

25.4.1

30a (משנה א') → 31b (ל דהו קמ"ל) → 31b (משנה א')



- I 1a class of people liable for שבועת העדות (v. 1) and circumstances that generate obligation
 - a Class: men, non-relatives, valid witnesses and those who are fit to testify only
 - i Meaning of "fit to testify":
 - 1 excluding a king (who isn't excluded by the other three categories)
 - 2 excluding משחק בקוביא (etc. – who are only invalid מדרבנן)
 - (a) Note: ר' אחא בר יעקב would certainly agree that a king is not bound by שבועת העדות
 - (i) But: ר"פ will claim that משחק בקוביא (etc.) is, as he is only מדרבנן פסול
- II Source for invalidity of women as witnesses
 - a 2: v. 2 – refers to עדים (since להם הריב אשר already refers to litigants) – and they are אנשים
 - i But: if you insist that the entire phrase is referencing בעלי דין; vv. 2::3 define שני אנשים as witnesses
 - b 2: v. 2 refers to עדים (since more than 2 may come as litigants) – and they are אנשים
 - i But: if you insist that it refers to בעלי דין, as "2" refers to sides in the conflict; vv. 2::3 define שני אנשים as witnesses
 - c 3: v. 2 refers to עדים (since women can also be litigants) – and they are אנשים
 - i But: if you insist that it refers to men, as women (v. 4) wouldn't come to דין - vv. 2::3 define שני אנשים as witnesses
- III Juridical procedures defined by v. 5
 - a stand as per v. 1
 - i ר' יהודה reports a tradition that they may both sit, as long as one doesn't stand and the other sit (v. 5)
 - 1 Note (עולא): dispute only re: בעלי דין; witnesses must stand per v. 1
 - 2 Note (ר' הונא): dispute only during deliberations; at גמ"ד, all agree that בעלי דין must stand, per v. 6
 - (a) Story: with ר"נ and the חבר – he leaned over, pronouncing the פסק דין
 - b (outside of court) judge people beneficially
 - c ר' יוסף judge a fellow (who is a colleague in תורה ומצוות) beneficially – ת"ח's cases go to head of line (or שודא דדייני)
 - i Related (ר' הונא): if a ת"ח and ע"ה come for דין, the ת"ח is seated and the ע"ה is invited to sit – but if he opts to stand, that's his choice and we proceed (story with ר"פ)
 - 1 and: if an ע"ה and ת"ח come to דין, the ת"ח shouldn't come in first and sit with דיינים
 - (a) exception: if they have a regular לימוד
 - 2 and: if a ת"ח can testify but the court is beneath his dignity – no need to go (as per אבדה)
 - (a) however: this only applies to ממונות; re: איסורין – v. 7 is invoked
 - (i) story: ועמדו שני האנשים עשה of עשה to כבוד התורה preferred עשה אמיר

IV Series of applications of v. 8

- a *Judge*: should not defend his errors
- b *Judge*: should not allow an ignorant student to sit before him (his comments/questions will confuse **דיין**)
- c *Judge (and witness)*: may not join a fellow judge/witness whom they know to be **פסולים**
- d *Judge*: who knows that the procedure involved deception, should not sign off on the **פסק**
- e *Student*: who sees an argument on behalf of an **עני**, should speak up
- f *Student*: sees his teacher erring, shouldn't wait to build up his own case, but correct immediately
- g *Student*: should not allow his teacher to pressure him to testify (with one **כשר** to teacher's benefit "on trust")
 - i *Challenge*: that is a clear violation of v. 9!
 - ii *Rather*: student shouldn't agree to stand there, appearing as if he will testify, to give impression of 2 **עדים**
- h *Plaintiff*: who is trying to collect 100 and also has an unactionable **שבועה** on the defendant, may not sue for 200, get the defendant to admit to part, apply a **שבועה** and use **גלגול** to bring in other **שבועה**
- i *Defendant*: should not deny a proper partial claim (even if he intends to admit it privately outside of **ב"ד** afterwards) to avoid **שבועת מודה במקצת** to avoid **שבועה** **גלגול**
- j *If*: three are trying to extract 100 from someone, they shouldn't act as 2 **עדים** and grant 100 to third, then split
- k *Court*: should not allow one litigant to be dressed in fancy clothes and the other in rags
 - i *Rather*; we tell the wealthy one to provide equally fancy clothes for his opposite number or to wear rags
 - ii *Report*: **הווא בר ר' הווא** would tell litigants to remove their fancy shoes before beginning proceedings
- l *Judge*: may not listen to one litigant's arguments before the other one is present
- m *Litigant*: may not "sweeten" his words to judge before opposite number arrives
 - i **לא תשיא לא תשא** inferred this from v. 10 – reading **לא תשיא** as **לא תשא**
 - ii *Tangent*: interpretation and application of v. 11:
 - 1 **בב"ד** this is someone who argues on behalf of another **זב**
 - 2 **שמואל** this is someone who buys a field, knowing that there are claims on it

V **משנה א**: Circumstances which allow for **שבועת העדות** if oath generated by others, only liable if the witnesses deny in **ב"ד**

- i *But*: if generated by self:
 - 1 **ז"מ**: liable even if he denies outside of **ב"ד**
 - 2 **חכמים**: only liable if he denies in **ב"ד**
 - (a) *Analysis of dispute*: (assumption: **שבועת העדות** when taken by himself is inferred from **הפקדון**)
 - (i) **תלמידי ר"פ**: if we learn A from B via **גז"ש**, does A take on all the parameters of B (דון מינה ומינה) – **ר"מ** – (דון מינה ומינה)
 - 1. Or: is A still bound by its own limitations (רבנן) – **שבועת העדות** (מפי אחרים) belongs in **ב"ד**
 - (ii) *Rejection* (**ר"פ**): **רבנן** infer via **ק"י** (and don't infer **שבועה** from **שבועה** at all) –
 - 1. *If*: **מושבט מפי אחרים** is valid, certainly **מפי עצמו** –
 - a. *Then*: the rule of **הדין להיות כנדון** limits to the presence of **ב"ד**
 - (iii) *Counter (students)*: **רבנן** must be inferring from **שבועה**, since in **הא**, they infer **שבועה** from **שבועה** (for **מושבט מפי אחרים**)
 - 1. *Defense* (**ר"פ**): perhaps they infer in one direction only (**שבועה** from **שבועה**)

VI **משנה ב'**: liability for **שבועת העדות**

- a *If*: he is aware of the testimony, even if he is **שווג** in re: the oath – liable for **עולה ויורד**
 - i *Reason (for liability במזיד)*: there is no mention of **ונעלם** in **הא**: **ויקרא**
- b *But*: he isn't liable if he is **שווג** – i.e. if he knows it is prohibited but is unaware of the consequence (**חיוב קרבן**)