

21.2.6

25b (משנה ג) → 26b (ומשכחנא מידי) (כי היכי דנפול מינאי דידי - הכי נפול מאיניש אחרינא, ומשכחנא מידי)

1. לא תעשק את רעך ולא תגזל לא תלין פעלת שכיר אתך עד בקר: ויקרא פרק יט פסוק יג
 2. לא תרצה את שור אחיך או את שיו נדחים והתעלמת מהם השב תשיבם לאחיך: דברים פרק כב פסוק א
 3. וכן תעשה לחמרו וכן תעשה לשמלתו וכן תעשה לכל אבדת אחיך אשר תאבד ממנו ומצאתה לא תוכל להחזיק: דברים פרק כב פסוק ג

- I **מסנה ג**: finding in abandoned circumstances - finder may keep
- a *If*: he finds a **מצויאה** in an old wall or under a pile of rocks – may keep
- i *Reason*: he may claim that it is ancient and belongs to **אמוריים** – but only if it is truly old and (e.g.) rusty
- b *If*: he found a **מצויאה** in a new wall
- i *If*: it was in the outer half – may keep
- ii *If*: it was in the inner half (towards house) – belongs to **בעה"ב**
- 1 *Note*: if it had a handle – e.g. a knife with a haft or a pouch with drawstrings – the location of the haft or drawstrings determines ownership; our **מסנה** is in re: something without a handle; e.g. cotton or a metal bar
- 2 *Note*: if the wall was filled with this **מצויאה**, finder and owner split
- (a) *Challenge*: this is obvious
- (b) *Answer*: even if wall is slanted (and we might think it fell from higher side) – still split
- iii *However*: if house is rented out, finder may always claim it – even inside the house
- 1 *Challenge*: why not assign it to ownership of most recent renter?
- (a) *Support*: status of coins found in **ירושלים** follows most recent use (**מע"ש**) (חולין, etc.)
- 2 *Answer1* (**ל"ז**): in our case, the owner rented out house to 3 **ישראלים**; one who dropped it is **מתייאש**
- (a) *Challenge*: does this mean that **הלכה כרשב"א** even when a majority (totality) are **ישראל**? *Rather*
- 3 *Answer2* (**ר' מנשיא בר יעקב**): in our case, he rented out to 3 **נכרים**
- 4 *Comeback* (**ל"ז**): owner rented out house to 3 **ישראלים**; one who dropped it is **מתייאש**
- (a) *Reason*: had he intended to return it, would've done so by now; rather, he intends to keep/steal it
- (b) *Consistency* (**ל"ז**):
- (i) *If*: he saw a coin fall from two men – must declare
1. *Reason*: owner knows that there's only one "suspect"; he can easily be accused
- (ii) *But if*: he saw a coin fall from 3 men – may keep
1. *Reason*: owner gives up, knowing that either "buddy" that he accuses will claim other took it
- (iii) *Caveat* (**ל"א**): not returning to 3 – only if less than **ש"פ** for each (3 **פרוטות**); else, they may be partners
- (iv) *Possibly*: even if there are 2 **פרוטות** – perhaps they are partners and one forgave his portion
- iv **Additional rulings of רבא**:
- 1 *If*: he took a coin before **יאוש**, intending to steal – he violates all three prohibitions in vv. 1-3
- (a) *Note*: even if he returns it after **יאוש** – that is a gift but the violations still hold
- (b) *But if*: he took before **יאוש** intending to return it; after **יאוש** decided to steal, violates v. 2
- (c) *And if*: he waited until **יאוש** and then took it, only violates v. 3
- 2 *If*: he saw a coin fall from someone into the sand and he found it and took it – no obligation to return
- (a) *Reason*: he is **מייאש**, figuring that even if someone came with a sieve to find it, he may have found someone else's that fell there