

21.4.6;48b (אבל אמרו מי שפרע וכו') → 49b (כך תקנו משיכה בלקוחות)

Note: our סוגיא discusses an ערבון; רש"י understands it as a down payment, others understand ערבון as a self-imposed fine if buyer reneges

1. אלהים לא תקלל ונשיא בעמך לא תאר: שמות פרק כב פסוק כז  
 2. מאזני צדק אבני צדק איפת צדק וחיון צדק: ה' אלהיכם אשר הוצאתי אתכם מארץ מצרים: ויקרא פרק יט פסוק לו

- I Discussion of penultimate clause in משנה – someone who doesn't fulfill his commitment is under the imprecation of מי שפרע
  - a Dispute אביי/רבא whether it is a warning (this is what God will do to him) or a curse
    - i אביי – it is a warning; we are forbidden from cursing as per v. 1
    - ii רבא – it is a curse – v. 1 only applies to עמך
      - 1 Proof: חייא בר יוסף ר' received payment for salt but before delivery, the price of salt went up
        - (a) Ruling: ר' יוחנן told him to deliver it all (as per earlier price) or he would be under "מי שפרע"
        - (b) And: חייא ר' certainly knows that God will exact punishment from a dishonest person → must be a curse
          - (i) Challenge: how could חייא ר' subject himself to such a curse?
          - (ii) Answer: buyer gave ערבון (note); he thought that ערבון only acquires as per its value
- II Extent of קנין of an ערבון
  - a רב – he acquires as per the value of the ערבון; ר' יוחנן – he acquires the entire lot
  - b Challenge: if ערבון is given with commitments; buyer commits to forgo it if he reneges, seller to double it if he reneges
    - i אסמכתא קניא ד' יוסי conditions are valid, as per his general approach that
    - ii יהודה ד' יהודה buyer has only acquired amount of goods equal to value of ערבון
    - iii דשב"ג only if he states "let my ערבון be קונה"
    - 1 But: if he bought קרקע and paid part ("down payment"), he is קונה and pays up the rest – even after years
    - 2 Assumption: מטלטלין should be treated the same way – challenging רב
    - 3 Block: קרקע is different, as קנין כסף works directly on קרקע → ערבון gives ownership to all; מטלטלין, where he is paying to avoid שפרע מי, only effects ownership on a part equal to the value of the payment
  - c Suggestion: perhaps this dispute (רב/ר') parallels a dispute הנשיא רשב"ג/ר' יהודה הנשיא regarding a loan with collateral
    - i דשב"ג even if the collateral isn't worth the full value of the loan, שמיטה doesn't cancel the loan
    - ii דבני if the collateral equals value of loan, שמיטה doesn't attach; else, it attaches
      - 1 Analysis: dispute must be in re: the surplus of the loan (beyond value of משכון); else, why give collateral?
      - 2 And: dispute is whether an ערבון (משכון) generates קנין on entire amount or only at same value of ערבון
        - (a) Rejection: dispute is regarding the "1st half" – purpose of משכון (according to רבי) – as a reminder of loan
  - d Story: ר' paid (in advance) for flax, which appreciated; sellers came to רב: must pay amount of ערבון only
    - i Remainder: is only an oral commitment; if someone reneges on an oral commitment, he isn't considered מחוסר אמנה
      - 1 Dissent: ר' יוחנן states that one who reneges on an oral commitment is considered מחוסר אמנה
      - 2 Challenge: ר' יוסי בר יהודה interprets הין in v. 2 as per Greek for "yes", that a person's words must be honest
        - (a) Answer: that means that he can't lie or defraud – but non-fulfillment of an oral obligation isn't intended
      - 3 Challenge: ruling of מי שפרע מי against someone who receives funds and then reneges on deal
        - (a) Answer: it is a dispute among תנאים as per story of ר' יוחנן בן בון מתיא and his son, hiring workers for food
          - (i) Case: father made תנאי סעודה more explicit them → משום מחוסרי אמנה
          - (ii) Note: only valid before onset of work; else, פועלים assume that father agreed to the original תנאי
      - 4 Challenge: ר' יוחנן doesn't rule this way; he explicitly states that a promise to give a gift may be retracted
        - (a) Answer: he agrees that a small gift may not be retracted, as the intended recipient relies on it
        - (b) Support: ר' יוחנן ruled that if a לוי is promised a (small amount of) מע"ר, he may make it תר"מ on other מעשר
          - (i) Suggested block: לוי had taken it (rejected: if ישראל gives to another, 1st לוי has no claim → didn't get it)
- e Story: man paid for sesame seeds but they appreciated (before taking possession), sellers reneged & gave money back,
  - i However: buyer didn't take the money and then it was stolen
  - ii Ruling (רבא): since they offered money and he didn't take, they aren't even considered ש"ח and aren't liable
    - 1 Challenge (students to רבא): seller must accept מי שפרע מי (answer: true, either accept מי שפרע מי or deliver שימוש)
    - 2 Version: a חכם claims he was the seller, and it happened on ע"ש; since he didn't have any sesame, he told the buyer to leave it anywhere in his house and it was stolen; רבא exempted him as he wasn't "even" a ש"ח – רבא's response that seller must accept מי שפרע מי or deliver never happened (להד"ם)
- III Analysis of ר'ש"י's opinion (end of משנה) – ברייתא limits this ruling to case where seller has both money and goods
  - a But: if the storage place belong to buyer, as תקנת משיכה isn't needed here; story where buyer wanted to renege
    - i Ruling (ר' חסדא): just as רבנן made תקנת משיכה to protect buyer, they made it to protect seller (can't renege)