

25.5.2

38a (שיום הפרק) → 38b (שבועת הפקדון כיצד [משנהב'])

- I 'משנה ב': method of oath
- a *מפקיד*: claims (etc.) and *שיומר* takes an oath that he doesn't have it; or denies it and *מפיקד* is *משיביע* and *שומר* says *אמן*
- i *if*: he administered multiple oaths – even in ב"ד, liable for each
- 1 *reason* (ר"ש): at any point he could admit to it and his admission would be accepted (unlike שבוה"ע)
- II 'משנה ג': multiple claims and multiple claimants
- a *If*: there were 5 claimants and his response was general – "שבועה שאין לכם בידי" – only liable once
- i *But if*: his response was particularized: *לך ולא לך בידי ולא לך* – liable for each
- 1 *ל"א*: for it to be particularized, must state שבועה at the end
- 2 *ל"ש*: for it to be particularized, must state שבועה for each one
- b *If*: the claim was for *אבדה*, *גזל*, etc. and his response was general "שבועה שאין לכם בידי" – only liable once
- i *But if*: he itemizes them, liable for each one
- ii *ל"ג יוחנן*: if there is one פרוטה among them, it is מצטרף for liability
- 1 *Commentary*: ר' אחא/רבינא ר'
- (a) *One*: only liable for details (wheat, barley etc.), not for general oath (in second case)
- (b) *Other*: also liable for general oath (→ ר' יוחנן's statement applies to סיפא as well)
- (i) *Challenge*: ר' חייא ruled that there are a total of 15 חטאות here (3x5) → פרטים
1. *defense*: he's not reckoning the כלל, though it may be there
2. *challenge*: other version where ר' חייא tallies 20 חטאות
- a. *defense*: that is in re: פקדון יד, גזל, אבדה, תשומת יד, where there are 4 פרטים
- 2 *related*: רבא asked ר"נ: what if he takes an oath, detailing 4 claims, and adds *לך ולא לך ולא...* do the multiple liabilities distribute to each of the claimants?
- (a) *Response*: from ר' חייא's ruling (20 חטאות), must be our case; else he isn't teaching anything (except 4x5=20)
- c *Parallel*: if claim was multiple items – e.g. חטין ושעורין and response was general "שבועה שאין לכם בידי" – only liable once
- i *But if*: he itemized the response – *שבועה שאין לך בידי חטין ושעורין* etc. – liable for each
- ii *ל"מ*: even if he mentioned them in the singular (indicating species) – liable for each
- d *ברייתא*:
- i *ל"מ*: if he presents them as a כלל – liable once; if he details them – liable for each
- ii *ל"ג יהודה*: if he responds *לך ולא לך ולא לך* – liable for each;
- 1 *ל"ג ר"מ*: "detail" (לא לך לא לך לא לך) is ר"מ's "כלל" and vice-versa (לא לך לא לך לא לך) is detail for ר"י
- 2 *ל"ג ר"מ*: all agree that *לך ולא לך ולא* is a detail; disagreement about *לך לא לך לא* (ל"מ – detail; ר"י – כלל)
- (a) *And*: ר"מ only regards *לכם* as כלל
- (b) *Arguments*:
- (i) *ל"ג ר"מ* inferred from ברייתא – since ר"י introduces *לך ולא* he must have heard ר"מ rule that that was a כלל (ולא לך)
1. *Retort*: ר"מ ruled them both to be יהודה, פרט ר' יהודה acceded on one (ולא לך)
2. *Response*: why show point of agreement rather than point of dispute (לא לך לא לך)
- (ii) *ל"ג ר"מ*: infers from משנה – ר"מ used *לכם* as an example of כלל; if he held that *לך ולא לך לא* is a כלל, let him present that, which is a bigger חידוש
1. *Retort*: *לך ולא לך ולא* is tantamount to *לכם* – no need to present *לך ולא לך ולא*
- (iii) *Challenges* (to שמואל) indicating that ר"מ considers this a פרט
1. *Assumption*: anonymous author of משנה is ר"מ
- a. *Answer*: incorrect version – should be לא (without ווא"ו)
- b. *Challenge*: did the תנא err so grievously?
- c. *Rather*: our תנא is רבי who holds (in re: מחשבת פיגול) that כזית כזית :: כזית כזית ושעורה... – משנה from ר"מ's own words at end of משנה
- i. *Challenge*: should read שעורה חטה
- ii. *Answer*: should read חטה
- iii. *Meaning of אפילו*: even if he used singular, referring to species
- iii *ל"א*: if he responds *לך שבועה* – לא לך ולא לך ולא לך – liable for each
- iv *ל"ש*: must declare שבועה for each one (... שבועה לא לך ושבוה"ע לא לך); else it's all one oath

- III 'משנה ד' claim of אינוס/פיתוי – liable
- a *Dissent:* ר"ש exempts, as he would be exempt if he admitted it (קנס)
 - b *Response:* even though he is exempt from קנס, he is still liable for בושת ופגם by his own admission
 - i *Analysis:* ר"ש's claim is that the main תביעה is for קנס, רבנן – תביעה is also פגם ובושת
 - 1 *Suggested metaphors:* רבא - defeated by אביי and doesn't fit (pairing חטין ושעורין with קנס ובושת)
 - 2 *Reasoning:*
 - (a) ר"ש a man won't ignore a set amount to go after a subjective sum
 - (b) רבנן a man won't ignore a sum he can secure even if defendant admits and go after a claim which, if the defendant admits guilt, will not be collectible
- IV 'משנה ה' liability limited to denial of חיוב ממוני, not קנס
- a *Example:* if he claims נזק for the defendant stealing his ox – liable
 - i *But if:* he admits he stole it but denies טביחה ומכירה – exempt
 - b *Example:* if he claims that the defendant's ox killed his ox – liable
 - i *But if:* he claims that the defendant's ox killed his slave – exempt
 - c *Example:* if he claims damages for assault – liable
 - i *But if:* his ע"כ claims freedom due to the defendant (master) knocking out his tooth (e.g.) – exempt
 - d *General rule:* any liability which he would not become obligated by dint of his own admission – exempt