

21.5.6

65b (משנה ג) → 67a (ולא גמר ומקני)

I ג משנה: possibility of רבית with delayed payments

- a If: he sold a field and the buyer paid part, the seller allowing him to pay when he wanted – אסור
- i Question posed: which of them eats the פירות in the meantime?
- 1 ד' הונא the seller
 - 2 דב ענן they are put in escrow (to see if buyer ends up completing the purchase)
 - (a) Resolution: no dispute; if deal was retroactive, per ר' ענן; if at point of full payment – per ר"ה
 - (b) ד' ספרא all 4 possibilities exist – both מותר to eat פירות, both אסור, seller alone אסור, buyer alone אסור
 - (i) דבא both permitted – if the seller stipulates that as he pays it, he receives that percentage of שדה
 1. Both אסור if he makes retroactive sale as of point of full payment
 - a. Note: this is contra יהודה ר', as it is צד אחד ברבית
 2. Only seller allowed: if purchase only works at point of full payment
 3. Only buyer allowed: if purchase is immediate and remainder considered a debt
- ii Related ברייתא: if he gave a house or field as collateral and the lender told the buyer that if he wants to sell it, it must be to the lender at a set price – אסור (as רבית); but if to sell at market value – permitted
 - 1 Note: this is also not per יהודה ר'
- iii Related ברייתא: if he sold a house or field stipulating that when he gets the money, he wants to buy back – אסור
 - 1 But if: the buyer agrees to let him buy back when he gets the money – מותר
 - 2 Note: this is also contra ר"י
 - 3 Explanation: in the 2nd case, the buyer willingly made the offer → מכר is valid now, later, a sell-back
 - (a) However: in 1st case, seller insisted on it → it is a loan
- iv Related story: A sold land to B w/o אחריות; seeing buyer nervous, he committed that if seized he would repay
 - 1 אממר no commitment – just “hot air”
 - 2 ד' אשי reason must be because the buyer must make that condition; here the seller did
 - 3 However: in our ברייתא, when the buyer offered to sell back the land – but the seller should have done that
 - (a) And: we explained that the 2nd case was permitted because it was done voluntarily
 - (b) Implying: that if it weren't voluntary, we wouldn't treat it as “hot air”
 - (c) Answer: in that case, we regard it as if he committed to do it of his own free will
- v Related story: a dying man wrote a גט for his wife and sighed; she promised that if he lived, she'd remarry him
 - 1 ד' זביד no commitment (פטומי מילי)
 - 2 ד' אחא מדיפתי even if it isn't מילי, she's not the one in charge of making גט תנאים
 - 3 Defense: we might have thought that he wrote the גט on condition that he wouldn't live – קמ"ל
- b But if: he lent money using a field as collateral and stipulated that if by date X loan wasn't paid, lender could seize the field – this is valid (ביתוס בן זונין) would do this, per חכמים's permission
- i ד"ה only if he stipulated at the time that he gave the money; if afterwards, only has rights to the field equal to the money he gave
- ii ד"ג even afterwards, he has rights to the whole field
 - 1 Note: ר"ג ruled, in practice, in this fashion with the ריש גלותא
 - (a) דב יהודה invalidated the שטר (ר"ג) – he must have found an error in the שטר itself
- iii ד"ג changed his mind and said that even at the time of מעות, he doesn't have rights to entire field
 - 1 Challenge (רבא): from our משנה
 - 2 Answer (ר"ג): originally accepted it because he held that אסמכתא קניא; but מניומי convinced him that ר"ג אסמכתא לא קניא – and that convinced ר"ג
 - (a) Note: מניומי must answer for our משנה
 - (b) Answer1: our משנה is per ר' יוסי (אסמכתא קניא) OR
 - (c) Answer2: in our case, he told him to “take possession as of now”

II Tangential discussion re: אסמכתא

- a **אסמכתא** is only קונה when done on the spot
 i *Challenge*: all conditions only obtain if done at the time of the קנין
 ii *Correction*: what he meant was if the lender finds the buyer during the loan duration period and says קני – it is valid; if afterwards, it isn't valid, as he is simply embarrassed that he can't yet pay back
 1 *Rejection*: even during the duration it isn't קונה; since he's simply trying to "buy time"
- b ד"פ sometimes an אסמכתא holds; sometimes not –
 i *Explication*: if the lender finds the borrower drinking beer (at the collection date) – קונה (he's already given up on trying to pay off the loan)
 1 *But if*: he's busy trying to arrange payment, not קונה
 ii *Response* (ר' אחא מדיפתי): perhaps he's drinking to calm himself down about the impending collection
 1 *Alternatively*: maybe someone else is fronting him the money
 iii *Rather* (רבינא): if he is careful about selling off his items and demands good price – קונה (he's not desperate to get cash to pay off loan)
 1 *Response* (ר' אחא מדיפתי): perhaps he's trying to keep his property value
 2 *Rather* (ר"פ): if he insists on only using this land – קונה
- c ד"פ even though we rule that אסמכתא לא קניא; nonetheless, this land becomes an אפותיקי for this loan
 i *Challenge*: the borrower didn't stipulate that he is קונה for purposes of collection
 ii *Note*: if he had said that, it would still be an אסמכתא
 iii *Rather*: the אפותיקי to which ר"פ referred – he said "no collection from any property except this one"
- d *Story*: A sold land to B with אחריות; buyer insisted on collecting from seller's עדי עדית (absolute best land)
 i *Seller*: wasn't willing to part with that, but promised to give him from עדי עדית
 ii *Then*: the seller's עדי עדית was destroyed (washed away) and the land was seized
 iii ד"פ considered allowing the buyer to seize that עדי עדית
 1 *Challenge*: he only committed to that עדי עדית because he still had better land; not anymore...
- e *Story*: ר' כהנא was owed money; borrower committed that if he doesn't pay by date X, he may collect from wine
 i ד"פ considered that אסמכתא לא קניא is limited to land, which isn't otherwise for sale – not wine
 ii דהבדל"י cited רבה – all cases of "if I don't..." aren't קונה (all אסמכתאות of that sort)
- f ד"נ since we rule that אסמכתא לא קניא, in our case if the land was given to lender, we return it with פירות
- g *Implication*: ר"נ holds that מחילה בטעות is returned
 i *But*: in re selling futures, may renege before fruit appear; ר"נ allows renegeing even after they appear
 1 *But*: ר"נ concedes that if the putative buyer takes fruit in the interim, we don't seize it from him
 ii *Defense*: that is true in the case of a sale, not a loan
- h *Recollection*: רבא tried to challenge ר"נ from אונאה and he also raised איילונית
 i אונאה is all מחילה בטעות and it isn't a מחילה
 ii איילונית is all מחילה בטעות and it is a מחילה
 iii *Rejection*: neither is relevant – in the case of אונאה, he didn't know there was מחילה! In the case of איילונית, she may wish to secure a better rep by getting married and will be מוחל her נדונייה for that
- i *Story*: woman sent an agent to buy land from her relative; the seller asked the agent if he were able to get funds would she allow him to buy it back; seller assumed she would
 i *Ruling*: in any such case (of kin), we assume that he is relying on it and hasn't fully sold the field