

21.6.3

(אי נמי דמטו ליה זוזי ופריק לה ארבע וחמש שנין מקמי יובל) → 79a (משנה ג') 78a

1. והארץ לא תמכר לצמחת כי לי הארץ כי גרים ותושבים אתם עמדי: ויקרא פרק כה פסוק כג

I 'משנה ג': renting a donkey; circumstances that generate liability

- a *If*: he rents a donkey to take it by way of the valley and instead takes it by way of the mountain – or vice-versa
- i *Even if*: the distance is the same
 - ii *And*: it dies – he is liable
 - 1 *Reasons*: ר' יוסי בר חנינא, ר' ינאי provide "local" reasons (died due to mountain or valley air etc.);
 - (a) ר"מ ר' יוחנן attributes ruling to ר"מ:
 - (i) גזלן: anyone who violates the directive of the owner is considered a גזלן
 - (ii) *source*: ר"מ's ruling about יעני's lack of latitude in using צדקה given him for a specific purchase
- b *if*: he rents a donkey to take by way of the mountain and took it by through the valley
- i *if*: it slipped and fell – he is exempt;
 - ii *if*: it overheated – liable
- c *if*: he rents a donkey to take by way of the valley and took it by over the mountain
- i *if*: it slipped and fell – he is liable;
 - ii *if*: it overheated – exempt
 - 1 *but*: if it overheated due to the climb – liable
- d *if*: he rents a donkey and הבריקה ("hit by lightning", causing damage to eye; *or* became infested, causing paralysis)
- i *of*: was seized by king – may say to owner הרי שלך לפניך (i.e. is exempt)
 - 1 רב: only if it will eventually be returned; else, the renter must provide a new one
 - 2 שמואל: (even if it won't be returned, he is exempt) only if it was seized in the direction it was going anyway
 - (a) *Challenge*: ברייתא ruling that if seized, renter must provide a new one
 - (i) אנגריא: it is fine – that ברייתא is referring to a non-returned אנגריא
 - (ii) לשמואל: can't reconcile as referring to seized in a different direction
 1. *Reason*: רשב"א (apparently) dissents with ברייתא of ת"ק and distinguishes between הליכתה/not
 2. *Defense1*: שמואל is appropriating the position of רשב"א
 3. *Defense2*: entire ברייתא is רשב"א and distinction is built in
 - a. *Challenge*: ברייתא rules that if the animal הבריקה, exempt
 - i. *But*: רשב"א rules in such a case, if it was hired for riding, he is liable
 - ii. *Answer*: hiring for riding is different and he is liable; רשב"א could still be ת"ק of ברייתא
 - iii. *Addendum* (ר"פ): carrying glass is the same (נשטתה or הבריקה can't carry glass w/o break)

e *Tangential discussion*: liability of the owner in case his donkey dies in mid-journey

 - i *If*: the renter gets partway to destination and donkey dies
 - 1 דב: the renter must pay for ½ the journey and he has no real claim against the owner – only תרעומת
 - (a) *What is the case*: if he can find another donkey at the midway point – why תרעומת?
 - (b) *Rather*: must be a case where he cannot find one; he must pay since, to get this far, he would've had to pay
 - (i) *Note*: he must've rented "חמור זה"; if it were "a donkey", the owner would have to provide another
 1. *Question*: if חמור זה - why not sell the carcass and use that money to rent another?
 2. *Answer*: case is where there isn't enough value to carcass to rent another
 3. *But*: even if it would cover a new "rental", may not do so; רב's position – לא מכלינן קרנא
 - a. *Explanation*: in such a case, we don't expend the entire principal on a rental
 - b. *Dissent*: שמואל maintains that another one may even be rented – מכלינן קרנא
 - i. *Challenge*: trees of a field given as משכון may not be burned by either לווה or מלווה
 - ii. *Solution*: take dead wood and buy קרקע and eat its פירות
 - iii. *However*: he is מכליא קרנא of לווה
 - iv. *defense*: 60-year sale, exempt from יובל as per v. 1)
 - v. *Rejected*: when יובל comes, קרן is gone
 - vi. *answer*: time when no יובל
 - vii. *attempted support*: else, the מלוה could just cut up the wood
 - viii. *rejection*: יובל may be יובל; נהוג; concern that משכון expires or is paid off before יובל