

21.5.8

68a (משנה ד') → 69b (ש"י)

## I ד משנה ד: prohibition of "50%-partnership"

- a *Prohibited*: to give a storekeeper goods or money and split the profits (אבק רבית)
  - i *Unless*: you pay him like a worker (Gem – פועל בטל – from that work)
    - 1 ד"מ. whatever they agree between them is a valid שכר
    - 2 ד"י. even if he only gives him a little food – that's a sufficient שכר
    - 3 ד"ש. must pay him full amount
  - ii *Justification (for "goods" and "money")*: if we only read חנווני, we would think that since he has little טירחה, it is enough to pay him בטל כפועל בטל; but if you give money, he has to go out and buy goods – need to pay more
    - 1 *And if*: we only read "money", we would think that a חנווני could be given less (e.g. a meal) – קמ"ל
- b *Similarly*: may not give chickens (for eggs) or calves (for raising) and split the profits
  - i *Unless*: you pay the rancher as a worker
- c *However*: you may make a partnership where one pays for their upkeep and the other for raising etc.
  - i *Until*: they are 1/3 grown – or a donkey, until it can carry a load

## II בריות:

- a *Limitations*: we may not make מחצית-שכר with goats or lambs or any animal that doesn't work
  - i ד' יוסי בר יהודה. permissible, since goats are milked and lambs are sheared etc. and hens lay eggs
  - ii ד"ק. they don't produce enough to warrant a full payment
    - 1 *Note*: they agree if the worker keeps the milk or shearings
    - 2 *Dispute*: if he only keeps the "run off" – ר"ש holds like ר"י (pay full); ר"י holds like his father (above)
- b *Hens*: a woman may rent out her hen to roost on eggs in return for two chicks
  - i *But*: if they agree that she keeps the hen and the other keeps the eggs and they'll split the chicks
    - 1 ד' יהודה. permitted (she does get the non-fertilized eggs as payment)
    - 2 ד"ש. prohibits (as above – requires full payment)
- c *Raising animals*: in a region where the custom is to pay the one raising them for his lifting them – we do so
  - i דשב"ג. we assess the baby with its mother – even in a place where they pay for lifting
    - 1 *Note*: רשב"ג considers the dung his payment (חכמים – they are מפקיר it)
    - 2 *Practicum (ר"ג)*: we rule like יהודה, ר' יהודה, ר' יוסי ב"ר יהודה, ר' יוסי ב"ר יוסי and רשב"ג when it comes to paying for raising young
    - 3 *Story*: ר' עיליש died and left a שטר that he had signed that partnered two for ½ loss, ½ profit (כרבית)
      - (a) דבא. he wouldn't have done that – must have been 2/3 loss or 2/3 profit
      - (b) ד' זב"ג. perhaps the lender/investor gave some food to the borrower/worker – per ר"ג (הלכה כר"י)
        - (i) *Response*: we read שיטה, meaning that the 3 חכמים mentioned have the same approach
          - 1. *Else*: why did ר"ג list the other 2 חכמים – ר"י is more מיקל
  - ii דב. if he stipulates 50/50, but that anything above 1/3 profit goes to worker – permitted
    - 1 ד' שמואל. and if there isn't more than 1/3 – will he take nothing? (he'll take 50% → רבית)
    - 2 *Rather*: he must pay a set amount to the worker
    - 3 *Question*: doesn't רב agree that he has to pay a set amount? רב would say "calf's head for fattening it up"
      - (a) *Answer*: רב gave him the choice – surplus over 1/3 or the head
      - (b) *Or*: when רב said שליש – when the worker has his own animal whom he's feeding as is
  - iii *Story*: ר"א gave his אריס an animal to fatten, giving him the head and ½ the profits. אריס decided to buy in with him on the next animal, to be able to split the tail as well; wanted head again. ר"א – only gave you the head b/c it was a מחצית שכר and looked like רבית; now no need, since we are partners.

- d **סימנס** if someone is raising an animal for another, must have it for at least 18/24 months (donkey/lamb)
- i *If*: he wants to split profits during that time, the other can withhold
  - ii *because*: the care of one year is unlike that of another
  - iii *parallel ברייתא* 30 days for דקה, 50 for גסה; ר' יוסי – ר' דקה needs 3 months as its teeth are fine
    - 1 *After that time*: he may take his half and  $\frac{1}{2}$  of the half of the other (as his payment)
    - 2 *Story*: ר' מנשיא took per this directive; came before אביי; disallowed since the owner didn't agree to split at that time; furthermore, it was a region where the מנהג is to complete the raising
    - 3 *Story*: ר"פ ruled for 2 כותים where one took his half of money - allowed it per ר"נ
      - (a) *But*: when they made a partnership with wine and he disallowed unilateral division – protested
      - (i) *Justification*: with coins, one didn't take the good ones only; but wine, some could be better
      - (ii) *Note*: ר"נ only ruled that way if all the coins were good, or deficient
    - 4 *Story*: ר' חמא would “rent” out his coins for  $\frac{1}{8}$  דינר a day; he lost all his money (as a punishment)
      - (a) *His thinking*: it was like a tool (renting it out)
      - (b) *Rejection*: a tool is returned as is; not same coins returned and he can't know if they've depreciated
  - 5 **דנא** permissible for A to pay B to lend to C –
    - (a) *Reason*: רבית only prohibited when it goes from borrower to lender
  - 6 **דנא** permissible for A to pay B to persuade C to loan A money
    - (a) *Reason*: he's paying him for his “speech”
    - (b) *Example*: from אבא מר בריה דר"פ