

21.3.4

37a (משנה ג) → 38a (ולא זו אף זו קתני)

Note: our סוגיא invokes a ruling of ר"ט in יבמות טו:ז, where he rules that if there are 5 claimants on a single theft, the thief need only leave the object between them and leave; ר"ע dissents and argues that this doesn't exonerate him, rather he must pay all 5

- I משנה ג: multiple payees on one doubt based on admission of debtor
- If: someone admits that he stole but isn't sure from which of two possible victims
 - Or: he has a פקדון given him by the father of one of two possible payees
 - Ruling: he must pay both, since he admitted it of his own accord
- II משנה ד: 2 owners, one שומר, conflicting claims
- If: 2 people entrust money to 1 שומר, 1 giving 100 and the other 200 and each claims to own the 200
 - Ruling: give 100 to each and the remaining 100 remain "until אליהו comes"
 - Dissent: ר' יוסי – the liar loses nothing; rather, all 300 are held "until אליהו comes" (i.e. until liar admits...)
- III משנה ה: parallel to משנה ד with vessels
- If: 2 people entrust vessels to 1 שומר, 1 worth 100 and the other 1000
 - Ruling: give small vessel to one and sell larger, paying 1000 of it to other - remaining 900 remains עד שיבא אליהו
 - Dissent: ר' יוסי – the liar loses nothing; rather, both כלים are held עד שיבא אליהו
- IV Analysis:
- Observation: from משנה ג: we pay based on ספק and don't employ rule of מריה בחזקת מריה
 - Challenge: משנה ד – we don't have שומר pay 200 to each
 - Answer: can't challenge from גזל to פקדון; in case of גזלה, he violated law and must pay both
 - Contradiction: both פקדון and גזל are challenged:
 - משנה ג (where he pays to both) vs. משנה ד (where he doesn't pay all out)
 - Resolution: משנה ג is as if they entrusted him in separate packages and he should have noted who gave 200
 - But: משנה ד is as if they entrusted him in one package and they didn't bother to identify who gave 200
 - משנה ג (where he pays to both) vs. יבמות טו:ז (where, לר"ט, he places one גזלה among them and leaves)
 - Note: our משנה follows ר"ט (not ר"ע), since ר"ט explicitly concedes in the case of our משנה
 - Resolution: יבמות טו:ז follows דין (they claimed from him); in our case, he volunteers ידי שמים לצאת ידי שמים
 - Note: wording of our משנה supports ידי שמים – "שכבר הודה מעצמו"
 - Analysis: in יבמות טו:ז, each of the 5 claimed the גזלה – but what was his response?
 - רב (acc. to יהודה): silent – unlike usual silence (=admission); here, his silence reflects his doubt of the identity of his victim
 - רב (acc. to מתנה): denies each claim (but he would argue that silence= admission → חייב to each)
- Examination of ר"ע's dissent in יבמות טו:ז (see note)
 - Implication: ר"ע maintains that we seize money from a claimant in case of ספק
 - Challenge (רבא → אביי): ר"ע's ruling that in case of doubt which מוריש died first, we leave the property בחזקתן
 - Answer: in that case, both sides (son's heirs and mother's heirs) have a claim based on uncertainty (שמא); here, the claimants each maintain to be sure (ברי), but the thief is in doubt
 - Challenge: our משנה, which must be consistent with ר"ע (as ר"ט "accedes" to our ruling; he must be acceding to ר"ע, whose position our משנה represents), rules that in the case of שמא / שמא (theft from one of two), pay both
 - Answer: we've already established that in our משנה, the thief wants to be יוצא ידי שמים by paying both
- Reassessing רבא's position that if 2 פקדונות are entrusted in separate packages, the שומר must be careful to distinguish
 - Challenge: רבא ruled that a parallel case to יבמות טו:ז with animals given to a רועה – he leaves them to sort it out
 - Answer: that is a case where they placed the animals in his flock without his awareness
- Analysis of משנה ה – justification for this case, once משנה ד was taught
 - Proposal: if we only had משנה ד, משנה ה that סד"א that רבנן's position is limited there, where there is no loss
 - But: in case of vessels, where one needs to be sold – leading to loss, they would agree with יוסי ר'
 - And: if we only had משנה ה, we would think that ר' יוסי agrees with רבנן in case of money
 - Rejection: ר' יוסי's reason isn't הפסד, rather deterrence to the liar; he wouldn't accede in either case
 - Rather: both are needed for רבנן and לא זו אף זו