **רבית**
- b *Note*: if it had **אחריות** (see below), they are obligated
- c *Note*: **רב חסדא**, who maintains that without **יאוש**, anyone who takes from the גזלן is himself considered גזלן from original owner, must interpret our **משנה** as a case of the original owner already having had **יאוש**
- d **ברייתא**: as per our **משנה** – but if גזלה was still around, only adult children are liable to return
 - i *However*: if they claimed that they were familiar with father's accounts and no debt was left – exempt
- e *Alternate ברייתא*: if father fed them - exempt; but if it was intact – both גדולים וקטנים must pay back
 - i *Challenge*: how can קטנים be considered liable?
 - ii *Answer*: means if he had left it before them while they were קטנים, they are liable (when they reach majority)

II **דבא's** ruling:

- a *Part 1*: if father left them a borrowed cow, they may use it until the end of the period of **שאלה**; if it died, they are **פטור**
- b *Part 2*: if, in such a case, they thought it to be father's and killed it – they pay as per price of cheap meat
 - i *addendum*: if father left them land (**אחריות נכסים**) – they are liable
 - 1 *Note*: addendum may be attached to part 1 → ק"ו to part 2 (more liability) – *contra* ר"פ (see below)
 - 2 *Or*: addendum may be attached to part 2 → but not part 1 – *simpactico con* ר"פ (see below)
 - ii **ד' פפא**: if he had stolen a cow on ע"ש and slaughtered on שבת – liable (no קבל"מ)
 - 1 *Reason*: liability for קרן came before שבת; all קנסות follow that
 - 2 *But*: if he was a שואל of the cow and he slaughtered on שגבת – exempt (קלב"מ)