

25.6.6

43a (משנה ז') → 44b (סיום הפרק)

1. השב תשיב לו את העבוט כבא השמש ושכב בשלמתו וברכך וקף תהיזא צדקה לפני ה' אלהיך: דברים כז:יג

- I 'ז משנה ז' disputes between lender and borrower as to value of pledge which has been lost (loan was 1 דינר=2 שקל=4 סלע)
- a If: lender claims משכון was worth 1 שקל and borrower claims it was worth 1 סלע – exempt from שבועה (→ לויה is “done”)
- b If: lender claims משכון was worth 1 שקל and borrower claims it was worth 3 דינר – חייב (לויה must take oath and pay 1 דינר)
- c If: borrower claims משכון was worth 2 סלעים and lender claims it was worth 1 – פטור (no outstanding debt)
- d If: borrower claims משכון was worth 2 סלעים and lender claims it was worth 1+דינר – חייב (and pays 3 דינר)
- i Oath: taken by the one who has the פקדון; concern that the lender will subsequently “find” the משכון
- 1 Note: this explains case [b], where oath should be borrower's; in case [d], oath is lender's in any case
- 2 And: once ר' אשי ruled that both must swear (לויה – value; מלווה – he doesn't have משכון) - מלווה is first
- II שמואל's ruling regarding משכון taking on full value of loan (even if worth less)
- a If: someone lent 1000 זוז and took a scythe-handle (worth much less) as משכון and it was lost - debt is fully cancelled
- i However: if he took 2 handles, we don't assess each as “worth” 500
- ii ל"ג even if he took 2 handles, each is “worth” 500 and if one is lost, debt is ½ cancelled
- 1 However: if he took a handle and piece of silver, we don't assess each as being worth ½ of the debt
- 2 גהרדעי even if he took a handle and silver; each is “worth” ½ the debt
- b Challenge: from our משנה – why do מלווה ולויה dispute value of משכון if it cancels out the debt?
- i Answer: in our משנה, he explicitly gave it for its value; שמואל's ruling is in a case where he didn't explicate
- c Suggestion: שמואל's ruling is subject to dispute ר"א/ר"ע; in case of a loan with a משכון and the משכון was lost
- i ל"א the lender can take an oath and collect the debt
- ii ל"ע the borrower can claim that he lent on collateral; if the collateral is lost, the debt is cancelled
- iii But: if he lent 1000 בטרטר and left collateral in his hands – all agree that if the משכון is lost, the debt is cancelled
- 1 Case must be: where the משכון is worth less than the loan
- 2 Therefore: evidently they disagree about the validity of שמואל's ruling
- 3 Rejection: if the collateral is not worth the loan, all agree to reject שמואל's ruling
- (a) The dispute: in case debt is worth the value of the loan
- (i) And: they disagree whether to accept ר' יצחק's interpretation of v. 1 – that a בע"ח acquires the משכון
1. ל"א rejects it and sees בע"ח as שומר חנם (→ exempt for the loss, debt still fully collectible)
2. ל"ע accepts ר' יצחק and sees בע"ח as having been paid
- 4 Challenge: is ר' יצחק's ruling subject to מחלוקת תנאים?
- (a) rejection: ר' יצחק's ruling is about a case where the pledge was taken after the loan
- (b) our case: is of a משכון given at the time of the loan and all agree to see him as a שומר אבדה
- (i) ל"א equates שומר אבדה to שומר חנם (as ר"ב's position)
- (ii) ל"ע sees שומר אבדה as שומר שכר (as ר' יוסף's position – since he gains by not having to give צדקה during that time, as he is engaged in the מצוה of watching the אבדה; that gain is a שכר)
- 5 Challenge: is ר"ב's ruling subject to מחלוקת תנאים?
- (a) Rejection: all agree that שומר שכר:: שומר אבדה
- (b) Dispute: in case where מלווה needs the משכון (for his own use) and deducts the value of that rental from loan
- (i) ל"א since he needs it for himself, no longer performing מצוה of הלואה, considered שומר חנם on the rest
- (ii) ל"ע still performing מצוה, considered שומר שכר and liable for entire משכון
- d Suggestion: שמואל's ruling is subject to מחלוקת רשב"ג/ר' יהודה הנשיא:
- i דשב"ג a loan made with a משכון isn't cancelled by שמיטה even if the משכון was worth less than the loan
- ii דנ"י if it is worth the value of the loan, debt isn't cancelled; else, it is cancelled
- 1 Must be: that, to רבי, it cancels entire loan (else, what is the purpose of the משכון?) → they disagree about שמואל
- 2 Rejection: משמט/אינו משמט is only corresponding to value of משכון
- (a) And: reason מלווה took משכון was to serve as a reminder of the debt