

4.2.9

30b (משנה ג) → 31b (טפח)

<p>(1) והתודו את חטאתם אשר עשו והשיב את אשמו בראשו וחמישתו יסף עליו ונתן לאשר אשם לו: במדבר ה, ז</p> <p>(2) השב תשיב לו את העבוט כבא השמש ושכב בשלמתו וברכך ולך תהיה צדקה לפני ה' אלהיך: דברים כד, יג</p>

- I. משנה גו used as collateral, in possession of creditor over חג המצות and returned (upon payment) afterwards
- a. *If*: lender is a נכרי – the ישראל may use it when he retrieves it
 - b. *But if*: the lender is a ישראל – he may not use it after the חג
- II. Back door סוויא ואביי re: ownership of collateral
- a. *Positions*: אביי – למפרע הוא גובה (when the borrower defaults, the collateral is considered the lender's retroactively)
 - i. *דבא*: מכאן ולהבא הוא גובה (only belongs to lender from moment of default on loan)
 - ii. *If*: lender sells/מקדיש the collateral before default
 1. *Note*: if he sells/מקדיש מלוה, can reposses/פודה; if he is מן ההקדש, must give symbolic payment to הקדש
 2. *Positions*: אביי – sale/הקדש is valid due to retroactive ownership; רבא – invalid
 - a) *Challenge (to דבא)*: רב"ח ruled that if X sells קרקע to Y באחריות and then “finances” the sale
 - i. *And*: X dies and X's creditor collects קרקע from Y and Y pays the בע"ח off
 - ii. *Then*: X's heirs can claim that the חוב was not inherited and they owe Y nothing
 - iii. *דבא*: if Y is sharp, he'll default on the loan, return the קרקע and then collect it back
 1. *Implication*: רבא seems to hold that collateral is acquired למפרע
 - iv. *Answer*: that is due to the transitive nature of debt (נתן – v. 1) (שעבודא דר' נתן)
 - b. *Our משנה* seems to support אביי – the status of the חמץ follows מלוה
 - i. *Defense (דבא)*: חמץ was placed in house of מלוה
 - c. *Proposal*: אביי/רבא is parallel to ת"ק/ר"מ
 - i. *Case*: if חמץ is used as collateral by נכרי
 1. *ת"ק*: it may be used afterwards
 2. *ר"מ*: may not be used afterwards
 - a) *Suggestion*: they disagree if למפרע (ר"מ) or מלאכה (ת"ק)
 - b) *challenge*: רבא has them agreeing that if ישראל was the מלוה (and נכרי gave חמץ as משכון) – prohibited
 - i. *and*: according to the proposal, they should simply reverse positions (ר"מ should permit)
 - c) *rather*: they disagree about how far to extend ר' יצחק's dictum that the בע"ח “acquires” collateral (v. 2)
 - i. *in re*: loans involving ישראל → ישראל, the lender owns the משכון (→ צדקה to return it for use by לווה)
 1. *ת"ק*: only applies in ישראל → ישראל loans
 2. *ר"מ*: certainly the ישראל acquires it from נכרי
 - a. *סיפא*: certainly the נכרי does not acquire it from ישראל
 - d) *In our משנה*: the ישראל said “acquire it as of now” and placed it in his house
 - i. *Support*: for distinction between saying “מעכשיו” and not saying “מעכשיו”
 1. *If*: a נכרי gave fresh-baked bread to ישראל as collateral – ישראל is not in violation
 - a. *However*: if he said “הגעתיך” (מעכשיו) – in violation
- III. ברייתא re: assumption of found חמץ (ב:ה-ו) פסחים
- a. *If*: the store and inventory belong to ישראל and non-Jewish workers work there and חמץ is found הפסח אסור – לאחר הפסח
 - b. *But if*: store and inventory belong to נכרי and ישראל workers are there – חמץ found after פסח may even be eaten
- IV. משנה ג: buried חמץ is considered disposed; רשב"ג – as long as a dog can't find it
- a. *ח"ח*: he still must nullify the buried חמץ
 - b. *שעור רשב"ג*: a dog will dig up to 3 טפחים to find חמץ (clarifying רשב"ג)
 - i. *Question (posed to אשי ר')*: שמואל's ruling that money can only be guarded by being buried – require 3 טפחים?
 1. *Answer*: in our case, it is due to smell (that attracts the dog) → ג"ט
 2. *But*: in that case, it is to make sure that it is hidden from other eyes → 1 טפח is sufficient