

21.8.9

102a (משנה ח') → 103a (סיום הפרק)

- I שנה מעוברת) length of tenancy in case of extended year (משנה ח')
- a *If*: he rented for a year and the year was extended, the renter gains the month
- b *But if*: he rented for months, the extra month is credited to the landlord
- c *Story*: in **ציפורי**, someone rented a bathhouse for 12 ד"ז for the year, 1 per month and the year was extended
- i *Ruling*: ר' יוסי and רשב"ג – split the difference
- ii *Question*: is this story contradicting the earlier ruling?
- iii *Answer*: **חסורי מיחסרא** – add “if they named a price per year at a per month rate – split the difference”
- 1 *Critique* (**רב**): would have given all to the landlord (as per last phrase – “1 ד"ז per month”)
- (a) *Question*: **רב** already ruled **תפוס לשון אחרון** to define meaning in re: 100 מעה/1 איסתירא
- (i) *Defense*: in that case, we might understand the latter term as explaining former one
- 2 *Dissent* (**שמואל**): case in **ציפורי** was one in which case came to ב"ד at mid-month
- (a) *Note*: had it come at beginning of month, case is ruled for landlord; if at end, in favor of renter
- (b) *Question*: doesn't **שמואל** accept notion of **תפוס לשון אחרון**?
- (i) *Support*: **שמואל** ruled that if A sells 1 כור for 30X, can retract until the last סאה; if he sells 1 כור for 30X, 1 סאה per X, each סאה is acquired independently
- (ii) *answer*: reason **שמואל** favors **תפוס לשון אחרון** is due to the doubt; since he's taken possession, he is the מוחזק and can keep all but the last סאה; same in our case – he's already lived in the house
- d *Q posed to גר' ינאי* if renter says he paid and landlord says he never got payment - who has onus of proof?
- i *Note*: already taught, whether during tenancy period or after:
- 1 *If*: father dies during 30 days (of בכור's birth), assumption is unredeemed; if after, assumption is פדוי
- 2 *Answer*: case is on last day of tenancy; do we assume people pay at end of period?
- ii *Response* (**ר' יוחנן**): a hireling must take an oath (that he wasn't paid) at the time; this only applies to a שכיר, as the בעה"ב is busy with his other workers; otherwise, assumption is people pay on time
- e נחמן ר' rulings
- i (quoted by **רבא**): if someone rents a house for 10 years (but no date in the שטר) and the landlord claims he's already lived there for 5 years (and renter claims, e.g. 3), landlord believed
- 1 *Counter*: why not apply this to a שטר (where debtor claims he's already paid some back)
- 2 *Answer*: in case of loan, שטר is for collection – should've gotten a receipt; in our case, שטר is just to protect landlord against renter claiming ownership
- ii *If*: someone borrows an item “בטובו”, he has perennial rights to it
- 1 *Note*: only if he made a קנין from the owner; else, once he returns it, that שאלה is over
- 2 *Note*: once it's no longer usable, borrower must return the broken parts (still a שאלה, not a gift)
- iii *Associated ruling* (**רבא**): if someone borrows a plow to use on:
- 1 “this orchard”: he may only use it on that orchard
- 2 “an orchard”: he may use it on one orchard, of his choosing
- 3 “orchards”: he may use it as much as he wants, and returns broken pieces to owner
- iv *Related ruling* (**ר' פנא**): if someone borrows a well and it collapses:
- 1 *If*: he borrowed “a well for irrigation”, he may not rebuild and use
- 2 *If*: he borrowed “a well”, he may rebuild
- 3 *If*: he borrowed “a place to dig a well”, he may continue digging until he finds water
- (a) *But*: he must make a קנין from the owner
- II משנה ט') if someone rents a house to another and it collapses, he must furnish him with a house
- a *If*: it was small, he may not make it large (and vice-versa)
- b *If*: it was one room, he may not make it two (and vice-versa)
- c *And*: he may not diminish the number of windows nor add - unless both parties agree
- i *Question*: what was the original agreement?
- 1 *If*: it was “this house” – it fell, and there's no obligation to rebuild or furnish another
- 2 *Must be*: he said “a house like this”
- (a) *Challenge*: if so, it's obvious that he has to furnish a similar house
- (b) *Answer*: if it was, e.g. on the banks of a river, we might've understood “like this” to refer to location – קמ"ל that “like this” refers to architecture.