

21.3.2; 34b (מכי שלימו ימי ארוכותא) → 35b (אמר רב הונא: משביעין אותו)

1. תמות ישרים תנחם וקלף בוגדים יצדם: משלי פרק יא פסוק ג
 2. ונשית הישר והטוב בעיני ה' למען ייטב לך ובאת וירשת את הארץ הטבה אשר נשבע ה' לאבותיך: דברים פרק ו פסוק יח

- I oath: in our משנה, if the ש"ח chooses to pay, he must nonetheless swear that the פקדון isn't in his domain
- a Reason: we are concerned that he decided to keep it and pay out
- b Challenge: ברייתא dealing with a loan made with collateral and the collateral is stolen from מלווה's house:
- i Assumption: a מלווה who holds collateral is a שומר שכר → liable in case of גנבה
- ii If: the מלווה claims he is still owed, as the loan was 1 סלע and the collateral was only ½ סלע (שקל) פטור
- 1 But: if the לווה claims that the collateral was also worth 1 סלע (and the debt is fully paid) – פטור
- 2 But: if the לווה admits that the collateral was worth ¾ סלע (דינרים 3) - חייב (as there is במקצת)
- iii If: the לווה claims that he is owed, as the collateral was worth 2 סלע פטור
- 1 But: the מלווה claims that the collateral was also worth 1 סלע (and he owes nothing) – פטור
- 2 But: if the מלווה admits that the collateral was worth 1¼ סלע (דינרים 5) - חייב (as there is במקצת)
- iv Who takes the oath?: the one holding the collateral, lest the other takes the oath and he then pulls out the משכון
- 1 And then: the לווה will be invalidated as a liar
- 2 Q: which clause does this question address? Cannot be: (iii) – as מלווה is, in any case, the one taking the oath
- (a) Block: (ii) – the לווה should take the שבועה, but מפני תקה"ע רבנן said the מלווה should swear, as above
- c Explanation: if we accept הונא's ruling, if מלווה has to swear that משכון isn't there, how does he present it?
- i Answer1 (ר'בא): if there are witnesses that it was burned (then no need for הונא's oath)
- 1 Challenge: if so, how could he then pull it out and invalidate the לווה?
- ii Answer2 (ר' יוסף): if there are witnesses that it was stolen (then no need for הונא's oath)
- 1 Challenge: if so, how could he then pull it out and invalidate the לווה?
- 2 Defense: if he investigates and then finds the גנב and recovers it
- (a) Block: even if the מלווה takes the oath, the לווה can investigate, recover the משכון and invalidate the מלווה
- (b) Answer: the מלווה knows where to look (it was taken from his house) as he knows who comes in and out
- iii Alternate explanation (אב"י): he must swear so that he doesn't claim he found it after the oath
- iv Alternate (ר' אשי): both take the oath – the מלווה, that it isn't in his house, the לווה – as to the value
- 1 And: the ruling is who swears first – מלווה swears first, so that he doesn't then bring משכון and invalidate לווה
- d Suggestion: case (iii, 1) is a refutation of ר' הונא; if the לווה can make the מלווה take an oath that the משכון isn't in his property, he can tag on (גלגול שבועה) an oath about the value
- i Block (ר' כהנא): could be a case where the לווה trusts the מלווה that the משכון isn't in his property
- 1 Challenge: why, then, doesn't the לווה trust the מלווה about the value?
- 2 Answer: the מלווה doesn't know the value (it's the לווה's collateral)
- 3 Question: then why doesn't the מלווה trust the לווה about the value?
- (a) Answer: the לווה trusts the מלווה (credibility), not vice-versa, as per dialectic of v. 1
- II Story related to our משנה:
- a A man entrusted jewels with another but when he came to recover them, the שומר forgot where he had put them
- i Ruling: ר"ג – such a case is פשיעה, he ordered him to pay; but the שומר refused to pay; ר"ג ordered the שומר's house in payment; eventually, the jewels were found but their value had appreciated;
- ii Ruling: ר"ג ordered the jewels be returned as is to owner and the house returned to שומר
- 1 Challenge: רבא pointed to our משנה; if the שומר pays, he collects appreciation (כפל)
- 2 Defense: in the case of our משנה, the claimant didn't have to go court etc.;
- iii Observation: it seems that ר"ג holds that שומא דרר (seized property of לווה is returned if debt is later paid)
- 1 Rejection: this שומא was in error, as the jewels were around the whole time
- b Related discussion: return of שומא if debt paid off
- i הלכה - 2: forever as per v. 2 (נהרדעי) – אממר (of the נהרדעי) – up to 12 months; Dissent: נהרדעי
- ii Transference: if the בע"ח collects and then that land is seized for his בע"ח – no different (can be returned)
- 1 However: if the בע"ח bequeathed, sold or gave it away – cannot be returned (was accepted as land)
- 2 If: נכסי מלווה are involved (seized from woman or for woman who then is married and dies) – husband is considered a לוקח – no revocation of שומא from -or to - him. As per אושא
- iii If: לווה gave the land; אחא/רבינא if ר' אחא can recover it; either sale fully intended, or he gave the land due to כסיפותא
- iv From when: may בע"ח eat פירות? רבה – when he gets אדרכתא; אב"י – as of date on שטר; רבא – after 90 days of אדרכתא