

21.1.09

11a (משנה 27) → 12a (שאני מתולגל דכמונח דמי)

1. י תקצר קצידו ב. ו. ו. עמר. ו. ו. לא ת. ב לקח ו. ל. ל. תום ו. ל. מנה ינה למען יברכה ה' אלהיך. כל מע. ה. ידך: דברים פרק כז פסוק יט
 2. י תכה לע. ר. את. ל. מע. ר. ב. תד. נה. ה. ל. י. ת. נ. ה. ע. ר. ו. נ. ה. ל. ל. ל. תום ו. ל. מנה ו. כל. ב. ערדך ו. בע: דברים פרק כז פסוק יב

I קנין חצר: משנה 27

- a *If*: he saw people chasing a מציאה (through his field), e.g. a lame deer or birds that don't yet fly
 i *And*: he declared that he wants his field to generate acquisition for him – valid
- b *However, if*: he saw people chasing a deer running as usual or birds that fly – this declaration isn't valid
 i *Limitation (שמואל)*: only works if the owner is standing near his field
 1 *Challenge*: why can't his field generate the קנין without his presence
 (a) *Support*: חצר חנינא – ר' יוסי בר חנינא generates קנין without awareness of the owner
 2 *Answer*: this is only true in a חצר המשתמרת; in our משנה, it is a חצר שאינה משתמרת – must be present
 (a) *Source*: v. 1 implies that if the farmer was away from his field and then remember and עמר
 (i) *Even if*: he forgot the sheaf and then remembered it, it is still considered שכחה
 (ii) *As opposed to*: on the field, it is only שכחה if he was never aware of it
 1. *Reason*: if he is standing there, his חצר is קונה; but if he is away, his חצר (שאינה משתמרת) isn't קונה
 2. *Challenge*: perhaps that's just Divine fiat
 3. *Answer*: לא תשוב לקחתו expressly includes שכחה in the city (so it's not excluded as גזרת הכתוב)
 a. *Challenge*: that's needed to express the לאו
 b. *Answer*: לאו could've been stated without לא תשוב
 i. *Challenge*: still needed to define parameters of שכחה – only if it involves retracing steps
 4. *Answer (רב אשי)*: רב"ה establishes שכחה even in the city
- 3 *Support*: עולא and רב"ה agree that חצר שאינה משתמרת is only קונה if the owner is standing there
 (a) *Challenge (עולא to ר' אבא)*: story of ר"ג יהושע, ר"ג ר"ע and ר"ע on the boat, he rented them space and gave them מעשרות that were there - to ר"ג as מעשר ראשון and to ר"ע for the poor (מע"ע)
 (i) *Note*: neither ר"ג nor ר"ע were standing alongside ר"ג's granary
 (b) *Response (to challenger, after leaving without an answer)*: ר"ג gave them the goods via אגב
 (i) *Reaction*: ר' אבא didn't accept the answer
 1. *Explanation (רבא)*: he was right – they could've used a סודר for חליפין
 a. *But*: they didn't, since טובת הנאה (that right the owner has to choose to which להן, which לוי and which עני to give מעשרות) isn't sufficient ממון for חליפין
 b. *Similarly*: טובת הנאה is insufficient for אגב
 c. *Rejection*: חליפין look like transaction, but מתני"כ require a gift (נתינה – v. 2); אגב is a proper נתינה
 (c) *Rather (ר"פ)*: in this case, we have דעת מקנה who is gifting it – no need to be standing near the חצר
 (i) *Proof*: our משנה, interpreted by ר' יוחנן as a case where he could catch up with the deer or birds
 1. *And*: ר' ירמיה asked if the same applies to a gift, and answered in the negative, since there's דעת מקנה
 (ii) *Challenge*: in the case of גט, where there is דעת מקנה (husband) and she must, nonetheless, be standing near her חצר
 1. *Defense*: in that case, it works without her consent
 a. *Challenge*: ק"ו that the דעת מקנה should be sufficient and she shouldn't need to stand there
 (d) *Rather (רב אשי)*: חצר is an extension of יד but no worse than שליחות
 (i) *Therefore*: in the case of גט, (חוב) - we need her consent (presence); in case of מתנה (זכות) – no need
- c Revisiting ר' ירמיה's question about מתנה and his answer – no need to be able to catch up with it
 i *Q.רבא*: if he threw a money pouch through one door and out the other, is the house קונה (חצר)
 1 i.e.: is it considered to have come to rest?
 (a) *Suggested answer*: from ר' ירמיה's response about the gift – no need to catch up with it
 (b) *Rejection (רבא)*: in that case, it is rolling::at rest; unlike this case, where it is in the air all the time