

20.7.7

70a (משנה ב') → 71a (בהכי הוי מכירה)

1. לא יקום עד אחד באיש לכל עון ולכל חטאת בכל חטא אשר יחטא על פי שני עדים או על פי שלשה עדים יקום דבר: דברים יט, טו

- I 'משנה ב' range of circumstances which, in spite of their apparent deficiencies, generate liability for **ארבעה וחמשה**
- a if the theft and **מכירה/מכירה** was done in the presence of 2 **עדים** - even if they are different
- i *suggestion*: this is *contra* ר"ע who interprets v. 1 as requiring **עדים** to testify about an entire matter
- 1 *explanation*: in this case, 1 set of witnesses testified to the theft, another to the sale/slaughter
- ii *rejection*: ר"ע agrees that if the components of testimony aren't mutually dependent, there is no deficiency of **דבר חצי**
- 1 *example*: if 2 **עדים** testified to **בגרושה כהן קידושי** and another 2 to the **ביאה**, since the **ביאה** alone would generate culpability, he agrees that the testimony stands
- 2 *application*: in our case, without **עדי גניבה** **עדי טביחה** aren't meaningful, however, **עדי גניבה** alone generate **כפל**
- iii *note*: **רבנן**, who disagree with ר"ע (allowing 3 sets of **עדים**, each testifying about 1 year of **חזקה**, to validate **חזקת ג'** **שנים**), apply **דבר** to one set of witnesses testifying to 1 hair (of **סימני נערות**) on the front and another set testifying to 1 hair on the back - each one's testimony keeps her a **קטנה** (e.g. no validity to her **קידושין**)
- b if he stole and sold on **שבת** (קלב"מ no)
- i *challenge*: we have a **ברייתא** which reads that in this case he is exempt
- 1 *answer1* (**רמי בר חמא**): in that case, the buyer told the **גנב** to cut figs from his tree as the purchase price
- (a) *Explanation*: since the **גנב** becomes **חייב מיתה** at the moment of **מכירה**, he is exempt as per קלב"מ
- (b) *Challenge*: if the buyer sued the thief for the purchase, he couldn't recover (since he's **חייב מיתה**) → the sale should be invalid (→ no **ארבעה וחמשה**)
- 2 *Answer2* (**ר' פנא**): buyer tells thief to throw the **גניבה** into his property (**הוצאה**)
- (a) *Challenge*; this only works according to ר"ע (**כמי שהונחה**) → liabilities are concurrent
- (b) *However*: according to **רבנן**, liability for theft occurs before **חייב שבת** (when it lands)
- (c) *Rather*: buyer states that he doesn't want to take possession until it lands
- 3 *Answer 1* (**בא reviving it**): still liable for **מכירה**, even though, had he sued for it, he couldn't collect
- (a) *Proof*: **אתנן** is prohibited, even if the **ביאה** generated **חייב מיתה**
- (i) *Even though*: if she sued him, couldn't collect (קלב"מ), if he paid her, still called an **אתנן**
- (ii) *Similarly*: even though the buyer couldn't sue for the **גניבה**, since the **גנב** did give it to him, it's a **מכירה** and generates liability for 4/5
- c (if he stole and sold to ע"ז)
- d if he stole and slaughtered on **יה"כ** (כרת) doesn't generate **קלב"מ** - *contra* **בן הקנה**
- e if he stole his father's and then he slaughtered or sold and then father died
- f if he stole and slaughtered or sold and then was **מקדיש**
- g if he stole and slaughtered to feed to dogs or for medical use
- h if he stole and slaughtered and it proved to be a **טריפה** (ר"ש exempts)
- i if he stole and slaughtered **בעזרה** (ר"ש exempts)