

21.8.5

98b (משנה ג') → 99b (דמי ברזנייתא)

7. **אִישׁ כִּי יֹאכַל קֹדֶשׁ בְּשִׁגְגָה וְיִסַּף חֲמִשִּׁיתוֹ עָלָיו וְנָתַן לַכֹּהֵן אֶת הַקֹּדֶשׁ: וְיִקְרָא פֶּרֶק כֵּב פֶּסוּק יָד**

- I **ג' משנה**: liability for death to פרה incurred while sending it to (or back from) שואל with agent
- a *If*: the lender initiates the שליחות, even if it is a שליח of the שואל – exempt
- b *But if*: the borrower initiates the שליחות, or the lender initiates it but the borrower confirms – חייב
- i *Note*: even if he sends it with his slave
- 1 *Question*: shouldn't the slave's presence be tantamount to the owner's (יד עבד כיד רבו)
- (a) *Answer1 (שמואל)*: עבד עברי here is an עבד עברי
- (b) *Answer2 (רב)*: could even be ע"כ – considered as if he told him to lead animal by hitting it
- (i) *Challenge*: שמואל ברייתא which rules that sending with slave generates exemption
1. *According to שמואל*: easy to answer – that שמואל is בריתא
2. *But according to רב*: must answer that in our משנה, he actually said "hit it with a stick and it will follow"
- a. *Support*: ruling of רבה בר אבוה that if lender tells borrower to hit it and it will come – no פטור
- b. *Suggestion*: further support from ברייתא (same as ruling of רבא)
- i. *Rejection (ר' אשי)*: in that case, property of borrower was inside that of lender
- ii. *Consideration*: might think that since there are impediments, he may not come – קמ"ל
- II הונא **הונא**'s ruling about retracting a שאלה – once the tool has been used, he may no longer retract; if he didn't yet use it, may retract
- a *Contra*: ר' אמי – if someone lends a tool of הקדש, there is immediate מעילה (as per טובת הנאה) and borrower may use it
- b *And contra*: ר' אבא – just as the rabbis mandated that קנין משיכה generates קנין for purchase, so too for שומרים
- i *And*: just as land is bought via שטר וחזקה, כסף, שטר וחזקה, so too with שכירות (meaning – renting land)
- III שמואל's ruling about liability for stealing pressed dates
- a *If*: someone stole a date cake of 50 dates that would be sold for 49 (buyer makes 1 פרוטה for separating them); if sold separately, sold at 50 פרוטות
- i *If*: he stole from הדיוט, pays 49
- ii *If*: he stole from הקדש, must pay 50 plus 1/5
- 1 *Unlike*: damaging הקדש, where 1/5 isn't added, as per exclusion alluded to in v. 1
- iii *Challenge* (רב בני בר אבוי): in case of הדיוט, why pay 49 – victim could argue that he would've separated them (=50)?
- 1 *Defense (ר' הונא בריה דר' י)*: in case of נזיקין, we take less of two possible values as per ב"ק ו:א
- iv *Challenge*: שמואל doesn't distinguish between הדיוט/הקדש as per his inference from ruling about מעילה → paying rent for living in another's yard without awareness of owner
- 1 *Answer*: שמואל changed his mind about the latter and distinguishes
- (a) *Challenge*: perhaps he changed his mind about the former (and doesn't distinguish הדיוט/הקדש)
- (b) *Answer*: as per רבא, who equated מדעת שלא מדעת with מדעת
- IV רבא's ruling about porters breaking a barrel of wine
- a *If*: it is sold on market day for 5 but other days for 4
- i *If*: they pay back on market day, must replace a barrel
- ii *But if*: they pay back on another day, must pay 5
- 1 *However*: this is only if he has no other wine to sell; else, he should've sold that (and they may return a barrel, or he can refuse it and they pay 5, but subtract the value of his trouble and the tap)