

21.1.13; 15b (הכיר בה) → 16b (אי נמי - מפשיטי דספרא זייר ליה)

7. וְעַתָּה יֵרָא וְהָיָה לְמַעַן יֵיטֵב לְךָ בְּאֵת וְיָרָא אֶת הַרְצָה הַבְּהָא רַגְלֵי עַד יְדוּד לְאַבְתִּיךָ: דְּבָרִים פֶּרֶק וּפְסוּק יח

- I 2nd dispute רב/שמואל – if the buyer knew, in advance, that the field he was buying was stolen
- a רב: he can recover principle (but not שבח)
- i reason: knew wasn't sale & gave money as פקדון; knowing "seller" wouldn't take פקדון, "disguised" as purchase
- b שמואל: he may not recover anything
- i reason: he knew wasn't sale & gave money as gift; knowing "seller" wouldn't take it, "disguised" as purchase
- c note: this dispute is replicated in re: מעות קידושין given to his sister
- i justification: if we only had that case, רב's position holds there because it is reasonable that he would gift his sister, but not a stranger and שמואל would agree with רב; if we only had our case, רב's position that in re: מעות קידושין, רב would agree with שמואל
- d question: according to either, how does the "buyer" begin using a field that he knows is not his?
- i Answer: he reasons that he'll treat it as did the "seller" (גולן) and will keep the פירות as מתנה or פקדון
- II Final rulings (רבא):
- a Buying from a גולן (w/o knowing it was stolen) – can recover principle and שבח (רב)
- b Buying from a גולן (knowing it was stolen) – can recover principle (רב)
- c שמואל is always assumed, even in a מכר (contra שטר מכר)
- III שמואל's question of רב: what if the גולן, after selling the field, bought it from the גולן?
- a Answer: 2nd (גולן) bought all rights – including right that his subsequent sale be valid (cannot take from לוקח)
- i Reasons: מר זוטרא: doesn't want to be called a גולן; רב אשי: wants to maintain his trust (re: sale)
- 1 Split the difference: if the buyer died in the meantime – only רב אשי's reason applies – even to לוקח's sons
(a) Rejection: even מר זוטרא's reason applies, since the sons will call him a גולן - rather
- 2 Split the difference: if the גולן dies; only concern for רב אשי's reason
(a) Rejection: they still call his children the sons of a גולן, rather
- 3 Split the difference: if his original transaction with לוקח was a gift – not a sale:
(a) מר זוטרא: can't be called a גולן, as he took nothing from לוקח when he recovers land
(b) רב אשי: still wants to maintain his trust
- b Caveat to previous ruling: if the גולן subsequently bequeaths or sells the field to another recipient – he is clearly not interested in maintaining his trust
- 1 If: the field fell to גולן as a ירושה, he's done nothing to try to maintain his trust – doesn't go back to לוקח
- 2 If: the גולן seized it for a debt;
(a) If: it was the only field his debtor (the גולן) had, no proof that he wanted to maintain trust
(b) But if: the debtor had other fields and he specifically went after that one – stays with לוקח
- 3 If: the גולן gave it to him as a מתנה – dispute ר' אחא/רבינא
(a) Could be: since he didn't trouble himself, should be like ירושה (doesn't go to לוקח)
(b) Or could be: since he had to work to appease גולן to give it to him – goes to לוקח
- 4 Note: he only wants to maintain trust until העמדה בדין, or אדרכתא is written or הכרזה (of seizure) begins
(a) Explanation: after that point, he's shown that he isn't concerned with maintaining his trust
- IV רב's challenge to רב's ruling that the לוקח recovers principle – the only vehicle of קנין is the שטר – which is worthless
- a רבא – in this case, the לוקח trusted the גולן/מוכר and that הנאה generates the קנין
- b Challenge (ר' ש): if someone sells futures in his inheritance or what his fishing nets will bring – no sale
- i However: if he sells what his father will bequeath him "today" or what his nets will yield "today" – valid
- ii Implication: may not sell futures
- iii Response (רבא): there, buyer doesn't rely on futures; here, לוקח does repond (ר' יוסף vs. ר' אביי replicate dispute)
- 1 Note: reason that "today" is valid is דרבנן, to honor father (who is dying today) or for necessary livelihood
- V רב's ruling on selling futures: if A says to B that a particular field he plans to buy he is now selling – valid
- a Note: follows ר"מ, who allows for דבר שלבע"ל – even if he points to a particular field (akin to a specific woman)
- VI שמואל's ruling about finding הקנאה: שטרי חטאתא ואדרכתא return to owner; there is already a שעבוד and if it had been paid, he would've torn it up
- a Support from ר' ינאי's memory of שמואל's instructions to his father, a סופר; and ruling that חוזרים ב"ד מעשה ח"ד חוזרים כל מעשה ב"ד חוזרים
- i Challenge (ר' זירא): that ruling is in re שטרי חטאתא ואדרכתא, which aren't subject to פרעון
- ii Block (רבא): they are subject to פרעון, as an appraisal of ב"ד can be reversed (for 12 months – or forever)
- b Rather (רבא): it's returned, since debtor should've torn it up; in case of בע"ח, perhaps had to wait until שטר was produced
- i Note: field only returned due to consideration of v. 1 -