

21.8.2

95a (האי אורחיה דקרא הוא) → 96a (איתמר פשיעה בבעלים)

1. וְכִי שָׁאֵל אִישׁ מֵעַם רְעוּהוּ וְנִשְׁבַּר אוֹ מֵת בְּעֵלְיוֹ אִין עֵמוּ שְׁלָם וְשְׁלָם אִם בְּעֵלְיוֹ עֵמוּ לֹא יִשְׁלָם אִם שְׁכִיר הוּא בָּא בְּשִׁכְרוֹ: שְׁמוֹת כּבִּי-יִגִיד

- I רב אחא/רבינא – if the שואל was neglectful while the owner was working with him; dispute
- a 1: liable – since מקרא נדרש לפניו but not לפני פניו (→ rules of שואל can be applied back to ש"ח, but not all the way back to ש"ח)
- i Therefore: there is no exemption of עמו בעליו in re: ש"ח; פשיעה inferred from ש"ח via ק"ו
- b 2: exempt – since מקרא נדרש לפניו ולפני פניו (→ rules of שואל can be applied to ש"ח as well)
- i Therefore: exemption of עמו בעליו applies to ש"ח as well
- c Challenge: our משנה omits ש"ח from the exemption of עמו בעליו
- i Counter: it also omits ש"ח –
- ii Rather: it only mentions the case of the explicit exemption (שואל)
- 1 Challenge: בריתא which lists שוכר along w/ שואל & omits שוכר – & allows for owner to be engaged אחר במלאכה במקום אחר
- (a) Answer1: follows ר"מ, who equates שוכר with ש"ח
- (b) Answer2: (if we prefer to have בריתא סתם follow ר"י) follows ר"י, as per רבא's inversion (ש"ח=שוכר)
- II בעליו עמו re: exemption of המנונא
- a Unless: the owner is plowing with the ox itself or leading the donkey itself, the שואל is liable if it dies
- i And: the owner must have been with the animal from the moment of borrowing until the injury or death
- ii Inference: he maintains that עמו בעליו applies to the entire passage
- 1 Challenge (רבא): בריתא (above) – even if the owner isn't with the animal, he is exempt
- (a) Answer: means – with animal at work, but animal is a few steps behind him
- (b) Challenge: of סיפא (parallel to סיפא of our משנה) has owner "atop" animal → רישא is אחרת
- (c) Defense: both are מלאכה, אותה מלאכה, each teaches a context-appropriate חידוש
- (i) רישא: even though the owner isn't atop the animal, since he's engaged in the same מלאכה – exempt
- (ii) סיפא: even though the owner is atop the animal, since he came after the שאלה, liable
- (d) However: חידוש is only meaningful if רישא is אחרת
- (e) Additionally: בייתות, interpreting v. 1 - if owner was there at שאלה, doesn't need to be there at time of injury
- 2 Rejection: of המנונא – (in both – owner need not be there at time of injury/death, nor working in same מלאכה)
- III ר' יאשיהו/ר' יונתן interpreting v. 1 according to רבא
- a רבא uses יאשיהו's approach, understanding all terms in the verse as indispensable:
- i בעליו אין עמו – liable; implying the owner's absence for the full gamut → if the owner was there for any part, exempt
- 1 Then: אם בעליו עמו – implying that the owner had been there for the entire process → if gone for any, liable
- 2 Conclusion: if the owner was there at time of שאלה, no liability even if gone at time of injury; not the inverse
- b רבא uses יונתן's approach, understanding each term as independently significant
- i אם בעליו עמו לא ישלם – implying that the owner was there for any part of the process, but
- ii אין בעליו עמו – implying that the owner was gone for any part of the process
- 1 Conclusion: if the owner was there at time of שאלה, no liability even if gone at time of injury; not the inverse
- c Challenge: why not invert (in both) the application, and require owner to be there at time of injury
- i Answer: שאלה is more significant, as that generates the essential liability of care for the animal
- ii איש מעם רעהו: ר' אשי – borrowing "away from" owner generates liability
- 1 Question: if so, why write עמו בעליו אין עמו?
- 2 Answer: without those phrases, we would have understood מעם רעהו as the colloquy of the תורה – קמ"ל