

20.9.12

104a (דהא לא הוה ידע) → 105a (לא יתן לא לבנו ולא לשלוחו)

7. והיה כי יחטא ואשם והשיב את הגזלה אשר גזל או את העשק אשר עשק או את הפקדון אשר הפקד אותו או את האבדה אשר מצא: ויקרא פרק ה פסוק כג.

- I Further analysis of משנה ה' may not return גולה to the agent or family member of the נגזל (but may give to שליח ב"ד)
- a Dispute regarding appointing a שליח in front of עדים
- i valid שליח (and if borrower, e.g., hands him owed money and it's lost, he is exempt) ר' חסדא
- 1 Argument: that's why he bothered to get witnesses – to put money under his control
- ii רבה: not a valid שליח – intent to inform borrower that this agent is trustworthy and he can appoint him if he wants
- iii Challenges (to ר"ח):
- 1 Ruling that if an owner sent an animal to a שואל via his own שליח or the שואל's and it died –the שואל is פטור
- (a) Must be: that the שליח was appointed with עדים (else, how would we know that he was a שליח)
- (b) Defense: case where the שליח was well-known as a houseperson of the שואל (but no עדים)
- 2 Our משנה – may not pay the שליח – must be a שליח appointed by עדים, else how would we know?
- (a) Defense: as above – שכירו or לקיטו, but not appointed in presence of עדים
- (i) Challenge: if so, why not mention שליח שעשאו בפני עדים at end, along with שליח ב"ד?
- (ii) Answer: שליח ב"ד is always valid, שליח שעשאו בפני עדים is only valid if appointed by נגזל
1. Contra: רשב"א: who only accepts שליח ב"ד if made by נגזל
- iv Parallel: ר' יוחנן and ר"א agree with ר"ח, defending against our משנה:
- 1 Either: as he did (שכירו ולקיטו)
- 2 Or: the נגזל convinced the שליח to go in order to allow גזלן to pay him back
- b Tangential discussion: returning פקדון with a שליח bearing a request of the מפקיד with his seal
- i שמואל: don't return, even if there are witnesses signed on it as authentication of the seal
- ii ר' יוחנן: only return if there are עדים signed on the seal
- 1 Question: according to שמואל, what is the solution (for sending owed moneys?)
- (a) Answer: as per story involving ר' אבא, ר' יוסף; he was made to acquire the money ( קנין ) on behalf of ר' אבא, thus fully exempting ר' יוסף with no concern of later indemnity
- II משנה ו' (continuing from responsibility to follow נגזל to pay him) –
- a If: the גזלן has already paid the קרן or the נגזל forgave the קרן and the 1/5 fine was still owed
- i Or: there was less than ש"פ owed on the קרן
- ii Then: no need to follow him as per משנה ה'
- b But if: the גזלן had only paid the חומש or the נגזל forgave the חומש or there was ש"פ (or more) still owed on קרן
- i Then: he must still follow him as per משנה ה'
- c Implication: חומש is a real financial debt (that can be forgiven)
- i Support: if he lies about the חומש, he pays a חומש on that (next משנה)
- ii Support: heirs pay חומש for father's theft
- iii Contradiction: son doesn't pay חומש for father's theft
- 1 Resolution (ר"ג): doesn't pay if there was no admission
- (a) Challenge: if there was no admission, shouldn't pay קרן either
- (b) Suggestion: perhaps that is the intent – doesn't pay קרן or חומש
- (c) Rejection: if so, why discuss exemption from חומש exclusively?
- (d) Additionally: הונא ר' explicitly taught that son is liable to return קרן
- 2 Answer: only the son admitted
- (a) Challenge: if so, son should pay 1/5 for his own (earlier) false oath
- (b) Response: if the גזילה is no longer around
- (i) Block: if so, there's nothing to return
- (ii) Answer: father left אחריות נכסים on his property, obligating heirs to pay any outstanding debts
1. Challenge: אחריות is an oral obligation – which cannot be seized from heirs
2. Answer: there had already been בדין –
3. Block: if so, should have to pay חומש
4. Answer1: no payment of 1/5 on denial of debt of קרקע (which is what they would have had to pay)
5. Answer2 (רבא): גזילה was still around, but father didn't know that it was in another's possession – his oath wasn't false and there was no liability for חומש