

25.4.1

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

1.	וּנְפֹשׁ כִּי תִחַטָּא וְשִׁמְעָה קוֹל אֱלֹהִים וְהוּא עַד אוֹ רָאָה אוֹ יָדַע אִם לֹא יִגִּיד וְנִשְׂא עֹנֹנוֹ: וּמִקְרָא הָאֵל:
2.	וְעִמְדוֹ שְׁנֵי הָאֲנָשִׁים אֲשֶׁר לָהֶם הָרִיב לִפְנֵי ה' לִפְנֵי הַכֹּהֲנִים וְהַשֹּׁפְטִים אֲשֶׁר יִהְיוּ בַּיָּמִים הָהֵם: דְּבָרִים יִט-ו:
3.	לֹא יָקוּם עַד אֶחָד בָּאִישׁ לְכָל עוֹן וּלְכָל חַטָּאת בְּכָל חַטָּא אֲשֶׁר יִחַטָּא עַל פִּי שְׁנֵי עֲדִים אוֹ עַל פִּי שְׁלֹשָׁה עֲדִים יָקוּם דְּבָר: דְּבָרִים יִט-ו:
4.	כָּל כְּבוֹדָה בַּת מֶלֶךְ פְּנִימָה מִמְשַׁבְּצוֹת זָהָב לְבוּשָׁה: תַּהֲלִים מִה-יד
5.	לֹא תַעֲשׂוּ עוֹל בְּמִשְׁפָּט לֹא תִשָּׂא פְּנֵי דָל וְלֹא תִהְדַּר פְּנֵי גְדוֹל בְּצַדֵּק תִּשְׁפֹּט עִמֶיךָ: וּמִקְרָא יִט-ו:
6.	וַיְהִי מִמְחֲרַת וַיִּשָּׁב מֹשֶׁה לְשַׁפֵּט אֶת הָעָם וַיַּעֲמֵד הָעָם עַל מֹשֶׁה מִן הַבֶּקֶר עַד הָעֶרֶב: שְׁמוֹת יח-ג
7.	אֵין חֲכָמָה וְאֵין תְּבוּנָה וְאֵין עֶצָה לְנֹגֵד ה': מְשֻׁלִי טֵא-ל
8.	מִדְּבַר שֹׁקֵר תִּרְחֹק וְנִקְי וְצַדִּיק אֵל תִּהְרַג כִּי לֹא אֲצַדִּיק רְשָׁע: שְׁמוֹת כג-ז
9.	לֹא תִרְצַח ס לֹא תִנְאַף ס לֹא תִגְנֹב ס לֹא תַעֲנֶה בְּרֵעֶךָ עַד שֹׁקֵר: ס שְׁמוֹת כז-ב
10.	לֹא תִשָּׂא שְׁמֵעַ שְׁוֹא אֵל תִּשָּׂא תְּדַד עִם רְשָׁע לְהִית עַד חֲמִס: שְׁמוֹת כג-א
11.	אָבִיו כִּי עִשָּׂק עִשָּׂק גָּזַל גָּזַל אֵחָ וְאֲשֶׁר לֹא טוֹב עֲשָׂה בְּתוֹךְ עַמּוּי וְהִגָּה מֵת בְּעוֹנוֹ: יחזקאל יח-ח

- I או משנה 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) *אחא בר יעקב*)
 - (a) Note: *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
- II Source for invalidity of women as witnesses
- a *אנשים*: 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 *דין* בעלי דין; vv. 2::3 define *אנשים שני* as witnesses
- b *אנשים*: 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 *דין* בעלי דין, as "2" refers to sides in the conflict; vv. 2::3 define *אנשים שני* as witnesses
- c *אנשים*: 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 *אנשים שני* as witnesses
- III Juridical procedures defined by v. 5
- a stand as per v. 1 בעלי דינין
- 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"ג and the חבר – אשת 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 שורא דדייני (שורא 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: עשה of *אנשים שני* preferred עשה of *אמימר* to כבוד התורה

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 עד 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 גלגול שבועה
- 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*: הונא בר ר' הונא 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 להנא כהנא
 - ii *Tangent*: interpretation and application of v. 11:
 - 1 בב"ד this is someone who argues on behalf of another דב
 - 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 ד"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) תלמיד 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"ע from שבועה"פ at all) –
 - 1. *If*: מפי עצמו מפי אחרים is valid, certainly –
 - a. *Then*: the rule of דין להיות כנדון די limits to the presence of ב"ד
 - (iii) *Counter (students)*: רבנן must be inferring from שבועה"פ, since in א:ה, they infer שבועה"פ from שבועה"ע (for מושבע מפי אחרים)
 - 1. *Defense* (ר"פ): perhaps they infer in one direction only (שבועה"ע from שבועה"פ)

VI משנה ב': liability for שבועת העדות

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