

21.1.03; 4a (אלא כי איתמר) → 5a (ורג מחייב)

1. על, ל, בר, ע על, ור על חמור על, ה על, לקה על, ל אבדה א, ר יאמר, יה א זה עד האלהים יבא, בר, גיהם א, ר יך, יען אלהים, גים לרעה: שמות כב,ח.

I Continued discussion of ר' חייא ruling –

- a Reinterpreting the support from our משנה as relating to a different ruling of ר' חייא – “הילך דר' חייא”:
- i If: A claims that B owes him a מנה and B admits to ½ and offers it to him on the spot – “הילך” – still בשבועה חייב
- ii Support from משנה: in our case, his holding on to ½ is akin to הילך and he is still liable for an oath
- iii Dissent (ר' ששת): in such a case, הילך is פטור
- 1 Reason: the 50 to which he admits is as if the מלוה already has them and the לווה denied any debt
 - 2 Challenge: our משנה;
 - (a) Answer (ר' ש): our משנה is a unique תקנה חכמים (per יוחנן)
 - (b) Response (ר' חייא): חכמים wouldn't have made a תקנה unless the תורה obligated in a similar case
- iv Challenge: if a שטר states (e.g.) דינרין (in the plural) and the מלווה claims it was 5 and the לווה – 3
- 1 משב"א: since the לווה was מודה במקצת, he must take an oath to the rest
 - 2 ר"ע: לווה is considered אבדה משיב (since דינרין would've only obligated him to pay 2 and he admitted to 3)
 - 3 Version #1 of the challenge: from רשב"א (to ר' חייא)
 - (a) inference: only because he volunteered “3” must he swear; had he agreed with “2”, he'd be exempt
 - (i) Even though: he admitted to the validity of the שטר, akin to הילך → הילך פטור
 - (b) Defense: even had he said “2” he'd be חייב; “3” was picked to counter ר' חייא considering him משיב אבדה
 - (i) Challenge: why does רשב"א argue that “since he was מודה במקצת he must swear”? He should've stated “even this one must swear” (to counter ר"ע)
 - (ii) Rather: 2 is certainly פטור, but הילך חייב,
 - (iii) Explanation: if he admits to “2”, the שטר supports him;
 - (iv) Alternatively: denying the amount in the שטר is denying a debt related to קרקע → שבועה no
 - 4 Version #2 of the challenge: from ר"ע (to ר' ששת)
 - (a) Inference: only because he admitted to “3” is he exempt as משיב אבדה; had he said “2” he'd be חייב
 - (i) And: confirming the validity of the שטר is akin to הילך; nonetheless he is חייב
 - (b) Defense: even had he said “2”, he's still be exempt; “3” was picked to counter רשב"א who considers him משיב אבדה (and פטור) rather, he is considered משיב אבדה (and חייב);
 - (i) Support: were he to be liable if he said “2”, he would lie and say “3” to exempt himself
 - (c) Summary: ר' חייא is challenged here
 - (d) Defense: this case is different, as the שטר supports him
 - (e) Alternatively: denying the amount in the שטר is denying a debt related to קרקע → שבועה no
- v Challenge (ר' ששת's son):
- 1 If: the תובע claims כלים וקרקע & the נתבע admits to all the כלים, or some of all of the קרקעות – exempt
 - 2 However: if he admits to some (but not all) of the כלים – חייב
 - (a) Implication: he's only exempt in those cases because an oath cannot be taken on קרקע
 - (i) But: if it were כלים and כלים that were “like” קרקע, he'd be liable
 1. Suggested meaning: הילך (just like קרקע is always present and available) → הילך חייב
 - (b) Rejection: inference is incorrect; in such a case, he'd still be exempt
 - (c) Rather: כלים וקרקעות is teaching that if he is liable (for admitting to some of the כלים), he is now liable to swear regarding the land as well
 - (i) Challenge: we have already been taught that מטלטלין can “drag” קרקע into an oath (קידושין א:ה)
 - (ii) Answer: it is just being taught incidentally here (in קיד', it is an explicit ruling)
- vi Note: according to ר' ששת, why does text need to exclude קרקע from oaths – הילך is קרקע all
- 1 Answer: in case he harmed land (dug holes etc.) or (in our case above) he admitted to כלים but not קרקע
- vii Challenge: רב"ה ruled that שומרים must deny part and admit to part for liability for שבוות השומרים
- 1 Suggestion: doesn't this mean that he says הילך (the part he admits – he hands over)
 - 2 Rejection: case where (e.g.) the claim is for the 3 cows entrusted; response is that 1 להד"ם, 1 died באונס and the other died due to neglect and he owes for 1. (הילך no)

II Challenge to ר' חייא's earlier ruling: בריתא directly disagrees, citing v. 1 (defense: ר' חייא is also a תנא and may disagree)

- a Positions: בריתא reads הוא as including במקצת and זה as excluding עדים
- b But: בריתא reads הוא as including במקצת and זה as requiring הטענה
- i בריתא agrees with ר' ג' who doesn't require הטענה; if A claims חטה and B admits to שעורים – חייב