

21.6.5; 80b (משנה ו') → 81b (מה לי לשקר במקום עדים לא אמרינן)

- I שומר חנם or שומר שכר as אומן status: משנה ו'
- a ש"ש – אומן he is a regular
 i ש"ח – But: once he's done and tells the owner to come pick it up
- b ש"ש – they agree to watch things for each other
 i ש"ח – But if: one requests that the other watch for him and he responds "put it before me"
- II Analysis:
- a ד"מ with איש רישא align attempt to
 i ר"מ maintains that a renter is like a ש"ח (ר' יהודה) (and שוכר::אומן – gets benefit of being paid for work)
 ii Defense #1: benefit that אומן gets for getting the work → ש"ש akin
 1 Block: same can be said for שוכר (benefit that owner agreed to rent to him)
 iii Defense #2: he's getting a bit more (impossible to give exactly what his work is worth) – that הנאה → ש"ש
 1 Block: same can be said about שוכר (if owner rents at a bit less than others, ר"מ still considers שוכר → ש"ח)
 iv Defense #3: he gets benefit of having item as surety against being paid (not true about שוכר)
 1 Alternatively: as per ר"ב's "flip" of the positions – ר"מ holds that ש"ש::שוכר
- b Backdoor:
 i משנה (ב"מ חג) if someone requests a שאלה be sent to him, liable as שואל from time it's picked up :: when returning
 1 ד"ח only applies if he returns it during period of שאלה; if afterwards, he is exempt (as ש"ח)
 (a) Response v1 (challenge- ר"נ בר פפא): our משנה, implying if the אומן said "I've finished" – still liable as ש"ש
 (i) Rejection: inference is if he said (rather) – "bring money and take item" – still liable
 1. But: גמרתיו – exempt
 a. Challenge: if so, why not mention גמרתיו explicitly in משנה
 b. Answer: to teach that "come take your item" is still a ש"ח (liable for פשיעה)
 (b) Response v2 (support- ר"נ פ): our משנה, including גמרתיו
 (i) Rejection: "take your money" isn't the same as גמרתיו
- ii מרימר raised contradiction between משניות, answered as per ר"ח's answer (during vs. after period)
- iii Question: in that case, where he returns שאלה after period, is he (at least) a ש"ש or "less"?
 1 הנאה אממר reasonably – should be ש"ש, as he did get הנאה
 2 Supportive ברייתא: if someone takes vessels from אומן on spec and returns them – liable as per ש"ש
 3 Possible challenge: ruling of ר"נ in case of someone who took wine on consignment, didn't find buyer and was נאנס on way back – ר"נ found him liable (as שואל)
 (a) Defense: in that case, even while returning still considered הליכה, as he may find buyer then
- c Analysis of סיפא – שומר לי ואשמור לך – ש"ש both considered
 i Challenge: in that case, the owners are present during part of the שמירה (פטור – בעלים)
 ii Answer (ר"פ): where each took a specific day to watch; on each day, בעלים wasn't present
 1 Note: this answer works for לי ואשמור etc. they become ש"ש to each other
 2 Story: aloe-workers who took turns baking for each other asked 1 to bake, which agreed to do if they would watch his cloak; his cloak was stolen and ר"פ found them liable
 (a) Challenge (students to ר"פ): this was שמירה בעלים – should be exempt (ר"פ was embarrassed)
 (b) Follow-up: turned out that "baker" didn't bake (was drunk) → no שמירה בעלים → ר"פ was correct
 (i) Note: if we hold that בעלים חייב פשיעה, he was right – why was he embarrassed? Rather
 3 Story (correct version): it wasn't his day to bake, it was stolen w/o פשיעה (held them liable as שכר שומרי)
 (a) Challenge (students to ר"פ): this was שמירה בעלים – should be exempt (ר"פ was embarrassed)
 (b) Follow-up: turned out that "baker" didn't bake (was drunk) → no שמירה בעלים → ר"פ was correct
- iii Related stories:
 1 The washed-away blanket: 2 were traveling, 1 on donkey with blanket, other by foot; when they got to river, walker took his cloak and placed on donkey, taking blanket – which got washed away
 (a) Ruling (ר"בא): liable
 (b) Challenge (students to ר"בא): this was שמירה בעלים – should be exempt (ר"בא was embarrassed)
 (c) Follow-up: turned out that the walker took the blanket w/o asking → גזלן and liable (ר"בא was correct)\
- 2 Wrong way donkey: man rented donkey, owner stipulated that he must take road A, where there is no water, and avoid road B where there is; he took road B, donkey died, but he swore that it wasn't due to water
 (a) Ruling: ר"בא – should be believed as per לשקר מה לי (could've said he took road A)
 (b) Dissent (אב"י): לשקר מה לי doesn't trump עדים (we know that road B always has water)