

21.1.04; 5a (ההוא רעיא) → 6a (ממון איתיה בחזרה שבועה ליתיה בחזרה)

1. לא תקל ל חר ולקמי ער לא ת. נמק ל וראת. אלהיך אני: וקרא פרק יט פסוק יד  
 2. לא תחמוד. ית רעה ס לא תחמוד א. ת רעה ועב ו ואמתו ו ורו וחמרו וכל א. ר לרעה: שמות פרק כ פסוק יג

## I Conclusion of analysis of חייא 'ר's first ruling

- a *Story*: a shepherd was accustomed to being given his sheep in front of עדים; one day, he was entrusted them without עדים and denied that he ever got them; witnesses testified that he had eaten (used) two of them
- i *Ruling (זריא)*: if we accept חייא 'ר's 1<sup>st</sup> dictum, he must take an oath, denying liability for the rest of the sheep
- ii *Challenge (אביי)*: the shepherd is a גולג and cannot swear
- iii *Response (שכנגד)*: the owner ר' זריא should take the oath
- 1 *challenge*: even w/o חייא 'ר, owner still takes oath, as per ר"נ - someone who denies all takes a שבועת היסת
  - 2 *response*: חייא 'ר's ruling is a תקנה (based on a חזקה that no one makes a claim without some substance to it
  - 3 *and*: we won't make a תקנה tacked on to a תקנה
- iv *challenge to אביי*: why deny him the oath because of his lie here; he is a רועה, who is automatically פסול לשבועה
- v *answer*: he is only פסול in re: his own animals, ולא לו - דאין אדם חוטא ולא לו - but for others, he is (otherwise) a valid עד.
- 1 *Proof*: else, we couldn't give him sheep to watch, as we would violate v. 1 (לפני עיור)

## II Analysis of oath administered in our משנה – each swears that he owns no less than ½

- a *Question*: is he testifying about the half that he is holding or the other half?
- i *Answer (ר' הונא)*: meaning of oath is "I have a claim on it, and my claim is no less than 1/2"
- 1 *Why not*: have him swear to what he claims? (all is his)
    - (a) *Answer*: he won't be given the entire thing
  - 2 *Why not*: have him swear to what he will receive? (half is his – חציה שלי)
    - (a) *Answer*: he hurts his own claim (backing down from "all")
  - 3 *Challenge*: in our formulation, he also harms his own claim
    - (a) *Modified meaning*: he still claims all; but concedes that according to ב"ד, he has ½, and according to them he still has a claim and has no less than ½ of it
  - 4 *Question*: since each is equally enabled as possessor, why make them swear?
    - (a) *Answer*: as per ר' יוחנן – this oath is דרבנן, to protect against opportunistic "grabbers-on"
    - (b) *Challenge*: if he is suspected as a "grabber" (quasi-thief), why should we allow him a שבועה?
      - (i) *Answer*: suspicion of misappropriation does not generate suspicion of lying under oath
        1. *Proposed proof*: application of שבועת מודה במקצת to one who is suspected of lying about debt
          - a. *Counter*: that שבועה is as per רבה and he is essentially "honest"
          - b. *Proof*: ר' חסדא - if one denies a חסדא-debt he's כשר לעדות (but not if he denies פקדון)
        - (c) *Challenge*: רב"ח's ruling - all שומרים, to be liable for שבועת השומרים, must deny part and confirm part
          - (i) *Why*: don't we apply their suspicion re: שבועה to ממון and disallow the oath? (see above חסדא ר')
          1. *Answer*: he is also just evading, trying to find the גנב or the פקדון itself which he'll then return
            - a. *Challenge*: why did ר"ח rule that לעדות פסול לעדות?
            - b. *Answer*: that's only true if witnesses testify that the פקדון is in his domain (and he's aware of it) - or that he has it in his hands
        - (d) *Challenge*: ר' הונא's ruling that a שומר who pays for lost פקדון must take an oath that it's not in his possession – why don't we say השבועה על חשוד על הממון חשוד על השבועה?
          - (i) *Answer*: he rationalizes it since he's paying (doesn't consider himself a רשע → not אשבועה)
          1. *Challenge*: he violates לא תחמוד (v. 2)
          2. *Answer*: people think that it's only a violation if they don't pay up, doesn't consider himself...
        - (e) *Challenge*: רב"ח's ruling that a כופר בכל must take a שבועה דרבנן ("שבועת היסת")
          - (i) *Additionally*: in case in ד: שבועות where both חנוני and שכיר swear and collect from בעה"ב
          - (ii) *Additionally*: ר"ש's ruling that a שומר takes 3 oaths – didn't neglect, didn't harm, not in his רשות
        - (f) *Conclusion*: we do not accept notion that חשוד על הממון is considered חשוד על השבועה
        - (g) *Alternative to ר' יוחנן (אביי ר')*: we're concerned that one of the two has an older debt on the first and has seized the טלית for that purpose
          - (i) *Counter*: if so, we should take it without an oath (since the oath will be a lie)
          - (ii) *Rather*: perhaps he has a ספק מלווה (he doesn't remember) on the other fellow
            1. *Challenge*: if he'll grab the טלית out of doubt, why wouldn't he take an oath out of doubt?
            2. *Answer*: people are more in awe of a שבועה, since it can't be retracted (money can be returned)