

21.9.10

112a (... שתבעו...) → 113a (איתו היום של תביעה) →

1. לא תעשק את רעך ולא תגזל לא תלין פְעֻלַת שְׂכִיר אִתָּךְ עַד בִּקְרָ: וּקְרָא פֶּרֶק יֵט פֶּסוּק יג

I Analysis of next clause in משנה – “only if worker makes a claim”

a Source: אתך

i Additional application: only if employer has money

ii Additional application: excludes case where he credited worker with shopkeeper or moneychanger

1 Question: can the worker come back to employer if the תנווני/שלוני don't pay?

(a) דבה. he may return – ruling is אינו עובר עליו, implying that he may return to employer for payment

(b) ד' ששת. he may not return – אינו עובר עליו means that he is no longer bound by the liability

II Question asked of ר' – is an artisan considered שכיר for purposes of תלין?

a Lemma1: does the אומן own the appreciation of his work → it's a loan (בל תלין) OR

b Lemma2: does the אומן own nothing and it's purely שכירות (בל תלין attaches)

i Answer: there is a violation (i.e. אין אומן קונה בשבח כלי)

ii Challenge: ברייתא that rules that there is no violation

1 Defense: case is where he was hired to clean it out and soften it

(a) Challenge: isn't it an improvement when he softens it?

(b) Answer: he hired him at a rate per “stamping” – only labor costs

III Analysis of next clause – שכיר takes the oath and collects his money

a Note: this is considered a “תקנה קבועה”

i Explanation: even though מה"ת, the oath should be the employer's, רבנו ordained that the worker take the oath:

1 Reason: the employer is busy with his other workers and may not remember if he paid this one

(a) Challenge: let him collect without an oath

(i) Answer: the oath appeases בעה"ב

(b) Challenge: let them require witnesses

(i) Answer: too much trouble

(c) Challenge: let him pay from the outset (at beginning of day)

(i) Answer: both gain by waiting

1. בעה"ב may not have the money in the morning

2. שכיר is afraid he'll lose the money while working

(d) Challenge: this תקנה should apply even if they set a fixed price (קצץ)

(i) Explanation: ruling that if the אומן claims 2 and בעה"ב claims 1, onus is on אומן to prove 2

(ii) Answer: when a fixed price is set, the בעה"ב certainly remembers

(e) Challenge: (if the בעה"ב is טרוד בפועליו and may forget); תקנה should apply even if the time passed

(i) Explanation: our משנה stipulates that if the time passed, the שכיר may not swear and collect

(ii) Answer: we assume that the employer will not violate בל תלין

1. And: our concern about טרדה is only before the time for payment has come; after בל תלין sets in, he'll surely have paid

2. Challenge: do we assume that the שכיר will violate תגזול (and try to cheat בעה"ב, collecting twice?)

3. Answer: against the חזקה that שכיר won't violate תגזול 2, supporting having been paid,

a. בל תלין won't violate בעה"ב

b. worker won't wait to collect

IV Analysis of last clause – if there are witnesses that he made the claim, the שכיר may take the oath and collect after זמן

a Challenge: he's claiming it now!

i Answer: he has to have claimed it during the זמן (all day or all night etc.)

b Question: for how long may he now raise the issue?

i Answer: for one time-period, corresponding to the זמן תביעה