## 33.1.4

5b (והרי מקדיש תמימין לבדק הבית) → 6b (בשינוי קונה)

- I Dispute אביי/רבא of efficacy of a prohibited act (continued)
  - a challenge (to מקדיש: מקדיש animal to בדק הבית (per v. 1 –בדה"ב (בדה"ב)
    - i *answer*: same source which validates הקדש הקדש בע"מ למזבח validates הקדש תמימים לבדה"ב
  - b challenge (to גזל (if followed by שנוי y v. 2, yet he acquires it and pays כשעת הגזילה
    - i answer: v. 3 אשר הגזילה determines payment as per אשר הגזילה
    - ii אשר גזל אביי ilmits חומש to his own theft, to the exclusion of father's theft (and, as heir, he is repaying)
  - c challenge: taking a pledge from a poor man; per v. 4, it is prohibited, yet משנה rules that he must return one that the needs at the time and keeps the other (if, e.g. he took two)
    - i answer: v. 5 השב תשיב he must continually return (in staggered form 1 at night, other during day)
    - ii השב תשיב אביי teaches that he must return; else, we would think that he violated איסור (by taking) but isn't obligated to return it
  - d challenge (to פאה: פאב" v. 6 prohibits clear-cutting, yet per תוספתא פאה א:ה v. 6 prohibits clear-cutting, yet per תוספתא פאה א:ה
    - i (note: per ר' ישמעאל even from the dough)
    - ii answer: תעזוב x 2 (vv. 6, 7) extends קמה past קמה
    - iii איז: extra תעזוב → another "abandonment" like this:
      - 1 ברייתא: if he disowns his vineyard and the next morning gets up and harvests it
        - (a) then: he must give all מתנות עניים, but is exempt from מעשר
  - e *observation (ר' אחא בריה דרבא לד' אשי)*: since we have an answer for each position to every challenge, where is exactly the point of dispute between אביי?
    - i answer1: רבית קצוצה (preset, agreed-up רבית) as to whether it may be recovered in court
      - 1 *per*: אלעזר, it may be recovered, but אבק רבית (which is מד"ס) may not be recovered
      - 2 רבית קצוצה may not be recovered
        - (a) assumption: they have same disagreement; רבא::ר"א not recoverable); רבא::ר"א not recoverable); רבא
        - (b) rejection: they disagree about פסוקים, per יצחק: ר' יצחק:
          - (i) מב"ש 'r's reason (per מב"ש): v. 8 punishment is מב"ש, not to return (via court)
          - (ii) איייחנן s reason (per ר' אחא בר אדא): v. 9 given to the lender's conscience, not for return via ב"ד
          - (iii) איז. vv. 8-9 juxtapose מלוה ברבית to murderer; just as רוצח cannot make reparation, so too מלוה ברבית 1. And: איז's reason − v. 10 − he must be allowed to survive (→allow him to sue for רצית)
    - ii Answer2: whether שינוי קונה (theoretical question: does violating the law "work")
      - 1 (alternative explanation: practical שנוי קונה)
  - f Alternate version (in answer to אחא 'ז's question):after these defenses they only disagree about returning רבית קצוצה
    - i Positions: רבא no return; רבא return
      - 1 Challenge: רבית rules that רבית is recoverable per his dictum that if someone is suing for 4 אביי and he is given an item worth 5 the לווה may reclaim 4 of it, but the extra וז is considered a מתנה
        - (a) רבית: we return all five, as the entire pledge was taken as רבית
    - ii Rather: they disagree about שנוי קונה (as above)