

21.6.6

81b (הואיל ונפיש אגרייהו וזוטר פחתייהו) → 82b (שמור לי ואמר לו)

7. השב תשיב לו את העבוט כבא השמש ושכב בשלמתו וברכך ולך תהיה אדקה לפני ה' אלהיך: דברים פרק כד פסוק יג

- I Comment on **סיפא** of **משנה** – if the **אומן** tells the owner to come pick up his item and bring money – **ש"ח**
- a **ר' הונא** – if the owner says **הנח לפניך** – he isn't even a **ש"ח** (no liability)
- i **Question**: what if he just says **הנח** – does it mean **לפני** or **לפניך**?
- 1 **Crossed implications**: from our **משנה** → no liability; from **ר' הונא** → liability (no solution from here)
 - 2 **Suggestion**: it follows **מח' תנאים** (**ב"ק**:ג:ח); **רבנן** assume permission to put in a **חצר** is **שמירה** (no **רבי** doesn't)
 - (a) **Rejection**: perhaps **רבנן** only regard it because a **חצר** is a place of **שמירה**; perhaps **רבי** only regards it not because intent is that owner will bring it in and watch on his own; if **הנח** meant "I'll watch it" no need for **רשות**
- II **משנה ז'** (presented on **פ**) – a loan with a **משכון** makes the lender a **ש"ש** for the **משכון** (**שכר** – for the **מצווה** of lending)
- a **ר' יהודה** – if he borrowed money – **ש"ח**; if he borrowed perishable goods – **ש"ש**
- i **Analysis**: our **משנה** is *contra* **ר"א**:
- 1 **ר"א**: if lender has **משכון** and it is stolen, he may take a **שבועה** (no **פשיעה**) and collect debt (**ש"ח**)
 - 2 **ר"ע**: borrower can respond – **משכון** – to cover debt; if **משכון** is gone, debt is erased
 - (a) **But**: if the loan was made **בשטר** (→ **שעבוד קרקע**), **משכון** was clearly for collection; if lost, debt erased
- ii **Suggestion**: perhaps our **משנה** comports with **ר"א**; that ruling was re: a **משכון** made at time of debt
- 1 **But**: if made at time of collection, clearly for collection and lender is **ש"ש**
 - 2 **Rejection**: both (**ברייתא** and **משנה**) use phrase **הלוהו על המשכון** → at time of debt
 - 3 **Save**: our **משנה** – when he borrowed **פירות**; **ברייתא** – when he borrowed money
 - (a) **Rejection**: from **ר"א**'s distinction between the two → **ת"ק** equates them
 - (i) **Save**: entire **משנה** may be **ר"י**, following **מיחסרא** **ר"י**,
 1. **Rejection**: then our **משנה** is *contra* **ר"ע** (of **ברייתא**)
 2. **Rather**: indeed, our **משנה** is *contra* **ר' אליעזר**
 - 4 **Suggestion**: **ר"א** and **ר"ע** disagree in case **משכון** isn't worth value of debt and they disagree whether to accept **שמואל**:
 - (a) **שמואל**: any value of **משכון** erases entire debt
 - (b) **Rejection**: no one accepts **שמואל**'s position if **משכון** is worth less than debt
 - (i) **ר"א**: lose nothing; **ר"ע**: lose as per value of **משכון** only
 - (ii) **Perhaps**: disagreement in case where it is worth the debt, whether we accept **ר' יצחק**:
 1. **ר' יצחק** acquires the **משכון** as per v. 1
 - a. **Rejection**: **ר' יצחק** only stated this in case where **משכון** is made after loan
 - (iii) **Rather**: everyone accepts **ר"א**'s ruling in case **משכון** was made later
 1. **Disagreement**: whether to regard **שומר אבדה** (with **משכון** **בע"ח**::) as **ש"ש** or **ש"ח**:
 - a. **ש"ח**: **שומר אבדה** **דבה**
 - b. **ש"ש**: **שומר אבדה** **ד' יוסף**
 - c. **Suggestion**: is **ר"א**'s position dependent on **מחלוקת תנאים** (**ר"א**/**ר"א**)?
 - d. **Rather**: everyone accepts **ר' יוסף**
 - e. **Dispute**: whether to regard a loan, where **בע"ח** took a **משכון** that he will use as a **מצוה**
 - i. **ר"ע**: it is still the **מצוה** of **הלוואה**
 - ii. **ר"א**: he's benefiting himself (to use **משכון**) – no **מצוה** → not **ש"ש** (no **שכר מצוה**)

b **אבא שאול**: a lender may rent out the **משכון** of a poor man that he is holding and have the debt decrease with use

i **Note**: **הלכה כא"ש** and he only applies it to items which bring in significant rent and have little depreciation (e.g. tools)