

20.9.11

103a (משנה ה'ז') → 104a (הוי גביה פקדון עד דאתי ושקיל ליה)

1. נָפֵשׁ כִּי תִחַטָּא וּמַעְלָה מֵעַל בִּידוּד וְכַחֵשׁ בְּעַמִּיתוֹ בְּפִקְדוֹן אוּ בְתְשׁוּמַת יָד אוּ בְגָזֵל אוּ עֲשָׂק אֶת עַמִּיתוֹ: וּקְרָא פֶרֶק הַ פְּסוּק כֹּא
 2. אוּ מִכָּל אֲשֶׁר יִשָּׁבַע עָלָיו לְשָׁקֵר וְשָׁלַם אֹתוֹ בְּרֵאשׁוֹ וְחִמְשָׁתָיו יִסֹּף עָלָיו לְאֲשֶׁר הוּא לוֹ יִתְנַנּוּ בַיּוֹם אֲשֶׁמְתוֹ: וּקְרָא פֶרֶק הַ פְּסוּק כֹּד

- I 'מסנה ה': liability for גזילה (ז-ז): משניות are analyzed in subsequent (סוגיות; we will leave those משניות until then)
- a If: he stole **and swore** innocence – he must pay him – and only him back (wherever he may be); but he may pay ב"ד שליח ב"ד
- i *Observation*: only liable to follow נגזל and pay him back if he swore – (else, he can wait for נגזל to come to him)
- ii *Question*: whose opinion does this follow?
- 1 *Neither*: ר"ט nor ר"ע: who disagree in case where גזול doesn't remember from which of 5 he stole
- (a) ר"ט: he leaves the amount between them and leaves – (we assume), even if he swears
- (b) ר"ע: must pay that amount to each of them – (we assume) – even if he doesn't swear, still liable to all 5
- (i) *Answer*: it is ר"ע – only states his ruling (case of 5 potential נגזלים) if he swore as per v. 2
1. *And*: ר"ט extends תקנת השבים to such a case, where גזול doesn't know from whom he stole
2. ר"ע: only applies when גזול can identify גזול and he will get paid
- (ii) *Rejection*: ר"ט/ר"ע limited the dispute between רשב"א to גזלה, not מקח
1. *Explanation*: if someone bought from 1 of 5, both agree that he leaves purchase price between them
2. *Therefore*: their dispute must be without an oath; else no reason to differentiate between מקח/גזילה
- (iii) *Additional rejection*: story of חסיד אחד who was unsure from which of 2 he bought:
1. ר"ט: told him to leave it between them
2. ר"ע: told him he must pay both
- a. *And*: since he was a חסיד, he certainly didn't lie under oath
- i. *Possibility*: he became a חסיד after the oath
- ii. *Rejected*: "חסיד אחד" in חז"ל refers to יהודה בן בבא or ר' יהודה בר אילעא – always חסידים
- (iv) *Rather*: our משנה follows ר"ט – and he agrees that if the גזול took a (false) oath, he must follow the נגזל to pay him – as per v. 2
1. ר"ע: he is fined (to follow and pay him back) even if he didn't take an oath
2. *Challenge to ר"ט*: since the case can't begin unless the גזול admitted his guilt – why is a שבועה necessary – ר"ט himself ruled that if a גזול tells two men that he certainly stole from one of them but is unsure which – he must pay each the full amount – since he admitted guilt
- (v) *Rather* (ר"בא): משנה follows both; it is unique since he admitted guilt: it is as if the נגזל said "you hold it for me",
1. If: he took the oath and needs כפרה for שבועת שקר, he gets no כפרה until he gets it to נגזל;
2. If: he didn't take an oath, it is as a פקדון in the גזול's hands until the נגזל comes to claim it