

25.4.4

33b (לחייב על המזיד כשוגג) → 35a (משנה ז')

1. וְנָפֵשׁ כִּי תִחְטָא וְשָׁמְעָה קוֹל אֱלֹהִים וְהוּא עַד אִם לֹא יִגִּיד וְנִשְׂא עוֹנוֹ: וּיקרא ה:א

2. נֶפֶשׁ כִּי תִחְטָא וּמַעֲלָה מֵעַל בֵּה' וְכַחַשׁ בְּעֵמִיתוֹ בְּפִקְדוֹן אוֹ בְּתִשּׁוּמֹת יָד אוֹ בְּגִזְל אוֹ עֶשֶׂק אֶת עֵמִיתוֹ: וּיקרא ה:בא

3. וְאִם בְּשִׁנְאָה יִהְיֶה עָלָיו בְּצַדִּיקָה וְיָמָת: אוֹ בְּאֵיבָה הִכְהוּ בְיָדוֹ וְיָמָת מוֹת יָמָת הַמִּכָּה רִצַּח הוּא גֹאֵל הַדָּם יָמִית אֶת הַרְצָח בְּפָגְעוֹ בוֹ: בַּמִּדְבָּר לֵה-ב-ג-א

4. וְעָבַר עָלָיו רוּחַ קְנָאָה וְקָנָא אֶת אִשְׁתּוֹ וְהוּא נִטְמָא אוֹ עָבַר עָלָיו רוּחַ קְנָאָה וְקָנָא אֶת אִשְׁתּוֹ וְהִיא לֹא נִטְמָא: בַּמִּדְבָּר ה:ד

5. וְהִיא כִּי יֵאָשֵׁם לְאַחַת מֵאֵלֶּה וְהִתְנַדָּה אֲשֶׁר חָטָא עָלֶיהָ: וּיקרא ה:ה

6. אוֹ נֶפֶשׁ כִּי תִשְׁבַּע לְבִטָּא בְּשִׁפְתָיִם לְהַרְעוֹ אוֹ לְהִיטִיב לְכָל אֲשֶׁר יִבְטָא הָאָדָם בְּשִׁבְעָה וְנִעְלַם מִמֶּנּוּ וְהוּא יָדַע וְאֵשֶׁם לְאַחַת מֵאֵלֶּה: וּיקרא ה:ו

7. עַל פִּי שְׁנַיִם עֵדִים אוֹ שְׁלֹשָׁה עֵדִים יוֹמָת הֵמָּת לֹא יוֹמָת עַל פִּי עַד אֶחָד: דְּבָרִים י:ו

- I תביעת ממון (not just potential) שבועה limitation of משנה ז'
- a Excluded: any testimony about personal status (e.g. כהן, לוי, not a חלל)
- i And: any testimony about another's personal status
- 1 Implication: שבועה on behalf of another's finances is valid
- (a) Challenge: next משנה requires that the עדים hear the demand from the plaintiff
- (b) Answer (שמואל): only valid if the claimant is acting on behalf of the plaintiff
- (i) Challenge; נהרדעי rule – we don't write a שטר הרשאה for מטלטלים
- (ii) Answer; that's only if the defendant denies his debt (plaintiff must face him)
- ii And: any cases where financial liability is trumped by greater punishment (e.g. אונס/פתה את בתו, my son wounded me, שבת פ' torched field)
- II Source for שבועה being limited to cases of תביעת ממון (ברייתא)
- a אואין (אואין) use of multiple v. 2) - שבועה"פ parallel to ר: אליעזר
- i Challenges: vv. 3, 4 have אואין
- 1 Answers: v. 3 has no oath associated; v. 4 has כהן associated
- (a) Challenge (רבה בר עולא): v. 6 also has או, an oath and no כהן
- (b) Answer: שבועה"פ is a more likely index than שבועה"ע – due to תחטא::תחטא
- (i) Retort: שבועה"ב is more likely, as both incur a חטאת
- (ii) Defense: שבועה"פ shares "תחטא", מזיד, a claim, a denial and "the past" (i.e. not about the future)
- (iii) Back: שבועה"ב is more likely, as it shares a חטאת, קרבן חטאת and no חומש
1. Conclusion: שבועה"פ has more points in common
- b ר"ע v. 5 – מאלה; לאחת מאלה – only some of them are valid (ממון)
- i Challenge: his determination seems arbitrary (why not flip what's included and excluded?)
- 1 Answer: he's building on ר"א's use of אואין
- 2 Question: where do they differ?
- (a) Suggestion1: whether עדי קרקע are subject (ר"א – yes; ר"ע exempts them from מאלה)
- (b) Suggestion2 (עדי קרקע ר"א א even ר"א יוחנן): עדי קרקע ר"א א
- c ריה"ג v. 1 allows for a case where ראייה OR ידיעה alone would suffice → only ממונות
- i Seeing: he can testify that he saw the lender counting out money to the debtor
- ii Knowing: if the debtor admitted his debt in front of the witnesses
- 1 Suggestion (ר"פ לאבוי): ריה"ג rejects אחא ר' ruling about circumstantial evidence re: crazed camel who kills
- (a) And: he would judge similarly in homicide case like that told of שטח בן שטח (v. 7)
- (b) Defense: he still wouldn't allow for "seeing" alone to be sufficient in נפשות
- (i) Reason: need to know if victim was Jewish, not a טריפה
- iii Observation: ריה"ג must hold that עדי קנס are not subject to שבועה"ע, as (e.g. in case of אונס) they must know if she was a בתולה etc. – and ראייה alone can never be enough
- iv Entrance exam (ר' המנונא רב יהודה): if witnesses see A counting out money to B – חייבים?
- 1 Question: what is the recipient's claim?
- (a) If: he claims that he never got the money – he is a liar (and the giver is נשבע ונוטל)
- (b) If: he claims that he was receiving his own money, their testimony won't help → they are פטור (accepted!)
- 2 Related case: A claimed he gave money in place X; B denied he wasn't there; עדים testified that he urinated there
- (a) ר"ל – he is a liar
- (b) ר"נ – (this is the way the Sassanians rule) – he didn't say he was never there! (→not a liar)
- 3 Alternate version: B claimed he had never been there, but עדים testified that he urinated there
- (a) ד"ל - he is a liar
- (b) דבא (לר"ג): people don't remember something so insignificant (השתנה) → not a liar

- d **ש"ד**: simple comparison with **פ** שבוה – just as that is only **ממון**, תביעת ממון, similarly **ע** שבוה is only **ממון**
- i **And**: **ק"ו** from **פ** שבוה, where the class of persons and circumstances is larger and it only involves **ממון**
- 1 **Block**: in **פ** שבוה, **נשבע**–**מושבע** and **מזיד**–**שווג**
 - 2 **Defense**: **תחטא**–**תחטא** (vv. 1,2) connects **פ** שבוה to **ע** שבוה limiting **ע** שבוה to **ממון**
- ii **Reaction in א'**: they derided his exegesis
- 1 **Question**: what was the derision?
 - (a) **Suggestion**: the knock-down of the **ק"ו**
 - (i) **Part1**: **פ** שבוה doesn't equate **נשבע**–**מושבע**, unlike **עדות**
 1. **But**: what is **ר"ש**'s source for **נשבע** מפי עצמו carrying any liability in **ע** שבוה? Must be from **פ** שבוה
 2. **Therefore**: just as he infers **נשבע** מפי עצמו from **פ** שבוה, he can infer **מושבע** מפי אחרים from **ע** שבוה
 3. **Block**: perhaps **ר"ש** infers **נשבע** מפי עצמו in **ע** שבוה via **ק"ו** ; rather...
 - (ii) **Part2**: **פ** שבוה doesn't equate **שווג**–**מזיד**, unlike **ע** שבוה
 1. **But**: the same omission (**ונעלם**) in **ע** שבוה holds for **פ** שבוה (no "**ונעלם**") → should be **שווג**–**מזיד** there
 2. **Block** (**ר' הונא**): perhaps **ר"ש** infers "**שווג**–**מזיד**" from **מעילה**
 3. **And**: that is the "derision" – he should've inferred from **ע** שבוה and included **מזיד**
 - a. **Challenge**: **מעילה** is a better index, as both are called **מעילה** (v. 2)
 - b. **Retort**: **ע** שבוה is a better index, **תחטא**–**תחטא**
 - c. **Defense**: **מעילה** shares these - is **מעילה**, applies to all people, liability generated by **הנאה**, must bring a **קרבן קבוע** (not **ערי**), owes an extra **חומש** and the **קרבן** is an **אשם**
 - d. **Response**: **ע** שבוה shares these – **תחטא**, is unrelated to **קדשים**, involves an oath, a claim and a denial and **אואין**
 - i. **Conclusion**: **מעילה** has more significant points in common
 - (b) **Suggestion (ר')**: since **ר"ש** has the **גז"ש** (of **תחטא**–**תחטא**) - why does he set up his own challenge of **פ** שבוה–**ע** שבוה by dint of **נשבע**–**מושבע** and **שווג**–**מזיד**?
 - (i) **Block**: perhaps these challenges were raised before he utilized the **גז"ש** (as per the sequence in **ברייתא**)
 - (ii) **Retort**: **ר"ש**, even in conclusion, holds that **פ** שבוה doesn't allow for **זדון** (**pre** **בר** **איתי**'s report)
 1. **Meaning**: even after the **גז"ש**, he doesn't allow for **כשווג**
 2. **Defense**: perhaps he only accepts that distinction, but not **נשבע**–**מושבע**
 - a. **Challenge**: if so, he should infer **ע** שבוה from **פ** שבוה (which was inferred, in turn, from **מעילה**)
 - i. **And**: conclude that even in **ע** שבוה, no **זדון** for **מזיד**
 - ii. **Answer**: that's why the **תורה** wrote **ע** שבוה with **הטומאה** and **ידועות** and **שבע"ב**
 - iii. **Explanation**: by its contextually glaring omission of **ונעלם** → even **מזיד** is **ערי** **חייב קרבן**