

21.9.2; 104a (משנה ג') → 105a (ברזא דנפל נפל)

- I 'משנה ג': Consequences of leaving a leased field fallow
- a If: he leases a field and doesn't plow nor plant – must pay based on what it likely would have produced
- i Reason: that's what they write in the שטר חכירות – "if I leave it fallow, I'll pay from מיטב"
- ii Authorship: ר"מ who interprets the common wording of a שטר (tho it contradicts תקנת חכמים) as above
- iii Parallels:
- 1 ד' יהודה responsibility to bring קרבן עשיר for a wife if he is from a wealthy family, regardless of her status
  - 2 הלל in Alexandria, קידושין are delayed until חופה as per their wording
  - 3 ד' יהושע בן קרח limit of משכון as amount of loan
    - (a) Challenge: implication that he must make a קנין;
      - (i) Explanation: ר' יוחנן ruled that the קנין is automatic with the משכון, raising it beyond level of normal מטלטלין that aren't משתעבד to בע"ח
      - (ii) Defense: שטר works for גרעון, if משכון depreciates after return to לויה, מלוה may seize it but collect the difference from other property
  - 4 ד' יוסי turning a כתובה into a מלוה, such that the husband may collect from the father-in-law as a בע"ח, and if they regularly double the value, he may collect half only
    - (a) Challenge: גרבלאי would collect 1/3; מרימר would collect the entire (artificially inflated) amount
      - (i) Answer: if they made a קנין, collect full; else, ½ (or the inverse of the artificial inflation)
        1. Story: רבינא would write double for his daughter; the groom's family asked him to make a קנין and he responded that if he makes a קנין, he won't "double"; if he "doubles" – no קנין
        - (b) Related story: father of bride stated "give her 400 זוז"
          - (i) Question: did he mean (200) or (write 800)?
            1. Answer (ר' אשי): if he said "give", he meant 800→400; if he said "write", he meant 400→200
            2. (alternate answer: if he said לכתובתה, 800→400; if he said בכתובתה, 400→200
              - a. Rejected: both words mean 400→200, unless he says "give her")
  - iv Story: man leased property and stated "if I leave it fallow, I'll pay 1000 זוז" and he left 1/3 fallow
    - 1 Ruling: נהרדעי – should pay 333 (1/3 of commitment)
    - 2 Dissent (רבא): it's an אסמכתא (לא קניא); distinct from our משנה, as his extra commitment (\$) is a גוזמא→אסמכתא
  - v Story: man leased land to plant sesame; he planted wheat instead and it made as much money as sesame would've
    - 1 Suggestion (ר' כהנא): he should gain the value of the lack of depreciation of the land (sesame depreciates land)
      - (a) Rejection (ר' אשי): aphorism – master would rather make quicker \$\$\$ and lose value of land
  - vi Story: man leased land to plant sesame, planted wheat and it made more money than sesame would've
    - 1 Suggestion (רבנא): owner should give him the profit
      - (a) Rejection (ר' אחא מדיפתי): the land contributed to the great yield (owner and מקבל should split profit)
  - vii Tangential discussion: נהרדעי explain meaning of עיסקא (goods given on consignment, where middleman takes responsibility for loss) is half-loan, half-פקדון; good for both sides
    - 1 "borrower": gains, since it's considered a הלוואה, he may use it as he wishes
    - 2 Dissent (רבא): called עיסקא because the "borrower" has to be engaged (מתעסק) with selling it - and not to use it as he wishes (e.g. drinking)
      - (a) Follows (ר' אידי בר אבין): if the לויה dies, it is considered מטלטלין of heirs (cannot be collected)
        - (i) Dissent (רבא): that's why it's called עיסקא – that it doesn't become מטלטלין
    - 3 Related (רבא): if there is 1 עיסקא, but they wrote separate שטרות for each half, the loss (of one half) is borne by מלוה (considered 2 עסקים); if 2 עסקים but covered by 1 שטר, considered 1 → loss to לויה
    - 4 Related (רבא): if the מקבל lost money on the עסק and made it up, he can't claim that owner should share the cost of the loss – retort: the reason he made up the loss was to not be considered בעיסקא
    - 5 Related (רבא): if an עיסקא succeeds and one wants to split profits and other wants to continue, hoping to make more money, he can prevent the split;
      - (a) Even if: other suggests they split the profits only, other can respond that the profit is tied in with the קרן
      - (b) And even if: he suggests they split the capital and profit – he can respond that the עסק is bound together
      - (c) And even if: offers to make up loss to other's קרן (as result of split), other responds "עסק does better together"
- II ד' משנה ד': מקבל who doesn't want to weed – may not do so, as he will eventually leave and owner is stuck with weeds
- a (note: this is only applicable to חכירות; if אריס, the owner clearly has an interest as he gets a percentage of the yield)
- b Even if: he offers to plow later (owner wants good wheat); even if: he offers to buy good wheat (owner wants own wheat)
- c Even if: he offers to weed that portion given to owner (harms field as bad seeds will sprout later)