

20.7.11; 74b (משנה ד') → 76a (תשלום דכפל)

1. אם המצא תמצא בידו הגנבה משור עד חמור עד שה חיים שנים ישלם: שמות פרק כב פסוק ג
 2. ... עד האלהים גבא דבר שניהם אשר ירשיען אלהים ישלם שנים לרעהו: שמות פרק כב פסוק ח

- I 'משנה ד' cases (parallel to 'משנה ב' where ארבעה וחמשה is **not** assessed, but כפל is paid
- if there are 2 witnesses to גניבה, but only one (or his own admission) to טבחה ומכירה
 - stole and slaughtered on שבת; stole and slaughtered for ע"ז (קלב"מ)
 - stole his father's, then father died and then he slaughtered/ stole
 - if he stole, then was מקדיש and then slaughtered/stole
 - dissent*: ר"ש – if these are אחריות that carry קדשים (e.g. נדר) – pays ארבעה וחמשה; if no אחריות, only כפל
- II Dispute שמואל; פטור (רב): liability for someone who admits to a קנס but is followed by עדים to that effect (רב):
- Observation about our משנה*: juxtaposition of 1 עד with ע"פ עצמו – just as 1 עד, if followed by another – חייב;
 - So too*: if someone admits to a קנס and עדים come and testify to that effect – חייב (*contra* רב)
 - Challenge (to הונא ר', citing רב)*: story - ר"ג knocked out טבי's eye; was happy (wanted to free him) and told יהושע ר' about it
 - Then*: יהושע ר' negated ר"ג's actions,
 - Version #1*: reason – there are no witnesses
 - Implication*: if witnesses came, even afterwards, would still go free
 - Block*: in this case, ר"ג didn't yet admit in front of ב"ד (though ר"י was אב"ד, it was outside of ב"ד)
 - Version #2*: reason – you've already admitted to it
 - Proposal*: author of version #1 מודה בקנס ואח"כ באו עדים חייב – פטור; version #2 – פטור
 - Rejection (on behalf of רב)*: all agree פטור; #1 – admitted outside of ב"ד; #2 – admitted in ב"ד (no more liability)
 - Source for רב* v. 1 makes v. 2 unnecessary → teaches that even if עדים come afterward, still exempt
 - Source*: v. 1 needed for essential liability of כפל for all גניבות as per דבי חזקיה (above, סג-סד).
 - challenge (רב → שמואל)*: ברייתא – if he saw witnesses approaching and he admits to גניבה but denies ט"מ – only liable for קרן
 - defense*: in that case, the witnesses turned back (never testified)
 - block*: ר"אב's dissent – “let the witnesses come and testify” implies that they hadn't turned back
 - Rather*: שמואל subscribes to ר"אב's approach
 - Question*: must רב admit that his approach is disputed (by ר"אב"ש) or can he claim it to be unanimously accepted?
 - Answer*: ר"אב"ש only claims that the witnesses may come if we see that the perpetrator admitted due to fear
 - e* רב's exemption is only reasonable if the original admission generates some liability
 - In the ברייתא *if*: he admitted to גניבה, he generates liability for קרן → פטור;
 - but if*: he denied גניבה and then they testified to גניבה, then he admitted ט"מ and then they testified – liable
 - challenge to רב*: ר' המנונא – from ר"ג's admission to ר"י (above) – he generated no liability but was exempt
 - and*: ר' הונא challenged ר' חסדא (רב's ruling) with this and ר' הונא didn't use this limitation to defend his position
 - Support for ר' המנונא*
 - ר' יוחנן*: explicitly ruled this way
 - רב המנונא* both our משנה and the above-cited ברייתא support רב המנונא:
 - משנה*: if there are 2 witnesses to גניבה but only 1 or himself to ט"מ – no liability for ט"מ
 - why not*: bring case where there are no witnesses at all and he admits to all of it – only pays קרן
 - rather*: only in case where he generated some liability with his admission is the rest exempt
 - ברייתא*: if he admits to גניבה (before עדים) and denies ט"מ – since he generated קרן, חייב פטור from כפל and 4/5
 - rejection*: reason for including admission of גניבה is to teach that if he admitted to the גניבה, exempting him from כפל, there can be no more liability for ט"מ, since he can't pay 3/4, as the תורה presented 4/5
 - iv suggestion*: perhaps ר' המנונא's position is subject to מחלוקת תנאים:
 - if*: 2 testified to גניבה and another 2 to ט"מ and 1st set was מוזם – testimony is all annulled; *but if*: 2nd set was מוזם:
 - חכמים*: he pays כפל, 2nd set pays 3/2
 - סומכוס*: they pay (2nd half of) כפל, he pays 3/2 (! - impossible in this case):
 - "hidden" case*: 1st set testified to גניבה, he admitted to ט"מ but not in their presence, they were subsequently מוזם then witnesses came to ט"מ
 - חכמים*: even though his admission was driven by עדים, it still exempts him
 - סומכוס*: since it was driven by עדים and generated no liability – not an “admission” – liable
 - rejection*: dispute in re: יכול להזימה; case as above, but he identified עדים (now cannot be מוזם)
 - and*: those עדים testify to גט"מ – but they cannot be מוזם, as he identified them
 - challenge*: we hold עדות שא"א יכול להזימה לא הויא עדות; *defense*: only if they don't specify time/place