

20.10.2

112a (תן לחכם ויחכם עוד) → 113a (ת"ר והשיב את הגזילה אשר גזל)

1. והיה כי יחטא ואשם והשיב את הגזילה אשר גזל או את העשק אשר עשק או את הפקדון אשר הפקדו אתו או את האבדה אשר מצא: ויקרא פרק ה פסוק כג  
 2. ואם שור נגח הוא מתמל שלשם והיער בבגליו ולא ישמרנו והמית איש או אשה השור יסקל וגם בגליו יומת: שמות פרק כג פסוק כט  
 3. תן לחכם ויחכם עוד הודע לצדיק ויוסף לקח: משלי פרק ט פסוק ט

- I Interpretation and application of v. 1: return the גזלה as is
- a Application: our משנה; if גזל fed it to his children and died, they are exempt from returning it
  - b But: if it was intact, they must return it (regardless of their age)
    - i Dissent: סומכוס – only adult heirs must return it
    - ii Story: a particular קטן shut a door in the face of ר' ירמיה, who claimed that he had bought it from the קטן's father
      - 1 And: he offered to bring witnesses to that effect
      - 2 Block: we cannot bring witnesses without the presence of the בעל-דין (who is a קטן)
      - 3 Response: yes we can, as evidenced by ruling above – even קטנים have to return גזלה
      - 4 Rejoinder: but סומכוס's opinion prevents action against קטן
      - 5 Comeback: will everyone rule like סומכוס – just to keep me from claiming what is mine?
        - (a) Next stage: ר' אבהו heard about it and responded (in favor of ר' ירמיה) that it parallels case of קטן who seizes another's slaves – we take them away and when he reaches majority he may bring suit to get them back
        - (b) Disanalogy: in that case, he has no חזקת אביו on which to rely, as opposed to our case
- II Tangential discussion: testimony in absence of בעל דין
- a ר' יוסי בר חנינא (ר' יוסי בר חנינא – amazed at statement: explained by ר' שבתאי):
    - i Explanation: if either the בע"ד or witnesses were ill; or the witnesses needed to travel and he didn't respond to הזמנה
    - ii Additional support: מר עוקבא concurs – explained by ר' יוחנן
      - 1 Explanation: if the case already began and he didn't respond to הזמנה; else he can claim he is going to הגדול
        - (a) Challenge: if so, he can even make that claim in the middle of the case
        - (b) Answer (רבינא): if the opposite litigant is holding a certificate from הגדול ב"ד subpoenaing him to that court
  - b Tangent: confirming a שטר in absence of בע"ד –
    - i רב may be done
    - ii ר' יוחנן may not be done – as per v. 2
    - iii Ruling (רבא): as per רב, but if he is claiming that he needs to time to get witnesses to challenge שטר, we allow it
      - 1 If: he comes, fine;
      - 2 If: he doesn't arrive, and still says that he plans to come to challenge שטר; we wait M-Th-M,
        - (a) If: he still doesn't come, we write a writ of seizure on his property
          - (i) However: we don't seize for 90 days; assuming that for 30 he is trying to borrow; for 30 he is trying to sell his property, and for 30 for the buyer is gathering funds to buy from him
      - 3 Note: all of this applies to loan; re: a פקדון, it is written immediately
      - 4 Note: writ of seizure only written on קרקע; if we allow seizure of goods, claimant may spend them and then when defendant successfully challenges שטר, won't be anything to return
        - (a) Suggestion: if קרקע has מלוה, we may write אדרכתא on מטלטלין (קרקע can be seized back)
          - (i) Rejected: land may lose value
          - (ii) Additionally: we only wait for defendant to get information, agent to return and then we seize
    - iv רבא we trust ב"ד שליח (to tell us he has informed the accused/defendant) – but only for שמתא, not writ of שמתא
      - 1 Reason: since he is losing money, as he has to pay סופר, need 2 witnesses that he was alerted
    - v Note: we give him time if a woman or neighbor is going to tell him and don't consider him delinquent
      - 1 However: this is only if he isn't in town, or if he needn't pass the ב"ד when returning or isn't returning that day
    - vi רבא a writ of שמתא due to contempt isn't destroyed until he complies
      - 1 Rejection: it is destroyed as soon as he says that he accepts their authority and will comply
    - vii Further regulations of writ of contempt:
      - 1 Must give ב,ה,ב to respond: only if man, but a woman who isn't working must respond immediately
      - 2 Times we don't issue: ניסן or תשרי (harvest) or ע"ש ועיר"ט; but we may issue in ניסן/תשרי for afterwards
      - 3 ר"ג: we don't issue during רגל or כלה – but now, due to רמאים who take advantage – we do issue
- III Note on final clause – דבר שיש בו אחריות
- a ר"ש taught his son ר"ש – could even be a cow with which the son is plowing
    - i רב: even applies to a bed upon which he is sleeping (application of this takes wisdom – v. 3)