

25.7.2

46a (עבד מלך [כ/מלך] 47b → (משנה ב' [נגזל כיצד] 46a)

<p>1. שבעת ה' תהיה בין שניהם אם לא שלח ידו במלאכת רעהו ולקח בעליו ולא ישלם: שמות כב, י  2. לא תרצה ס לא תנאף ס לא תגנב ס לא תענה ברעך עד שקר: ס שמות כ, יב  3. ותרגנו באהליכם ותאמרו בשנאת יקוק אתנו הוציאנו מארץ מצרים לתת אתנו ביד האמרי להשמידנו: דברים א, כו  4. פנו וסעו לכם ובאו הר האמרי ואל כל שכניו בערבה בהר ובשפלה ובנגב ובחוף הים ארץ הכנעני והלבנוני עד הנָהָר הַגָּדוֹל נָהָר פְּרָת: דברים א, ז</p>
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## I גזל: משנה ב'

- a גזל: his creditor was seen coming into his house to take a pledge w/o his permission and debtor claims he took the משכון - and creditor denies it – גזל takes an oath and seizes it
- i note: witnesses see him declare that he is coming in in order to take a pledge
- 1 question: why not testify to what he took?
  - 2 Answer: he took it under his garment and they couldn't see what he took
    - (a) Tangent: רב יהודה: if someone left another's home with vessels under his garment
      - (i) Claims: he claims that he bought them and the houseowner claims he lent them –
      - (ii) Then: we don't believe the "thief" and they are considered borrowed
        1. Caveat: only if the home is not owned by someone who typically sells his vessels
          - a. Nor: if they are the type of vessels to be carried out discreetly
          - b. Nor: if the "borrower/buyer" is a private person who hides everything
          - c. Nor: if homeowner claims that they are stolen – such a claim isn't accepted
          - d. And only: with things that are typically lent/rented; else he is believed
        2. Supports: ruling sent by ר' חייא בר אבין ר, seizure of property by רבא
- ii Addendum: even a housewatcher or his wife can take this oath,
- 1 Question (ר"פ): what about a worker at the house? תיקו
  - 2 Question (ר' יימר לר' אשי): what if he claims that the מלוה took a silver cup? (is the גזל believed בשבועה?)
    - (a) Answer: if he is either wealthy enough or trusted enough (that others would entrust him with it) נאמן
- iii Dissent (ר' יהודה): only if there is a הודאה במקצת הטענה – הודאה גזל claims he took two and he admits to taking one

## II נחבל: משנה ג'

- a נשבע ונוטל – נחבל testify that he came to accused healthy and is now injured; he claims that man hurt him – נחבל
- i Note: שמואל – only if it is in a location that the injured could have hurt himself
- 1 Else: he can collect without a שבועה
  - 2 Challenge: perhaps he rubbed up against a wall (e.g.) and injured himself
    - (a) Answer: if he is bitten behind his back (e.g.)
      - (i) Challenge: perhaps he had another bite him (in order to extract money from the "חובל")
      - (ii) Answer: it only applies if there's no one else present
- ii Dissent (ר' יהודה): only if there's הודאה במקצת הטענה; חובל admits to a lighter חבלה than the claim

## III שכנגדו חשוד: משנה ד'

- a שבועת שווא or שבוה"ע, שבוה"ע שבוה"ע or even שבוה"ע שבוה"ע: whether he is חשוד due to lying when he took שבוה"ע שבוה"ע
- i Note: mention of שבוה"ע שבוה"ע - not only שבוה"ע/ע שבוה"ע פ which involve ממון כפירת ממון, but even בעלמא כפירת דברים בעלמא
- 1 Question: why not mention שבוה"ע ביטוי?
    - (a) Answer: שבוה"ע ב, he isn't lying at the time of the oath, he just fails to fulfill his words
    - (b) Challenge: this is only true about a שבוה"ע about the future (e.g. אוכל/לא אוכל);
      - (i) Answer: שבוה"ע about the past (אכלתי/לא אכלתי) is subsumed under שבוה"ע שווא
  - ii Even if: one of them was פסול דרבנן (e.g. gambler) – his antagonist takes the oath and collects
  - iii If: both are חשוד
    - 1 יוסי ד' the oath "returns to its place"
    - 2 מ"מ they split the money
      - (a) Note: ר"נ was unsure which חכם said what; concluded the opposite – ר' יוסי יחלוקו ר' יוסי – הלכה כר' יוסי

- IV Analysis of חזרה למקומה (ר"נ and his school – and הלכה – according to anyone *except* ר"נ and his school)
- a ר' אמי: interpretation of חזרה למקומה is disputed between ר' אמי/בבל/א"י
- i בבל: it "goes back to יוסי"; i.e. to God's command of לא תגזול and parties are adjured to act honestly – but ב"ד extracts no money
- ii א"י: since neither side can swear, defendant pays
- b ר"פ: identifies רבותינו שבבל and רבותינו שבא"י
- i רב ושמואל: רבותינו שבבל (below):
- 1 יתומים: may not collect without a שבועה
- (a) *Our question*: they cannot be collecting from debtor; sine their father could collect without a שבועה, they certainly don't need one
- (b) *Must be*: they are collecting from the heirs of the debtor (יורשי לוה)
- (i) דב ושמואל: this only holds if the מלוה died first (then לוה died, then יורשי מלוה come to collect from יורשי לוה)
1. *But*: if לוה died first, מלוה already became obligated to collect from his heirs בשבועה
- a. *And*: מוריש שבועה לבניו
- i. *Meaning*: moneys that a man may collect only with a שבועה cannot be bequeathed
- ii. *Therefore*: when no oath is possible, no money changes hands
- ii ר' אבא – רבותינו שבא"י
- 1 *Case*: A grabbed a piece of silver from B and they came to ר' אמי ב"ד
- (a) B: brought a witness to the "theft"
- (b) A: admitted he took it, but claimed it was his own
- (i) *quandry* (ר' אמי): how to rule
1. *Cannot*: restore silver as there aren't two witnesses
2. *Cannot*: exempt A, as there is one witness
3. *Canot*: allow A to swear that it was his; as by his own admission he is a גולן
- (ii) ג' אבא. A is, therefore, יכול לישבע – and must pay
- c רבא: ר' אמי's position is more reasonable, per ר' אמי's exposition of v. 1
- i יורשים: שבועת ה' תהיה בין שניהם and not between יורשים
- 1 *Application*: cannot be where each side has a certain claim ("father was owed 100"; "father only owed 50")
- (a) *Rather*: must be a case where יורשי המלוה make a certain claim ("father was owed 100")
- (i) *And*: יורשי הלוה answer with unsure claim ("father certainly owed 50; we don't know about the other 50") - no oath (they only pay 50)
- (ii) *Therefore*: in parallel case, if father were alive, he would be liable for an oath –
1. *And*: since he couldn't swear about the other 50 (as he doesn't know) – would have to pay
- ii *Question*: how do רב ושמואל interpret v. 1 (as to avoid ר' אמי's דרשה)?
- 1 *Answer*: per ר' שמעון בן טרפון – ר' שמעון בן טרפון – the שבועה applies to both of them – both are "enablers"
- (a) *Tangent*: other דרשות of ר"ש בן טרפון (as he is rarely quoted)
- (i) V2: prohibition of "enabling" (procuring?) adultery
- (ii) V3: interpretation of ורגנו – "you scouted (the Land), you degraded (the Land)
- (iii) V4: פרת, which is a "small" river, is called 'great' due to its proximity to ארץ ישראל