

25.4.4

33b (לחייב על המזיד כשוגג) → 35a (משנה ז')

<p>1. וְנָפֵשׁ כִּי תִחְטָא וְשָׁמְעָה קוֹל אֱלֹהִים וְהָיָה עַד אִם לֹא יִגִּיד וְנִשְׂא עוֹנוֹ: וּמִקְרָא הָאֵל:</p> <p>2. נָפֵשׁ כִּי תִחְטָא וְשָׁמְעָה מֵעַל בְּה' וְכָחַשׁ בְּעֵמִיתוֹ בְּפִקְדוֹן אוֹ בְּתְשׁוּמַת יָד אוֹ בְּגִזְל אוֹ עָשָׂק אֶת עֵמִיתוֹ: וּמִקְרָא הָאֵל:</p> <p>3. וְאִם בְּשִׁנְאָה יְהַדְפְּנוּ אוֹ הַשְׁלִיךְ עָלָיו בְּצַדִּיקָה וְיָמַת: אוֹ בְּאֵיבָה הִכְהוּ בְיָדוֹ וְיָמַת מוֹת יוֹמַת הַמִּכָּה רָצַח הוּא גֹאֵל הַדָּם יָמִית אֶת הַרָצוּחַ בְּפָנָיו בּוֹ: בְּמִדְבַר לַהֲכִיב־אֵל:</p> <p>4. וְעָבַר עָלָיו רוּחַ קִנְיָה וְקָנָה אֶת אִשְׁתּוֹ וְהוּא נִטְמָא אוֹ עָבַר עָלָיו רוּחַ קִנְיָה וְקָנָה אֶת אִשְׁתּוֹ וְהִיא לֹא נִטְמָא: בְּמִדְבַר הָיִד:</p> <p>5. וְהָיָה כִּי יֵאָשֵׁם לְאַחַת מֵאֵלֶּה וְהִתְנַדָּה אֲשֶׁר חָטָא עָלֶיהָ: וּמִקְרָא הָאֵל:</p> <p>6. אוֹ נָפֵשׁ כִּי תִשָּׁבַע לְבָטָא בְּשִׁפְתָיִם לְהַרְעוֹ אוֹ לְהִיטִיב לְכָל אֲשֶׁר יִבְטָא הָאָדָם בְּשִׁבְעָה וְנִעְלַם מִמֶּנּוּ וְהוּא יָדַע וְאִשָּׁם לְאַחַת מֵאֵלֶּה: וּמִקְרָא הָיִד:</p> <p>7. עַל פִּי שְׁנַיִם עֵדִים אוֹ שְׁלֹשָׁה עֵדִים יוֹמַת הָמֵת לֹא יוֹמַת עַל פִּי עֵד אֶחָד: דְּבָרִים יִזָּ:</p>

- I תביעת ממון (not just potential) שבועה"ע משנה ז'
 - a Excluded: any testimony about personal status (e.g. כהן, לוי, not a חלל)
 - i And: any testimony about another's personal status
 - 1 Implication: שבועה"ע on behalf of another's finances is valid
 - (a) Challenge: next משנה requires that the עדים hear the demand from the plaintiff
 - (b) Answer (שמואל): only valid if the claimant is acting on behalf of the plaintiff
 - (i) Challenge; מוטל rule – we don't write a שטר הרשאה for מטלטלים
 - (ii) Answer; that's only if the defendant denies his debt (plaintiff must face him)
 - ii And: any cases where financial liability is trumped by greater punishment (e.g. אנס/פתה את בתו, my son wounded me, שבת torched field on פ')
- II Source for שבועה"ע being limited to cases of תביעת ממון (ברייתא)
 - a אואין (אואין) use of multiple פ's (v. 2) - parallel to ר' אליעזר
 - i Challenges: vv. 3, 4 have אואין
 - 1 Answers: v. 3 has no oath associated; v. 4 has כהן associated
 - (a) Challenge (רבה בר עולא): v. 6 also has או, an oath and no כהן
 - (b) Answer: שבועה"פ is a more likely index than שבועה"ע – due to תחטא::תחטא
 - (i) Retort: שבועה"ב is more likely, as both incur a קרבן חטאת
 - (ii) Defense: שבועה"פ shares "תחטא", מזיד, a claim, a denial and "the past" (i.e. not about the future)
 - (iii) Back: שבועה"ב is more likely, as it shares a קרבן חטאת and חומש ויורד, עולה ויורד and no חומש
 - 1. Conclusion: שבועה"פ has more points in common
 - b ר"ע: v. 5 – לאחת מאלה; only some of them are valid (ממון)
 - i Challenge: his determination seems arbitrary (why not flip what's included and excluded?)
 - 1 Answer: he's building on ר"א's use of אואין
 - 2 Question: where do they differ?
 - (a) Suggestion1: whether עדי קרקע are subject (ר"א – yes; ר"ע exempts them from מאלה)
 - (b) Suggestion2 (עדי קרקע ר"א who maintains that even ר"ע exempts them from מאלה): יוחנן
 - c ממונות v. 1 allows for a case where ראייה OR ידיעה alone would suffice → ממונות
 - i Seeing: he can testify that he saw the lender counting out money to the debtor
 - ii Knowing: if the debtor admitted his debt in front of the witnesses
 - 1 Suggestion (ר"פ לאביי): ריה"ג rejects ר"א's ruling about circumstantial evidence re: crazed camel who kills
 - (a) And: he would judge similarly in homicide case like that told of שטח בן שטח (v. 7)
 - (b) Defense: he still wouldn't allow for "seeing" alone to be sufficient in נפשות
 - (i) Reason: need to know if victim was Jewish, not a טריפה
 - iii Observation: ריה"ג must hold that עדי קנס are not subject to שבועה"ע, as (e.g. in case of אונס) they must know if she was a בתולה etc. – and ראייה alone can never be enough
 - iv Entrance exam (ר' המנונא רב יהודה) of ר' יהודה: if witnesses see A counting out money to B – חייבים?
 - 1 Question: what is the recipient's claim?
 - (a) If: he claims that he never got the money – he is a liar (and the giver is נשבע ונוטל)
 - (b) If: he claims that he was receiving his own money, their testimony won't help → they are פטור (accepted!)
 - 2 Related case: A claimed he gave money in place X; B denied he wasn't there; עדים testified that he urinated there
 - (a) ר"ל – he is a liar
 - (b) ר"נ – (this is the way the Sassanians rule) – he didn't say he was never there! (→ not a liar)
 - 3 Alternate version: B claimed he had never been there, but עדים testified that he urinated there
 - (a) ד"ל - he is a liar
 - (b) דבא (לר"ג) people don't remember something so insignificant (השתנה) → not a liar

- d *ש"ד* simple comparison with *פ* – just as that is only *ממון*, similarly *ע* is only *ממון*
- i *And*: *ק"ו* from *פ*, where the class of persons and circumstances is larger and it only involves *ממון*
- 1 *Block*: in *פ* – *נשבע* – *מושבע*, *פ* – *נשבע* and *מזיד* – *שווג*
 - 2 *Defense*: *תחטא* – *תחטא* (vv. 1,2) connects *פ* to *ע* limiting *ע* to *ממון*
- ii *Reaction in א'*: they derided his exegesis
- 1 *Question*: what was the derision?
 - (a) *Suggestion*: the knock-down of the *ק"ו*
 - (i) *Part1*: *פ* doesn't equate *נשבע*; *מושבע*, unlike *עדות*
 1. *But*: what is *ר*'s source for *נשבע* *מפי עצמו* carrying any liability in *ע*? Must be from *פ* – *פ* – *נשבע* *מפי אחרים* from *ע*, he can infer *נשבע* *מפי עצמו* from *פ*, he can infer *נשבע* *מפי אחרים* from *ע*
 2. *Therefore*: just as he infers *נשבע* *מפי עצמו* from *פ*, he can infer *נשבע* *מפי אחרים* from *ע*
 3. *Block*: perhaps *ר* infers *נשבע* *מפי עצמו* in *ע* via *ק"ו*; rather...
 - (ii) *Part2*: *פ* doesn't equate *שווג*; *מזיד*, unlike *ע*
 1. *But*: the same omission (*ונעלם*) in *ע* holds for *פ* (no "*ונעלם*") → should be *שווג* there
 2. *Block* (*ר' הונא*): perhaps *ר* infers "*שווג*-only" from *מעילה*
 3. *And*: that is the "derision" – he should've inferred from *ע* and included *מזיד*
 - a. *Challenge*: *מעילה* is a better index, as both are called *מעילה* (v. 2)
 - b. *Retort*: *ע* is a better index, *תחטא* – *תחטא*
 - c. *Defense*: *מעילה* shares these – is *מעילה*, applies to all people, liability generated by *הנאה*, must bring a *קרבן קבוע* (not *ערי*), owes an extra *חומש* and the *קרבן* is an *אשם*
 - d. *Response*: *ע* shares these – *תחטא*, is unrelated to *קדשים*, involves an oath, a claim and a denial and *אואין*
 - i. *Conclusion*: *מעילה* has more significant points in common
- (b) *Suggestion (ר')*: since *ר* has the *גז"ש* (of *תחטא* – *תחטא*) – why does he set up his own challenge of *ע* – *ע* – *נשבע* by dint of *נשבע* and *שווג*?
- (i) *Block*: perhaps these challenges were raised before he utilized the *גז"ש* (as per the sequence in *ברייתא*)
 - (ii) *Retort*: *ר*, even in conclusion, holds that *פ* doesn't allow for *זדון* (pre *בר איתי*'s report)
 1. *Meaning*: even after the *גז"ש*, he doesn't allow for *כשווג*
 2. *Defense*: perhaps he only accepts that distinction, but not *נשבע* / *נשבע*
 - a. *Challenge*: if so, he should infer *ע* from *פ* (which was inferred, in turn, from *מעילה*)
 - i. *And*: conclude that even in *ע*, no *קרבן* for *מזיד*
 - ii. *Answer*: that's why the *תורה* wrote *ע* with *הטומאה* and *ידועות* and *שבוע"ב*
 - iii. *Explanation*: by its contextually glaring omission of *ונעלם* → even *מזיד* is *ערי* *חייב קרבן ערי*