

18.05.04; 52a (משנה 17) → 52b (מפני שהוא בנושא שכר)

.7. כן תרימו גם אתם תרומת ה' מכל מעשרתיכם אשר תקחו מאת בני ישראל ונתתם ממנו את תרומת ה' לאהרן הכהן: במדבר יח, כח

- I מושג: the אפוטרופוס (trustee)
- a orphans who board (i.e. not a formal אפוטרופוס) or if father appointed him as אפוטרופוס – he must separate their tithes
- i *challenge*: v. 1 implies that only the owners and their appointed agents may separate tithes
- 1 *excluded*: includes אפוטרופוסין
 - 2 *resolution*: if they need to eat, he tithes; if its being stored – let them tithe when they reach age
 - 3 *supportive* **ברייתא**:
 - (a) אפוטרופוסין may separate tithes – for purposes of immediate consumption
 - (b) They may buy houses, animals, slaves, fields etc. – if needed for immediate consumption
 - (c) They may buy foods etc. – if needed for immediate consumption
 - (d) They buy לולב etc. or anything else with a set budget
 - (e) They purchase ספרי תורה etc. or anything of its type with a set budget
 - (f) They do not assess צדקה, money for ransoming captives, including gifts brought to בית האבל
 - (g) They may not act on behalf of the orphans to go to court to entail obligations – even if for their benefit
 - (h) They may not sell a distant field and redeem a nearby field (owned by father) - or buy during bad times to sell during good times – for there may be a blight
 - (i) They may not sell fields and buy slaves (with the proceeds)
 - (i) *However*: they may sell slaves to buy fields
 - (ii) *Dissent*: רשב"ג disagrees – the fields may have legal entanglements
 - (j) They may not free slaves, but they may sell them and the others free them
 - (i) *Note*: רבי says the slaves may buy themselves out
 - (k) When the children reach majority, the אפוטרופוס must make an accounting with them on all of these
 - (i) *Dissent*: רשב"ג doesn't require the accounting
 - (l) We do not appoint women, slaves or minors as אפוטרופוסין; but if father did so, that's valid
- ii Stories of אפוטרופוסין:
- 1 אפוטרופוס in neighborhood of ר"מ who sold land to buy slaves; ר"מ opposed him (in spite of his dream)
 - (a) *tangential story*: ר"מ, the two quarrelers and שטן
 - 2 אפוטרופוס in neighborhood of ריב"ל was selling land and buying oxen; he said nothing, for he held like יוסי ר' who called his wife "my house" and his ox "my field"
 - 3 orphans boarded with an old woman who sold their cow. appealed rejected; our משנה equates her to a אפוטרופוס; the cow's appreciation happened in the domain of the buyer
 - (a) *then*: they pointed out that the orphans hadn't been paid and he applied שמואל – property of orphans is akin to הקדש – the קנין isn't valid until they receive money
 - 4 similar story with the wine of רבנא עוקבא the orphan (appreciated after they took wine, before he was paid)
 - (a) *spinoff*: if it *depreciated*, the sellers cannot reverse deal – הקדש shouldn't be *less* empowered
 - (b) *further*: if the orphans are buying and the goods *appreciated* – הקדש shouldn't be less empowered
 - (c) *however*: if goods bought by orphans *depreciated* (after משיכה) – we thought to apply שמואל's ruling
 - (i) *dissent*: no one will ever sell to them if they don't pay first; against their interest to apply שמואל here
 - (d) *further*: if they pay first and the price goes down – should be no less empowered than הקדש
 - (e) *however*: if they pay and then price goes up – we think to apply שמואל
 - (i) *dissent*: to their detriment – sellers will tell them that their goods were subsequently destroyed
 - (f) *further*: if the buyers gave money first and then the goods appreciated – just as הדיוס (price goes up)
 - (g) *however*: if the buyers paid and then goods depreciated – we should apply שמואל
 - (i) *dissent*: this will be to their detriment, as noone will sell to them without getting the פירות first
 - 5 *note*: ר' אשי signed a sale of a trustee who paid tax – without giving notice – as per נהדעי (also for food and burial)
 - 6 *Story*: אפוטרופוס who was spoiling orphans' property – was removed (as per רב)
- b credibility of an אפוטרופוס when orphans reach majority and he relinquishes his trusteeship
- i *ת"ק*: if appointed by father – he must swear; if appointed by ב"ד, he needn't swear
- 1 *reason*: he got pleasure from being appointed and the possibility of an oath wouldn't deter him
- ii *אבא שאול*: (inverse) if appointed by ב"ד – he must swear; if appointed by father – he needn't swear
- 1 *reason*: he gets pleasure from being recognized by court; but for father, he's doing a favor (oath would deter)
- iii *final ruling*: both must take oaths; if appointed by father, he is like a נושא שכר