

22.6.1

92a (משנה א') → 93b (אין האורחין נכנסין)

I Selling fruit which fail as seeds

- a If: he sells fruit to a buyer, who then plants them and they fail to grow – no liability
  - i Even if: he sold flax seed
  - ii Dissent: רשב"ג – garden seeds that are not eaten – he is liable

II Analysis (back-door סוגיא re: the role of רוב in ממון)

- a If: an ox is sold and it turns out to be violent (only relevant if it isn't slated for slaughtering)
  - i דב errant sale – reverts
  - ii שמואל: seller can claim that he sold it for חיטה
    - 1 Question: let's determine based on habits of seller – does he generally sell for slaughtering or for plowing
      - (a) Answer: case where seller sells for both
    - 2 Question: let the fee help determine the reality – did he pay the value of meat or for a live, working ox
      - (a) Answer: case where the value of meat has risen and there is no difference
        - (i) If so: what is the difference between ruling one way or the other? (same value)
        - (ii) Answer: who has to trouble himself (does buyer have to sell animal and use proceeds to buy another)
          - 1. Note: must be a case where seller has money to pay back; else the buyer would keep the ox in any case- against payment
    - 3 Positions:
      - (a) דב follow רוב; most oxen are sold for work
      - (b) שמואל: we only follow רוב in איסורים; not in ממון
        - (i) Challenge: כתובות ב:א – if a woman has עדים that she married as a בתולה – she gets 200
          - 1. Implication: without עדים, we grant her 100 (as per his claim) even though רוב marry as בתולות
            - a. Answer1: since all בתולות who marry have a קול – and this one doesn't – we don't follow רוב
            - i. Block: if all have a קול and she doesn't, the עדים are liars
            - b. Answer2: since most בתולות have a קול – her רוב is diminished
          - (ii) Challenge: if someone sells a slave who turns out to be a thief or gambler (ר"ח) – sale is valid
            - 1. Answer: in that case, it isn't רוב; rather all slaves are like that
            - 2. Continuation: if the slave proves to be an armed robber or guilty of a capital crime – מקח טעות
          - (iii) Challenge: if ox gores cow and miscarried fetal calf found by its side – pays ½ of the פרה and ¼ the לוד
            - 1. However: if we follow רוב, shouldn't we assume that she miscarried due to goring?
            - 2. Answer: we're unsure how she was attacked
              - a. If: from front, she would've been scared and miscarried
              - b. If: from rear, the goring itself would've caused it
                - i. Therefore: it is – ממון המוטל בספק and we split it.
          - (iv) Suggestion: רב/שמואל: אחא :: רב/שמואל: חזקה in re: מחלוקת חכמים/ר"א חזקה that active animal gored (found) dead one
            - 1. Rejection: רב would argue that even חכמים agree with him – רוב is stronger than חזקה
              - a. And: שמואל would argue that even ר"א agrees with him – in our case, nothing was מחזק
        - (c) Challenge: our משנה – even flax – assumed meaning – even though a majority buy for seed (כשמואל)
          - (i) Answer: it is a dispute of תנאים – as per:
            - 1. בריתא: no liability for flax seed; יוסי – ר"י – liable; "אמרו לר" – lots of people buy for other things
              - a. Dispute: between ת"ק and either ר"י or ר"א (each of which accepts רוב; dispute which רוב)

III ברייתא – dispute if he must pay (in case of garden seeds) only the amount paid or also his expense

- a Suggestion: 2<sup>nd</sup> position is רשב"ג
  - i Suggested source: from our משנה, since ת"ק also finds liability for garden seeds (by implication), רשב"ג adds expense
    - 1 Rejection: perhaps positions are reversed (and רשב"ג only finds for amount, ת"ק includes הוצאה)
      - (a) Defense: 2<sup>nd</sup> תנא is always adding to earlier approach, not limiting it
      - 2 Rejection: perhaps our entire משנה is רשב"ג (חסורי) and he only includes value
    - ii Source: ברייתא which finds liability for artisan who fouls product (e.g. שוחט who makes it a נבילה) as he is ש"ש
      - 1 הוצאה: he must also pay the value of the "host's" shame (:: הוצאה)
        - (a) Note: רשב"ג mentions גדול מנהג ירושלים – if someone hands over responsibility for a feast to another and he ruins it – must pay his בושת
        - (b) And: another גדול מנהג ירושלים re: הכנסת אורחים – as long as the cloth was over the door, table is "open" to guests; once it's down, not to enter (nothing to offer or feast is over)