

20.9.15; 107a (תני רמי בר חמא) → 108b (תיקו)

1. על כל דבר פשע על שור על חמור על שיה על שלמה על כל אגדה אשר יאמר פי הוא זה עד האלהים יבא דבר שניהם אשר ירשיען אלהים ישלם שנים לרעהו: שמות כב:ח.
2. כי יתן איש אל רעהו קסף או כלים לשמר וגנב מבית האיש אם ימצא הגנב ישלם שנים: שמות כב:ו.
3. כי יתן איש אל רעהו חמור או שור או שיה וכל בהמה לשמר ומת או נשבר או נשבה אין ראה: שמות כב:ט.
4. וכי ישאל איש מעם רעהו ונשבר או מת בעליו אין עמו שלם ישלם: שמות כב:יג.
5. אם לא ימצא הגנב ונקרב בעל הבית אל האלהים אם לא שלח ידו במלאכת רעהו: שמות כב:ז.
6. ואת אשר חטא מן הקדש ישלם ואת חמישתו יוסף עליו ונתן אותו לכהן ולהלן יכפר עליו באיל האשם ונסלח לו: ויקרא ה:טז.

I Various rulings re: liability for שומרים

- a a שומרים re: obligation of all 4 types of שומרים to take oath – only if they admit to some liability and deny some
- i Source: שומר חנם – v. 1 (explicit); שומר שכר – vv. 2-3; שואל – v. 4 (connects to ש"ש); ש"ש is either like ש"ח or ש"ש
- b b חייא בר יוסף's ruling – a שומר who claims גנבה isn't liable unless he spent or damaged (שליחות יד) – v. 5
- i Challenge: if so, he became a גזול when he was שולח יד and there's no liability for כפל
- ii Answer (ר' יוחנן): case in the תורה is where there was no שליחות יד (e.g. the animal was standing at the trough)
- 1 Question: does ר"י maintain that only in such a case is there liability, but if there was שליחות יד, the שומר is קונה?
- 2 Proposed answer: similar ruling of ר"י – if שומר claims טענת אבד (and swears), then טוען טענת גנב – exempt (for 2nd)
- (a) Explanation: he is exempt because he was קונה via the 1st שבועה
- (b) Rejection: he has already sworn to the בעלים (once) and has no further liability towards them (support – ר"י)
- iii Dissent (ר' ששת): if he takes an oath and is שולח יד – he is exempt, as per v. 5
- 1 Challenge (ר"י): he is administered 3 oaths – wasn't neglectful, no שליחות יד, isn't in his possession
- 2 Assumption: oath of שליחות יד – ברשותי: שליחות יד – in both cases, when he is proved to be lying, he is liable
- 3 Correction: oath of שליחות יד – בפעתי: שליחות יד – in both cases, when he is proved to be lying, he is exempt (from כפל)
- c Question (ר"ב"ח): is he exempted from חומש due to כפל or the oath?
- i Split the difference: he claimed גנב & swore, then אבד & swore & עדים responded to 1st and he admitted to the 2nd –
- 1 Question: is he liable חומש for the 2nd oath?
- 2 Answer (ר"בא): if someone defended against a claim of גנבה with an oath and he lied – עדים generate כפל, admission generates חומש קרן
- 3 Explanation: if oath generates exemption, in this case, if the עדים came (i.e. לא פטר) he should be חייב 1/5
- 4 → it is the ממון of כפל that generates the exemption of חומש
- d רבינא: can חומש and כפל be applied to the same שבועה?
- i Example: he handed his ox to 2 people, both claimed גנב and were lying, one admitted, the other didn't (עדים) – תיקו
- e ר"פ: can חומש or כפל be applied to one man (if he swore twice)
- i Lemma1: did the תורה limit 2 different payments (כפל and חומש) on same item OR
- ii Lemma2: did the תורה limit 2 different payments on one שבועה
- iii Answer (ר"בא): v. 6 implies multiple חמישיות on a single קרן
- f If: he claimed גנב, took the oath and paid משורת הדין and the גנב was found – the money goes to:
- i owner – once the owner was troubled to go to ב"ד, he didn't give rights to כפל to the שומר
- ii שומר – once he paid, he "owns" rights to כפל
- iii And: their dispute is in how to interpret ב"מ ג:א – משנה ב"מ ג:א
- 1 owner – once he takes the oath, all proceeds go to owner
- (a) His take on the סיפא: if he didn't want to pay before the oath – goes to the owner
- 2 שומר – once he pays, all proceeds go to שומר
- (a) His take on the דישא: if he paid and didn't want to swear in any case – to שומר
- g If: the שומר claims טענת גנב and takes an oath and the גנב is found and the שומר makes the גנב take an oath
- i And: the גנב admits to the שומר but denies to the owner (and עדים come) – is he exempted from כפל due to his הודאה?
- ii Answer (ר"בא): if the original oath of the שומר was honest – exempted; if not, still liable
- 1 Question: if he was about to lie under oath but never got to – is the admission still meaningful? תיקו
- 2 Version 2: if he lied under oath, is the admission still meaningful? תיקו
- h If: the שומר claims טענת גנב and takes an oath and the גנב is found and the שומר makes the גנב take an oath
- i And: the גנב admits to the owner but denies to the שומר (and עדים come) – is he exempted from כפל due to his הודאה?
- 1 Lemma1: does the שומר tell the owners that once they got their payment, they are no longer players OR
- 2 Lemma2: do the owners claim that both of them were after the גנב and each should get his "portion"? תיקו
- i If: it was stolen from the שומר and the גנב was found; ש"ח אב"י may choose to pay and go after גנב or take the oath and be exempt, but ש"ש must take the oath; רבא – can choose in either case (unlike הונא's ruling – before the oath)
- j Variation: if it was stolen באונס, then returned and died בפשיעה, is he liable? תיקו