

23.5.1; 40a (משנה א') → 42a (סיום הפרק)

1. וְדוֹשֶׁת וְחִקְרָת וְשָׁאלָת הֵיטֵב וְהָנָה אִמֵּת נִכּוֹן הַדָּבָר וְנִעְשְׂתָה הַתּוֹעֵבָה הַזֹּאת בְּקִרְבָּךְ: דברים יג, טו
 2. וְהִגֵּד לָךְ וְשִׁמְעֵת וְדוֹשֶׁת הֵיטֵב וְהָנָה אִמֵּת נִכּוֹן הַדָּבָר וְנִעְשְׂתָה הַתּוֹעֵבָה הַזֹּאת בְּיִשְׂרָאֵל: דברים יז, ד
 3. וְדָרְשׁוּ הַשְּׂפִטִים הֵיטֵב וְהָנָה עַד שֶׁקָר הַעֵד שֶׁקָר עִנָּה בְּאִחִיו: דברים יט, יח
 4. וְאִישׁ אֲשֶׁר יִקַּח אֶת אֶחָתוֹ בֵּת אֲבִיו אוֹ בֵּת אִמּוֹ וְנָרְאָה אֶת עֲרֹתָהּ וְהָיָה תְרָאָה אֶת עֲרֹתוֹ חֶסֶד הוּא וְנִכְרְתוּ לְעֵינֵי בְנֵי עַמִּם עֲרוֹת אֶחָתוֹ גְּלָה עֹנּוֹ וְשָׂא: ויקרא כ, יז
 5. וְכִי יָזַד אִישׁ עַל רְעֵהוּ לְהַרְגוֹ בְּעֶרְמָה מֵעַם מִזְבְּחֵי תִקְחֻנּוּ לְמוֹת: שמות כא, יד
 6. וְיִקְרִיבוּ אֹתוֹ הַמַּצְאִים אֹתוֹ מִקְלֶשׁ עֲצִים אֶל מֹשֶׁה וְאֶל אֶהֱרֹן וְאֶל כָּל הָעֵדָה: במדבר טו, לג
 7. ... וְסִקְלֶתֶם אֹתָם בְּאֲבָנִים וּמָתוּ אֶת הַנֶּגֶד עַל דָּבָר אֲשֶׁר לֹא צִעֲקָה בְּעִיר וְאֵת הָאִישׁ עַל דָּבָר אֲשֶׁר עָנָה אֶת אִשְׁתּוֹ וּבְעֵרַת הָרֶעַךְ מִקְרָבָךְ: דברים כב, כד
 8. עַל פִּי שְׁנַיִם עֵדִים אוֹ שְׁלֹשָׁה עֵדִים יוֹמַת הַמֵּת לֹא יוֹמַת עַל פִּי עֵד אֶחָד: דברים יז, ו
 9. הַחֹדֵשׁ הַזֶּה לָכֵם רֹאשׁ חֹדְשֵׁי רֹאשׁוֹן הוּא לָכֵם לְחֹדְשֵׁי הַשָּׁנָה: שמות יב, ב
 10. עֲזִי וְזִמְרַת יְהוָה לִי לִישׁוּעָה זֶה אֱלֹהֵי וְאֶנְהוּ אֱלֹהֵי אָבִי וְאַרְמָמְנָהוּ: שמות טו, ב
 11. כִּי בְתַחְבֻּלוֹת תַּעֲשֶׂה לָךְ מִלְחָמָה וּתְשׁוּעָה בְּרַב יוֹעֵץ: משלי כד, ו
 12. בְּאֵין אֱלֹפִים אֲבוֹס בְּרַב תְּבוֹאוֹת בְּכַח שׁוֹר: משלי יד, ד
 13. אֶל לְמַלְכִים לְמוֹאֵל אֶל לְמַלְכִים שְׁתוּ יָיִן וּלְרוֹזְנִים אִי שְׂכָר: משלי לא, ד
 14. יִהְלֶךְ זֶר וְלֹא פִיד נִכְרִי וְאֶל שְׂפִתָיִךְ: משלי כז, ב

- I 'א משנה א' list of 7 חקירות in נפשות (6 – time, 1- location)
- a Source (for 7): vv. 1-3, with היטב as “מופנה” word → sets of גז”ש to combine them
 - i Note: to apply to שריפה, we have to position it as “lighter” than סקילה (inferred via ק”ו)
 - ii But: to ר”ש, for whom it is חומר – difficult
 - 1 Answer: הנה הנה אמת נכון הדבר adds 4 more – 3 for מופנה and 1 for שריפה
 - 2 And: לרבנן, adds 8th חקירה – which יובל was it (or what minute of the hour, if we expect such observation)
 - b Dissent: ר’ יוסי has 2 of time (proximate), 1 of location, 1 of identification, 1 of התראה and, if ע”ז, two about the crime
 - i בריתא ר’ יוסי ברייתא pointed out that crimes are usually attested within a few days – no need for asking about the year
 - 1 Response: even if he testifies that it happened now, we all agree to ask what week?
 - 2 Retort (ר”י): within a few days is a common lag time – not a year or more
 - ii Identification: בריתא – they are asked if they recognized him, did he kill a ישראל or נכרי, did they warn him, did he accept the warning and did he accept the consequences of the death penalty and did he kill immediately
 - 1 In case of ר”ע: what god did he worship and how did he worship (bowing, slaughtering etc.)
 - iii Sources (for התראה):
 - 1 עולא – v. 4 (dealing with כרת → מלקות)
 - 2 תנא דבי חזקיה – v. 5 – must still be “seething” (מזיד)
 - 3 דבי ר”י – v. 6 – he was still gathering sticks
 - 4 דבי רבי – v. 7 – על דבר (implying speech)
 - (a) Note: in this sequence, all but the last are needed (except for ר”ש, who needs the last for נשרפין)
 - (b) But: had we only had נסקלין, all would’ve been inferred via ק”ו – nonetheless, מילתא דאתיא בק”ו – nonethless, ...
 - iv Source (for התיר עצמו למיתה – did he accept the consequence of the death penalty?):
 - 1 v8: מת implies that he is only killed if he was pre-defined as a מת
 - (a) התיר עצמו למיתה ד’ חנן cannot be killed – they can claim that they testified to ban her to her husband
 - (i) Challenge: if we require התראה, they cannot make such a claim
 - (ii) Answer: they didn’t warn
 - 1. If so: she could never be killed either
 - 2. Answer: case is a learned girl (אשה חבירה), as per יהודה ר’ יוסי בר יהודה for someone who is otherwise ignorant of the law
 - a. However: if they can’t be killed, neither can she; עדות is להזימה יכול להזימה → invalid
 - b. Indeed: חנן ר’ חנן ruled that since they can’t be killed, neither can she?
 - c. Question: how could an אשה חבירה ever be executed for this?
 - i. Answer: if they attested to two different acts or ביאה with someone who is her קרוב
- (iii) Note: נערה is the example - even though she wasn’t yet married, they can claim באנו על בעלה
- II 'ב משנה ב' the more בדיקות, the better
- a Example: בן זכאי asked the עדים about the stems of the figs
 - i Related ruling: ר’ חסדאי – if there is a discrepancy about the weapon used – inconsistent
 - 1 But: if there is an inconsistency about the color of clothes worn by killer – acceptable difference
 - 2 Challenge: ruling where discrepancy in color of clothes was considered a significant inconsistency
 - (a) Defense: case where he murdered him with his turban (what color was it?)
 - 3 Challenge: ruling where discrepancy about color of shoes was considered significant

- (a) *Defense*: case where he kicked him and that led to his death
- 4 *Challenge*: זכאי בן זכאי's question about the fig-stems
- (a) *Answer1* (ר"ח): where he was שבת מחלל, by picking figs
- (i) *Rejection*: זכאי ברייתא gives examples where he killed someone under a fig tree (→ זכאי בן זכאי's question)
- (b) *Answer1a* (ר"ח): he skewered him with a fig branch
- (i) *Rejection*: זכאי בן זכאי's questions were about the color of the figs, the width of the stems etc.
- (c) *Rather*: זכאי בן זכאי is not a challenge, he considered חקירות::בדיקות (but we don't)
- ii *Note*: זכאי בן זכאי here not ריב"ז, as ריב"ז was no longer executing in his day as נשיא (and he wouldn't be called "בן זכאי")
- 1 *Challenge*: alternate version reports this as ריב"ז
- (a) *Rather*: he suggested it as a student (before סנהדרין moved out of הגזית in 30 CE) and they accepted his suggestion and credited him – משנה uses his name at the time, ברייתא uses his more proper name
- b *Difference btwn. חקירות ובדיקות*. if one of the עדים can't answer a חקירה, whole testimony is invalid (invulnerable to הזמה)
- i *But*: if one – or even both – can't answer a בדיקה, testimony isn't necessarily invalidated
- 1 *Challenge to "even both"*: if one's saying יודע איני doesn't invalidate, certainly if both say that – should be good
- (a) *Answer1* (ר' ששת): refers to רישא (חקירות); even if 2 know and a 3rd says יודע – invalid, as per ר"ע:
- (i) ר"ע rules (מכות פ"א) that all עדים are together for הזמה and all must be vulnerable to הזמה
- (ii) *Challenge* (ר"בא): word used is קיימת, not בטילה, rather
- (b) *Answer2* (ר"בא): even in חקירות, if two say ידענו and a 3rd doesn't know – valid, *contra* ר"ע
- ii *However*: if they contradict each other, certainly invalidated
- 1 *Explanation of difference* (ר"בא ח' טו' כהנא ור' ספרא): in חקירות, if they don't know, it is an invulnerable testimony – בדיקות שא"א יוכל להזימה ל"ש עדות; which is not the case in בדיקות
- III *משנה ג'*: range of discrepancies
- a *If*: one עד says it was on the 2nd of the month and the other says it was the 3rd – valid; as one is familiar with the עיבור החדש and the other isn't
- i *But*: if one says the 3rd and the other says that it happened on the 5th – invalid
- ii *Note*: the limit is until mid-month; after that point, people should know עיבור החדש; proved from סיפא, since no one would be unaware of 2 עיבורין, as by that time everyone knows when ר"ח was
- 1 *Rejection of proof*: possible that people don't know through entire month, but no one misses 2 דר"ח
- iii *Tangent*: ברכת קידוש לבנה (including the נוסח and requirement to stand – vv. 9-10)
- 1 *Tangential אגדה*: interpretation of vv. 11-12
- b *If*: one עד says that it took place at 2 hours (of the day), and the other says 3 – valid; 3/5 invalid
- i *Dissent*: ר' יהודה validates 3/5
- ii *All agree*: if one says 5 hours and the other – 7 – invalid, as the sun is no longer in the east
- 1 *Note*: if their discrepancy, even slight, was before/after הנץ החמה – invalid
- (a) *Challenge*: this is obvious
- (b) *Rather*: if one said before הנץ and the other – during הנץ – invalid
- (i) *Even though*: we could argue that the "before" עד saw glimmers of the coming sunrise – קמ"ל
- IV *משנה ד'*: continuation of process
- a *Then*: they bring in the 2nd עד; if their words jibe, they begin by arguing לזכות; if one of the עדים suggests an argument for זכות – or one of the תלמידים (3 rows) suggests an argument for חובה – we don't allow them to speak
- i *But*: if one of the תלמידים suggests an argument for זכות, we bring him up and he remains there all day; if his argument is sound, we attend to it – even if the defendant suggests an argument we listen – if it has substance
- 1 *Note*: if the student's argument is baseless, he's still kept there all day; if it is substantial, he remains forever
- V *משנה ה'*: conclusion: if they find זכות and acquit – he is freed; if not, they recess until the morning, and they pair up and deliberate all night, they would minimize eating and drink no wine all day (as per v. 13) and the next morning, everyone would announce if they maintained their positions or had switched (and give the reason) – but someone who argued לזכות may not switch לחובה; if he errs, the court reporters remind him; if they end up acquitting him, he goes free, if not, they tally the votes. If a majority acquits – he goes free; if 12 convict, or even 11-11 (or even 22-0) and one says "איני יודע", they add pairs of דיינים until they get to 71; if the vote is 36-35 for acquittal, he goes free; if 36-35 for conviction, they continuing debating until one of the convicts changes his mind to acquit; if there is no change, he goes free
- a *Note*: יוסי ר' יוסי dissents from the entire system of הדיינים and acquits immediately.
- b *Meaning*: judgment is challenging and we need more time
- i *Challenge*: should be opposite application' elder announces it to proclaim his own shame that they're stuck
- ii *אשי ד' אשי*: don't flip - means "דין חכם" – elder announces, in spite of v. 14: גדול has job of proclaiming announcements