

21.8.3

(לסוף אינלאי מילתא דלמיסר טעונה הוא דנפק) 97a → (בעי רמי בר חמא) 96a

.1 . כל גדר וכל שבעת אסר לעזת נפש אישה קימנו ואישה זכרנו: במדבר פרק ל פסוק יד

I רמי בר חמא's questions:

- a Series of questions regarding definition of שואל and בעלי עמו
- i If: he borrowed the animal for bestiality, is it considered שאלה?
- 1 Lemma1: must be "normal" borrowing OR
 - 2 Lemma2: the liability derives from the הונאה the שואל gets –
- ii If: he borrowed it to show off (giving the impression he is rich), is it considered שאלה?
- 1 Lemma1: there must be some value – which exists OR
 - 2 Lemma2: there must be some value of which he is getting (tangible) benefit
- iii If: he borrowed it to perform work valued at less than a שווה פרוטה – is he liable for אונסין?
- 1 Lemma1: there must be some value to the benefit – which exists, OR
 - 2 Lemma2: anything less than ש"פ is not considered ממון at all
- iv If: he borrowed two cows to perform work which totals ש"פ in value –
- 1 Lemma1: we consider the lender and borrower – there's a ש"פ OR
 - 2 Lemma2: we consider the cows themselves; neither which of produces a ש"פ of benefit
- v If: he borrowed a cow from partners, only one of whom came along –
- 1 Lemma1: do we require all of the owner(s) to be there to generate exemption OR
 - 2 Lemma2: is he (at least) exempt from the ½ of the liability?
- vi If: partners borrowed from one and he came to work with one of them
- 1 Lemma1: do we require the entire שואל to be present to generate exemption OR
 - 2 Lemma2: is he (at least) exempt from ½ the liability
- vii If: borrowed from woman & her בעל came along – or if a woman borrowed and the owner went to work for the בעל
- 1 Lemma1: קנין פירות: קנין הגוף → husband is same (exempt in both cases) OR
 - 2 Lemma2: קנין פירות: קנין הגוף → husband is different person (liable in both cases)
- viii Related question (asked of ר' אשי): if someone sent his cow with שליח, who worked with it – is there an exemption?
- 1 Lemma1: is the real owner required to be there to generate the exemption, OR
 - 2 Lemma2: do we apply the notion of שלוחו של אדם כמותו?
 - (a) Answer (ר' אשי): question #7 depends on a dispute ר"ר/ל (ביכורים); #8 depends on יונתן ר' יאשיה/ר' יונתן; ר' יאשיה doesn't allow via שליח (v. 1); ר' יונתן does, as per rule of שלוחו של אדם כמותו
 - (b) Related question (asked of רבא): if a man sends his slave out to work with cow
 - (i) Lemma1: even if we accept שלוחו של אדם כמותו, that may be because שליח is מצוה, unlike עבד
 - (ii) Lemma2: even if we don't accept שלוחו של אדם כמותו, the slave may generate exemption as per עבד כיד רבו

- b Question about status of husband vis-à-vis his wife's property – is he a שואל or שוכר
- i Challenge (רבא): no difference; in either case, he is exempt, as בעלי עמו;
- ii Rather: question is if he rented a cow from her and then married her; as a שואל, a new financial liability is set up and we have שאלה בבעלים; as a שוכר, the original שכירות isn't cancelled and there's still liability
- 1 Challenge: new שכירות should also replace old one and now it's שאלה בבעלים
- iii Rather: question is if she rented a cow and then married; only asked according to ר' יוסי (a שוכר who lends it out and it dies, must be returned as is to owner)
- iv Answer (רבא): he is neither a שואל nor a שוכר – he's a לוקח as per תקנת אושא
- c Tangential question about same: is the husband considered a מועל with his wife's property?
- i Case: she inherited money, including (unmarked) הקדש – does he gain them directly (and he is the מועל when he uses them) or does it go through her (and she is the מועל) or is ב"ד considered מועל due to their תקנה?
- 1 Answer (רבא): husband is מועל – only when he uses the money and it is יוצא לחולין (like someone finding הקדש מעות)

- II Question about depreciation of שאלה
- a Response: implication is that if it died due to the work for which it was borrowed – liable!
- i Clarification (רבא): no liability for depreciation due to work, even if it dies as a result
- b Case: man borrowed tool and it broke; רבא ruled that he must bring עדים that he didn't misuse it
- i Question: if he couldn't find עדים, what should he do?
- ii Answer: story about man who did the same and רב found him liable and had to pay for new tool
- 1 Challenge (רב to ר' כהנא ור' אסי): he should have to return the broken tool and pay the difference – הלכה
- c Case: man borrowed cat and it died as a result of the mice
- i Version 1: the mice ganged up and killed it
- 1 Ruling (in name of רבא): if a man is killed by a bunch of women – no דין (shouldn't have fallen into their hands)
- 2 Application: the שואל is liable, not considered מתה מחמת מלאכה
- ii Version 2: the cat ate a bunch of mice and died
- 1 Ruling (in name of רבא): if a man had multiple relations and died – no דין
- 2 Application: the שואל is liable, not considered מתה מחמת מלאכה
- III רבא's advice to borrowers and lenders
- a A wise borrower: who wants to ensure exemption, should ask owner to give him some water just before borrowing
- b And: a wise lender should respond that he'll give him the water after the cow is handed over
- IV רבא: status of people in service industries as בעלים
- a If: a teacher, gardener, slaughterer, blood-letter or town barber lend something while at work – considered פטור – בעליו עמו
- i Comment (students to רבא): "you are on loan to us" (so if we borrow something from you, we are exempt)
- ii Response: opposite – they are on loan to him, as he can determine the course of study
- 1 Reality: he is on loan to them for כלה (public lectures); they are on loan to him on regular days
- b Story: מרימר rented out his donkey in בני חזאי; he went out to help them load it; they were negligent and it died
- i Ruling (רבא): they are liable (פשיעה)
- ii Challenge (students): it is פשיעה בבעלים (he had no answer)
- 1 As it turned out: he had only gone out to ensure that they didn't overload it – not to help load it
- 2 Note: we understand his silence according to position that פטור בבעלים; but if פשיעה בבעלים חייב, why be silent?
- (a) Answer: case was different
- c Case: they weren't negligent, but the donkey was stolen and it died in גנב's property
- i Ruling: רבא found them liable
- ii Challenge (students): this is גניבה בבעלים (should be exempt)
- 1 As it turned out: he had only gone out to ensure that they didn't overload it – not to help load it