

25.4.2

31b (משנה ג') → 33a (קמ"ל)

1. נָפֵשׁ כִּי תִחְטָא וּמַעְלָה מַעַל בְּה' וְכִחְשׁ בְּעֵמִיתוֹ בְּפִקְדוֹן אוֹ בְתִשּׁוּמַת יָד אוֹ בְגִזְל אוֹ עֲשָׂק אֶת עֵמִיתוֹ: וּיקרא ה:בא  
 2. וְנָפֵשׁ כִּי תִחְטָא וְשִׁמְעָה קוֹל אֱלֹהִים וְהוּא עֵד אוֹ רֹאֵה אוֹ יָדַע אִם לֹא יִגִּיד וְנִשְׂא עֲוֹנוֹ: וּיקרא ה:א  
 3. אוֹ נָפֵשׁ כִּי תִשָּׁבַע לְבִטּוֹא בְשִׁפְתָיִם לְהִרְעוֹ אוֹ לְהִיטִיב לְכָל אֲשֶׁר יִבְטֵא הָאָדָם בְּשִׁבְעָה וְנִעְלַם מִמֶּנּוּ וְהוּא יָדַע וְאִשָּׁם לְאַחַת מֵאֵלֶּה: וּיקרא ה:ד  
 4. וְשָׁכַב אִישׁ אֶתֶּה שְׁכֵבַת זָרַע וְנִעְלַם מֵעֵינָי אִישָׁה וְנִסְתַּרָה וְהִיא נִטְמָאָה וְגַד אֵין בָּהּ וְהוּא לֹא נִתְפָּשָׂה: בַּמְדַּבֵּר ה:ג

## I 'משנה ג': the process of שבועת העדות

a Plaintiff: says to two – “come and testify on my behalf” and they answer

i Either: “we swear that we know no testimony for you”

ii Or: “we know no testimony for you”, he responds by administering an oath and they say “אמן” - liable

1 שמואל מימרא – if they saw the תובע chasing them and initiated an oath of denial – exempt

(a) Challenge: this is obvious, as the later משנה rules that they must hear the claim from the תובע

(i) Defense: we might have thought that his chasing them was tantamount to a request to testify

(b) Challenge: this is also obvious, as our משנה presents the procedure as the תובע addressing them

(i) Defense: the same is found in ה:א, in re: שבועת הפקדון, and there it is certainly not needed (v. 1)

(ii) Answer: we must assume that in our משנה, אמר is needed; else why state it (and then we understand why it was stated in ה:א, following the pattern of our משנה)

1. Alternative: perhaps the משניות are just describing the common setting (תובע initiates verbally)

(c) Support: שמואל ברייתא supports שמואל – in re: שבוה"ע – chasing doesn't generate חיוב; in re: שבוה"פ – it does

b If: he administered multiple oaths outside of court –

i And if: they came to court and admitted to their testimony – exempt

ii But if: they denied their testimony (and they prove to have been lying), they are liable for each

1 But if: he administered multiple oaths in court – only liable once

2 Explanation (ר"ש): in court, they could no longer admit (and testify) after the first denial (... כיון שהגיד)

iii Explanation: why denial must take place in ב"ד – per v. 2 – his denial must be in the place of testimony

1 Challenge (ר"פ): even his oath should be in ב"ד

2 Answer (אב"י): v. 3 allows for multiple חיובים; can only happen if he swears outside of ב"ד as per above

## II 'משנה ד': denial only leads to liability if testimony would have been effective

a Therefore: if they deny simultaneously (to אפשר לצמצם]ייה"ג, as one; to רבנן, כדי דיבור, רבנן of each other) – both liable

i But if: they deny in sequence, only the first is liable (since the 2<sup>nd</sup>'s testimony wouldn't have been effective)

1 Note: ר"ש would disagree, as he allows ע"א to be liable for שבוה"ע

(a) Suggestion: their disagreement is whether 1 witness chiefly comes for שבועה (ת"ק) or ממון (ראב"ש)

(i) Rejection: ראב"ש's ruling (see below) implies that ע"א agrees that ע"א can only generate שבועה

(ii) Rather: dispute is whether דבר הגורם לממון (i.e. חיוב שבועה) is considered ממון

ii And if: one denied and the next one admitted to his testimony – only the first is liable

1 Challenge: this is obvious; if denial after denial is exempt, certainly admission is exempt

(a) Answer: case where both denied then first one recanted תוך כ"ד – teaching that תכ"ד works for recanting

iii However: if there were 2 כתי עדים and both denied- both liable; testimony of the 2<sup>nd</sup> כת would've been accepted1 Question: why is 1<sup>st</sup> group liable? The 2<sup>nd</sup> כת is there to testify(a) Answer: case where 2<sup>nd</sup> group were קרובים (through marriage) at time of denial of 1<sup>st</sup> and their wives were גוססות – we may have thought that קמ"ל – מת: גוסס – until they are dead, the פסול קירבה holds

## III אב"י's epigram:

a הכל מודים בעד סוטה והכל מודים בעדי סוטה ומחלוקת בעדי סוטה הכל מודים בעד אחד והכל מודים בעד שכנגדו חשוד על השבועה

i All agree: that עד סוטה (i.e. קינוי וסתירה) is חייב (i.e. for שבוה"ע, as his testimony is accepted – v. 4)

ii All agree: that עדי קנוי are exempt, as they are גורם דגורם (2 steps away from any financial liability)

iii Dispute (ראב"ש/רבנן): whether עדי סתירה are liable, as they are גורם לממון

iv All agree: if both are חשוד על השבועה, as per ruling that the original claimant collects – directly ממון

v All agree: that one עד, in case like אבא דר' נסכא דר' אבא, where the defendant cannot swear so he pays – liable (directly ממון)

b Similar epigram (ר"פ): הכל מודים בעד מיתה שהוא חייב והכל מודים בעד מיתה שהוא פטור:

i exempt: when he already told the wife; based on his report, she may marry

ii liable: if he didn't tell her; his withholding his testimony keeps her from marrying

1 note: it seems that עדי קרקע are reliable (she collects כתובה from קרקע)

(a) rejection: she may have seized מטלטלי