21.4.5 47b (כיצד משך הימנו) → 48b (הא מני ד"ש היא)

וּ וְכִי תִמְכָּרוּ מִמְכָּר לַצְמִיתֶךּ אוֹ קָנֹה מִיַּד עָמִיתֶךּ אַל תּוֹנוּ אִישׁ אֶת אָחִיו: *ויקרא פרק כה פסוק יד* 2. נֶפֶשׁ כִּי תֶחֲטָא וּמָצֻלָה מֵעַל בַּה' וְכִחֵשׁ בַּצְמִיתוֹ **בְּפָקְדוֹן** אוֹ בִ**רְשִּׁיּמֶת יָד** אוֹ בְּנָזֵל אוֹ **עַשְׁק** אֶת נְמִיתוֹ: *ויקרא פרק ה פסוק כא* 3. וְהָיָה כִּי יֶחֲטָא וְאָשֵׁם וְהַשִּׁיב אֶת **הָגְּזֶלָה** אֲשֶׁר גָזָל אוֹ אֶת **הָעשֶׁק** אֲשֶׁר עָשָׁק אוֹ אֶת הַ**פְּקְדוֹן** אֲשֶׁר הָפְקְד אָתוֹ אוֹ אֶת הָאֲבָדָה אֲשֶׁר מְצָא: *ויקרא הכּג* 4. אוֹ מִ**כּל אֲשֶׁר יִשָּׁבַע עָלָיוֹ לַשֶּׁקָר** וְשָׁלָם אֹתוֹ בְּרֹאשׁוֹ וַחֲמִשְׁתִיוֹ יֹסף עָלָיו לַאֲשֶׁר הוּא לוֹ יִתְנֶנוּ בְּיוֹם אַשְׁמְתוֹ: *ויקרא פרק ה פסוק כד*

- I Dispute מה"ת re: essential קנין of goods מה"ת (Analysis of משנה ב' example of point in transaction when it is irretractable)
 - a מעות מאות, rabbis introduced משיכה to protect buyer in case of אונס to his goods after having paid (before מעות ר"י
 - b משיכה ר"ל (as per v. 1)
 - i מיד ר"י excludes קרקע from limitations of אונאה (can't be "handed over")
 - ii או קנה that is inferred from או (unnecessary)
 - 1 necessary to teach that אונאה applies to both buyer and seller
 - 2 infers both of those או קנה application to seller; משיכה teaches מיד
 - c Arguments:
 - i שנה whoever holds the משנה has control
 - 1 Supports ר"י
 - 2 indeed, ר"ש disagrees and that is the root of the dispute ר"ש indeed, ר"ש
 - 3 root of their dispute is whether to accept תקנת משיכה, ר' חסדא is for the benefit of both seller and buyer
 - (a) ר"ש doesn't accept only for benefit of seller
 - (b) חכמים accept it
 - ii Penultimate clause in משנה משרע... משרו מי שפרע...
 - 1 Supports "ר that's why there's an "אבל" (meaning, he's not legally bound to complete the sale before paying)
 - 2 the אבל is due to his oral commitment to complete the transaction
 - (a) Challenge: words alone don't generate מי שפרע:
 - (i) קונה even though a קונה a gold coin and not the inverse,
 - 1. Nonetheless: someone who doesn't stand by his word is under the imprecation of ... מי שברע...
 - 2. *However*: someone who merely doesn't complete a transaction to which he orally agreed isn't well-thought of by חכמים but there is no greater imprecation on him (i.e. not a מי שפרע)
 - (ii) Answer: an oral agreement where money has changed hands generates מי שפרע;
 - 1. But: an oral agreement without money changing hands only rises to level of אין רוח חכמים נוחה הימנו
 - d ברייתא from vv.2-3 and from a ברייתא:
 - i בסוקים. v. 2 lists עושק and תשומת יד, which are interpreted by פסוקים as variations of פקדונות:
 - משכון and he then refuses to hand it over משכון as a משכון and he then refuses to hand it over
 - 2 עשק. if the hirer sets aside a guarantee for payment to his workers and then refuses to hand it over
 - 3 Then: v. 3 (returning these things) omits תשומת יד
 - (a) Explanation: since the משיכה מלונה never took it (משיכה), there is nothing to return → משיכה קונה מה"ת
 - (i) Challenge (דבא of ד' פפא): perhaps it is included under rubric of עושק
 - 1. Case: worker received surety, then entrusted it to hirer as פקדון
 - 2. Comeback: we could posit the same with תשומת יד where the מלווה got the משכון and returned it to the לווה as a פקדון
 - a. Answer: had text restated תשומת יד, we may have said this –neither support nor defeat ד"ל
 - b. *However*: now that the text omitted it, it is support for ר"ל
 - 4 Challenge: רב the text does (allude to) a return of דיש in v. 4 (as per רב)
 - (a) Answer: but it doesn't state a return of תשומת יד explicitly
 - ii ברייתא: if someone gave a coin of הקדש to a bathouse attendant מעל
 - 1 בלן a since there are no goods for him to give (משיכה), his service has already been completed
 - (a) But: in case of barber, (e.g) no משיכה until there is משיכה of the goods
 - (b) Challenge: we find that giving coins of מעילה to barber generates immediate liability for מעילה
 - (c) Answer: that is if the barber is non-Jewish (where מעות קונות according to all)
 - (i) Support: ruling that if he gives coins to barber etc. no משיכה until מעילה resolved by ישראל vs. ישראל vs.
 - iii Challenge: מעל מעות הקדש and לוי found a ברייתא that a wholesaler who buys with מעל מעות הקדש
 - 1 א"ל's defense: those are according to ר"ש