

21.1.12; 14b (דאמר ליה לא יהיה לך פרועון אלא מזו) → 15b (איתמר המוכר שדה לחברו)

- I Discussion: If A sells land to B, who then improves it; but we learn that A had stolen the land from C and C reclaims
- a רב: A pays B both the purchase price and his appreciation
- b שמואל: A only pays the purchase price
- i Question asked of ר' הונא: what if A stipulated that he would recompense for appreciation if seized?
- 1 דב הונא wasn't sure; perhaps since it was stipulated, it is paid,
    - (a) Or: The purchase funds are (retrospectively understood as) a loan and surplus appears to be בית גזלה
  - 2 ד'נ quoted שמואל as applying the ruling even to this case
    - (a) Reason: since the land was never A's, the stipulation was meaningless
    - (b) Challenge (דבא): we don't pay פירות, שבח, or food allowance for wife/daughters from משועבדים (תקה"ע)
      - (i) Implication: we do pay for שבח (etc.) from בני חורין
      - (ii) And: ruling must refer to a case of גזילה → payment is made for שבח
        1. Challenge: perhaps the ruling is in re: בעל חוב (but not גזלן)
        2. Rejection: list includes פירות, which do not go to a בע"ח (as per שמואל's dictum)
          - a. Block: perhaps פירות is only in re: גזלן, but שבח is in re: בע"ח (no שבח in case of גזלה)
    - (c) Challenge (דבא): ruling that שבח קרקעות is taken, in case of גזלה, from ב"ח only (ממשועבדים)
      - (i) Explanation: must be referring to לוקח, as גזלן certainly has no claim of collection on anyone
      - (ii) Rejection: it could be explained (again) as a case of a בע"ח seizing property
    - (d) Challenge (דבא): parallel ברייתא in re: אכילת פירות (which do not go to בע"ח → must be מקח ומגילה)
      - (i) Answer (דבא himself): case – stole a field filled with פירות, ate them and destroyed field
        1. When: גזלן collects קרן (can't take field) – even from משועבדים; פירות – only from בני חורין
      - (ii) Answer (דבא ב"ר הונא): case – it was seized by thugs after גזלן took it and targeted מסיקין
        1. When: גזלן collects קרן (land unavailable) – collects from משועבדים; פירות from ב"ח
        2. Analysis: בעין רבב"ה (not מסיקין); בדין רבא - הרי היא יוצאה מתחת ידו (not destroyed)
        3. challenge: for both רבא and רבב"ה it is אפה על פה (השבת הגזילה) – no collection from משועבדים
          - a. Answer: case was already adjudicated only for קרן (plaintiff generally addresses first)
      - (iii) Answer (ר' אשי): ruling is split – if he stole field filled with פירות, spent them and sold field
        1. Buyer: collects purchase price from משועבדים; Victim: collects פירות from בני חורין only
    - (e) Challenge: שמואל instructed the סופרים to consult a seller if he wanted to include שבח ופירות
      - (i) Implying: that a buyer from a גזלן can recover שבח (can't be from בע"ח, as he has no פירות)
        1. Answer (ר' יוסף): case where גזלן has land and he will repay with it (won't look כרבית)
          - a. Challenge (אב"י): prohibited to borrow מטלטלין from מטלטלין if לויה (=גזלן) has land
          - b. Answer (ר' יוסף): that's only true for a loan; this is a sale
        2. Answer (ר' יוסף): case where there was הקנאה on the land
          - a. Challenge (אב"י): prohibited to borrow מטלטלין from מטלטלין if there is a הקנאה
          - b. Answer (ר' יוסף): that's only true for a loan; this is a sale
- ii Revisiting שמואל's ruling that a בע"ח has no claim of שבח
- 1 Support (דבא): from wording of שטר מכר, where seller agrees to "clean up" any problems with the land, including relating to the work involved (יציאה) and improvement (שבח)
    - (a) challenge (דחב"א): if so, is a מתנה stronger (no such wording in a מתנה → no such rights of גבייה)
    - (b) answer: indeed, a מתנה is stronger
  - 2 observation (ר'נ): שמואל supports ברייתא but ר' הונא interprets it differently
    - (a) if: X sells a field and it is being seized by the court, "he" collects קרן from משועבדים and שבח from ב"ח (גזלן שבח from גזלן)
      - (i) ד' הונא interprets it as a case of buying from a גזלן (he maintains that גזלן collects שבח from גזלן)
- iii ברייתא: A sells land to B who improves it and בע"ח of A seizes it;
- 1 if: improvement is more than his expense, he collects differential from A and expenses from בע"ח
  - 2 if: expense is greater, he can only collect value of expense from בע"ח
  - 3 analysis: שמואל cannot explain this as being about בע"ח (who always collects שבח) or גזלן (who doesn't)
    - (a) answers: גזלן – if גזלן has land or sale had הקנאה; or בע"ח and the שבח was "ready to go" – akin to פירות
      - (i) block: in practice, שמואל has בע"ח collect even ripe crops
    - (b) Answer2: if he is collecting an amount equal to land and appreciation – keeps all
      - (i) Note: only acc. to מ"ד allowing לוקח to block בע"ח from seizing if he has \$\$\$ with which to pay him off;
      - (ii) However: according to opposing מ"ד, לוקח should be able to say to בע"ח: if I had the money, I could've kept you from collecting; now, at least leave the part of the land that I appreciated
        1. Answer: in this case, the land was made an אפוטיקי; לוקח couldn't have paid off בע"ח against his will