

20.9.13; 105a (חוג מפחות משווה פרוטה) → 106a (שוב אין משלם ממון)

1. או מצא אבדה ונחש בה ונשבע על שקר על אחת מכל אשר יעשה האדם לחטא בהנה: ויקרא פרק ה פסוק כב
 2. לא תגנבו ולא תכחשו ולא תשקרו איש בעמיתו: ויקרא פרק יט פסוק יא
 3. שבעת ה' תהיה בין שניהם אם לא שלח ידו במלאכת רעהו ולקח בעליו ולא ישלם: שמות פרק כב פסוק י

- I Continued analysis of ר' משנה ר' as long as less than ש"פ of the קרן is owed, he needn't chase the נגזל to pay him
- a ר"פ (version 1) – only if the גזלה isn't still in existence; else, he must get it to him immediately, lest it appreciate to ש"פ
- b ר"פ (version 2) – even if גזלה is still in existence; we have no concern that the גזלה may appreciate beyond ש"פ
- c Tangential rulings and analysis by רבא:
- i If: he stole 3 bunches of vegetables@1 פרוטה, they depreciated and he returned 2, must return 3rd
- 1 Reason: at time of theft, it represented ממון
 - 2 Support: ruling that if he stole חמץ and פסח lapsed, he may return as is
 - (a) Implication: if it was gone, he would have to pay original value, even though it has no current value
- ii Question: if he stole 2 bunches with a sum value of 1 פרוטה and returned one, is he now exempt
- 1 Lemma1: there isn't a גזלה left in his hands
 - 2 Lemma2: he never returned the גזלה (since he gave back מש"פ פחות מש"פ)
 - 3 His answer: since there is no גזלה here, there is no מצוות השבת הגזלה – nor did he fulfill it
 - 4 Parallel: if a נזיר had only 2 hairs left, 1 fell out and he shaved the other – he didn't fulfill גילוח מצות גילוח (but needn't)
- iii Tangent (another analysis by רבא): does a ½ plugged hole save a barrel from receiving טומאה?
- 1 Attempted proposal: from משנה ר', ruling that if 2 vines were used to plug, they must be cemented in
 - 2 Rejection: 2 vines don't stay in place without some glueing; half-plugging remains (for ½)
- iv Question: on ruling that if he stole חמץ and פסח lapsed, he may give it back as is
- 1 What if: he took an oath (denying possession) and then admitted guilt – is he liable?
 - (a) Lemma1: if it were stolen from the גזלן, he'd owe money → it's a denial of debt
 - (b) Lemma2: currently, he owes nothing → no denial of debt
 - 2 Note: רבה had no doubt, as per his ruling:
 - (a) If: the owner claims that someone stole his ox, and the defendant claims (under oath) that he is a שומר – חייב – שואל (if שואל) מתה מחמת מלאכה (if ש"ש) from שבורה (if ש"ח) from גנבה ואבדה (if ש"ח), from גנבה ואבדה (if ש"ח)
 - (i) Reason: he exempted himself from שבורה (if ש"ש) from שבורה (if ש"ש) from גנבה ואבדה (if ש"ח)
 - (ii) Ergo: his denial of potential liability is considered a כפירת ממון → liable
 - (iii) Challenge: v. 1 excludes if he admits to the essential liability (as in the case of claiming he is a שומר)
 1. Examples: you sold/gave it to me it, father sold/gave it to me, I found him wandering etc.
 - a. Admission: (sale – not paid; gift – to do favor –not done; wandering – should've returned it)
 - b. Response: in case of loss – accused claims he didn't know it belonged to נגזל
 2. Answer: in those cases, he is returning the ox; in our case, the ox is elsewhere
- II איבן עזאי's "3 oaths" – 3 types of שבועת העדות that can be administered to a single witness in the case of an אבדה
- a If he recognized the item, but not the person who found it
- b If he recognized the person who found it but not the item
- c If he recognized both (originally "neither" – but that is impossible – emended to "both")
- i Dispute: ר' חנינא – exempt (לא דאין דינא דגרמי) – שמואל; (לא דאין דינא דגרמי) – generates liability (שבועה 1 דינא דגרמי) – 1 witness could force שבועה
 - ii Note: parallels שבועת העדות as to whether 1 עד who lies in response to שבועת העדות is liable
- III אונסין ruling: if someone denies a debt (without שבועה) of פקדון, he becomes a שומר and is liable for אונסין
- a Support: ברייתא which finds punishment for הכחשה (vv. 2-3 – violation of לא תכחשו)
- i Rejection: punishment there is for taking the oath
 - 1 Block: next part of ברייתא deals with punishment for oath (violation of לא תשקרו)
 - 2 Defense: both are in re: taking oath; 1st part of ברייתא – עדים come; 2nd part is his liability (חומש ואשם) if he admits
- b Challenge: example of השבועה על חשוד – includes שבועת הפקדון; he should be invalidated from moment of denial
- i Answer: case is where פקדון is off somewhere – not considered כפירה as per רבא's ruling re: כפור במלוה – כפור לעדות – כשר לעדות
 - ii Possible support: אילפא taught that a (false) שבועה generates קנין (we assume – the גזלן is now באונסין as per ר"ש)
 - 1 Block: could be case (as above) where פקדון isn't around, or as per רב's teaching: (that שבועה is fully קונה)
 - (a) If: A claims that B owes him and B takes a (false) oath that he doesn't owe him – and then witnesses testify to support the claim, he is exempt from paying, as per v. 3 – once the בעלים have accepted the oath, the claim is "gone" and the defendant owns the money (שבועה קונה – לגמרי) TBC