

20.9.14

106a → (גופא, אמר רב הונא אמר רב) (אבל גבי פקדון מעיז ומעיז) 107a

1. שבעת ה' תהיה בין שניהם אם לא שלח ידו במלאכת רעהו ולקח בעליו ולא ישלם: שמות פרק כב פסוק י'
 2. על כל דבר פשע על שור על חמור על שיה על שלמה על כל אגדה אשר יאמר פי הוא זה עד האלהים: בא דבר שניהם אשר ירשיעו אלהים ישלם שנים לרעהו: שמות כב. ח.
 3. כי יתן איש אל רעהו כסף או כלים לשמר וגנב מבית האיש אם ימצא הגנב ישלם שנים: שמות כב.ו

- I Revisiting רב's ruling – that the defendant acquires the גזלה via his שבועה
- a רבא: only reasonable in re: מלוה, which belongs to לויה; but not פקדון, which always belongs to מפקיד
- b However: רב stated the rule in re: both, since the source-text (v. 1) is stated re: פקדון
- i Challenge: if שומר claims that פקדון was lost, swears - if he admits guilt, pays וחומש ואשם; if עדים come, pays only קרן
- 1 Answer (ר"נ): in this case, the שבועה was taken outside of ב"ד
 - 2 Challenge: סיפא – where he claims נגנב, he must pay כפל (when he admits it) – can't be חוץ לב"ד → no כלל
 - 3 Answer: (could've been רישא was outside, סיפא inside, but that's weak)
 - (a) רישא – the שבועה initiated נגזל (in ב"ד); סיפא – the ב"ד administered the oath
 - (b) Note: v. 1 is essentially teaching that only the defendant swears (ולא משלמין)
 - 4 Challenge (ר' המנונא): if administered 5 oaths – in or out of ב"ד – liable 5x, since he could admit at any point (ר"ש)
 - (a) And: cannot posit קפץ nor outside of court
 - (b) Answer: בריתא read as either/or – קפץ or outside of court
 - 5 Challenge (רבא): if שומר claimed גנבה and swore and then admitted that he still had it
 - (a) If: he admitted before witnesses came, pays וחומש ואשם
 - (b) If: witnesses came first, he pays כפל (+ואשם)
 - (i) And: cannot claim חוץ לב"ד or קפץ since כפל can only happen inside ב"ד
 - 6 Rather (רבא): רב agrees if he admitted it (as per והתודה) or if he claimed גנב and עדים came (as we have כפל)
 - (a) However: רב holds his position only when the claim is אבד and, after the שבועה, the שומר admits he lied
 - (b) Challenge: ר' המנונא, a student of רב, challenged the ruling with a case of הודה
 - (i) Explanation: ר' המנונא was bothered by liability for possibility of admission (ר"ש) – if עדים couldn't generate liability once he's sworn, how can we generate liability for each oath; after all, he never admitted it, so his later oaths didn't save him from any liability
- II רב's ruling that someone who claims גנב is liable for כפל; if he claims טבח ומכר – liable for ד' וה'
- a Argument: just as a גנב pays double and if he טבח ומכר – pays 4/5; similarly, טוען טענת גנב generates 2x → טענת טבח ומכר: 4/5
- i Challenge: טוען טענת גנב does not pay כפל even without a שבועה; גנב טענת גנב
- 1 Defense: it's based on a היקש (see beginning of פרק מרובה) between גנב עצמו and גנב טענת גנב
 - 2 Block: this is only valid according to מ"ד that the two phrases are גנב and טוען טענת גנב
 - (a) However: according to מ"ד that both are טוען טענת גנב – no היקש
 - (b) Answer: the extra ה"ה (אם ימצא הגנב) comes to extend to גנב עצמו → we still have a היקש
- ii Challenge: if the גנב denies liability and witnesses testify that he ate – כפל (but not ד' וה')
- 1 Answer: he ate it as a נבלה (not טריפה, as per ר"מ [contra ר"ש], that שחיטה שאינה ראויה is שחיטה שהיא שחיטה)
 - 2 Question: why not answer בן פקועה ר"מ? (answer: follows בן פקועה ר"מ that בן פקועה requires ר"מ)
 - 3 Question: why not answer that it was a case of עמד בדין and the ב"ד ordered him to pay
 - (a) As per: רבא - if they ordered him to pay and then he was טובח ומוכר, exempt from ד' וה' as he is now a גזלן
 - (b) Answer: indeed, they could've used any number of scenarios where he is exempt – they chose this (נבלה)
- III רב's ruling about טוען טענת גנב with an אבידה – כפל; source: v. 2
- a Challenge: v. 3 indicates that liability for a פקדון is only if given as an adult and claimed as such – but why not consider it as an אבדה (as per יוחנן)?
- i Answer1: case is where it was spent by שומר while the מפקיד was a קטן
 - ii Answer2: dissimilar; the אבידה came to him from a בן-דעת, not the פקדון
- IV רב's ruling - if someone claims גנבה in re: a פקדון, he must admit to liability (מודה במקצת)
- a Reason: v. 3 (כי הוא זה)
- b Contra: ר' חייא בר יוסף – that we have a mixed text and v. 3 is in re: מלוה
- i Explanation for difference: in re a loan, we have חזקה רבה explaining why ישבע הטענה במקצת
 - ii However: in re: פקדון, a defendant will brazenly lie, so the rationale behind מודה במקצת doesn't obtain