

20.10.4

114a (משנה ב') → 114b (שע"מ כן הנחיל יהושע לישראל את הארץ)

I מוכסין more rulings guiding dealings with משנה ב'

- a *If*: מוכסין took his donkey and gave him another, or if robbers took his clothes and gave him others
- i *Then*: they belong to him, as the original owners presumably were מתייאש
- ii *Dissent* (ברייתא): if he took it, he must return to the original owners (since יאוש alone isn't a קנין)
- 1 *Alternate version*: if he doesn't want to hold ill-gotten gains, he may return to original owners
- b *Parallel*: if someone saves an item from the river or from robbers, it is his, if we can confirm יאוש
- c *Similarly*: a swarm of bees (that got away) is his, if we can confirm יאוש
- i *even though*: his ownership is דרבנן, only if we confirm יאוש does this ruling apply
- ii *Note*: ריב"ב – even a woman or minor is trusted to identify the source of the swarm
- 1 *Challenge*: women aren't valid witnesses
- 2 *Answer*: case is where owner is chasing the swarm and they are just talking (w/o intent for עדות – מסיח לפי תומו)
- (a) *Challenge*: ר' אשי stated that מסיח לפי תומו is only valid for testimony of death (to allow woman to remarry)
- (i) *Block*: our משנה, which we interpret as מסיח לפי תומו
1. *Answer*: the קנין is דרבנן
- (ii) *Challenge*: שמואל's story about a man who testified about being treated as כהן when he was a child and רבי elevated him to כהונה
1. *Answer*: only for דרבנן תרומה
- (iii) *Challenge*: story related by ר' דימי of child who testified that he kept his eye on his mother during captivity and she was allowed to marry כהן
1. *Answer*: we are lenient in case of שבויה
- iii *And*: the owner may go through another's property to retrieve his swarm and is liable for damage he causes
- 1 *But*: he may not cut down branches with the understanding that he'll pay for damages
- 2 *Dissent*: ר' שמעאל בנו של ריב"ב permits him to cut branches with the understanding that he'll pay for damages
- (a) *Challenge*: ריב"ב states that it is a תנאי ב"ד that a man may cut another's branch to save his swarm – and pays for the branch from the swarm; he may spill out his wine to save his fellow's honey and pay for his own wine from the honey and unload his wood and load flax and take value of (lost) wood from flax – יב"נ gave the Land to ישראל on condition that they cooperate with each other in such a fashion

II Analysis of 1st and 2nd clauses – confirming ownership

- a *משנה #1*: only applies to non-Jewish robbers; if the robbers were Jewish, the owner isn't מתייאש
- i *Challenge* (ר' יוסף): opposite is reasonable – non-Jews use force to execute judgment and he has hope of recovery
- b *משנה #2*: comment on סיפא → default is no יאוש; applies to non-Jews, who use force to execute judgment...
- i *Discussion*: ruling (כלים כז:ח) hides of בעה"ב are liable for טומאה via intent (to have finished tanning), but not artisan
- ii *ת"ק*: a גנב is like a בעה"ב (in the default case of גנבה, there is יאוש בעלים and יאוש קונה); גזלן like an artisan (for this rule)
- iii *ל"ש*: inverse: גנב is like an artisan (מחשבה is insufficient) and a גזלן like a בעה"ב (there is יאוש in case of גזלה)
- 1 *עולא*: dispute is only in assumed case; if we know there to be יאוש, all agree that יאוש is effective
- 2 *דבה*: dispute is even in case where we know there to be יאוש
- (a) *Challenge* (אב"י): supporting עולא – our משנה; implying that יאוש, if confirmed, is מקנה
- (b) *Retort*: he reads משנה as "there is no יאוש of the owners"
- iv *Identifying the author of our משנה*: according to עולא, it is both ר"ש and רבנן – in case we know of יאוש
- 1 *However*: according to רבה, can't be either, since a מוכס is a גזלן and לסטים is גנב
- (a) *Answer*: could be a מוזיין (גזלן) לסטים מוזיין → both are גזלנים; follows ר"ש - 2 types of גזלן (armed and unarmed)
- 2 *Parallel treatment of ברייתא*: תר"מ, גזלן וגנב הקדש, אנס, גזלן וגנב הקדש, תר"מ ברייתא are valid - according to רבה, must be מוזיין
- (a) *Alternate answer*: could be רבי, who equates גנב:גזלן – as we conclude, as גזלן of ר"ש (יאוש) in both cases
- (i) *Proof of רבי's position*: from our משנה, although our משנה could be ר"ש and case of מוזיין (as above)
- (ii) *Proof of רבי's position*: from ברייתא of הקדש etc.; again, could be ר"ש and מוזיין
- (iii) *Proof*: from רבי's take on אחריות (above); if not for כבוד אבא, no obligation to return → גנב כגזלן דר"ש