

21.3.10; 43a (משנה יא) → 44a (סיום הפרק)

1. או מכל אֶשֶׁר יִשְׁבַּע עָלָיו לְשָׁקֵר וְשָׁלַם אֹתוֹ בְּרֵאשׁוֹ וְחִמְשֵׁתָיו יִסֹּף עָלָיו לְאֶשֶׁר הוּא לוֹ יִתְּנֶנּוּ בָּיוֹם אֲשֶׁמְתוֹ: וְיִקְרָא פֶּרֶק הַ פְּסוּק כֵּד
 2. אִם לֹא מִצָּא הַגָּנֵב וְנִקְרַב בְּעַל הַבַּיִת אֶל הָאֱלֹהִים אִם לֹא שָׁלַח יָדוֹ בְּמִלְאֲכָתוֹ וְעָהָז: שְׁמוֹת פֶּרֶק כֵּב פְּסוּק ז'
 3. עַל כָּל דָּבָר פְּשָׁע עַל שׁוֹר עַל חֲמוֹר עַל שֶׁהָ עַל שְׁלֵמָה עַל כָּל אֲבָדָה אֶשֶׁר יֹאמֵר כִּי הוּא זֶה עַד הָאֱלֹהִים: בְּבֹא דָבָר שְׁנִיָּהם אֶשֶׁר יִרְשִׁיעַן אֱלֹהִים יִשְׁלַם שְׁנַיִם לְרַעְהוֹ: שְׁמוֹת כֵּב: ח.

- I פקדון accessibility of moneys entrusted as משנה יא
- a If: given to a money-changer
- i If: untied (i.e. not sealed up), may use them → liable for any loss
- 1 אונס ד' הונא even if it was loss due to אונס
 (a) Challenge: wording of משנה is אבדו
 (b) Answer: as per רבה who interprets נגנבו – armed robbers; אבדו – lost at sea (i.e. אונס)
- 2 אונסין ד' נחמן exempt in case of אונסין
 (a) Challenge (ר'בא): what is the status of this שומר? Not שואל (exempt from אונסין) and not ש"ש?
 (i) Answer: he is a ש"ש; since he may use moneys, that profit defines him as ש"ש
- 3 Challenge (ר' הונא → ר'נ): ruling that if אבדו entrusted moneys of הקדש to moneychanger and they were unsealed, he may use them → if he used them, it is מעילה; but if he is liable for אונסין, he is a שואל and that should be מעילה even if he didn't use them
 (a) Answer: indeed, he is liable for מעילה right away; הוציא is used as parallel construction
- ii If: tied up (i.e. sealed up), may not use them → not liable for אונסין
- 1 Note: if tied with an unusual knot, מרי ר' either ruled that is like sealed, or left it as תיקו
- b If: given to אב"ב בעה"ב – may never use it → not liable for אונסין
- c Dispute re status of storekeeper: ר"מ – like אב"ב בעה"ב (may never use); ר' יהודה – like שלחני (may use if not sealed up)
- II שליחות liability for משנה יב
- a ב"ש – pays greater amount of original or current value
- b ב"ה – pays as per value at time of "הוצאה" (meaning discussed below)
- c ר"ע – pays as per value at time of claim
- i Backdoor discussion: רבה - if someone stole a barrel, originally worth 1 זוז and now worth 4;
- 1 If: he broke it or drunk it - pays 4; if: it broke on its own – pays 1
- 2 Reason: all גזלנים pay as per value at time of גזל; if he actively harmed it, pays as per current value (4)
 (a) But if: it broke on its own, value goes back to moment of theft (1 זוז)
- 3 Compare against our משנה (ב"ה) הוצאה: משנה must mean "taking out of owner's house"
- 4 Challenge: does רבה rule like ב"ש (that he would pay the greater value)?
 (a) Defense: all agree in case of appreciation; disagreement in re: חסר – ב"ש holds א"צ חסרון
 (b) Challenge: does רבה rule like ב"ש (that no חסרון needed to be considered יד שולח → באונסין)?
 (i) Defense: rather, case is where he moved barrel as a stand; dispute if מדעת
 (ii) Challenge: does רבא, who maintains הוי גזלן hold like ב"ש?
- 5 Rather: dispute is re: ownership of profit of גזלה (as per ר"מ/ר"י, where ר"מ holds entire profit goes to גזול)
- ii Ruling: שמואל – follows ר"ע – but he agrees if there are עדים as per v. 1
- 1 Dissent: ר' יוחנן holds that ר"ע disagreed even if there are עדים; v. 1 refers to ב"ד who establish liability
 (a) confirmation: ר' יוחנן was reported to rule לעולם – meaning even if there are עדים
 (i) alternatively: even if he returned it to its spot, ר' ישמעאל דעת בעלים is required for השבה
- iii dissent: רבא – רבה follows ב"ה (הלכה) – as רבא is later authority than שמואל
- III פקדון liability for (unfulfilled) intent to use משנה יב
- a If: he intended to be שולח יד, never did so and there was a loss due to אונס:
- i ב"ש – liable (v. 3) – ב"ה (v. 2), v. 3 extends liability to שליחות יד performed at his behest by his slave
- b if: he tipped the barrel and took out some and then it broke – only liable for what he took
- i דבה: only if it broke; but if it went sour, his tipping caused it and he is liable for entire barrel
- c but if: he lifted up the barrel and took out some and then it broke – liable for entire barrel
- i שמואל even if he intended to lift –
- 1 Implication: שמואל doesn't require חסרון for שליחות יד
- 2 Rejection: here, the שומר gains as all the contents serve as a base for the רביעיית he wants
- 3 Associated question (ר' אשי): does the same apply to a pouch full of money?
 (a) Lemma1: in case of barrel, wine is only guarded with rest of wine (in barrel), but not so with coins
 (b) Lemma2: it is still more protected in the pouch – תיקו