

20.10.6; 115a (משנה ד') → 116b (לאמצע - לאמעה)

1. פי לי בני ישראל עבדים עבדי הם אשר הוצאתי אותם מארץ מצרים אני ה' אלהיכם: ויקרא פרק כה פסוק נה

- I rescuing another's goods at the expense of his own (e.g. spilling out his wine to save another's honey in his barrel; ignoring his own donkey – worth 100 – to rescue a more valuable one belonging to his fellow, when both are being lost)
- a If he initiated the rescue without prior agreement, he only has claim to payment for labor and the tools he used
- b But if he explicitly made a condition that he would be repaid – has claim to entire loss
- i Challenge: why can't the rescuer claim that he's rescued הפקר and it's all his?
- 1 Support: if someone sees that his barrel is breaking, he cannot designate it as תר"מ (→ not his anymore)
- 2 Answer: in our case, it's dripping out slowly with press on top of it
- (a) Note: in ruling above, if he tries to designate broken barrel, invalid
- (i) Challenge: if he sees his money is about to be taken, may not use for חילול מע"ש, but if he did – valid
- (ii) Answer: in that case, he is able – with great difficulty – to save the money (not in case of broken barrel)
- 3 Challenge: in cases where there is financial loss, isn't he allowed *ab initio* to designate as תרומה?
- (a) Support: ruling that if he has 10 barrels of טבל טמא and one broke or become exposed (to snake venom)
- (i) Ruling: he may designate one as תרומת מעשר on the rest - but he may not do so with שמן (reason below)
- (ii) Answer: in that case (as in our משנה) – the press was on the barrel and it was dripping out slowly
- (iii) Note: exposed wine should be unfit – even for זילוף (pouring on ground)
1. Answer: follows נחמיה ר', who permits in case where there is a sieve atop the barrel
- a. Challenge: that ruling is limited to a case where the liquid wasn't mixed (mixing in toxin)
- i. Answer: in this case, something can be placed on mouth of barrel to prevent mixing
- b. Challenge: נחמיה ר' doesn't allow taking הטמא על הטמא (→ can't be author of that ברייתא)
- i. Answer: in this case, it was דמאי (where he allows)
- (iv) Note: exception of oil – due to loss to כהן – since he may use it for fuel for a flame
1. Challenge: wine is also usable for זילוף – which is permissible תרומה-use as per שמואל
2. Answer: this wine is new (cannot be used for זילוף)
- a. Challenge: it could be aged Answer: it will lead to misuse (someone will drink it – and it is טמא)
- i. Block: oil could also be misused Note: this is dispute ב"ה/ב"ש re: disposal of טמא
- ii. Answer: could be placed in dirty vessel Challenge: wine could be placed in dirty vessel
- iii. Defense: if he's saving it for זילוף, he won't put it in dirty vessel
- c Challenge: why can't defendant claim that he didn't mean it, as per ruling re: ferry operator
- i Answer: our case is similar to סיפא of ruling of ferry operator; if the passenger offers a specific coin, must pay
- 1 Explanation: referent is a boatman who is a fisherman and is losing money while he ferries this fellow
- II Justification for both examples – the honey and the donkey
- a If we only had "honey", א"ס in case of donkey (where the loss wasn't made actively) – he only gets his labor costs
- b If we only had "donkey", א"ס in honey case (since the loss was direct & active) – even w/o stipulation gets full payment
- c Question: if he made the deal and then his own donkey saved itself – does he still collect payment?
- i Answer: yes – he was "granted" מן השמים – as in story with ספרא ר' donkey
- 1 Note: in that case, he didn't need to reacquire it, just did so "to be on the safe side"
- d Question: what if he went down to save (the other's donkey, giving up his own) and failed?
- i Answer: only gets his labor costs
- 1 Challenge: pay full, *a la* case of man sent with food for sick person; arrives too late (answer: he completed שליחות)
- III Tangential discussion – common liability in case of group assessment
- a If a caravan was pirated and made a deal for a price, they divide it by assets, not people
- i However: if they had hired a guide, divide assessment by people
- ii And: the local custom of donkey drivers determines how to assess it
- 1 And: they may determine rules of replacement – e.g. they'll replace a lost donkey if there was no negligence
- (a) And: if someone chooses to accept payment for donkey that he'll buy himself – they may refuse
- (b) justification: case where he has another and has to guard anyway –ל"ק guarding 2 isn't same as guarding 1
- b if a boat was storm-tossed, lighten load based on weight, not value; they may set their own rules about replacing boats
- i and: if he took it to a place where boats don't go – even if they go there during other seasons – considered negligence
- c if caravan set on by pirates, saved by one of them –all share saved assets; unless he states that he's saving for himself
- i distinction: could be partners; worker (who declares independence – v. 1) or hard to save; only if declares is it his