20.9.5

(וְאִי מַשְׁכְחִי קַפְּדֵי) 97b → (מִשְׁנָה ב') 96b

> **2.** נִשְׁאַר בָּעִיר שַׁמָּה **וּשְׁאִיָּה יֻכַּת שָׁעַר:** *ישעיה כד:יב*

I   **משנה ב':** depreciation
- a   *If*: he stole an animal or slaves and they aged (depreciated)
  - i   *חכמים*: pay as per value at time of גזלה
  - ii   *ר"מ*: in case of slaves, give it back in current (devalued) state
    - 1   *Note*: רב rules in accord with ר"מ
    - 2   *Challenge*: רב rules against the majority?
      - (a)   *Answer*: רב has a reversed version of משנה (חכמים hold נגזל – not עבד כקרקע →give back as is) & ברייתא
      - (b)   *Or*: רב has 2 ברייתות with that (reversed position); ours, and חכמים (*contra* ר"מ) disallow oaths re: עבדים
        - (i)   *Challenge*: רב seems to hold that עבדים are **not** כקרקע:
          - 1. *If*: someone grabs another's slave and makes him work, he isn't liable to pay owner for work
            - a.   *Analysis*: if עבד::קרקע, has worked him in the domain of the owner, should be liable
            - b.   *Defense*: case is where he grabbed him at a time that he wasn't otherwise working
            - c.   *Akin to*: living in another's empty house without his knowledge – exempt from rent
              - i.   *Challenge*: in that case, there is a benefit of having someone live there (v. 1), here, he doesn't want his slave to get "used up"
              - ii.   *Answer*: here, too, he prefers to have his slave used to working and not idle
              - iii.   *story*: custom of ר' יוסף's household used to grab slaves of their debtors and make them work, defending it on grounds of רב's ruling, along the lines of the rental exemption
              - iv.   *Challenge*: this is only true if the owner owes you nothing; else, it appears as רבית (same ruling in re: דר בחצרו שלא לדעת בעלים)
    - 3   *Tangential ruling*: if someone seizes another's ship and uses it:
      - (a)   *רב*: owner may choose to demand all proceeds **or** depreciation
      - (b)   *שמואל*: may only demand depreciation
        - (i)   *ר' פפא*: no dispute; if it was a ship for hire, take proceeds; else, take depreciation
        - (ii)   *Or*: no dispute, both cases it was a ship for hire; if he took it for hire, pay hire; if he took as theft, pay פחת
  - iii   *Note*: depreciation can even be weakening, akin to aging (irreversible)
    - 1   *Tangent*: following rule taught in name of ר' יוחנן but should be amended to ר' אלעא:
      - (a)   *If*: he stole a kid and it matured into a ram – קנה ע"י שנוי
        - (i)   *therefore*: he is exempt from תשלומי ד' וה' – it is his own animal that he is טובח ומוכר
- b   *If*: he stole an item and it spoiled (depreciation), pay as per value at time of גזלה
  - i   *Examples*: he stole a coin and it cracked, fruit went rotten, wine and it went sour
- c   *But if*: he stole an item and it lost all value – he may give it as is – הרי שלך לפניך
  - i   *Examples*: coin → invalidated, תרומה → טמא, חמץ & פסח lapsed, animal was used for sin, or became unfit for מזבח or was going to be stoned
  - ii   *Discussion re*: cracked and invalidated coins:
    - 1   *ר' הונא*: cracked – is literal; invalidated – by government
    - 2   *ר' יהודה*: invalidated by government is also "cracked"; נפסל – where one district won't accept it anymore
      - (a)   *Challenge (to ר"ה)*: isn't grouped with analogous cases (e.g. rotted fruit)
        - (i)   *Answer*: in those cases, the physical traits of the object have changed (unlike the coin)
      - (b)   *Challenge (to ר"י)*: נסדק isn't grouped with analogous cases (e.g. תרומה ונטמאת)
        - (i)   *Answer*: in those cases, damage is intangible
  - iii   *Related discussion*: if someone lends money, using a coin as collateral and the coin becomes obsolete
    - 1   *רב*: give him another coin that is currently accepted
    - 2   *שמואל*: borrower can tell lender to go take the coin to the district that accepts it (e.g. מישן)
      - (a)   *ר"נ*: only if he otherwise had reason to go there
        - (i)   *Challenge (רבא)*: we may not perform חילול מעשרות on coins not accepted as currency –
          - 1. *Implication*: current coins ≅ old ones (i.e. accepted elsewhere) may be used (w/o ר"נ's limitation)
        - (ii)   *Defense*: this is in case the provinces cooperate and allow "full faith and credit"
        - (iii)   *and*: שמואל's case was where they are מקפיד, but you can sneak them through to the other district