

20.10.5

114b (ולזיל מרי דספרא ולישקול ארבעין מפפונאה ותמנן מנרשאה) → 115a (משנה ג')

- I recovering stolen property: משנה ג'
- a If: someone recognizes his goods in another's hands,
 - b And: there was a report of his items being stolen
 - c Then: the holder can testify how much he paid, and the victim can pay him and recover his items
 - d However; if there was no such report, he has no such power; we assume he sold it to another and this fellow bought it
 - e Question: why does the report of a theft justify his action; perhaps he manufactured the report to recover the sold item
 - i Answer (רב): if there was exacting testimony of people in his house who found the route taken by the thieves who had earlier lodged with the גזל
 - 1 Challenge: רב maintains that someone who comes through מחתרת is exempt from paying – he “earned” the theft by risking his life
 - 2 Answer: only true about someone who burrows into the house; these people came in properly as his “friends”
 - (a) Note (רבא): this demand is only true in case of בעה"ב who regularly sells his household items;
 - (i) However: if he doesn't usually sell, since there is a general report of theft in his house, that is sufficient
 - f Related discussion: if the גנב is recognized afterwards,
 - i רב דב בעה"ב goes directly to גנב
 - ii ד' יוחנן רב ד' בעה"ב goes after the buyer
 - 1 Resolution #1 (ר' יוסף): all accept חסדא ר' ruling about יאוש
 - (a) If: there was no יאוש at the time of sale, בעה"ב goes to buyer, seizes his property, and the לוקח sues the גנב
 - (b) If: there was already יאוש, בעה"ב goes directly to the גנב and the buyer is out of the picture (keeps the item)
 - (c) Challenge (אביי): in case of מתנות כהונה – which are always considered יאוש – לפני רב suggests that the כהן goes after the גזלן
 - (i) Answer: רב's ruling there is that the כהן may also go after the טבח – in addition to buyer – teaching that גזילה מתני"כ fall under rubric of גזילה
 - 2 Resolution #2 (אביי): dispute is whether to accept ר"ח's ruling about יאוש (רב rejects ר"ח)
 - 3 Resolution #3 (ר' זביד): dispute is in case יאוש happened after purchase;
 - (a) רב: if יאוש happens after sale, no קנין and בעה"ב goes after גנב
 - (b) קנה – שנוי רשות; ד' יוחנן: the order is insignificant; if there is יאוש and רשות
 - 4 Resolution #4 (רבא): whether we apply תקנת השוק (and בעה"ב must pay לוקח to retrieve item)
 - (a) רב: doesn't apply
 - (i) Challenge: הונא רב's student, applied תקנת השוק to a case of חנן בישא
 - (ii) Defense: in his case, he had nothing with which to pay – treated as if we didn't identify גנב
 1. Note: רבא says תקנת השוק doesn't apply to a well-known thief
 - a. But: חנן בישא was well-known? (answer – well-known as a bad guy, not as a thief)
 - g Limitations of תקנת השוק:
 - i If: the thief used the theft to pay back a loan or credit – no תקה"ש
 - 1 Reason: בעה"ב says to מלווה or חנווני – you didn't lend him/give credit based on the גנבה
 - ii If: he used the גנבה as collateral for a smaller loan – there is תקה"ש
 - 1 But: if it was an even amount
 - (a) אממר: no תקה"ש (people generally don't lend for a collateral of same amount)
 - (b) הלכה – תקה"ש; מר זוטרא; there is תקה"ש
 - iii If: he sold it for fair market price – תקה"ש applies
 - 1 But: if he sold it for a greater price
 - (a) תקה"ש: no ד' ששת
 - (b) רבא: it applies – הלכה (applies in all cases except using to pay back loan/credit)
 - iv story: רבינא's father-in-law was owed money by someone, who paid him back with a גנבה (מלווה); he then lent him another sum; when he was identified:
 - 1 הלכה: תקה"ש attaches to first sum; 2nd sum - must return גנבה to owner and collect from them
 - 2 הלכה – ר' אבהו: perhaps 2nd sum was given on trust and owners can collect without paying at all (ד' כהן)
 - v Story: man from נרש stole book, sold to פפונאי for 80, who sold to מחוזאי for 120
 - 1 אביי: owner collects book from מחוזאי, paying him 80; מחוזאי goes to פפונאי for other 40
 - (a) Challenge: רבא – if we have תקה"ש with one purchaser, certainly with two
 - (b) Rather: collect and pay 120 to מחוזאי then go to פפונאי for 40 and original גנב for 80