

20.9.7

98b (משנה ג') → 99b (מלוה ופרוטה)

7. לא תעשק את רעך ולא תגזל לא תלון פגלת שכיר אתך עד בקר: ויקרא יט, יג

- I **משנה ג'**: liability of artisans who fail to produce as directed
- a *if*: a carpenter was given a carriage or a box to fix and he broke it – liable
 - b *if*: a contractor was hired to take a wall down and he destroyed the stones - liable
 - i *if*: he was knocking it down on one side and it fell to the other
 - 1 *if*: it fell due to his work, liable; if it fell for some other reason, exempt
- II discussion re: **אומן קונה בשבח כלי**
- a **אסי ד'**: our **משנה** refers only to case where carpenter was given box to repair and broke it – but if he was given wood to build a box, built it and broke it – exempt (just pays for wood) since he acquired the **כלי** when he improved it (built it)
 - i *challenge*: our **משנה** implies that even if he gave him wood – liable
 - 1 *proof*: from separate clauses – “if they damaged”, then example of the box
 - 2 *rejection*: 2nd clause may be explaining opening line
 - 3 *support*: if 1st line meant that even when he gave wood the carpenter is liable, “box” example isn’t needed
 - (a) *block*: example was taught to show that even **עצים** generates liability (**רישא** taught to illuminate **סיפא**)
 - ii *support*: **משנה ד'** - dyer only pays value of wool, not wool and improvement
 - 1 *Rejection*: **שמואל** explained that case as being where it was destroyed as it fell into the vat – no **שבח**
 - (a) *Suggestion*: **שמואל** disagrees with **אסי ר'** (maintaining that **כלי** **אין אומן קונה בשבח כלי**)
 - (b) *Rejection*: case may be where dye and wool both belonged to **בע"ה** – dyer was only providing labor
 - (i) *Challenge*: if so, he should pay for the wool and the (lost) dye (**שמואל** was just deflecting challenge)
 - b **ברייתא**: if an artisan finished work on garment & informed owner, he doesn't violate **בל תלון** (v. 1) even for several days
 - i *However*: the day that the artisan hands it over to the owner, **בל תלון** is in effect (as of sunset on that day)
 - ii *Explanation*: if **אומן קונה בשבח כלי**, it isn't “hiring” at all (no violation), as the artisan “bought it” via improvement
 - iii *Defense*: case is where he was hired to clean it out and soften it
 - 1 *Challenge*: isn't it an improvement when he softens it?
 - 2 *Answer*: he hired him at a rate per “stamping” – only labor costs
 - (a) *Note*: according to original assumption (hired for improving garment) – supports **ששת ר'**:
 - (i) *ששת ד'*: there is a violation of **בל תלון** for contracted work
 - (ii) *Question*: does **ר"ש** disagree with **אסי ר'**?
 - (iii) *Response*: **ר"ש** referred to (e.g.) a messenger (hired to deliver letter – no intrinsic improvement)
 - c *Suggestion*: **כלי** **אומן קונה בשבח כלי** is the subject of a **מחלוקת תנאים**:
 - i *If*: a woman tells a man to fashion jewelry and she will accept it as **קידושין**:
 - 1 **ד"מ**: as soon as he is finished – **מקודשת**
 - 2 **חכמים**: no **קידושין** until she receives the money (jewelry)
 - (a) *assumption*: all agree that **שכירות** is collectible at any point **and** that **מקדש במלוה** is invalid
 - (b) *and*: the dispute is whether the **כלי** **אומן קונה בשבח כלי** (**ר"מ** – he is, therefore, she owes him **ש"פ** immediately)
 - (i) *rejection*: all agree **בש"כ** **אין אומן קונה בשבח כלי** (*contra* **אסי ר'**); dispute is whether **שכירות** is collectible at any point
 - (ii) *OR*: all agree that **שכירות** is collectible at any point; **ר"מ** maintains that **מקדש במלוה** is valid
 - (iii) *דבא*: all agree that **שכירות** is collectible at any point and **המקדש במלוה** is invalid & **אין אומן קונה בשבח כלי** & **פרוטה**, is the intent of
 1. *dispute*: case where he added his own material; if someone is **מקדש במלוה** and **פרוטה**, is the intent of the **מתקדשת** to the **מלוה** or the added **פרוטה** (**ר"מ** – added **פרוטה**; **חכמים** – **מלוה**)
 2. *parallels*: dispute as to validity of **קידושין** for “value of what I will do for you”
 - a. **חכמים**: valid (unlike “value of what I already did for you”)
 - b. **ר"נ**: neither is valid
 - c. **רבי**: neither is valid, but if he added his own material, valid
 - i. dispute between **ת"ק/ר"נ** – is **שכירות** collectible at each point (**ר"נ** – it isn't)
 - ii. dispute between **ר"נ/רבי** – if he is **מקדש במלוה ופרוטה** if the intent is **פרוטה** (**רבי**) or **מלוה** (**ר"נ**)