

25.6.4

41b (ההוא דא"ל לחבריה) → 42b (אבל גבי בריא ודאי חיישינן)

7. פי' יתן איש אל רעהו כסף או כלים לשמר ונגב מבית האיש אם ימצא הגנב שלם שנינים: שמות כג:

- I Series of cases involving dispute between מלוה ולווה regarding repayment ("M" – מלווה; "L" – לווה)
- a Case 1: M told L to pay him back in front of witnesses A and B; he paid back in front of Y and Z (and they are gone)
 - i אבני he demanded payment in front of 2 עדים and we have that – פטור
 - ii דבא that's why he singled out A and B – as he trusted them to be around (e.g.) → still liable
 - b Case 2: M told L to pay him back in front of two teachers; he paid back privately and the money was then lost/destroyed
 - i M: argued that he accepted the money as a פקדון until L could find two suitable עדים
 - ii Ruling (ר"נ): he admits that he got the money – לווה פטור (and he offered to serve, with ר"ש, as witnesses!)
 - c Case 3: M claimed he lent L 100, L denied the debt; עדים testified that L borrowed and had paid back
 - i אבני the same עדים who inform us that verified the loan also testified that it was paid back
 - ii דבא his claim of להד"ם (=לא לוייתי) is tantamount to a claim of לא פרעתי – still liable
 - d Case 4: M claims 100 from L who claims that he paid him before witnesses A and B.
 - i להד"ם say עדים
 - ii חייב is a liar (→ ד"ש)
 - iii דבא anything people aren't charged with remembering they may forget (עדים may have been incidental)
 - e Case 5: M claimed 600 זוז from L who responded that he paid him 100 קב of gall-nuts at 6 זוז per קב
 - i Response: M claimed that they were worth 4 per קב at the time (i.e. admits to having gotten 400 already)
 - ii עדים testified that the price was 4 per קב
 - iii דבא L is now considered a כפרן
 - 1 Challenge (רב"ח): didn't you (רבא) say that something that one is not charged with he may forget?
 - 2 Answer: he certainly is assumed to remember the market value at the time
 - f Case 6: M claimed debt of 100 from L, and produced a שטר, to which L responded that he had repaid it
 - i M: admitted to that payment, but claimed it was סיטראי (from another debt)
 - 1 ד"נ is now invalid (we accept admission of payment and reject claim of סיטראי)
 - 2 ד"פ is still valid (may collect)
 - (a) Question: why does ר"פ rule differently here than in this case:
 - (i) M: claimed 100 with שטר, L countered that money was advanced to him to buy oxen
 - 1. And: he bought the oxen and M got his money, to which M responded that that was סיטראי
 - 2. ד"פ is invalid
 - (b) Answer: in that case, since both admit it was for purchase of oxen and M got paid, claim of סיטראי is weak
 - (i) But here: claim of סיטראי is reasonable and שטר is maintained
 - ii Final ruling: שטר is invalid (ר' פפי כר' ששת בריה דר"א) contra כר' ששת בריה דר"א; but only if:
 - 1 He: paid him in front of עדים and he didn't ask for the שטר;
 - (a) Else: M is believed, מיגו he can claim להד"ם, his claim of סיטראי is accepted (as per story with אבנימי)
 - g Case 7: L told M (at time of loan) –he trusts him anytime to claim that he didn't pay back; he repaid לפני עדים but M denied it
 - i אבני ורבא he is liable; as he committed to believe M anytime he made that claim
 - ii Dissent (ר"פ): he trusted the מלווה more than himself – but not more than עדים
 - h Case 8: L told M (at time of loan) that he trusts him more than שני עדים; he repaid before 3 עדים and then M denied it
 - i ד"פ he only specified בי תרי, but not to trust him more than 3
 - ii ד' הונא בריה דר"י added עדים are only meaningful for appraisal; per עדות, 2 and 3 are no different
 - i Alternate version of C8: same case, ר"פ's ruling the same
 - i ד' הונא בריה דר"י 2 are the same as 100;
 - 1 But: if he said כבי תלתא (I trust you as much as 3 עדים), then if he repaid before 4 – since he detailed the number (3), he intended the number and once he paid him before 4, מלווה has no claim

II Analysis of ד' משנה – we do not respond to טענת קטן with an oath – per v. 1; must be an איש

III Analysis of final clause of **ד' משנה**: but we do swear לקטן ולהקדש

- a *Challenge*: in earlier clause, we ruled that we don't take an oath for **טענת קטן**
- i *Answer* (**רב**): case is where he comes for a claim of a debt owed his father, per **ראב"י**:
- 1 **ראב"י**: if a man admits to a debt to a (deceased) father, but he paid part, he takes an oath and pays the rest
 - (a) *And*: this is a unique case of generating a **שבועה** with one's own claim (**משיב אבדה** exempt him as he is **חכמים**)
 - (b) *And*: we challenged **ראב"י** that he must accept the principle of a self-generated payment as **משיב אבדה** ופטור
 - (c) *Answer*: the case was when the **קטן** (child of deceased creditor) was making the claim
 - (i) *Challenge*: we ruled that we never generate an oath based on **טענת קטן**
 1. *Answer*: this "**קטן**" is an adult, just "minor" relative to his father's business matters
 - (ii) *Challenge*: then this isn't **טענת עצמו** – it's **טענת אחרים** והודאת **עצמו** (just like every other **שבועה**)
 - ii *Answer*: **ראב"י** and **חכמים** disagree about the application of **חזקה**'s **רבה** (זקת **בעל חובו**)
 - 1 **ראב"י**: applies even to the son of **בעל חובו** – debtor can't lie and is trying to evade full payment etc.
 - 2 **חכמים**: **חזקה** only applies to creditor himself; here, debtor could have lied so he is considered **משיב אבדה**
 - (a) *Challenge*: we can't attribute our **משנה** to **ראב"י**; earlier we taught that if child claims 100 and debtor admits to owing 50 he is exempt as he is **משיב אבדה**
 - (i) *Answer*: in that case, the child's claim was iffy (**שמא**); in our case, it is **טענת ברי**
 - iii *Answer* (**שמואל**): the last line refers to collecting *from* the **קטן** and *from* **הקדש**
 - 1 *Challenge*: we already taught (**ז:ז, שבועות**; **ז:ז, כתובות**) that any collection from **יתומים** requires **שבועה**
 - (a) *Answer*: per **קשישא** – whether they are adults or children (→ needs to be taught twice)
 - 2 *Challenge* (to 2nd part **הקדש**): we already taught (**ibidem**) that **משועבדים** may not be collected w/o **שבועה**
 - (a) *And*: why would we distinguish between **משועבדים** to a regular person or to **הקדש**?
 - (b) *Justification*: in case of **הדיוט**, we know that a person may try to cheat a third party (who owns the **משועבדים**) and therefore must take a **שבועה** – but we wouldn't think that someone would make a **קנוניא** on **הקדש** – **קמ"ל** that he might and therefore requires **שבועה**
 - (i) *Challenge*: ruling that if a **שכ"מ** dedicates all his property to **הקדש** and then "remembers" that he owes someone some money – he's believed, as we don't suspect him of a conspiracy to cheat **הקדש**
 - (ii) *Answer*: that's in the case of a **שכ"מ**, as no one sins unless he will benefit
 1. *But*: in the case of a **בריא**, we certainly have that concern (→ **שבועה** required)