

25.7.1

44b (משנה א') → 46a (והשביעית משמטת את השבועה)

Note: again, in this (and the next, final) chapter, the entire chapter of משניות are presented at the beginning. We will present 'משנה א' alone here and the attendant גמרא and review the subsequent משניות as they are discussed.



- I 'משנה א': exceptions to rule that all who take an oath do so in order to exempt themselves from payment (explicated below)
 - a Source for the rule: v. 1, reading "ולקח" as "taking the oath"
 - b שכיר (hired hand), נגזל, נחבל (victim of assault), שכנגדו חשוד על השבועה, storekeeper with his ledge
 - c שכיר: claims that he wasn't paid and בעה"ב claims he paid – שכיר swears he wasn't paid and collects
 - i Dissent (ר' יהודה): only if there is a הטענה במקצת הטענה – בעה"ב claims he paid part
- II Analysis of תקנת חכמים that שכיר swears and collects:
 - a שמואל: in order to ensure שכיר's livelihood
 - i Challenge: why should בעה"ב be fined for this consideration?
 - ii Answer: בעה"ב gains - he will find it easy to hire workers as they are assured of being paid
 - 1 Counter: שכיר would gain as hirers wouldn't be reticent to hire
 - (a) Block to entire line of reasoning: each side needs each other
 - b Rather: בעה"ב is distracted with his other workers and doesn't remember if he paid
 - i Challenge: let him pay without an oath
 - ii Answer: the oath is to appease בעה"ב (he shouldn't be concerned that he's being cheated)
 - 1 Challenge: why not pay him with עדים (to avoid the problem)?
 - (a) Answer: that is too much bother
 - 2 Challenge: why not pay in advance?
 - (a) Answer: both sides' interest (בעה"ב – may not have cash; שכיר – rather not hold his coins while working)
 - iii Challenge: if so, why does this not apply if their dispute is re: the amount of the contract (קצץ)?
 - 1 Answer: בעה"ב remembers that
 - iv Challenge: בעה"ב should also have to pay (בשבועה) if the שכיר comes to him לאחר זמנו; but in that case, we ruled המע"ה
 - 1 Answer: we don't suspect בעה"ב of violating הלנת שכר (v. 2)
 - (a) Challenge: do we suspect worker of violation לא תגזול (v. 2)?
 - (b) Defense: there are two factors in בעה"ב's defense; won't violate הלני"ש, and שכיר doesn't delay collection of wages
- III Limitation on our rule (לפי ר' יצחק) and שמואל, רב)
 - a Only applies: if בעה"ב hired him in front of עדים; else, he is believed to claim he paid, מינו he could claim he never hired him
 - i דב"ח: praise for the ruling
 - ii דבא: challenges ruling; leads to conclusion that there is no שבועת השומרים,
 - 1 Argument: שומר can always claim נאנסתי and be believed, מינו he could have claimed that he never got the פקדון
 - 2 Block: it would still apply - if he gave the פקדון in front of עדים
 - (a) Retort: he would still be believed to say נאנסו, as he could have claimed that he returned the פקדון
 - (b) Answer: שבועת השומרים would apply in a case where he gave the פקדון with a שטר
 - 3 Inference: both רבא and רב"ח agree that if a מפקיד entrusted פקדון via עדים, need not be returned עדים בפני עדים
 - (a) But: if he gave the פקדון with a שטר, must be returned עדים בפני עדים
 - 4 ברייתא א' רבה בר שמואל applied v. 3 to ר"ש, for his inference from שמואל בר שמואל:
 - (a) ברייתא: a שכיר swears and collects (בזמנו): but if they disagree about the קציצה, then המע"ה
 - (i) Inference (ר"ש): since there is a demand for proof in סיפא, must be no demand in סיפא
 - 1. Therefore: even if hired בעדים, של שכיר is believed to claim he wasn't paid (contra שמואל רב)
 - (ii) Rejection (רנ"י): ראייה needed in both cases, but only ראייה for payment is mentioned
 - 1. However: ראייה לישבע requires that he prove he was hired (כשמואל) – but תנא didn't mention ראייה

IV Question sent to שמואל (from בית מדרש ר'ב) – regarding a dispute between בעה"ב and artisan re: amount of contract

- a Answer: בעה"ב swears (to the lesser amount) and אומן loses
- i Reason: בעה"ב certainly remembers the amount of the קציצה
- 1 Challenge: from ברייתא (above); in case of dispute over קציצה, ruling is המע"ה → no שבועה needed
 - 2 Answer (ר"נ): statement is distributive (לצדדין קתני) –
 - (a) Either: the אומן brings proof (to the larger amount) and collects
 - (b) Or: בעה"ב takes an oath and is exempted
- b Challenge: משנה rules that if there is a dispute between בעה"ב and אומן about price (e.g. of dyeing a garment)
- i If: the garment is still in the possession of the אומן, המע"ה (בעה"ב must prove lesser amount)
 - ii If: the garment was returned but it is the proper time of collection – אומן takes an oath and collects (larger amount)
 - iii If: after time of collection, המע"ה (אומן must prove larger amount)
 - 1 In middle clause: according to שמואל's ruling, בעה"ב should take the oath here
 - (a) Answer (רנב"י): this is authored by ר' יהודה, who maintains that as long as the שבועה "leans" towards the בעה"ב, the שכיר (אומן) takes the oath and collects
 - (i) Question: which statement of ר' יהודה informs us of his position?
 1. Can't be: his ruling in משניות ב-ד, as there he limits the scope of נוטל more than רבנן
 2. Rather: must be ברייתא, where he limits שבועה נוטל to a case of מודה במקצת (as he does in the משנה)
 - a. But: he adds, as an example, a dispute over קציצה
 - b. In sum:
 - i. ד' יהודה maintains that קציצה is no different than a regular hire, and בעה"ב may forget – but in any case, we only apply שבועת השכיר (etc.) to a case of מודה במקצת, as that is essentially a שבועה דאורייתא, and רבנן allowed for it to be "flipped" as a תקנה for the שכיר but they wouldn't allow it with a שבועה (היסת) which is fundamentally דרבנן
 - ii. רבנן maintain that the בעה"ב always remembers קציצה, but allow for a (היסת) שבועה דרבנן to be turned around for the benefit of the שכיר