

21.3.3; 35b (משנה ב') → 37a (שכבר אמר היני משלם)

Note: a vain oath carries liability for a קרבן חטאת, an oath generated to evade financial obligation carries a liability of אשם

1. או נפש מי תשבע לבטא בשפתים להרע או להיטיב לכל אשר יבטא האדם בשבעה ונגעלם ממנו והוא ידע ואשם לאחת מאלה: ויקרא פרק ה פסוק ד

- I 'משנה ב': if a שוכר of a cow then lends the cow to a שואל under whose watch it dies
  - a שוכר swears to owner (oath just to appease owner; שוכר gained rights from moment of death); שוכר pays שואל
  - b שוכר can't make money off of owner's property – rather, he must pay a cow to the owner
- II Possibility of multiple payments for one (dead) cow:
  - a זירא: if owner rents cow for 100 days; borrows it back for 90, rents it back for 80 and borrows back for 70
    - i And then: it died during first 70 days
    - ii Ruling: owner must pay שוכר value of 2 cows (!)
      - 1 Challenge (ר' אחא מדיפתי): it's one cow – how can there be multiple payments
      - 2 Defense: cow is not around to be identified as “only one”
    - iii Modified ruling (מר בר רב אשי): there are 2 “cows” here – a rented one and a borrowed one
      - 1 Therefore: the שואל gets him forever; the שוכר gets him for the length of his שכירות, then returns him to owner
- III Commentary on שבועות in our משנה:
  - a Possibility of same scenario but שוכר and שואל, by lying, end up...(see note)
    - i Both liable for חטאת
      - 1 If: she died in a normal fashion and they swear that it was אונס (neither has advanced his cause)
    - ii Both liable for אשם
      - 1 If: she was stolen but they claimed מתה מחמת מלאכה (both advanced their causes)
    - iii שוכר liable for חטאת and שואל for אשם
      - 1 If: she died in a normal fashion and they swear that it was מתה מחמת מלאכה (only שואל advanced his cause)
    - iv שואל liable for חטאת and שוכר for אשם
      - 1 If: she was stolen but they claimed that she died in a normal fashion (only שוכר advanced his cause)
    - v Purpose of this matrix: to counter אמי ר' אמי's opinion that שבועת ביטוי (v. 1) cannot attach to an oath administered by ב"ד (פטור)
  - IV שומר שמסר לשומר רב vs. ר' יוחנן (Q:: if פקדון is damaged under the watch of the 2<sup>nd</sup> in a manner that the 1<sup>st</sup> would be פטור)
    - a רב: exempt (even if a ש"ח gave it to a ש"ח); since he entrusted it to a בן-דעת
    - b ר' יוחנן: liable (even if a ש"ח gave it to a ש"ח); owner can claim that he didn't want his פקדון in someone else's care
      - i ר' חסדא: this is a misread of רב; students erroneously inferred it from story of gardeners:
        - 1 They used to keep their tools with an old woman; 1 day, one of them entrusted tools to the other, and he gave to the old woman and they were stolen – and רב exempted him from liability
          - (a) Error: observer thought it was due to שומר לשומר
          - (b) Reality: since they both regularly entrusted tools to that same woman, he was exempt
      - ii Challenge (to יוחנן): our משנה, where the שוכר gains the פרה and owner can't claim אין רצוני...
        - 1 Defense (ר' אמי): in that case, the owner allowed the שוכר to lend it out
        - 2 Block: if so, the שואל should pay the owner
        - 3 Defense: the owner told the renter to lend at his discretion
      - iii Challenge (ר"ח): if a שומר gives the פקדון to his minor children – liable
        - 1 Implicatoin: if he gave to his adult children – not liable; this refutes the claim of אין רצוני...
          - 2 Answer: anyone who is מפקיד assumes that the responsible members of the שומר's household will also watch
          - 3 Support: ruling identifies his own minor children, implying that an outsider, even adult, generates liability
    - c Ruling (רבא): שומר שמסר לשומר is liable – even ש"ח → ש"ש; owner can say that he doesn't trust the oath of the new “שומר”
  - V רבה and the case of ש"ח who was neglectful but then animal died on its own
    - a רבה: liable; even to position that תחילתו בפשיעה וסופו באונס פטור (בשם רבה) אביי
    - b רבה: exempt; even to position that תחילתו בפשיעה וסופו באונס חייב (בשם רבה) רבא
      - i Concession (רבא to אביי): if he got the animal back and then it died – exempt
      - ii Concession (אביי to רבא): if stolen at marsh & died in house of גנב – liable; even if he didn't die, was still stolen
      - iii Argument (רבא to אביי): why did we defend משנה, positing that בעלים gave שוכר permission to lend?
        - 1 Defense: only a question if we explain ר"י's reason as אין רצוני..., but רבא maintains that it is לא מהימנת...
    - c Challenge (ר"ח): implication that we cannot claim that the “air” of a different environment killed – (defended)
  - VI Ruling on dispute יוסי/חכמים ר':
    - a שמואל (and ר"א) – הלכה follows יוסי, he dissents in משנה א' (disallowing payoff) and הלכה כמותו there as well
    - b ר' יוחנן – הלכה follows יוסי here, but he agrees with the first משנה, since the שומר committed to paying