

15.4.2

33b (מחזיר לו) → 35a (מועל)

Note1: ר' רב יוסף in בבא קמא נז: posits that someone watching an אבדה is considered a "hired watchman" (שומר שכר) and therefore held to a higher standard of care; one of the explanations provided there is that since, while he is engaged in the מצוה of אבדה, he is exempt from giving charity to a poor man who may encounter him, he is considered "hired".

Note2: for purposes of the first discussion, we will posit that A has banned B from benefiting from him. A is the מדייר and B is the מודר.

I Dispute ר' אמי/ר' אסי regarding the identity of the מודר and מדייר in the case of returning a lost item

a Version 1:

i Position 1: it is only permitted if A is returning to B, since it is B's item to begin with; but if B is returning to A, it is forbidden, since while B is watching the אבדה, he is benefiting as per ר' יוסף (note 1)

ii Position 2: it is permitted in either case - the concern of ר' יוסף is uncommon

iii Challenge: (to position 2 – this is the proper גרסא; see ר"ן) – if it is permitted for B to return the item to A, why is B's refusal to accept the fee considered sancta?

1 Answer: the last clause refers only to a case where A is returning to B

b Version 2:

i Position 1: it is only permitted if B is returning to A, and we have no concern for ר' יוסף "coin", but A may not return B's lost item, as A is giving B benefit

ii Position 2: it is permitted in either case – the item belonged to B to begin with

iii Challenge: (to position 1) – if it is only permitted if B is returning to A, there is no case where the last clause applies – קשיא

II רבא's ruling about הקדש

a if A declares a loaf הפקר and then declares it הקדש and then:

i picks it up to eat it, is considered a מועל for the full amount

ii picks it up in order to bequeath to his children, is only מועל as per the value of טובת הנאה

iii question: (asked of רבא) if A bans B (via נדר) from eating loaf X and then A gives loaf X to B as a present – is it still banned?

1 Lemma1: the key word is "my loaf" – and now it is no longer his

2 Lemma2: when A banned it "on you", perhaps that establishes loaf X as הקדש relative to B

3 Answer: the gift doesn't change the status – still אסור

4 Challenge: then why did A formulate the ban as "my loaf"? to exclude a case if it was subsequently stolen? (→same as gifting it)

5 Defense: to exclude a case where A had already invited B to join him at a meal; that portion of loaf X which was "slated" for B is excluded from the נדר

6 Challenge: ruling that if C asked D to borrow Z (e.g. animal, tool) and D responded that he had only the one and "if I have more than this one, all my Zs are prohibited to you" and it turned out that he had others:

(a) While he is alive: they are all prohibited to C

(b) After he dies or if a Z was given to C as a gift: permitted

7 Answer: only if it was given by another (i.e. D gave or sold it to E, who then gave it to C)

(a) Support: wording of ruling is "was given" (ניתנה) and not "he gave" (נתן)

III מעילה בקונמות ר' נחמן's question of רבא: is there a consequence of מעילה if someone violates a נדר?

a Answer: our משנה states that the (prohibited) הנאה goes to הקדש → parallel to הקדש → מעילה בקונמות

b However: it is subject to a dispute between ר"מ/חכמים:

i If someone declares a loaf הקדש, anyone who eats it is guilty of מעילה

ii If someone declares a loaf עלי:

1 ר"מ: if he eats it, he is guilty of מעילה

2 אין מעילה בקונמות: חכמים

iii Question (presuming מעילה בקונמות): if A banned loaf X from B and gave it to him – who is guilty of מעילה?

1 Lemma1: donor can't be guilty – he wasn't banned (it wasn't considered הקדש in his regard)

2 Lemma2: recipient can't be guilty – he wouldn't have wanted to acquire it had he known it was הקדש

(a) Answer: recipient is guilty as soon as he "spends" it

(i) Category: anyone who isn't aware of the הקדש-status of an item and uses it is still guilty לכשיוציא