

21.9.8; 110a (ההוא שטרא) → 111a (לעבור עליו בשני לאוין)

1. לא תעשק את רעך ולא תגזל לא תלין פגלת שכיר אתך עד בקר: ויקרא פרק יט פסוק יג
 2. ביומו תתן שכרו ולא תבוא עליו השמש כי עני הוא ואליו הוא נשא את נפשו ולא יקרא עקיד אל ה' והיה בך חטא: דברים פרק כד פסוק טו
 3. אל תאמר לרעך לך ושוב ומחר אתן ויש אתך: משלי פרק ג פסוק כח
 4. לא תעשק שכיר עני ואביון מאחיד או מגרד אשר בארצך בשעריך: דברים פרק כד פסוק יד
 5. נפש כי תחטא ומעלה מעל בה' וכחש בעמיתו בפקדון או בתשומת יד או בגזל או עשק את עמיתו: ויקרא פרק ה פסוק כא

- I Competing claims – which party has the onus of proof?
- a states “years”; לויה “means 2”, מלווה says “means 3” and מלווה eats up פירות of 3rd year before case is heard
- i רב יהודה: the landowner (לווה) is the מוחזק; the creditor must prove that he had 3 years’ rights
- ii הלכה – מוחזק is ממשכן: ר’ נחמן
- 1 Challenge: ר”נ ruled that בעליה עומדת
- 2 Answer: that’s in a case where the truth won’t be revealed on its own; in this case, it will and we don’t want to trouble בית דין twice (to remove פירות from מלווה and then, if proven right, to recompensate him)
- b משכנתא (with missing שטר); לויה – 3 years (already passed); מלווה – 5 years
- i רב יהודה: lender is believed; מינו he could argue the land is his
- 1 Dissent (as per ר”פ to ר”פ): ר’ עזריא and ר’ זביד – the שטר is for collection and the מלווה would certainly be careful with it; he’s likely hid it and is claiming more years than he deserves on the משכנתא
- 2 challenge (to יהודה ר”פ’s position): if so, a משכנתא דסורא, if the ממשכן claims he bought the field – should be believed?
- (a) Explanation: הפסד wouldn’t have set up such a deal that would lead to רבנן
- (b) Defense: in that case, the מלווה has to pay property tax and dig boundary-trenches
- (i) Block: what about a case where there is no tax and no trenches to dig?
- (ii) Answer: the לויה must protest every couple of years to prevent חזקה; if not, that’s his own loss
- c אריסטו: אריס claims ½, בעה”ב claims 1/3 – רב יהודה: בעה”ב is believed; ר”נ: all follows local custom
- 1 Assumption: they don’t disagree; ר”נ stated his case where מנהג המדינה is 1/3
- 2 Rejection (as per אב”י): even where local custom is ½, ר”נ still gives credibility to בעה”ב
- (a) Reason: he could claim that the אריס is simply a hired worker
- d בע”ח: claims that land he is seizing was improved by לווה (who died); heirs claim they improved (and deserve a חלק)
- i ר’ חנינא: assumed that the מוחזק and the בע”ח has to bring proof
- 1 Correction (from יוחנן): since it’s slated for collection, considered גבוי and בע”ח is the מוחזק (support - ב”ב כד: -)
- 2 Consideration: if heirs brought proof, they must be paid with land
- (a) Correction (from שמואל): paid with money, as is case of לפשוט & בע”ח, בכור לפשוט & בע”ח and יתמי to כתובה & בע”ח לקוחות to בע”ח
- (i) challenge: לוקח from the שבח can seize the בע”ח
1. answer1: if the שבח is already ripe (“reaches the shoulders”) – kept by לוקח
- a. block: שמואל has בע”ח collect even ripe crops
2. Answer2: if he is collecting an amount equal to land and appreciation – keeps all
- (ii) Note: only valid according to מ”ד that allows לוקח to block בע”ח from collecting land if he has money
- (iii) However: according to opposing מ”ד, לוקח should be able to say to בע”ח: if I had the money, I could’ve kept you from collecting; now, at least leave the part of the land that I appreciated
1. Answer: in this case, the land was made an אפותיקי (assigned for collection)
- II משנה י: if he rented for “7 שבו”ע” - שמיטה is reckoned; if he rented for “1 שבו”ע” - שמיטה doesn’t count (he gets an 8th year)
- III משנה יא: day worker collects all night (as per v. 1); night worker collects all day (v. 2) – since שכירות משתלמת בסוף, can’t reverse
- a Note: at first dawn, he violates תלין; afterwards, he violates “withholding”, based on v. 3
- b ברייתא: if one has another hire workers for him, neither violates תלין
- i Owner: because he didn’t hire them; head hunter: because the work isn’t happening on his property
- ii Note: only if the hirer told them that the owner would be paying (else, he is fully liable and collects from בעה”ב)
- 1 Note: employers in סורא don’t violate v. 1; all know no pay until השוק יום, but they violate “withholding” (v. 3)
- IV משנה יא (con’t): hourly workers collect all night and all day; weekly, monthly etc. workers; if they leave during the day, may collect all day; if at night, may collect all night and all day
- a רב: hourly workers collect during their time period; שמואל: hourly workers at night collect all night and all day
- i שמואל supports שמואל (רב: distribution – day → day; night → night)
- ii End of משנה: supports שמואל (רב: it is a dispute among תנאים – יהודה – רב: ר”ש, ר”ש, ר”ש)
- 1 Tangent: someone who doesn’t pay on time violates 5 לאוין and 1 עשה (vv. 1-2,4)
- 2 Tangent: discussion about difference between עקש and גזל (רבא: no difference)