

20.6.2; 56b (משנה ב) [מסרה לרועה] → 57b (ונמצא ליסטים שאינו מזויין) → 57b

1. לא תראה את שור אחיק או את שיו נדחים והתעלמת מהם **השב תשיבם** לאחיק: דברים פרק כב פסוק א
 2. וכי ישאל איש מעם רעהו ונשבר או מת בעליו אין עמו שלם ושלם: שמות פרק כב פסוק יג

- I **ב** משנה: various forms of שמירה and consequences for liability
- a *if*: he left it out in the sun *or*: he left it in the care of a חש"ו – he's liable
- b *if*: he entrusted it to a shepherd, the shepherd stands in *his* place
- i *clarification*: cannot mean "stands in place" of the original owner – as that has already been taught (ד:ט)
- ii *rather*: must mean that the שומר handed him over to another – and the שומר is now relieved of liability
- 1 *challenge*: רבא taught that a שומר who passes the bail to another שומר maintains liability
- 2 *answer*: case is where the shepherd handed him over to his student – and the shepherd maintains liability (כרבה)
- iii *alternately*: from the use of "shepherd" here, must be a case of handing it to his apprentice
- 1 *support*: for רבא (as above)
- 2 *rejection*: perhaps רועה is just a typical example and a 2nd שומר assumes full responsibility (*contra* רבא רבא)
- II Dispute between ר' יוסף re: status of אבדה
- a רבה: he's a שומר חנם, since he gains no material benefit
- b ר' יוסף: he's a שומר שכר, since he's exempt from צדקה while watching it; or because the תורה obligates him
- i ד' יוסף ruling that if he returns it to a place from where the owner can see it; he has no responsibility to care for it
- 1 *however*: if it was stolen or lost – he's still liable
- 2 *proposed interpretation*: wasn't it stolen/lost from his house (liable as ש"ש)
- (a) *rejection*: stolen/lost from place where he returned it
- (b) *block*: states that once he places it there, no longer responsible
- (c) *explanation* (רבה): 2 clauses:
- (i) *if*: he returned it in the morning (when people are home) to a visible spot – relieved of accountability
- (ii) *but if*: he returned it in the afternoon (people aren't home) – and it was stolen/lost – liable
- ii ר' יוסף ruling that the finder is "always" liable until he returns it to his domain
- 1 *meaning*: even if stolen from his own house → ש"ש
- 2 *concession*: animals always need to be guarded as they walk out on their own; רבה's position is only re: מטלטלים
- iii ד' ר' יוסף v. 1 extends options for returning from house to yard/garden
- 1 *must mean*: even if it isn't locked up (else, that is like his house) → שומר חנם
- 2 *response*: it does mean his locked up yard/garden – unlike house, in that we don't need his awareness
- (a) *as per*: ר"א's teaching that any "return" (e.g. from שומר) requires דעת בעלים except השבת אבדה - as per v. 1
- iv אב"י to ר' יוסף if a holder of an אבדה claims it was stolen (and was lying) – he pays double → כש"ח (who'd be פטור)
- 1 *Explanation*: if he'd be liable if stolen, he should pay the capital only, as that is what he would have had to pay
- 2 *Answer*: case is where he claimed "armed robbers" (even ש"ש would be exempt, due to אונס)
- (a) *Block* (אב"י): they are גולנים – such a claim could never be called גנב
- (b) *Answer*: since they act furtively, they are considered גנבים
- 3 *counter*: distinction between ש"ח/ש"ש – that a ש"ח pays כפל
- (a) *Explanation*: if לטטים מזויין is considered a גנב, he could also conceivably pay כפל
- (b) *Answer*: means "כפל ש"ח always pays כפל" as opposed to ש"ש who only does so sometimes (מזויין לטטים)
- 4 *Counter*: argument for liability for ואבדה וק"ו from ש"ש "which is an unassailable ק"ו":
- (a) *If*: ש"ש, who is exempt in case of שבורה ומתה, is liable in case of גנבה ואבדה
- (b) *Certainly*: שואל, who is liable in case of שבורה ומתה (v. 2), should be liable in case of גנבה ואבדה
- (i) *Explanation*: if ש"ש pays כפל for לטטים מזויין, טענת לטטים מזויין, the ק"ו isn't ironclad – since שואל never pays כפל
- (ii) *Answer*: תנא deems קרן paid w/o an oath to be stronger (more indicative) than a claim paid due to an oath
- 5 Possible support (for ר' יוסף) that לטטים מזויין is considered a גנב:
- (a) *If*: someone rents (שוכר) a cow from another and it is stolen and he prefers to pay than to swear:
- (i) *And then*: the thief is found – he pays double to שוכר
- (ii) *Inference*: he could've exempted himself via an oath (but preferred paying) and yet he collects the כפל
1. *must be*: that he would've claimed לטטים מזויין and would've been exempted as a result
- (b) *rejection*: interpretation rests on assumption that it follows ר"י – שוכר is like ש"ש;
- (i) *perhaps*: it follows ר"מ – שוכר is like ש"ח (who would certainly be exempt if it were stolen)
- (ii) *or*: it follows ר"י according to "flipped" version of רבה בר אבוה
- (iii) *alternately* (ר' זירא): he claimed לטטים מזויין (as גולן) and it turned out to be an unarmed thief. (כפל → גנב)