

20.7.5

(ושלו הוא טובח ושלו הוא מוכר) 68b → (ומדת תשלומי ארבעה וחמשה) 67b

7. כי יגנב איש שור או עֵה וטבחו או מקרו חמשה בקר ישלם תחת השור וארבע צאן תחת העֵה: שמות כא, לו

- I Analysis of 1<sup>st</sup> clause of 'א משנה: only שור ושה are under the rubric of חמשה וארבעה וחמשה
- a Challenge: why not expand to include all animals as we did (ח:ז) with שור של שבת?
- b Answer: the repetition of שור and שה in v. 1 serves to be exclusive
- i Question: which mention is the superfluous one?
- ii Proposal: second set (at end); could've read תחתיו וארבע צאן תחתיו חמשה בקר ישלם
- 1 Rejection: if so, סד"א must pay 9x (4+5)
- 2 Block: separate mentions of תחתיו (in hypothetical rewriting of verse) makes that untenable
- (a) Response: 2<sup>nd</sup> תחתיו is necessary to teach that animals of equal value must be paid (not weak ones)
- iii Rather: first set – could've stated: ... וכי יגנוב איש וטבחו או מכרו...
- 1 Challenge: if so, סד"א must steal and slaughter one of each to be liable
- (a) Block: it states וטבחו – in the singular (same proposal and rejection for selling)
- 2 Rather: if so, סד"א must steal one of each and slaughter one and sell the other
- (a) Block: it states או as a disjunct (slaughter or sell)
- 3 Rather: סד"א must steal one of each and sell or slaughter one of them to be liable
- iv Therefore: שה in the 1<sup>st</sup> clause and שור in the final clause are extra – **these** and no others
- II Analysis of 2<sup>nd</sup> clause: a גנב who steals from a גנב is liable for *neither* כפל nor 4/5
- a רב: limited to case without יאוש בעלים (original owner); else, 1<sup>st</sup> גנב acquires via יאוש and 2<sup>nd</sup> גנב owes כפל or 4/5
- i challenge (רב ששת) ר"ע: explanation for "excessive" 4/5 – because גנב has become "rooted" in חטא
- 1 assumption: נשתרש ("rooted") – refers to his "hold" as a result of יאוש
- 2 however: if he acquires via יאוש, why pay 4/5? – he's slaughtering or selling his own animal
- 3 defense: "rooted" interpreted as per רבא – he's strongly engaged in חטא, even though there is no קנין (יאוש)
- ii challenge (ברייתא): v. 1 טביחה:: מכירה; just as טביחה is irrevocable, so too, only **irretrievable** sale generates 4/5
- 1 explanation: if this is before יאוש, why can't sale be retracted?
- 2 Defense: ברייתא is excluding case of "temporary" sale akin to rental (but before יאוש still generates 4/5)
- iii Challenge (ברייתא): if B stole from A then C stole from B, B pays כפל (to A) and C pays קרן (to B)
- 1 If: B stole from A, then sold it to D and C stole from D, B pays 4/5 to A, C pays כפל to D
- 2 If: B stole from A, then slaughtered it and C stole (the meat) from B, B pays 4/5 to A, C pays קרן to B
- (a) Observation: case #2 is after A's יאוש; if B pays 4/5, must be יאוש isn't קונה (else, he's slaughtering his own)
- (b) And: 1<sup>st</sup> case (also יאוש), why does C only pay קרן? Should pay כפל to B → יאוש אינו קונה
- (c) Block (רבא): 3<sup>rd</sup> case doesn't work; all agree that שנינו מעשה (e.g. טביחה) is קונה → C should pay כפל to B
- (i) Rather (רבא): all before יאוש; flip rulings in cases 2 <-> 3
- (ii) Alternatively (ר' פפא): don't flip; last clause is ש"ש who doesn't allow for any שנינו to effect קנין
1. Block: if so (it's יאוש), cases #1 and #2 are a challenge to רב
- (iii) defense (ר' זביד): all cases לפני יאוש (no challenge to רב) – but only after the sale, no יאוש from גנב
1. Therefore: in 1<sup>st</sup> case, C only pays קרן (before יאוש) to B and in 2<sup>nd</sup> case, B pays 4/5 to A
2. However: יאוש alone → קנין (no need for רשות), but שנינו רשות invoked to generate liability for both
- III Related dispute (רב ששת) ר' vs. ר' נחמן if the גנב sells before יאוש בעלים – if he is liable for 4/5
- a ר"ג: liable – he sold it
- b ר"ש: only liable after יאוש, similar to טביחה where his actions have validity
- i Proposed support: ברייתא of ר"ע (above) – "rooted" (blocked as above – per רבא – engaged in חטא)
- ii Proposed support: ברייתא (above) using מכירה::טביחה that it must be irrevocable (blocked as above – temporary sale)
- iii Support: ר"א agrees that liability is only after יאוש; תורה obligates 4/5 for sale immediately → יאוש בעלים →
- 1 Challenge (ר' יוחנן): kidnapping proves that the re is liability before יאוש (the victim isn't מתייאש over himself)
- 2 Question: if so, is there liability for 4/5 after יאוש?
- (a) ר"י: liability is both before and after
- (b) ר"ל: liability only before יאוש; afterwards, he is selling or slaughtering his own animal – no liability for 4/5