

21.4.8

51a (משנה ד') → 51b (אמר רב פפא בצדרוויי דיהבי ארבע למאה)

7. וכי תמכרו ממכר לעמיתך או קנה מיד עמיתך אל תונו איש את אחיו: ויקרא פרק כה פסוק יד

I אונאה: Included parties in משנה ד'

- a Applies to both seller and buyer (as per v. 1)
 - i Justification: both phrases are needed
 - 1 If: תורה only forbade seller – סד"א since he knows the price, he is warned against אונאה
 - 2 If: תורה only forbade buyer – סד"א since he ultimately has the gain (as per aphorisms), he is warned... צריכא
- b Applies to salesman as well as הדיוט
 - i Dissent: ר' יהודה states that it doesn't apply to תגר
 - 1 Q: if he is a תגר, why does this exclude him from אונאה?
 - (a) Answer1 (ר' נחמן, quoting ר' רב): referent is a middleman, who knows the prices quite well; the reason he overpaid is he knows he has a buyer at that price (+profit)
 - (i) Support: ברייתא which explains ר' יהודה's position as on account that the תגר is an expert
 - (b) Answer2 (ר' אשי): he isn't bound by the usual parameters of אונאה (1/6th); rather, if he undersells even by a bit, he may retract the transaction, since this is his livelihood
- c victim has control over procedure; if he desires, transaction may be negated, or may demand the אונאה-amount back
 - i Q: who is the author of this passage? It fits neither ר' נתן nor רבי as per ברייתא (above, נ:)
 - 1 According to: ר' נתן, there should be no alternatives (no "רצה")
 - 2 According to: רבי, shouldn't equate buyer to seller (רבי only applies it to seller)
 - (a) reaction: ר"א expresses the same confusion (doesn't know who is the author)
 - (b) Answer1 (ר' רבה): it is ר' נתן and ברייתא should read "רצה"
 - (c) Answer2 (ר' רבא): it is רבי; his ruling in ברייתא is in re: seller, here it is expanded to include both
 - (i) Support (ר' אשי): sequence of משנה, mentions buyer then seller, and explicates buyer's rights
 - 1. Proving: that seller is understood to be included, as per ברייתא

II Impact of explicit forgiveness of אונאה-strictures

- a רב – invalid, and אונאה still obtains
- b שמואל – valid, no אונאה
 - i Suggestion: רב follows thinking of ר"מ בטל – מתנה ע"מ שכתוב בתורה תנאו בטל – ר' יהודה follows שמואל; ר' יהודה תנאו קיים – ר' יהודה follows שמואל
 - ii (case: if a man gives קידושין to a woman, on condition that she has no claims of ועונה on him;
 - 1 Ruling: קידושין are valid, but ר"מ and ר' יהודה disagree if any of the conditions obtain;
 - (a) ד"מ no conditions obtain
 - (b) ר' יהודה, שאר וכסות ד' יהודה, which are financial obligations, obtain, as she may forgive those debts
 - iii Rejection: each position could be universal:
 - 1 שאר כסות ועונה even works with ר' יהודה ר"י; ר' יהודה's position is only because she knows that she has forgiven ועונה
 - 2 שאר כסות ועונה even works with ר"מ; ר"מ's position is only because there is a certain evasion of the obligation
 - iv Clarification (שמואל, ר' ענן, quoting ר' ענן):
 - 1 If: he states "you have no claim of אונאה on me", it is valid and there is no claim
 - 2 But if: he states "this transaction isn't bound by אונאה", it is invalid and אונאה still obtains
 - v Challenge: if someone sells באמנה or stipulates that אונאה doesn't attach – it doesn't attach
 - 1 Note: according to רב, that even ר' יהודה would agree with his position – there is no תנא who could author this
 - 2 Answer1 (אבוי): we must accept that רב's position follows ר"מ only; שמואל's follows ר' יהודה only
 - 3 Answer2 (רבא): we may distinguish between merely forgiving אונאה or explicating awareness of the amounts
 - (a) As per: ברייתא – rule applies to סתם, but if the seller tells the buyer that the item is worth 100 and he's selling it for 200 on condition that there is no אונאה – there is no אונאה
 - (i) Similarly: if the buyer tells the seller that the item is worth 200 and he's buying it for 100 on condition that אונאה doesn't apply - there is no אונאה

III Tangent: selling באמנה (see footnote) - where there is no אונאה

- a Selling באמנה – shouldn't sell inferior good באמנה and solid goods at market price; both are באמנה or market price
 - i But: he pays the "shipping" etc. – but not the payment for labor, as that is included; as per ר"פ's example

² Acc. to רש"י, selling "on credit"; to רמב"ן and others, means that seller informs buyer of line-items of his markup