20.7.6
68b (איתיביה ר"י לר"ל) → 70a (והילכתא שליח שויא)

1. וְאִישׁ כִּי יַקְדִּשׁ אֶת **בֵּיתוֹ** קֹדֶשׁ לַה' וְהֶעֱרִיכוֹ הַכֹּהֵן בֵּין טוֹב וּבֵין רָע כַּאֲשֶׁר יַעֲרִיךְ אֹתוֹ הַכֹּהֵן כֵּן יָקוּם: *ויקרא פרק כז פסוק יד*
2. כִּי יִתֵּן אִישׁ אֶל רֵעֵהוּ כֶּסֶף אוֹ כֵלִים לִשְׁמֹר **וְגֻנַּב מִבֵּית הָאִישׁ** אִם יִמָּצֵא הַגַּנָּב יְשַׁלֵּם שְׁנָיִם: *שמות פרק כב פסוק ו*
3. וְאִם גָּאֹל יִגְאַל **אִישׁ מִמַּעֲשַׂרוֹ** חֲמִשִׁיתוֹ יֹסֵף עָלָיו: *ויקרא פרק כז פסוק לא*
4. וּבַשָּׁנָה הָרְבִיעִת יִהְיֶה כָּל פִּרְיוֹ **קֹדֶשׁ** הִלּוּלִים לַה': *ויקרא פרק יט פסוק כד*
5. וְכָל מַעְשַׂר הָאָרֶץ מִזֶּרַע הָאָרֶץ מִפְּרִי הָעֵץ לַה' הוּא **קֹדֶשׁ** לַה': *ויקרא פרק כז פסוק ל-*

I Continuation of debate ר"י/ר"ל re: liability for ארבעה וחמשה after ייאוש (ר"י – still liable)
- a ר"י: if a גנב steals, then is מקדיש and then slaughters – only pays כפל but not 4/5
  - i *Must be*: after ייאוש; else his הקדש is invalid as per v. 1
  - ii *inference*: only exempt from 4/5 because it belonged to הקדש, otherwise would be liable – even after ייאוש
  - iii *response*: in this case, the owner was מקדיש while in possession of גנב,
    - 1 *challenge*: in such a case, as per ר"י, neither can be מקדיש (גנב doesn't own it; בעלים don't have it)
      - (a) *answer*: as per צנועין (מע"ש ה:א) who leave money out for auto-פדיון of כרם רבעי of passers-by eating it (→הקדש is possible when out of one's possession)
    - 2 *challenge*: since the קרן "returns" to the owner (when he is מקדיש), there's no כפל
      - (a) *answer*: the בעלים were מקדיש after העמדה בדין (→ כפל was already "sentenced")
      - (b) *note*: if ב"ד told him to pay, wouldn't be liable for 4/5 in any case (even w/o הקדש); as he is considered a גזלן
      - (c) *Must be*: that ב"ד only pronounced ruling against him, without directing payment (still גנב → liable for 4/5)

II Revisiting ר"י's ruling that neither the בעלים nor the גנב can be מקדיש (before ייאוש) – and the challenge from מע"ש ה:א
- a צנועין as per רשב"ג (there) are able to set up פדיון in absentia
  - i *Suggested defense (of ר"י)*: he follows חכמים (there) who may disagree with רשב"ג
    - 1 *Rejection*: ר"י famously ruled that הלכה always follows רשב"ג in the משנה (except for 3 cases)
  - ii *Defense*: reread declaration of צנועין as "anything that will be taken" (as opposed to "has been taken") will be מחולל...
    - 1 *Rejection*: ר"י aligned צנועין and ר' דוסא who reported similar declaration (in re: לקט) "anything taken today…"
      - (a) *Answer*: invert reports (ר' יהודה now said "anything that was taken" & ר"ד – "anything that will be taken")
        - (i) *Reason*: we know (דמאי ז:ד) that ר' יהודה rejects ברירה (a necessary component of "will be taken")
        - (ii) *challenge*: reversing ר"ד<->ר"י still leaves us with a contradiction within ר' יוחנן, who rejects ברירה:
          1. *if*: brothers divide the estate, this is considered a sale and it reverts at יובל (→ no ברירה of each חלק)
  - iii *rather*: keep original wording of צנועין; ר' יוחנן relied on our סתם משנה - גנב אחר הגנב doesn't pay כפל -
    - 1 *Reason*: doesn't pay 1st גנב - v. 2 – מבית האיש and not מבית הגנב; should pay owner, but doesn't כיון שאינו ברשותו
    - 2 *Question*: why did ר"י favor our סתם משנה over מע"ש?
      - (a) *Answer*: ours is supported by v. 1
- b *Observations (אביי, רבא ורבינא) about ר"י's alignment of צנועין and ר' דוסא*:
  - i *אביי*: had he not done so, סד"א that צנועין accept ר"ד but not vice-versa – ר"ד's ruling was for benefit of קמ"ל – עניים
  - ii *רבא*: had he not done so, סד"א the צנועין represent ר"מ: (and ר"ד would accept them but not vice-versa)
    - 1 *Even though*: מעשר שני is ממון גבוה, the תורה identifies בעלים as owners (vis-à-vis חומש etc.) as per v. 3
    - 2 *So too*: even though כרם רבעי is קודש, it is available to us for פדיון (as per גז"ש vv. 4-5)
      - (a) *But*: wouldn't apply it to לקט, since that is owned by the בעלים and, perhaps, can only be made הפקר while in their possession – קמ"ל
  - iii *רבינא*: had he not done so, סד"א that ר"ד is the author of צנועין
    - 1 *Advantage*: resolves internal conflict in ר' יוחנן (his dictum of הלכה כסתם משנה wouldn't apply to a יחידאה)

III Related rulings of נהרדעי regarding writing a writ of seizure on מטלטלים:
- a *Version #1*: not done at all, as per ר"י's ruling about הקדש בגזל –
  - i *Argument*: since rightful owner doesn't have possession, can't be מקנה
- b *Version #2*: not done after שומר (e.g.) has already denied liability in court
  - i *Implication*: only if he already denied it – since it looks like שקר; otherwise, may be written
- c *Additionally*: a writ w/o explicit granting of rights of seizure to plaintiff is invalid – defendant states לאו בעל דברים דידי את
  - i *אביי*: if he had a fraction of the property granted to him, he may seize all of it (מיגו)
  - ii *אמרמר*: in such a case, if the plaintiff seizes the property, we don't confiscate it from him
  - iii *ר' אשי*: since it states "whatever the court imposes I accept", he has been made an agent
    - 1 *Alternatively*: he has been made a partner (in collection)
    - 2 *Split the difference*: whether he may keep half (הלכה – he is an agent and keeps none, *contra* אמימר)