

21.1.02

3a (תני ר' חייא) → 4a (ואפילו הכי משתבעי)

אמרו לו אכלת חלב מביא חטאת עד אומר אכל ועד אומר לא אכל אשה אומרת אכל ואשה אומרת לא אכל מביא אשם תלוי עד אומר אכל והוא אומר לא אכלתי פטור שנים אומרים אכל והוא אומר לא אכלתי רבי מאיר מחייב אמר רבי מאיר אם הביאוהו שנים למיתה חמורה לא יביאוהו לקרבן הקל אמרו לו מה אם ירצה לומר מזיד הייתי: כריתות ג:א.

I אר' dictum –

- a If: A claims that B owes him 100, B denies any debt and עדים testify that he owes 50
- b Then: B pays 50 (per עדים) and takes an oath denying debt of remaining 50
 - i Argument: his own admission (in case of במקצת מודה) shouldn't generate more liability for him than testimony
 - ii Possible support: our משנה; each one's hold on ½ establishes "testimony" of ownership and each must swear
 - 1 Anticipated challenge (to which ר' חייא adds "קל וחומר"): oath only necessary when he admits part, as per רב' explanation of במקצת מודה (no one can deny a debt directly to creditor, so he admits to part, rationalizing that he'll get the remaining funds later and complete his obligation) - but not in case of עדים
 - 2 Therefore: ק"ו employed to counter; suggestions as to gist of ק"ו (that עדים should be חמור than his own)
 - (a) His own admission: doesn't generate ממון חייב, but does generate חייב שבועה עדים, who are מחייב ממון...
 - (i) Block: a man's admission of financial liability is as strong (stronger?) than witnesses
 - (ii) modification: his own admission cannot generate חייב קנס (מודה בקנס פטור), but is מחייב שבועה... עדים...
 - (iii) Block: his own admission generates חייב קרבן (unlike עדים)
 - 1. Defense: ר"מ ר' חייא follows ר"מ (see above)
 - a. 2nd attempt: substitute "אשם" for "קרבן" (defeated; אשם::קרבן)
 - b. 3rd attempt: substitute "חומש" for "קרבן" (defeated; חומש::קרבן)
 - (iv) block: his own admission cannot be מוכחש or מוזם; עדים are vulnerable to those (ק"ו defeated)
 - iii reformulation: ק"ו is from 1 witness, who generates שבועה but not ממון
 - 1 block: בעד אחד, the oath responds to the עדות; in this case, he's responding to what the עדים didn't say (rather on what he denied)
 - iv Rather (ר"פ): inferred from גלגול שבועה generated by ע"א
 - 1 Block: in that case, it generates another שבועה; but with עדים, they generate ממון חייב
 - 2 Defense: פ"י disproves that, since he takes an oath on something that wasn't generated by testimony
 - (a) Block: פ"י is invulnerable to הכחשה
 - (b) Defense: ע"א – vulnerable to הכחשה (like עדים) and he generates חייב שבועה
 - (i) Block: ע"א – נתבע-ע"א swears in response to the עדות; in re: עדים, he swears in response to omission
 - (ii) Defense: פ"י
 - (iii) → צד השווה of פה and עד אחד: both come via a claim and denial and lead to שבועה
 - 1. Inference: עדים come due to claim and denial and should lead to שבועה
 - 2. Block: in all cases of השווה הצד, the נתבע hasn't been proven to be a liar;
 - a. However: if there are עדים, he's already been proven to be a liar
 - i. Challenge: ר' חסדא ruled that if someone denies a הלוואה – not considered a כפרן and is still a valid עד (which is not the case in re: פקדון)
 - 3. Reformulated block: all cases of צד השווה aren't liable for הזמה, unlike עדים
 - 4. Response: ר' חייא doesn't see צד הזמה as a challenge (inherently irrelevant to issue – see רש"י)
 - v However: the support from our משנה is disanalogous:
 - 1 In ר' חייא case: the מלוה has witnesses (and the לוהו doesn't; else there wouldn't be room for an oath)
 - 2 In our משנה: whatever support one has for his claim, the other has the same support
 - 3 (analysis continues in next שיעור)