

20.9.3

95a (לא יהא לך פרעון אלא מזה) → 96a (גזל פרה)

- I Analysis of 3rd clause of משנה, if he stole a cow and it became pregnant on his watch and it gave birth – pays as per הגזלה
- a *Parallel*: with wool (stole a sheep and she became laden with wool and he sheared her)
- b *ברייתא*: a גזילה that bore fruit (e.g. cow that gave birth, sheep that had wool)
- i *ר"מ* pay all – including appreciation
- 1 *Reason*: may be that *ר"מ* doesn't affect it or a קנס against גזלן
- (a) *Resolution*: it is a קנס, as *ר"מ* certainly accepts impact of שנוי as per his ruling in re: returning stolen animals – as per שעת הגזלה (but עבדים are given as is)
- (i) *Block*: perhaps *ר"מ* was only responding as per רבנן's approach, arguing that מלטלים::עבד (רבנן – כקרקע – רבנן)
- (ii) *comeback*: *ר"מ* rules (in re: dyer who used wrong color) that he pays just the value of the wool
1. → שנוי קונה and in the case of גזלה, it is a קנס
- (iii) *Support*: רב's version of the ברייתא in re: עבדים ובהמה is inverted (*ר"מ* – in both cases, כשעת הגזלה)
- 2 *Indeed*: our question – does *ר"מ* extend קנס to a case of שוגג
- (a) *Proposed answer*: yes, proven from his ruling that שבח פירות are collected (only) from בני חורין
- (i) *Assumption*: גזלן is an ע"ה, who doesn't know that קרקע can't be stolen; → even בשוגג there is קנס
- (ii) *Block*: perhaps case is with a ת"ח who knows
- (b) *Answer*: **no**, proven from *ר"מ*'s ruling about the dyer who errs (שוגג)
- ii *יהודה* גזילה ד' יהודה is returned as is
- iii *ר"ש* it is assessed as a value
- 1 *Question*: in what do *ר"י* and *ר"ש* differ?
- (a) *גזילת ד' זביד* appreciation which is part of the body of the גזילה
- (i) *ר"י* belongs to גזלן
- (ii) *ר"ש* belongs to גזלן
- (b) *פפא* ד' all agree that it belongs to גזלן – dispute if גזלן keeps only a labor-market share or all (support ברייתא)
- (i) *ר"י* keeps all
- (ii) *ר"ש* keeps the usual percentage workers get for this sort of appreciation
- (iii) *Challenge*: our משנה implies that only if the pregnant cow birthed does he pay הגזילה
1. *According to*: ר' זביד – author is יהודה
2. *But, according to*: ר"פ – neither *ר"י* nor *ר"ש*
- a. *Answer*: even if didn't give birth, pays כשעת הגזילה; birth is mentioned as parallel with רישא
- (c) *Question* (*ר' אשי*): according to *ר"ש*, is percentage paid in cash or from גזילה itself?
- (i) *Answer*: from שמואל's dictum that we only assess שבח and pay in cash for:
1. *בכור*: paying off the non-בכור for the overage of שבח
2. *בע"ח*: to a buyer from whom he is seizing land for payment
3. *בע"ח*: from orphan heirs for their father's debt – he has no claim on appreciation after father's death
- a. *challenge*: שמואל ruled that בע"ח can seize the שבח from the לוקח
- b. *answer1*: if the שבח is already ripe ("reaches the shoulders") – kept by לוקח
- i. *block*: שמואל has בע"ח collect even ripe crops
- c. *Answer2*: if he is collecting an amount equal to land and appreciation – keeps all
4. *Note*: this is only valid according to authority that allows a לוקח to block בע"ח from collecting land if he has money with which to pay him off;
5. *However*: according to opposing מ"ד לוקח should be able to say to בע"ח: if I had the money, I could've kept you from collecting; now, at least leave the part of the land that I appreciated
- a. *Answer*: in this case, the land was made an אפותיקי (assigned for collection); even according to the opposing authority, the לוקח couldn't have paid off the בע"ח against his will