

21.3.5; 38a (משנה ו') → 39a (אפוטרופא לדיקוני לא מוקמינן) → 39a

1. וְהָרָה אִפִּי וְהָרָגְתִּי אֶתְכֶם בְּחָרְבַּי וְהָיוּ נְשִׁיכֶם אֲלֵמְנוֹת וּבְנֵיכֶם יְתָמִים: שְׁמוֹת פְּרָק כָּב פְּסוּק כָּב
 2. וְהִשְׁבִּיעַת תְּשֻׁמְטָנָה וְנִטְשָׁתָה וְאָכְלוּ אֲבִינֵי עֵמֶד וַיִּתְּרֶם תֹּאכַל חֵית הַשָּׂדֶה כִּן תַּעֲשֶׂה לְכַרְמְךָ לְזִיתְךָ: שְׁמוֹת פְּרָק כָּב פְּסוּק יֵא
 3. וְקָאם שְׁאוֹן בְּעֵמֶד וְכָל מִבְצָרֶיךָ יוֹשֵׁד כְּשֵׁד שְׁלָמֵן בֵּית אֲרַבְאֵל בְּיוֹם מִלְחָמָה אִם עַל בְּנִים וְרִטְשָׁה: הוֹשַׁע פְּרָק י פְּסוּק יז

I פקדון: extent of care of a משנה ו'

- a *If*: one is watching fruit of another, even if they stand to be destroyed (by mice, for example), may not sell them
- i *Reason*
- 1 *כהנא* ד' *כהנא*: a person would rather a smaller amount that is his than a greater amount of another's
 - 2 *דנב"י*: we are concerned that this fruit may have been designated as *תר"מ* on other fruit
 - (a) *Challenge* (to *דנב"י*): *שומר* may not sell it, *therefore* the owner **may** make it *תר"מ*
 - (b) *Answer*: since he may not sell it, the owner may be assured it is still there and make it *תר"מ*
- ii *Limitation* (*ר' יוחנן*, quoted by *דנב"ח*): *מח' only* if they aren't losing the customary tret; else, all agree they are sold
- 1 *note*: certainly challenges *דנב"י*; but does it challenge *כהנא* ר'?
 - (a) *Not necessarily*: ... *בקיב שלו*: may be an exaggeration and he wouldn't extend it to great loss
 - 2 *Challenge*: therefore owner may make it *תר"מ*; what if it exceeded *בכדי חסרון* and he sold it → *טבל*
 - 3 *Answer*: great loss is unlikely;
 - (a) *But*: if it happens, food is sold to *כהנים* at *תרוימה*-value
 - (b) *Challenge*: why not answer for *דנב"י* that we sell to *כהנים*?
 - (i) *Answer*: their dispute is whether it is common to have such a loss
 1. *דנב"ח*: rare; if it happens, it is slow and by that time, *בעה"ב* will have made it *תר"מ* → sell to *כהנים*
 2. *דנב"י*: common; it may happen quick and by the time *בעה"ב* designates, may have been sold
 - a. *therefore*: may never be sold, as this may lead to mistake and he'll eat *טבל*
 - (c) *challenge*: *מ' forbids* selling, even if wine goes sour etc.; *חכמים* permit selling – only to another – *ב"ד* – *בפני ב"ד*
 - (i) *parallel*: *גבאי צדקה* may not make change to himself; *גבאי תמחוי* may not buy excess donated food
 - (ii) *note*: ruling includes soured wine – more than *בכדי חסרון*
 - (iii) *answer*: even *מ' only* forbids selling if within limits; (wine (and honey etc.) won't get worse)
 - (iv) *dispute*: *מ' only* concerned about great loss; *חכמים* – even in case of small loss

b *Dissent*: *רשב"ג* – sell in presence of *ב"ד* and is considered *אבדה* משיב

i *רשב"ג* follows הלכה *ד"י* (sell)

1 *note*: according to some *אמוראים*, no need to state this, as *מ' always* follows *רשב"ג* except *ערב ציידן*, *ראיה אחרונה* & *צידן*

ii *ד"י* follows הלכה *ד"י* – (don't sell)

c *suggestion*: application of our positions to question of having an heir control land of captive relative

i *רשב"ג* would argue that we do – in order to save the property (as here, where the *פקדון* is sold)

ii *רבנן* would argue that we don't – as we don't save the *פקדון* by selling it

d *disjunct*: perhaps *רשב"ג* would disallow coming down, only allows selling to save entire fruit

i *and*: perhaps *רבנן* would allow heir to control land, but here, we don't sell as per either *כהנא* or *דנב"י*'s reason

ii *proof*: *שמואל* maintains הלכה *חכמים*, yet he allows an heir to control *נכסי שבו*

II Tangent: situations where abandoned property is opened to heir

a *If* captive – and we haven't heard he died – (if we heard he died, land is opened to heir)

i *דב*: don't allow him to control the land – he may destroy it

ii *שמואל*: allow him to control land - , since he will be credited like a sharecropper

b *challenge*: interpretation of v. 1 – that we don't allow sons to control captive father's property

i *דבא* means – they can't sell it, but they may take it over (challenged by ruling of *רש"י* in *רש"י*)

c *note*: this issue is subject to a dispute of *תנאים*:

i *if*: we heard that someone died, heirs are let on to the property; even if we hear that they are coming, he harvests

ii *but*: *נכסי נטושים* (abandoned – as per v. 2); meaning, we heard of their capture but not death – may not control

1 *Dissent*: *רשב"ג* – these are treated the same (may control)

iii *And*: *נכסי רטושים* (as per v. 3) – abandoned (we don't know whereabouts of owner) – seizer is removed from land

1 *Note*: we credit them like *אריס* (must be in re: *רשב"ג*'s opinion, that *נטושים* – but not completely)

2 *Parallel*: as we do when a man works his minor wife's land – expenses credited like a sharecropper

iv *Note*: *שמים לכולם* includes case of someone who fled due to threat to his life from authorities; *ב"ד* appoints trustee to finish harvesting his field, but then allows heir to control land

1 *But*: we don't appoint trustee permanently, as we only appoint such trustees for minors