

22.3.12

43b (תנו רבנן מכו לו בית) → 45a (אשר פיהם דבר שוא וימינם ימין שקר)

1. לָוֶה רָשָׁע וְלֹא שָׁלֵם וְצָדִיק חֹנֵן וְנוֹתֵן: תְּהִלִּים פֶּרֶק לֹא פֶסוּק כֹּא
 2. אֲשֶׁר פִּיהֶם דְּבַר שְׂוֵא וְיָמִינָם יָמִין שְׂקֵר: תְּהִלִּים פֶּרֶק קַמֵּד פֶּסוּק ח

- I Continuation of discussion regarding liability of seller → invalidity as witness
- a *If*: he sold a house or field – cannot testify (since he has liability for the sale)
- b *But if*: he sold a garment or animal, he may testify (no liability)
- i *Question*: why the distinction? (i.e. if the sales are done באחריות, both sellers should be invalid)
- ii *Answer1* (ר"ש): case where A stole land from B, sold it to C and D is claiming it; B cannot testify that it belongs to C, as he has an interest (it may be easier for him to recover it from C than from D)
- 1 *Challenge*: why not take C out of the אוקימתא and have B testifying that it belongs to A?
- (a) *Answer*: in case of animal/garment, we need to have a sale (for ייאוש+שינוי רשות = קנין); for parallel construction, we have a sale here
- (b) *Challenge*: even in the סיפא, there is no ייאוש from being compensated
- (i) *Answer*: case where thief died; his heirs aren't liable to compensate (if גולה is no longer in existence)
- 2 *Challenge*: why not have C be an heir
- (a) *Answer*: we must accommodate position that an heir is like a purchaser
- 3 *Challenge* (אבני): then the argument shouldn't be אחריות, rather whether it returns (חזרת) - rather
- iii *Answer2* (אבני): as per שמואל, that if A sells B a field w/o אחריות, he may not testify as he then "presents" it to his own creditor (for collection in case of default), thereby benefiting, such that he has a vested interest
- 1 *And*: this only applies to a house or field, but not an animal or garment (hence, the distinction)
- (a) *Reason*: even though he writes דעל כתפאי מגלימא, מטלטלין, מגלימא דעל כתפאי are not משועבד to a בע"ח unless they are in present (and presented) at time of loan
- (i) *Even if*: he made the animal an אפותיקי, since the sale of animals (etc.) has no קול
- (b) *Challenge*: why aren't we concerned that he sold the מטלטלין w/קרקע/קרקע (אגב, קנין אגב), in which case the מטלטלין are משתעבד לבע"ח? (ר"ח: as long as he wrote דטורי כטופסי ודלא כאסמכתא ודלא כטופסי דטורי מטלטלין)
- (i) *Answer*: case where he bought and sold immediately
1. *Therefore*: no chance for him to borrow while he owned it
2. *Implication*: if someone says "דאיקני" (i.e. anything I will buy is משתעבד) that anything he subsuently buys but then sells or bequeaths is "untouchable" to בע"ח
3. *Defense*: in this case, witnesses testified that he never owned land before (couldn't be אגב)
- (ii) *Challenge*: ר"פ ruled that if A sells B some land w/o אחריות and it is seized, he can't recover
1. *But*: if it turns out that A never owned it, B may recover from A
2. *Answer*: in this case, the buyer recognized the seller's animal (seller will never be liable here → he may testify)
- a. *Note*: ר"פ disagrees with ר"ב and rules that even if it turns out that A never owned it, B cannot recover, as that is why A sold it באחריות
- c *Reassessing שמואל's ruling*: A sells B land w/o אחריות, he may not testify about it as he is presenting it to the בע"ח
- i *Cannot be*: a case where he has other land; בע"ח would go after that
- ii *But if*: he has no other land, why would he care; the בע"ח cannot seize it from the seller, whether it remains with the buyer or the claimant?
- 1 *Answer*: he has no other land, but doesn't want to fall under the category of v.1 with his loan
- (a) *Challenge*: he is still רשע ליה vis-à-vis the one to whom he sold the land
- (b) *Answer*: that's why he sold it באחריות
- II א"ר's pronouncement for all בני גולה ובני א"י (may have been ר"פ who made the pronouncement)
- a If a ישראל sells a donkey to another ישראל and then it is seized by עכ"ם, the seller must try to recover it and, if unsuccessful, must compensate buyer
- i *Caveat*: only if the buyer doesn't recognize the animal as the offspring of the seller's (claim may be true)
- ii *Caveat*: only if the עכ"ם takes the animal alone; if he seizes the saddle as well, clearly he is a גנב
- iii *Dissent* (אמימר): in any case, the seller isn't liable, as per our understanding of עכ"ם's ways (v. 2)