

21.6.1

75b (משנה א') → 77a (דאי לא עבדי חלשי)

7. אל תמנע טוב מבעליו בהיות לאל יָדָד לְעִשׂוֹת: משל ג, כ

- I 'משנה א': renegeing on hiring contracts
- a *if*: someone hires artisans and either "misleads" each other (analysis below) – only have תרועמת against the other
- b *if*: he hired workers for a time-bound job and they back out
- i *if*: he can't find other workers to hire,
- ii *then*: he may hire people at a higher fee (at their expense) or mislead original workers, offering them "more"
- 1 *examples*: shipper to bring wood or instruments for bride or for burial (both "time-bound")
- (a) *or*: workers to pull his flax out of the soaking vat
- II 'משנה ב': power position in the situation
- a *if*: the artisans back out – they are in the less favorable position – ידן על התחטונה
- b *if*: the בעה"ב backs out – he is in the less favorable position – ידו על התחטונה
- c *General rule*: the one who changes the terms is in the less favorable position – כל המשנה ידו על התחטונה
- III Analysis of 'משנה א' – הטעו זה את זה – noting use of הטעו and **not** חזרו
- a *Approach #1*: refers to workers "misleading" each other
- i *Case*: בעה"ב hires worker and asks him to hire others at 3, he tells them 4
- 1 *And*: it is a region where such work is done for either 3 or 4 (no norm)
- ii *Note*: cannot be case where "foreman" offered them *less* – if so, where is the תרועמת?
- iii *nor*: can it be case where foreman offered to pay them the higher rate on his own – then he would owe it
- 1 *possibility #1*: בעה"ב is worker – he wouldn't have done the job at the lower rate (that's his תרועמת)
- 2 *possibility #2*: פועלים – who wouldn't have worked as hard and as well (impossible to tell from their work what the quality was – e.g. digging a ditch that is now filled with water)
- iv *rethink*: perhaps בעה"ב said 3 and foreman misled them (4) – they would argue v. 1
- b *variation*: if בעה"ב said 3 and foreman misrepresented him as hiring@4 and they said "as per בעה"ב" – they mean 4
- i *but*: if בעה"ב said 4 and foreman reported it as 3 and they said "as per בעה"ב"
- 1 *Lemma1*: do they mean as per the report (3) OR
- 2 *Lemma2*: do they mean as per the real offer (4)
- (a) *Proof*: if woman sends שליח הולכה and he misrepresents himself as שליח קבלה and husband gives נט "as per her directive" – רב rules that even when it gets to her it is invalid
- (i) *Proving*: that the husband is relying on her represented statement
- (ii) *Therefore*: in our case, should owe 4
- (b) *Rejection* (ר' אשי): in this case, the שליח totally uprooted שליחות
- c *Approach #2*: refers to בעה"ב or worker changing their mind – תנא will refer to this as הטעו
- i *Proof*: ברייתא in which artisans are hired and בעה"ב is misled by them or vice-versa...
- 1 *Note*: in that ברייתא – if donkey-drivers go and find nothing to deliver, he must pay them full
- (a) ר' חייא דב ruled that he is paid בטל כפועל, as per later statement that bringing laden donkeys isn't the same as bringing unladen donkeys
- (i) *Answer*: they didn't present the entire ברייתא to רב (had they, he wouldn't have protested)
- (ii) *Alternatively*: they did, and ר' חייא would've ruled that they get nothing (their bad fortune)
1. *challenge*: how can ר' חייא reject the ברייתא
2. *resolution*: if the workers saw the territory the night before, the loss is theirs
- a. *otherwise*: they can claim that they weren't aware of the conditions
- b. *support*: רבא's ruling about hiring workers to build dam and it rained overnight
- (iii) *Parallel* (רבא): if he hired workers to irrigate and it rained –workers lose; if river overflowed –must pay
- (iv) *Parallel*: hired workers to irrigate from river and it dried up
1. *If*: it was unusual, loss is theirs; if usual and they live there, loss is theirs
- (v) *related*: if he hired workers and they finished job in mid-day
1. *if*: he has work of same or easier difficulty, he may give them; else, must pay them in full
- a. *challenge*: why not pay them (for the afternoon) as פועל בטל
- b. *answer*: this is in מחוזא (רבא's town) where if they don't work, they feel faint